M/s Shilpa Medicare Limited

Authority for Advance Ruling — Andhra Pradesh

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

Q Questions Before the Authority

- Whether the transaction would amount to supply of goods or supply of services or supply of goods & services?
- Whether the transaction would cover Sl.No.2 of the Notification No.12/2017 - Central Tax (Rate) dated 28.6.2017?
- Can GST ITC-02 return be filed and unutilised ITC transferred from the Vizianagaram, Andhra Pradesh unit to the Bengaluru, Karnataka unit?

F Facts

The applicant undertakes R&D work in APIs, formulation molecules and small-quantity formulation manufacture at its Vizianagaram (Andhra Pradesh) unit. The whole business, along with capital assets, is to be transferred as a going concern to the applicant's Bengaluru (Karnataka) unit, which has a separate GSTIN, for a monetary consideration. The applicant reported unutilised input credit as on 29.07.2019 of IGST Rs. 2,29,24,118, CGST Rs. 50,50,789 and SGST Rs. 35,40,668, and wished to transfer it using ITC-02.

H Ruling

Whether the transaction is supply of goods, services, or goods and services	****Supply of services****	The authority accepted that a going concern transfer is not a supply in the strict definition, but brought it within scope through the word 'includes' in section 7(1)(a). It treated it as a service because it is not goods (section 2(102)).
Whether the transaction is covered by Sl.No.2 of Notification No.12/2017-CT(Rate) dated 28.6.2017	****Affirmative** (covered; nil rate)**	Sl.No.2 covers services by way of transfer of a going concern, as a whole or an independent part thereof. The order records the transaction as nil-rated, so no tax is payable.
Whether GST ITC-02 can be filed and unutilised ITC transferred from the Vizianagaram unit to the Bengaluru unit	****Affirmative****	The order is conditional on the transfer being a sale or transfer of business with a specific provision for transfer of liabilities. Rule 41(2) requires a CA or cost accountant certificate to that effect.

The authority held that the transfer of the business as a going concern is a supply of services, not goods. It treated the transaction as falling within the scope of supply through the inclusive wording of section 7(1)(a) of the CGST Act, and as a service because it is neither goods nor money. It held that the going concern is covered by Sl.No.2 of Notification No.12/2017-Central Tax (Rate) and is nil-rated. It also held that unutilised ITC may be transferred to the transferee by filing FORM GST ITC-02.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

R Reasoning

The authority first examined whether the transfer is a supply under section 7(1)(a), which covers transfers made for consideration in the course or furtherance of business. It found the transfer was not in the course of business but read the inclusive word 'includes' broadly to bring it within supply. It then rejected classification as goods, noting that Schedule II para 4(c) treats transfer of business assets as goods only where the business is not transferred as a going concern, and held that anything other than goods is a service under section 2(102). On ITC, it relied on section 18(3) and Rule 41 for transfer of unutilised credit on transfer of business, and noted that the applicant had produced no documentary evidence of the going concern beyond its own declaration.

P Provisions Relied On

- Section 7(1)(a) of the CGST Act, 2017
- Section 2(102) of the CGST Act, 2017
- Schedule II, para 4(c) of the CGST Act, 2017
- Section 18(3) of the CGST Act, 2017
- Rule 41 of the CGST Rules, 2017 (FORM GST ITC-02)
- Notification No.12/2017-Central Tax (Rate) dated 28.6.2017, Sl.No.2 of Chapter 99
- Section 97(2) and Section 98 of the CGST/APGST Act, 2017

! For the Practitioner

The order is useful for practitioners planning intra-company transfers of a whole business between state registrations, because it confirms that unutilised ITC can move through ITC-02 and that the going concern transfer is nil-rated. The classification reasoning is thin, however, and it relies on the applicant's unsupported declaration that the transfer is a going concern. It does not bind other officers on the same facts, and it does not address whether the transfer of a unit in a different state constitutes a change of ownership for all purposes or how the transferee's liabilities are dealt with beyond the CA certificate.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> aar no. 5-2020 shilpa medicare limited.pdf

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