



सत्यमेव जयते

**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING  
for the State of Andhra Pradesh (Goods and Service Tax)**

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D NO 5-56, Block-B,  
R.K.Spring Valley Apartment, Bunder Road, Edupugallu, Vijayawada,  
Andhra Pradesh – 521151)

**Present:**

**Sri PEEYUSH KUMAR (Member) (State Tax)**

**Sri NARESH PENUMAKA (Member) (Central Tax)**

The 10<sup>th</sup> day of November, 2020

Order /AAAR/AP/ 07(GST)/2020

1	Name and address of the appellant	Deputy Commissioner of Central Tax in case of M/s. Shilpa Medicare Limited, Vizianagaram Central GST Division, Near Dandumaramma Temple, Cantonment Area, Vizianagaram-535003, Andhra Pradesh.
2	GSTIN	37AADCS8788F1ZR
3	Date of filing of Form GST ARA-03	25.08.2020
4	Date of Personal Hearing	20.10.2020
5	Authorized Representative	Deputy Commissioner (Central Tax), Vizianagaram.
6	Jurisdictional Authority – Centre	Superintendent Vizianagaram South, CGST Vizianagaram Division.

**(Under Section 101 of the Central Goods and Service Tax Act and the Andhra Pradesh Goods and Service Tax Act)**

The Deputy Commissioner of Central Tax, Vizianagaram Central GST Division (hereinafter referred to as appellant) filed an appeal in case of M/s. Shilpa Medicare Limited, Modavalasa Village, Denkada Mandal, Vizianagaram as per Rule 106(2) of CGST Rules 2017 against the Advance Ruling issued under sub-section (6) of section 98 in FORM GST ARA-03 and no fee shall be payable by the appellant for filing the appeal. The appeal dated: 25.08.2020 is filed contending the Ruling passed by the Authority for Advance Ruling, A.P vide Ruling AAR NO. 05/AP/GST/2020, Dated 24.02.2020.

**1. Back Ground of the Case:**

1. The appellant i.e., Deputy Commissioner of Central Tax, Vizianagaram Central GST Division filed an application in Form GST ARA-03 on 25.08.2020 before the Appellate Authority for Advance Ruling, Andhra Pradesh seeking clarification in

case of M/s. Shilpa Medicare Limited, Modavalasa Village, Denkada Mandal, Vizianagaram.

2. M/s. Shilpa Medicare Limited undertakes Research & Development work in Active Pharmaceutical Ingredient (API) & formulation molecules & manufacture of formulation products in small quantity for R & D purpose.
3. 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.
4. It was mentioned that the whole business of M/s. Shilpa Medicare Limited unit, Vizianagaram, Andhra Pradesh - 531162 vide GST No. 37AADCS8788F1ZR, is being shifted to M/s. Shilpa Medicare Limited, Bengaluru, Karnataka - 562117, vide GST No. 29AADCS8788F1ZO, as a going concern.
5. M/s. Shilpa Medicare Limited unit, Vizianagaram, stated that the GST returns for the month of Jan-19 were filed with input Credit balance as 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.
6. Questions raised by the M/s. Shilpa Medicare Limited unit, before the Authority for Advance Ruling are:

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?

7. The Authority for Advance Ruling clarified that,

1. The transaction would amount to supply of services.
2. The transaction would cover Sl.No.2 of the Notification No.12/2017 - Central Tax (Rate) dated 28.6.2017.
3. Ruled in affirmative that GST ITC-02 return can be filed.

8. Being aggrieved by the ruling of AAR, the appellant approached the appellate authority under the following grounds.

## **2. Grounds of Appeal:**

**2.1.** With reference to Question No. 1 of Application of AAR i.e., "Whether the transaction would amount to supply of goods or supply of services or supply of goods & services?" the appellant disagrees that it does not fall under the category of supply of services.

**2.2** Reference is invited to Para-4 (c) of the Schedule II of CGST Act, 2017, which reads asunder:

*"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 a taxable person."*

Reading of the above statutory provision infers that the business when transferred as a going concern to "another person" would only disqualify the activity as supply of goods. However, in the instant case since the transfer of the business as a going concern is carried out to a distinct but same person" in terms of Section 2(84) of CGST Act, 2017 i.e., M/s. Shilpa Medicare Limited, Plot No. 29-A5, Avverahalli Industrial Area, Bengaluru, (Bengaluru) Rural, Karnataka-562117, as a going concern having GSTIN: 29AADC8788F1ZO but not to another person. As M/s. Shilpa Medicare Limited, Survey No. 2017, Modavalsa Village, DenkadaMandal, Vizianagaram, Andhra Pradesh-531162 having GSTIN 37AADC8788F1ZR are holders of the same PAN, they are distinct but same persons in terms of section 2(84) of CGST Act, 2017 and M/s. Shilpa Medicare Limited, Bengaluru cannot be treated as another person. So the provisions of Para 4(c) of Schedule II of CGST Act, 2017 do not apply in this case. Hence, it cannot be treated as supply of services. Moreover, as per the AAR order No.05/AP/GST/2020 dated 24.02.2020, it was enunciated that the applicant had not submitted any documentary evidence to establish that the transaction is a going concern except for his categorical declaration in the application as such. Hence this office cannot conclude beyond doubt that the business is transferred as a going concern.

**2.3.** As per the GST registration details available with this office as on date, the PAN in registration details of the applicant remained the same. Hence the appellant is of the opinion that there is no change in the constitution of business of the applicant.

**2.4.** As discussed in AAR Order No.05/AP/GST/2020 dated 24.02.2020, it was opined that the activity of transfer of business is made for a consideration, but neither in course of business nor in furtherance of business. This office has addressed 2(two) letters vide C.No. IV/16/58/2020-GST Appeals /1011 dated 24.7.2020 and C.No.IV/16/58/2020-GST-Appeals/1025 dated 30.7.2020 seeking details of consideration, proof of consideration, copies of purchase invoices against which ITC is availed, nature and description of outward supplies. However as on 20.08.2020, this office did not receive any reply from the assessee regarding the proof of amount of consideration. Hence it can be presumed that there is no consideration for the above mentioned transfer of business.

- 2.5.** Further this office has addressed 2(two) letters vide C.No./16/58/2020- GST- Appeals/1011 dated 24.7.2020 and C.No.IV/16/58/2020- GST - Appeals/1025 dated 30.7.2020, requesting the assessee to submit the copies of purchase invoices. However this office hasn't received any reply till date. Hence the eligibility of ITC or otherwise as declared by the assessee could not be established, since the assessee did not submit invoices of outward supplies. Due to reasons mentioned above, the activity cannot be categorised as supply of service. The activity may be treated as supply of Goods.
- 3.** With reference to question No.2 of application of AAR i.e., "Whether transaction would cover Sl.No.2 of the Notification No.12/2017- Central Tax (Rate) dated 28.06.2017, the appellant is of the opinion that as discussed above, since the activity cannot be categorised as supply of services, the transaction would not be covered under Sl.No.2 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017.
- 4.** With reference to Question No.3 of the application of AAR i.e., "Can we file GST ITC-02 return and transfer unutilized ITC from Vizianagaram, Andhra Pradesh unit to Bengaluru, Karnataka Unit?, the appellant is of opinion that the provisions relating to transfer of credit under certain circumstances are contained in Section 18 of the CGST Act, 2017. Section 18(3) of the CGST Act, 2017 states that:

*"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."*

The methodology for the transfer of such credit is given in Rule 41 of the CGST Rules, 2017 as detailed below:

*"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"*.

- 4.1.** The Section 18(3) of the CGST Act, 2017 is applicable only when there is a change in the constitution of business of the registered person. The phrase "registered person" has been defined in section 2(94) of the CGST Act, 2017 to mean a person who is registered under Section 25 but does not include a person having a unique Identity Number. Section 25 of the CGST Act, 2017 mandates that every person shall be registered in every state in which he makes taxable supplies. Therefore, for Section 18(3) to be applicable there has to be a change in the constitution of business of the person registered in

the state. The situations leading to a change in constitution of the business can be on account of sale, merger, demerger, amalgamation, lease or transfer of business. Rule 19 of the CGST Rules, 2017 states that where a change in constitution results in the change of PAN of the registered person, the said person shall apply for fresh registration. The circumstances enumerated in section 18(3) of the CGST Act are to be understood as taking place within the same state since transfer of state GST from one state to another is not permissible in law.

**4.2** In the CGST Amendment Act, 2018, a provision was made to enable multiple places of business in a state with the same PAN to have separate registration for each such place of business. Accordingly, Rule 41A was inserted in the CGST Rules, 2017 to provide for Form ITC-02A to enable transfer of ITC from one registered person in a state to another registered person in the same state with the same PAN. There is no provision in GST Law to transfer ITC of the State taxes from one registered person in a State to another State as State Taxes of one state cannot be used by a registered person in another state. The Form ITC-02 which is filed by a registered person on account of change in constitution of business due to sale, merger, demerger, amalgamation, transfer of business, is possible only when the transfer and transferee are both in the same state since the State GST cannot be transferred to another state.

In view of the above, it is respectfully prayed that the Ld. Appellate Authority for advance Ruling, Andhra Pradesh Goods and services Tax, Vijayawada may be pleased to:

- a. To set aside the Advance Ruling No.05/AP/GST/2020 dated 24.02.2020 pronounced by the Authority for Advance Ruling, Andhra Pradesh Goods and Service Tax, Vijayawada.
- b. Pass any such further or other order(s) as may be deemed fit and proper in facts and circumstances of the case.

## **5. Virtual Hearing:**

The proceedings of Hearing were conducted through video conference on 20<sup>th</sup> October 2020, for which the appellant himself, The Deputy Commissioner (Central Tax), Vizianagaram attended and reiterated the submissions. M/s. Shilpa Medicare Limited also attended and presented their arguments as under.

**5.1.** At the outset it is submitted that the appeal filed by the Department is solely based on assumptions and presumptions and not based on the provisions of Law and hence the same merits to be set aside on this ground alone. In this regard it is submitted that in para no 1.3 of the Grounds of Appeal, in the last sentence the Department has admitted that it is presumed view when it has stated that – quote- "Hence it can be presumed that there is no consideration..." Unquote.

**5.2.** With regard to the other points raised by the Department, the main objections of the Department are:

- a. The assessee has declared as their nature of business activity as

1. Scientific and Technical Consultancy (SAC 00440125)
2. Technical Testing, Inspection, certification (SAC 00440249).

The department observes that the assessee has mentioned in the application for Advance ruling as, 'undertakes Research & Development work in 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 Markets 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.

However the Learned Jurisdictional Officer (JO) has not made any remark.

**5.3.** (1) The learned JO has disagreed with the answer given by the AAR to question No. 1 stating that Para-4(c) of the Schedule II of CGST Act, 2017.

(i) talks about another person and while analyzing it he travels beyond all the boundaries and comes to conclusion and creates a new word "distinct but same person". This observation is totally illogical and baseless in as much as for the purposes of payment of taxes and for taking of credit it is considered as different entities but for the purposes of transfer it is considered as same entity and not as to another person.

(2) The learned JO is notable to come to conclusion either to say yes or no about supply of goods or services. Then are they saying the entire transaction is not a supply at all?

(3) Further the Department has put forth a very illogical and without any legality reason for treating the activity as supply of goods. In their grounds, it is mentioned that the eligibility of ITC as declared by the assessee could not be established since the assessee did not submit the invoices of outward supplies and hence the activity cannot be categorized as supply of service and the same may be treated as supply of Goods. On these grounds alone the appeal merits to be set aside and the order of the AAR is to be upheld.

For easy understanding, the section has been reproduced herewith:

*Section 2(84) - "Person" Section 2(84) of CGST Act, unless the context otherwise requires, - "person" includes -*

- a) an individual;
- b) a Hindu Undivided family;
- c) a company;
- d) a firm;
- e) a Limited Liability Partnership;
- f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

- g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the companies Act, 2013;
- h) anybody corporate incorporated by or under the laws of a country outside India;
- i) a co-operative society registered under any law relating to co-operative societies;
- j) a local authority;
- k) Central Government or a State Government;
- l) Society as defined under the Societies Registration Act, 1860;
- m) Trust; and
- n) every artificial juridical person, not falling within any of the above;

As the AAR order itself made it very clear that the " .... thus, it disqualifies the going concern' to be grouped under 'supply of goods' as per the above - mentioned clause 4 ( c).

So the objections of the learned JO are not at all clear and hence not maintainable.

**5.4.** The learned JO points about the letters sent by the department to M/s. Shilpa Medicare Limited. The copies of the said letters are submitted herewith along with the replies given and the attachments/ documents submitted. The allegation of no reply to their above mentioned letters dated 24.07.2019 and 30.07.2019 is totally not correct and not acceptable.

**5.5** The remark of the learned JO stating that the applicant had not submitted any documentary evidence to establish that the transaction is a going concern and also points out that the same has been enunciated in the AAR order. The Order of the AAR is quite elaborate and has covered the various legal provisions for the applicability of the provisions of GST while holding that the transaction merits to be classified as Supply of services. The Order states that -Quote - "In the instant case the activity of the 'transfer' is made neither for a consideration, 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.... Though this transaction does not amount to a 'supply' as per term, but qualified to be one under the scope of supply as it is backed by the term 'includes' in Section 7(1) if the CGST Act, 2017. Thus, in the broadened interpretation of the term 'includes', this activity is brought under the scope of supply" - Unquote.

**5.6** Regarding documentary evidence to prove it a going concern - we have clearly submitted the GST registration and the monthly returns filed also stated the closing balance of ITC available as well. And we are ready to provide/ submit if any additional documents are asked for.

Also we would like to mention that in the letters sent by the learned JO, it is nowhere asked to submit any documentary evidence to establish that the transaction is going concern.

**5.7** The learned JO's observations for non-submission of documents (even though we have submitted the documents as requested by the department) is not true and correct in as much as the learned JO to request the advance ruling authority to reject the eligibility of ITC and NOT to treat the activity as Supply of Service but to treat it as Supply of Goods. It clearly shows that the learned JO is in a total confusion.

Whether transfer of business is goods or a service?

**5.8** In terms of Sec. 2(52) of CGST Act, 2017, "goods means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply".

Therefore, to be called as goods, it has to be movable property. As business cannot be said to be movable, transfer of business cannot be said to be a transfer of goods. Now, we shall examine whether the said transaction can be called as service.

In terms of sec. 2 (102), services mean anything other than goods. The term service is wider in its scope. As it covers anything other than goods, transfer of business which cannot be considered transfer of goods will fit into the definition of "service".

Further, in case of the judgement given by Andhra Pradesh High Court in case of Paradise Food Court v. State of Telangana 2017 VIL 238 AP in the context of VAT Law, it was held that the **"business" is not movable property and is, therefore, not goods.** Hence, based on the above we can conclude that transfer of business is a service. In the case of itemized sale, if the business is not transferred as a going concern then the same shall be treated as sale of goods in accordance with entry no.4(c) of Schedule II of CGST Act, 2017. (Detailed discussion follows in subsequent paras).

**5.9 Whether the activity of transfer of business satisfies the definition of supply?**

As per Sec. 7 of CGST Act, 2017, "supply includes all forms of supply of goods or services or both such as **sale, transfer.....in the course or furtherance of business.** As the definition of supply covers transfer, the activity of transfer of business can be said to be covered under the definition of supply."

However, a question may arise whether the activity is in the course of furtherance of business. As per sec. 2(17)(d) of the CGST Act, 2017, "business includes -supply or acquisition of goods including capital goods and services in connection with commencement or closure of business." Hence, transfer of assets during transfer of business is included in the definition of business and the activity of transfer of business is in the nature of supply which is in the course or furtherance of business.

Further, as per Entry No. 4(c) of schedule II of the CGST Act, 2017, where any person ceases to be a taxable person, then 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 business unless the business is transferred as a going concern to another person. Hence, wherever business is transferred as a going concern, it is not to be treated as supply as per this clause. However, one must note that the reference to schedule II cannot be made to conclude whether a transaction/activity is a supply or not. It is merely clarificatory in nature to conclude if the transactions are to be classified as supply of goods or supply of service.

Similar view is taken in the advance ruling given by Haryana Authority of Advance Ruling in case of M/s. B.M. Industries, 33, Industrial Estate, Phase II, Yamunanagar, Haryana – HAR/HAAR/R/2018-19/02.

#### **5.10 Is the activity of transfer of business, taxable?**

As per Entry No.2 of Notification No.12/2017 – Central Tax (Rate) dated 28<sup>th</sup> June 2017, services by way of transfer of a going concern as a whole or an independent part thereof is exempted from GST.

Hence, in order to avail the above exemption, the following conditions shall be satisfied –

- The transfer of business shall be transfer of a going concern.
- The business which is being transferred shall be transferred as a whole or independent part.

Now let us analyze what is meant by the word going concern. The term going concern is not defined in the GST law. Reference can be made to Accounting Standard (AS1) issued by the Institute of Chartered Accountants of India according to which "the enterprise is normally viewed as a going concern, that is, as continuing in operation for the foreseeable future. It is assumed that the enterprise has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the operations". Based on this we can conclude that if any enterprise is having the intention to continue the business it could be said to be a going concern. It is not necessary that all the assets and liabilities shall be transferred, it is sufficient if only those assets which are essential to continue the business are transferred, but that is being transferred should be capable of being considered as a whole or an independent part.

Further, in AAR No.10/2019 given by the Advance Ruling Authority of the state of Uttarakhand in case of M/s. Rajeev Bansal & Sudarshan Mittal it was held that "transfer of business as a going concern is the sale of business including assets. In terms of Financial transaction "going concern" has the meaning that at the point in time to which the description applies, the business is live or operating and has all parts and features necessary to keep it in operation. Thus, transfer of a going concern in a simple way can be described as transfer of a running business which is capable of being carried on by the purchaser as an independent business."

The second part of the exemption entry says that the transfer of business shall be as a whole or as an independent part thereof. It means that the business which is being transferred shall be capable of running a business activity on its own and the business which is being transferred shall be an independent unit.

Thus, if the above conditions are satisfied, that is the business which is being transferred is a going concern and is transferred as an independent part thereof, then GST exemption can be claimed for the same.

In view of the above, we respectfully pray that the appeal may be rejected and required directions may be passed so as to allow us to file the ITC-02 or other procedure to be followed to avail the ITC by the Bangalore Unit and along any other relief and oblige.

## 6) Discussion and Finding:

We have gone through the entire records of the appeal, facts of the case, and also considered the written and oral submissions made at length by the appellant and the party in dispute, M/s. Shilpa Medicare Limited as well, in light of the ruling pronounced by the AAR. On perusal of the information at hand, it is observed that the main issue of contention is whether the transfer of business of M/s. Shilpa Medicare Limited unit, Vizianagaram, Andhra Pradesh-531162 vide GST No.37AADCS8788F1ZR, to M/s. Shilpa Medicare Limited, Bengaluru, Karnataka - 562117, vide GST No.29AADCS8788F1ZO, is a supply of goods or services or both. The AAR has taken the stance that the activity is a going concern and classified it to be a supply of service, whereas the appellant contested it as supply of goods.

After careful examination of the competing arguments of the Lower Authority and the Revenue we come to a conclusion that there is consensus on the issue that it is a 'supply' primarily, and hence we take upon the question for further scrutiny, whether it is a supply of goods or services or both.

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"*

Now we examine, in the instant case, whether transaction is qualified to be business being transferred as a going concern to 'another person' or not. In terms of section 25 (4) and section 25 (5) of CGST Act, 2017.

"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".

"Section 25(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act."

The concept of distinct person has been newly introduced under GST law. In brief, the establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as 'distinct person.' A supplier is required to obtain registration in every State/ UT from where he makes taxable supply provided his aggregate turnover exceeds a specified threshold limit.

The case at hand doesn't qualify to be a 'going concern to another person', as M/s. Shilpa Medicare Limited, Vizianagaram, A.P and M/s. Shilpa Medicare Limited, Bangalore unit are holders of the same PAN and they are distinct persons. Hence, the provisions of Para 4(c) of Schedule II of CGST Act, 2017 do not apply in this case. Hence, it is treated as deemed supply of goods. The subsequent questions of applicability of Sl.No.2 of the Notification No.12/2017 – Central Tax (Rate) dated 28.6.2017 and the transfer of unutilised ITC don't arise as the transaction is classified as 'supply of goods' between distinct persons.

### **Can ITC-02 be filed for transfer of ITC from the Vizianagaram Unit to the Karnataka Unit.**

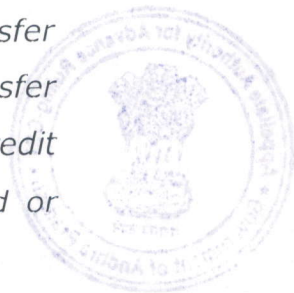
As discussed above, there is no supply of service but a supply of goods (assets of the Vizianagaram Unit to the Unit in Karnataka State). Therefore, the question of transfer of ITC would not arise.

M/s. Shilpa Medicare Limited, Vizianagaram seeks to transfer unutilized ITC from the Vizianagaram Unit to their Karnataka Unit under the provision of Section 18(3) of the CGST Act, 2017 read with Rule 41 of the CGST Rules, 2017 and using Form ITC-02. The said Section 18(3) reads as follows:

"(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."

Chief Commissioner of State Tax  
Government of A.P., Vijayawada

The wording of Section 18(3) makes it clear that the law permits the transfer of unutilized ITC in the electronic credit ledger 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.

In the instant case, there is no evidence of "**change in the constitution of the registered person**". A change in the constitution would envisage a change from say a proprietorship entity to a Partnership or a Company, or from a Partnership to a Company; or change in the constitution of the Shareholders, etc. There is no such thing happening in this case. M/s. Shilpa Medicare Limited, Vizianagaram is one and the same entity as M/s. Shilpa Medicare Limited, Bangalore, Karnataka. There is no change in the constitution of the entity as required under Section 18(3) of the CGST Act and therefore the provisions for transfer of ITC under Section 18(3) would not be permissible in this case.

Further, the GST law comprising of the Central GST Act, the Integrated GST Act and State / UT GST Acts, does not envisage the transfer of ITC in the form of CGST and SGST / UTGST accumulated in one State to another State. The scope of the AP GST Act cannot extend beyond the territory of the State of Andhra Pradesh. Similarly, the KSGST Act cannot extend beyond the borders of the State of Karnataka. Credit (ITC) accumulated under a particular State GST Act cannot be utilized in another State as there is no such provision under the extant law. Therefore, due to the exclusivity of ITC earned in a State, M/s. Shilpa Medicare Limited, Vizianagaram are not entitled to transfer the ITC earned in the State of Andhra Pradesh to themselves in the State of Karnataka. Hence, the facility of transfer of Credit using Form ITC-02 is not available in this case.

### ORDER

The ruling of the AAR is set aside and the transaction under question is 'supply of goods' and taxable accordingly as per the prevailing provisions of the CGST/APGST Act, 2017. Further, M/s. Shilpa Medicare Limited, Vizianagaram are not entitled to file Form ITC-02 for transfer of ITC to their Bangalore Unit in the State of Karnataka.

Sd/- Peeyush Kumar  
Chief Commissioner (State Tax)  
Member

Sd/- Naresh Penumaka  
Chief Commissioner (Central Tax)  
Member

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



*Sd/- Peeyush Kumar*  
**DESPATCHED**

*Naresh Penumaka*  
Deputy Commissioner (ST)

**DEPUTY COMMISSIONER (ST)**  
O/o. Chief Commissioner of State Tax,  
Government of A.P., Vijayawada

**TO**

1. The Deputy Commissioner of Central Tax, Vizianagaram Central GST Division, Near Dandumaramma Temple, Cantonment Area, Vizianagaram-535003, Andhra Pradesh.
2. 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.
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. **(By Registered Post)**