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Sale of Business vs. Supply In The Course of Business: The Evolving GST Landscape



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1. Introduction

One of the more nuanced issues under the GST framework arises in the context of *business restructuring transactions*, particularly where an entire undertaking is transferred as a going concern. While GST is designed to tax supplies made in the course or furtherance of business, a conceptual distinction emerges when the *business itself is transferred rather than individual goods or services forming part of that business*. The Andhra Pradesh High Court recently revisited this distinction in *Shilpa Medicare Ltd. v. Union of India* [(2026) 39 Centax 239 (A.P.)], providing useful clarity on the scope of "supply" under the GST law and corresponding provisions dealing with transfer of accumulated input tax credit to the transferee entity.

The case involved the transfer of a pharmaceutical research and development centre from Andhra Pradesh to Karnataka pursuant to a business transfer agreement executed for zero consideration. The dispute brought into focus two recurring questions under GST: first, whether the *transfer of an entire business unit as a going concern constitutes a taxable supply*, and second, whether *unutilized input tax credit can travel along with such transfer*, particularly where the units are registered in different States.

Before examining the facts, it is useful to appreciate that business reorganisations under GST generally raise two fundamental questions of practical significance. The first concerns the taxability of the transaction itself—namely, whether the restructuring activity constitutes a "supply" within the meaning of [Section 7](#) read with [Section 9](#) of the Central Goods and Services Tax Act, 2017, thereby attracting GST. This issue frequently arises in cases involving slump sales, transfer of undertakings, mergers, demergers or transfer of units as going concerns.

The second question relates to the continuity of input tax credit, which often represents a significant fiscal asset. In cases of sale, merger, demerger or transfer of business, the law permits transfer of unutilized credit under [Section 18\(3\)](#) of the CGST Act read with [Rule 41](#) of the CGST Rules, 2017, subject to specified conditions. In practice, however, complications arise where restructuring involves multiple State registrations, distinct persons under GST, or transfer of only a part of the business undertaking.

These issues are far from theoretical. The tax consequences of a restructuring transaction often determine the economic viability of the transaction itself. Any unintended GST liability or denial of accumulated input tax credit can significantly increase transaction costs and affect the commercial feasibility of the restructuring exercise. It is in this broader backdrop that the present decision assumes importance.

2. Factual Background

The petitioner company was engaged in research and development in pharmaceuticals, including development of active pharmaceutical ingredients, formulation of molecules and manufacture of formulation products. The company had two research and development centres—one located in Karnataka and the other in Vizianagaram district of Andhra Pradesh.

As part of its business restructuring, the company decided to transfer its R&D centre located in Vizianagaram to its Bangalore unit. For this purpose, both units entered into a Business Transfer Agreement, under which the assets and liabilities of the Vizianagaram unit were transferred to the Bangalore unit as a going concern. Notably, the transfer was executed without any consideration.

3. Proceedings before the Advance Ruling Authorities

Following execution of the agreement, the petitioner approached the Authority for Advance Ruling seeking clarification on three issues. The first was whether the transaction amounted to supply of goods, supply of services, or both under GST law. The second issue was whether the transaction would fall within Sl. No. 2 of [Notification No. 12/2017-Central Tax \(Rate\) dated 28.06.2017](#), which exempts transfer of a going concern. The third issue was whether the petitioner could file Form GST ITC-02 and transfer unutilized input tax credit from the Andhra Pradesh unit to the Karnataka unit.

Decision of the Authority for Advance Ruling

The Authority for Advance Ruling, in *AAR No.05/AP/GST/2020/Shilpa Medicare Ltd.*, In re [2020 \(39\) G.S.T.L. 334 \(A.A.R. - GST - A.P.\)](#), held that the transaction amounted to a supply of services, but was covered under Sl. No. 2 of Notification No. 12/2017-Central Tax (Rate) and was therefore exempt from GST. The AAR also ruled that the unutilized input tax credit available with the Vizianagaram unit could be transferred to the Bangalore unit.

Decision of the Appellate Authority for Advance Ruling

Aggrieved by this ruling, the Deputy Commissioner of Central Tax approached the Appellate Authority for Advance Ruling. The AAAR, by order dated 10.11.2020 in Order/AAAR/AP/07(GST)/2020, set aside the findings of the AAR and held that the transaction constituted a taxable supply of goods. It further held that the petitioner was not entitled to transfer the input tax credit from the Andhra Pradesh unit to the Karnataka unit.

4. Proceedings before the High Court

Challenging the order of the Appellate Authority for Advance Ruling, the petitioner approached the Andhra Pradesh High Court by way of a writ petition. The dispute before the Court essentially revolved around two questions—whether GST was leviable on transfer of the R&D unit as a going concern and whether the unutilized input tax credit could be transferred to the transferee unit.

5. Contentions of the Parties

5.1 Contentions of the Petitioner

The petitioner contended that the transfer of an entire business undertaking as a going concern does not amount to a taxable supply. According to the petitioner, sale of the business itself is distinct from supplies made in the course of business, and therefore does not fall within the scope of Section [7](#) read with section [9](#) of the CGST Act.

It was also submitted that even if the transaction were to be treated as supply of services, the same would still be exempt under Entry No. 2 of Notification No. 12/2017-CT (Rate) relating to transfer of a going concern.

On the issue of input tax credit, the petitioner relied on Section [18\(3\)](#) of the CGST Act, contending that unutilized credit can be transferred when a business is sold or transferred with liabilities. The petitioner also referred to Sections [25\(4\)](#) and [25\(5\)](#) to argue that separate GST registrations in different States are treated as distinct persons, and therefore transfer of business between such units cannot be ignored.

5.2 Contentions of the Department

The Department argued that the transaction could not qualify for transfer of input tax credit as there was no consideration for the transfer. It was further contended that credit accumulated under the APGST Act could not be transferred to another State governed by the Karnataka GST Act.

The Department also relied on the decision in *Paradise Food Court v. State of Telangana* [[2018 \(16\) G.S.T.L. 361 \(A.P.\)](#)] to argue that business itself cannot be treated as goods and therefore the transaction must necessarily be treated as supply of services.

6. Decision of the High Court

6.1 GST liability on transfer of business as a going concern

The High Court first examined the charging provisions under Section 9 of the CGST Act, which levy tax on intra-State supplies of goods or services. The Court observed that the levy of GST is contingent upon the existence of a "supply" as defined in Section 7 of the Act.

Section 7(1)(a) brings within its fold supplies made in the course or furtherance of business, while Section 7(1)(c) read with Schedule I treats certain transactions as supply even when made without consideration. Entry No. 2 of Schedule I specifically covers supplies between related or distinct persons under Section 25, provided such supplies are made in the course or furtherance of business.

After referring to a series of judgments under the erstwhile VAT and Sales Tax laws, the Court observed that the ratio emerging from these decisions is that it is only sales made in the course of or for furtherance of business which can be taxed, and not the sale of the business itself. The Court noted that the language employed in the GST provisions is substantially similar to the earlier tax statutes and therefore the same principles would apply.

Applying this reasoning to the facts of the case, the Court held that the transaction involved transfer of the entire R&D unit as a going concern along with all its assets and liabilities. Such a transaction amounted to sale of the business undertaking itself and not supply of individual goods or services forming part of that business.

The Court therefore concluded that transfer of the business itself is conceptually distinct from supplies made in the course of business. Since the transaction did not qualify as a "supply", which is the *sine qua non* for levy of GST, the transaction was held to fall outside the charging provisions of the GST law.

6.2 Transfer of Input Tax Credit under Section 18(3)

The second issue considered by the Court related to the transfer of unutilized input tax credit from the Andhra Pradesh unit to the Karnataka unit. The Department argued that such transfer was impermissible because there was no change in the constitution of the registered person, as required under Section 18(3) of the CGST Act.

The Court examined the wording of Section 18(3), which provides that where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of business, the unutilized input tax credit may be transferred to the transferee business.

Rejecting the narrow interpretation adopted by the Appellate Authority for Advance Ruling, the Court held that the phrase "change in the constitution of the registered person" cannot be confined to structural changes, such as conversion of a proprietorship into a partnership or a partnership into a company. If such a restrictive interpretation were adopted, several forms of business transfer specifically mentioned in Section 18(3)—such as sale, merger or lease—would become redundant.

The Court further observed that input tax credit represents a valuable asset of the business, arising from taxes paid on procurements. When the entire business undertaking is transferred, it would be commercially logical and legally consistent that this asset should also move along with the business. Section 18(3) therefore provides a statutory basis for such transfer.

6.3 Relevance of the concept of "distinct persons" under GST

The Court also examined *Sections 25(4) and 25(5)* of the CGST Act, which require separate GST registrations for establishments of the same entity in different States and treat such establishments as *distinct persons* for the purposes of the Act.

In the present case, the petitioner had separate registrations in Andhra Pradesh and Karnataka. Due to these statutory provisions, the two units were treated as distinct persons under GST. The Court observed that once the authorities treated these units as separate persons for taxation purposes, they could not simultaneously contend that the transfer was merely an internal movement within the same person.

Consequently, the Court held that the transfer of the R&D unit from the Andhra Pradesh registration to the Karnataka registration must be recognised as a transfer between distinct persons, thereby making the provisions relating to transfer of input tax credit applicable.

6.4 Issue relating to inter-State transfer of credit

The Department had also raised an objection that input tax credit accumulated under the APGST Act could not be transferred to a registration governed by the Karnataka GST Act. According to the Department, such transfer would affect the revenue of the State of Andhra Pradesh.

The Court observed that no such difficulty would arise with respect to credit under CGST or IGST, since these are administered by the Central Government. However, the transfer of credit between two State GST regimes could potentially involve the interests of the respective States.

Since the State of Karnataka was not a party before the Court, it considered it appropriate that the matter relating to transfer of State GST credit be placed before the authorities under both the APGST Act and the KGST Act for appropriate consideration. The petitioner was therefore permitted to approach the concerned authorities to seek resolution of this issue.

7. Conclusion

The decision of the Andhra Pradesh High Court provides welcome clarity on an area that often creates uncertainty during corporate restructuring. The Court has reaffirmed an important conceptual distinction—GST is intended to tax supplies made in the course of business, not the transfer of the business itself. Where an entire undertaking is transferred as a going concern along with assets and liabilities, the transaction stands on a fundamentally different footing from ordinary supplies of goods or services.

Equally significant is the Court's recognition that input tax credit constitutes an asset of the business, and therefore should ordinarily travel with the business when it is transferred. The ruling therefore adopts a commercially realistic approach, aligning the interpretation of GST provisions with the economic realities of business reorganisations.

Although the decision arises in the specific context of transfer of an R&D unit between two State registrations, the principles laid down have wider relevance under GST. Corporate restructurings—whether through slump sales, transfer of undertakings, mergers or internal reorganisations—are increasingly common in modern business environments. The ruling reinforces that transfer of business as a going concern stands outside the scope of "supply" under Section 7, and that Section 18(3) should be interpreted in a manner that facilitates continuity of input tax credit.

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