

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.		AD270821008161I
GSTIN Number, if any/ User-id		27AABCJ3574E2ZM
Legal Name of Applicant		M/s Crystal Crop Protection Limited
Registered Address/Address provided while obtaining user id		G-54, MIDC Industrial Estate, Butibori, Nagpur, Maharashtra- 441122
Details of application		GST-ARA, Application No. 31 Dated 20.08.2021
Concerned officer		Commissionerate - Nagpur I, Division.- Hingna, Range-Butibori II
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Factory/Manufacturing
B	Description (in brief)	Crystal Crop Protection Limited, Applicant is in the manufacturing & trading of agrochemical products – Insecticides, Fungicides, Herbicides, Plant Growth Regulators/Micronutrients. Applicant has two CGST registrations in Maharashtra, one at New Ravi Spinning and Manufacturing Co, Plot No 22,23,24, Phase II, MIDC, Akola, Maharashtra, 444104 and the other at G-54, MIDC Industrial Estate, Butibori, Nagpur, Maharashtra, 441122. Applicant wishes to merge both registrations by way of transfer of the business of Nagpur registration with Akola registration without consideration on a going concern basis and continue with one registration only.
Issue/s on which advance ruling required		<ul style="list-style-type: none"> ➤ Applicability of a notification issued under the provisions of this Act ➤ Admissibility of input tax credit of tax paid or deemed to have been paid ➤ Determination of the liability to pay tax on any goods or services or both ➤ Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 31/2021-22/B- 50

Mumbai, dt. 21/04/2022

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/ **Crystal Crop Protection Limited**, the applicant, seeking an advance ruling in respect of the following question.

1. Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply' under the GST law?

2. Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of goods' under the GST law?

3. Whether merger between distinct persons would qualify as 'transfer of business as going concern' under the purview of GST Law?

4. Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of services' under the GST law?

5. If the transaction qualifies as 'supply of services', whether the said transaction would get covered under Sl. No. 2 of Notification no. 12/2017-C.T.(R) dated 28.06.2017, and therefore not liable to GST?

6. Whether Nagpur registration can file Form GST ITC-02 and transfer unutilized credit balance to Akola registration?

7. In case the Applicant merges the business of Akola registration, then can the Applicant claim credit balance appearing in Akola registration via Form GST ITC 02A in Nagpur registration?

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 "Crystal Crop Protection Ltd (hereinafter referred to as 'the Company' or 'Crystal') is a trader & manufacturer of agrochemical products & registered under CGST 2017 vide Regn. No. 27AABCJ3574E2ZM in Nagpur ('Nagpur registration' or 'Applicant') & vide GST No. 27AABCJ3574E1ZN in Akola (Akola registration).
- 2.2 The Akola registration shifted from the earlier VAT regime to the GST regime and later on, acquired a manufacturing plant at Nagpur location. Further, as per the proviso to Section 25(2)

of CGST Act (prior to amendment vide CGST Amendment Act No. 31 of 2018) the Company obtained a separate registration in Nagpur with effect from 30.11.2018.

- 2.3 Akola registration trades in pesticides while Nagpur registration is involved in manufacturing as well as trading of insecticides. Further, in light of an incentive scheme of the Government of Maharashtra, the Company obtained separate registration for both the locations since the newly acquired unit at Nagpur was getting covered under the incentive scheme. However, it was later found that separate registration is not a requirement under the incentive scheme & therefore wishes to merge both the registrations by way of transfer of business of Nagpur registration with Akola registration without consideration, on a going concern basis, in the following manner –

- Proposed transaction will be implemented by entering into an internal Memorandum of Understanding (MoU) between the two registrations transferring all assets and related liabilities essential to carry on the business on as is basis by which, the transferee i.e. Akola registration would undertake all future liabilities of transferor i.e. Nagpur registration.
- The factory and the premises of Nagpur registration will remain at the same location where it is currently situated.

Nagpur registration will file Form ITC-02 to transfer the credit balance lying in its electronic credit ledger to Akola registration so that Akola registration can avail such input tax credit (ITC). Thereafter, intimation of surrender of Nagpur registration to be filed & all necessary compliance viz filing of GSTR 9/ 9C, final returns etc. shall be undertaken prior to surrender of the registration.



B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

- 2.4 **Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply' under the GST law?**

- 2.4.1 In the given case, all the conditions mentioned under the definition of supply as per Section 7(1) of CGST Act, between two distinct persons, are getting satisfied and accordingly transaction of transfer of business by way of merger qualifies as supply under GST.

- 2.5 **Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of goods' under the GST law?**

- 2.5.1 In light of the Section 7(1) of amended CGST Act & Part 4(c) of Sch.-II, Applicant submits that, in a case of transfer of business happening on a going concern basis, there is no "supply of goods".

2.6 Whether merger between distinct persons would qualify as 'transfer of business as going concern' under the purview of GST Law?

2.6.1 Since the term, 'going concern' is not defined in the GST legislation, applicant relies on various judicial pronouncements in this regard to understand the meaning of 'Going Concern' as under:=

1. In the case of State Of Tamil Nadu vs T.M.T. Drill (Private) Ltd. (1991 (082) STC 0059 Madras), it was held that for a business to be considered as sold 'as a whole / going concern', it is important that all assets of the business should be transferred.

2. In the case of Rajashri Foods Private Limited [KAR ADRG 06 / 2018 dated 23 April 2018], the Authority of Advance Ruling, Bangalore observed that :- 'A going concern is a concept of accounting and applies to the business of the company as a whole. Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business. Such transfer of business as a whole will comprise comprehensive transfer of immovable property, goods & transfer of unexecuted orders, employees, goodwill etc.'

2.6.2 Applicant submits that if the activities of business are continuous and uninterrupted & operations are being carried out on a regular basis, then transfer of business on going concern is nothing but transfer of "running business" which is capable of being carried on by the purchaser as an independent basis.

2.6.3 Applicant will transfer the business from Nagpur registration to Akola registration on as is basis. The operations will be continuous & uninterrupted at the same location; the business is transferred to enable Applicant to continue its business from one GST number only, in Maharashtra. Applicant submits that the business from Nagpur to Akola will be transferred on going concern basis.

2.7 Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of services' under the GST law?

2.7.1 If a transfer of business happens on a going concern basis, then it does not constitute as "supply of goods" as per Sch. II. Further, Sch. II does not prescribe whether transfer of business on a going concern basis would constitute as "supply of services". Hence, Applicant refers to definition of the term "Services" under Section 2(102) of GST Act, 2017 & submits that, since proposed transaction does not constitute supply of 'goods', the said transaction would constitute "supply of services".



2.8 If the transaction qualifies as 'supply of services', whether the said transaction would get covered under Sl. No. 2 of the Notification no. 12/2017-CTR dated 28.06.2017, and therefore not liable to GST?

2.8.1 As per Sl. No. 2 of Notification No. 12/2017-C.T.(R) dt 28.06.2017, services by way of transfer of a going concern, as a whole or an independent part thereof attracts 'Nil' rate of tax. Hence, transfer of business from Nagpur registration to Akola registration is on a going concern basis and accordingly the said transaction would attract Nil rate of tax.

2.8.2 Applicant relies on the Advance Ruling in the case of Shilpa Medicare Limited [AAR No. 05/AP/GST/2020 dated 24 Feb 2020], wherein it was held that transfer of business was a supply though exempted under Notification No. 12/2017-CTR dt 28.06.2017, transfer of ITC was allowed.

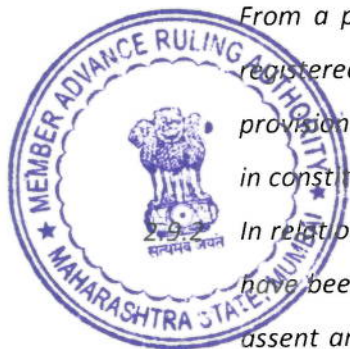
2.9 Whether Nagpur registration can file Form GST ITC-02 and transfer unutilized credit balance to Akola registration?

2.9.1 Section 18 (3) of CGST Act enables a registered person to transfer ITC, on transfer of business. From a perusal of the said Section 18(3), it is seen that firstly, change in the constitution of registered persons denotes a bi-lateral transactions, involving two entities and secondly, the provision uses the expressions sale, merger, de-merger, amalgamation, etc., as forms of change in constitution.

In relation to the first point, the Applicant submits that the terms in the provision referred above have been understood as referring to a bi-lateral transaction involving two parties with mutual assent and consideration, to be understood to include two distinct persons. Under GST Laws, 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 a distinct person for the purpose of the Act.

2.9.3 The present case involves merger of 2 GST registrations i.e. distinct persons by way of transfer of business of Nagpur registration to Akola registration. In this regard, it is submitted that, even under the erstwhile excise law also, registration was factory-based and each separate factory was treated as a distinctive unit. The Tribunals and Courts in the following judicial pronouncements have recognized the concept of merger of central excise registrations:

- Inox India Ltd. v. C.C.E., Vadodara reported in (2001) 133 ELT 487 (Tri.-Mumbai)
- CCE v. Rajshree Sugars & Chemicals Limited reported in 2014(299) ELT 277 (Mad.)
- CCE, Allahabad v. M/S. Shrawasti Kisan Sahkari Chini 2014 (8) Tmi 333 - Allahabad High Court



- *K.M. Sugar Mills Ltd. v. CCE, Allahabad* reported in 2001(133) ELT 567 (Tri.-Delhi)
- *Niphad SSK Ltd. v. Commissioner of Central Excise, (CESTAT - Mumbai)* MANU/CM/0303/2010

2.9.4 Thus, Tribunals/ Courts have held that for the purposes of Central Excise Law, registration is factory based & each factory is to be treated as separate entity. The said principle can be applied to GST Law especially when there is a deeming fiction under Section 25(2) of the CGST Act, treating two registrations as a distinct person. Hence, the impugned transaction of merger of GST registrations should get covered under Section 18(3) of the CGST Act. Hence, Nagpur registration can transfer the unutilized credit balance lying in its electronic credit ledger to Akola registration.

2.9.5 Further, Rule 41 of CGST Rules prescribes the process to transfer of input credit from electronic credit ledger of the transferor to the transferee via Form ITC-02. Since, there are two separate registrations of the Transferor (i.e. Nagpur registration) and Transferee (i.e. Akola registration) in the present case, respectively, the Applicant should be eligible to transfer ITC in Form ITC-02.

2.10 ***In case the Applicant merges the GST registrations by way of transferring the business of Akola registration with Nagpur registration, then can the Applicant claim credit balance appearing in***

Akola registration via Form GST ITC 02A in Nagpur registration?

2.10.1 Notwithstanding anything stated above, Applicant submits that even if said transaction does not qualify as a transfer of business under going concern as per GST provisions, applicant should be allowed to merge both its registrations & transfer the credit in terms of Rule 41A of CGST Rules.

2.10.2 As per Section 25(2) of CGST Act, a person seeking registration shall be granted a single registration in a State or Union Territory. However, as per proviso to Section 25(2) of amended CGST Act, a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to prescribed conditions. However, if a registered person has availed such benefit in terms of the provisions as discussed above, the provisions does not contain any bar for the registered person to opt out of it. The proviso to Section 25(2) of CGST Act allows that registered person to have two separate registrations, but it does not suggest that he cannot opt out and have a composite registration.

2.10.3 Rule 11 of the CGST Rules enables separate registrations for multiple places of business and Rule 41A of CGST Rules which prescribes for process to transfer input tax credit between two registrations, appears to contemplate a case of transfer of input tax credit to a newly created place of business and not to any other existing place of business.



2.10.4 In this regard, the Applicant submits the following judicial pronouncements, wherein it is settled that the beneficial provision must be liberally construed, so as not to cause unintended hardship.

1. Jnan Ranjan Sen Gupta Vs. Arun Kumar Bose reported in AIR 1975 SC 1994
2. Union of India & Another Vs. Pradeep Kumari reported in AIR 1995 SC 2259
3. JSW Steel Limited and others v. Union of India, 2016 (1) TMI 957 - Bombay High Court

2.10.5 In light of the above, Applicant submits that there is no embargo in Rule 41A of CGST Rules and other provisions of GST Law against merging of two registrations and seeking transfer of ITC in the process via Form ITC-02A and the credit should be eligible in the hands of Nagpur registration.

2.11 In light of the above analysis, applicant believes that the impugned transaction, between two distinct persons qualifies as transfer of business on a going concern basis under GST provisions & Applicant is allowed to transfer the ITC via Form GST ITC-02 to Akola registration which should be eligible for utilization in the hands of Akola registration.

Or

Applicant is allowed to merge two registrations and transfer the ITC via Form GST ITC-02A from Akola to Nagpur registration & eligible to claim ITC of Akola registration in Nagpur registration.

Under GST Laws, transfer of business from one registration to another registration within the same state shall not result in loss to the State or Central Government. Rather it will ease the compliance in assessee's hands. Therefore, Applicant prays to answer the questions in favor of the applicant.

2.13 Further Submissions dated 08.03.2022, 14/3/2022 & 22/3/2022 made by applicant are in the nature of repetitions of submissions made earlier and are not reproduced for the sake of brevity.

3. CONTENTION – AS PER THE CONCERNED OFFICER:

Officer Submission dated 15.03.2022-

“Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute ‘supply’ under the GST law?”

3.1 As per Sr. No. 2 of Schedule I & Section 7 (c) of the CGST Act 2017, supply of goods or services or both between related persons or between distinct persons as specified in section 25(4) of CGST Act, 2017, when made in the course or furtherance of business shall be treated as supply even if made without consideration.



Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of goods' under the GST law?

- 3.2 As per Section 7(1A) of amended CGST Act 2017, and Part 4(c) of Schedule II, it is understood that if a business is transferred as a going concern, it does not amount to supply of goods.

Whether merger between distinct persons would qualify as 'transfer of business as going concern' under the purview of GST Law?

- 3.3 The term 'going concern' is not defined in GST legislations. From applicant's submissions it is seen that, the activities of business are continuous, uninterrupted & operations are being carried out on a regular basis. Thus, the business from Nagpur to Akola will be transferred on going concern basis wherein the option to reorganize the business is on the initiative of the applicant.

Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of services' under the GST law?

- 3.4 If a transfer of business happens on a going concern basis, then it does not constitute as "supply of goods" as per Schedule II. Therefore, since the proposed transaction does not constitute supply of 'goods', the said transaction would get covered under the ambit of the definition of 'services'.

If the transaction qualifies as 'supply of services', whether the said transaction would get covered under Sl. No. 2 of Notification No. 12/2017-CTR dated 28.06.2017, and therefore not liable to GST?

- 3.5 As per Sl. No. 2 of the Notification no. 12/2017-C.T. (R) dated 28.06.2017, services by way of transfer of a going concern, as a whole or an independent part thereof attracts 'Nil' rate of tax.

Whether Nagpur registration can file Form GST ITC-02 and transfer unutilized credit balance to Akola registration?

- 3.6.1 Section 18 (3) of CGST Act, 2017, enables registered person to transfer input tax credit, on the occasion of transfer of business. As per Section 2 (94) of the CGST Act, 2017: "Registered person" means a person who is registered under section 25 of CGST Act, 2017, but does not include a person having a Unique Identity Number. As per Section 25(4) of CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union Territory shall, in respect of each such registration be treated as a distinct person for the purpose of the Act.
- 3.6.2 Hence, the transaction of merger of GST registrations by way of business transfer from Nagpur registration to Akola registration gets covered under the ambit of Section 18(3) of the CGST Act.



- 3.6.3 Further, Rule 41 of CGST Rules, 2017, prescribes the process to transfer of input credit from electronic credit ledger of the transferor to the electronic credit ledger of the transferee via Form ITC-02. In view of Rule 41 of CGST Rules, 2017, considering the fact that there are two separate registrations of the Transferor (i.e. Nagpur registration) and Transferee (i.e. Akola registration) in the present case, respectively, the Applicant appears to be eligible to transfer ITC in Form ITC-02 **In case the Applicant merges the GST registrations by way of transferring the business of Akola registration with Nagpur registration, then can the Applicant claim credit balance appearing in Akola registration via Form GST ITC 02A in Nagpur registration?**
- 3.7 In view of Rule 41 of CGST Rules, 2017, considering the fact that there are two separate registrations of the Transferor (i.e. Akola registration) and Transferee (i.e. Nagpur registration), the Applicant appears to be eligible to transfer ITC in Form ITC-02."

04. HEARING

- 4.1 Preliminary e-hearing was held on 18.01.2022. The Authorized representatives of the applicant, Shri. Dhruv Gupta CA and Shri. Shivarajan Kallyanaraman were present. Jurisdictional officer was absent. Application is filed by Nagpur unit & question No. 7 asked is about transfer of Akola unit to Nagpur. Since in that case Akola unit will be supplier, application for the question No.7 ought to have been filed by Akola Unit. Hence, question No.7 was not admitted. The jurisdictional officer was directed to file written submission within a weeks' time.
- The Application was admitted and Final e-hearing was held on 15.03.2022. The Authorized representatives of the applicant, Shri. Shivarajan Kallyanaraman CA & Shri. Dhruv Gupta, CA were present. The Jurisdictional officer Shri. Anjan Biswas, Superintendent, Division-Hingna, Range-Butibori-II, Nagpur was also present. The Application was heard.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have perused the documents on record, and taken into consideration, the submissions made by the applicant as well as the jurisdictional officer.
- 5.2 M/s Crystal Crop Protection Limited, the Applicant, has two GST registrations in the State of Maharashtra. The principal place of business of one of the registrations is at New Ravi Spinning and Manufacturing Co, Plot No 22, 23, 24, Phase II, MIDC, Shivani, Akola, Maharashtra, 444104 (hereinafter referred to as Akola registration) and the other registration is at G-54, MIDC Industrial Estate, Butibori, Nagpur, Maharashtra, 441122 (hereinafter referred to as Nagpur registration).

5.3 The Applicant wishes to merge both the GST registrations by way of transfer of the business of Nagpur registration with Akola registration (without consideration) and continue with one registration only and has submitted that the impugned merger transaction, as a going concern, is a supply of services and have quoted provisions of the GST Laws to support their contention.

5.4.1 The first question raised by the applicant is whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply' under the GST law.

5.4.2 As per Section 7(1) of CGST Act, 2017, **supply includes**

- all forms of supply of goods or services or both such as sale, transfer, barter exchange, license, lease, rental or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- the activities specified in Schedule I, made or agreed to be made without consideration.

5.4.3 Further, as per Sr. No. 1 of Schedule I to the CGST Act, '*Permanent transfer or disposal of business assets where input tax credit has been availed on such assets will be treated as supply even if made without consideration*'.

Also, as per Sr. No. 2 of Schedule I to the CGST Act, 2017, '*supply of goods or services or both between related persons or between distinct persons as specified in section 25 of CGST Act, 2017 when made in the course or furtherance of business shall be treated as supply, even if made without consideration*'.

Section 7(1A) of amended CGST Act 2017, mentioned as above, prescribes that, certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

Part 4(c) of Schedule II is reproduced as under:

- "4 (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."

5.4.4 In view of the above, we have no doubt that; there is a rendering of 'supply' in the subject case.

5.5 We now take up for discussions of the relevant provisions of the GST Laws in respect of Question Nos. 2 and 4 as under:



5.5.1 The term 'going concern' is not separately defined in the GST legislation. However, we refer to Section 18(3) of the CGST Act as guidance to understand the meaning or interpretation of the term "going concern". Section 18(3) of the CGST Act, 2017 reads as under:

*"Section 18(3) Where **there is a change in the constitution of a registered person** on account of sale, merger demerger; amalgamation, case 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 unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed."*

Even though it relates to transfer of unutilized input tax credit remaining in the electronic credit ledger, the wording of Section 18(3) of the GST Act makes it clear that it applies only when there is:

- (i) *Change in the constitution of such registered person and*
- (ii) *Such change is on account of sale, merger, demerger, amalgamation, lease or transfer of the business*
- (iii) *and in the manner prescribed.*

Thus, **change in constitution of the business is essential** otherwise, it cannot be said that there is transfer of business as a going concern.

The concept of 'distinct persons' has been introduced under GST law wherein the establishments of a person with separate registrations within the same State/UT are considered as "distinct person". The relevant Section 25 (4) of CGST Act, 2017 reads as under:

Section 25 (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".

5.5.4 In the subject case, M/s Crystal Crop Protection Limited, Nagpur and M/s Crystal Crop Protection Limited, Akola, as units are holders of the same PAN and they are merely distinct persons. Hence, the case at hand doesn't qualify to be a "going concern to another person" as units are holders of the same PAN and they are merely distinct persons. As discussed above, in view of statutory guidance as per Section 18 (cited supra), **the change in constitution of the business is essential** otherwise, it cannot be said that there is transfer of business as a going concern.



- 5.5.5 Hence, the provisions of Para 4(c) of Schedule II of CGST Act, 2017 do not apply in this case. Therefore, the impugned supply will be treated only as supply of goods and therefore there is no supply of services in the instant case.
- 5.5.6 The applicant has relied on the Ruling given by the Advance Ruling Authority for Andhra Pradesh in the case of M/s Shilpa Medicare Limited [AAR No. 05/AP/GST/2020 dated 24 Feb 2020], (wherein it was held that transfer of business was a supply of services though exempted under Notification No. 12/2017-CTR dt 28.06.2017, transfer of ITC was allowed), to contend that in the subject case the supply is of services, exempted under Sr. No. 2 of Notification No. 12/2017-CTR dt 28.06.2017. The said Authority also held that the activity is a going concern and classified it to be a supply of service.
- 5.5.7 We find that the above said order in the case of M/s Shilpa Medicare Limited [AAR No. 05/AP/GST/2020 dated 24 Feb 2020] has been overruled by the Appellate Authority of Advance Ruling, Andhra Pradesh, vide Advance Ruling Order No. AAAR/AP/07(GST)/2020 dated 10.11.2020. The said Appellate Authority has held that, M/s Shilpa Medicare Limited, Vizianagaram, A.P and M/s Shilpa Medicare Limited, Bangalore unit are holders of the same PAN and are distinct persons. Hence, the provisions of Para 4 (c) of Schedule II of the CGST Act, 2017 did not apply in their case and the transaction did not qualify to be a “going concern to another person”. Further the said Appellate Authority has also held that transfer of unutilized ITC did not arise since the transaction was classified as a “supply of goods” between distinct persons. Further, in respect to the question whether, ITC-02 can be filed for transfer of ITC from the Vizianagaram Unit to the Karnataka Unit of M/s Shilpa Medicare Ltd., the Appellate Authority held that, there was no supply of service but a supply of goods (assets of the Vizianagaram Unit to the Unit in Karnataka State) and therefore, the question of transfer of ITC would not arise.
- 5.5.8 We agree with the submissions made by the applicant that the facts of the Shilpa Medicare Ltd case are identical to the facts of the present case and therefore as a matter of judicial prudence we follow the decision given by the Appellate Authority of Advance Ruling, Andhra Pradesh, vide Advance Ruling Order No. AAAR/AP/07(GST)/2020 dated 10.11.2020 in the case of M/s Shilpa Medicare Limited. The other case laws relied by the applicant are pertaining either to pre-GST era; and/or on facts which are different from the subject case.
- 5.6 Question No 3 raised by the applicant is not covered under the provisions of Section 97 of the CGST Act, 2017 and therefore not taken up for discussion. Further, Question No. 7 raised by the applicant was not admitted. Hence we do not answer both Question Nos. 3 and 7.



- 5.7.1 Question No. 5 raised by the applicant is "If the transaction qualifies as 'supply of services', whether the said transaction would get covered under Sl. No. 2 of the Notification no. 12/2017–Central Tax (Rated) dated 28 June 2017, and therefore not liable to GST".
- 5.7.2 We have already held hereinabove that, the impugned transaction is not a supply of services and therefore we do not take up this question for discussion and do not answer the said question.
- 5.8 Applying the ratio of the above mentioned decision of the Appellate Authority for Advance Ruling, Andhra Pradesh, in the case of M/s Shilpa Medicare Ltd., answer to Question No. 6, is in the negative.
06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

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: - Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply' under the GST law?

Answer: - Answered in the affirmative.

Question 2: - Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of goods' under the GST law?

Answer: - Answered in the affirmative.

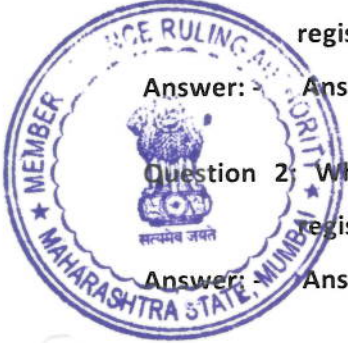
Question 3: Whether merger between distinct persons would qualify as 'transfer of business as going concern' under the purview of GST Law?

Answer: - Not Answered in view of discussions made above.

Question 4: Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of services' under the GST law?

Answer: - Answered in the negative in view of discussions made above.

Question 5: If the transaction qualifies as 'supply of services', whether the said transaction would get covered under Sl. No. 2 of the Notification no. 12/2017–Central Tax (Rated) dated 28 June 2017, and therefore not liable to GST?



Answer: - Not answered in view of answer to Question No. 4 above.

Question 6: Whether Nagpur registration can file Form GST ITC-02 and transfer unutilized credit balance to Akola registration?


Answer: - Answered in the negative.

Question 7: In case the Applicant merges the business of Akola registration, then can the Applicant claim credit balance appearing in Akola registration via Form GST ITC 02A in Nagpur registration?

Answer: - This question was not admitted at the time of admission of the application and is therefore not answered.




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 Pr. 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.