

## Transfer of business between distinct persons qualifies as supply of goods- Maharashtra AAR

13 May 2022



## Summary

The Maharashtra Authority of Advance Ruling (AAR) has observed that Schedule I<sup>1</sup> considers 'supply of goods or services between distinct persons without consideration' as a supply. Hence, transfer of business between two Goods and Services Tax (GST) registrations having same Permanent Account Number (PAN) would be treated as supply under GST. The AAR further stated that in order to transfer the Input Tax Credit (ITC)<sup>2</sup>, there must be a change in the constitution of the registered person. Thus, the AAR held that since there is no change in the constitution in present case, there cannot be any transfer by way of going concern and hence, the supply cannot be treated as supply of services but supply of goods. The advance ruling authority further held that since both units have the same PAN and qualify as distinct persons, this case does not qualify to be a 'going concern to another person'. Therefore, the AAR has ruled that the ITC cannot be transferred between the units.

## Facts of the case

- The applicant<sup>3</sup> has two separate registrations in Maharashtra and wished to merge both the registrations by way of transfer of all assets and related liabilities without consideration.
- On the perusal of provisions<sup>4</sup>, the applicant submitted that transfer of business by way of merger qualifies as a supply and such transfer will be on a going concern basis.
- Further, the applicant placed reliance on a similar case<sup>5</sup> wherein it was held that transfer of business is an exempt<sup>6</sup> supply and transfer of ITC will be allowed.
- Accordingly, the applicant has approached the Maharashtra AAR regarding the taxability of such

transaction of transfer of business in GST law.

## Maharashtra AAR observations and ruling<sup>7</sup>:

- **Transfer of business qualifies as a supply:** On perusal of the provisions<sup>6</sup> of the Act, supply of goods or services between distinct persons made in course or furtherance of business shall be treated as a supply irrespective of receipt of consideration. Accordingly, the impugned transaction of transfer amounts to supply.
- **Transfer of unutilized ITC:** The transferor and transferee are distinct persons registered under the same PAN. Hence, the case does not qualify to be the transfer of business under going

<sup>1</sup> of the CGST Act, 2017

<sup>2</sup> Under Section 18(3) of the CGST Act, 2017

<sup>3</sup> Crystal Crop Protection Limited

<sup>4</sup> Section 7(1) of CGST Act

<sup>5</sup> Shilpa Medicare Limited [AAR No.05/AP/GST/2020 dated 24 Feb 2020]

<sup>6</sup> Under Notification No. 12/2017-CTR dt 28 June 2017

<sup>7</sup> GST-ARA-31/2021-22/B-50

<sup>6</sup> Sr. No. 1 and 2 of Schedule I of CGST Act, 2017

concern. Therefore, the impugned supply shall be treated as supply of goods and not supply of services. Thus, transfer of unutilised ITC cannot be allowed between both the units.

### Our comments

Earlier, in case of Shilpa Medicare Limited, the Andhra Pradesh AAR<sup>8</sup> had held that the transfer of business shall be considered as supply of services and shall be exempt under GST. However, the Andhra Pradesh Appellate Authority for Advance Ruling (AAAR)<sup>9</sup> had overruled the decision of AAR and held that the transaction is liable to GST since business was not transferred to another person but to distinct person.

The present ruling pronounced by the Maharashtra AAR is in line with the ruling pronounced by the Andhra Pradesh AAAR.

Basis these rulings, it seems that the taxpayers shall have to bear the burden of tax implications even upon moving of business from one GSTIN to another. It shall create unnecessary complications under GST. Further, even though the AAR's decision is applicable only to the applicant, however the department may also apply this ruling in other cases to create GST liability.

Further, it should be noted that under GST laws, multiple registrations under the same PAN are considered as different taxpayers, hence transfer of business from one GSTIN to another should also be considered as transfer of business under going concern.

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<sup>8</sup> AAR No.05/AP/GST/2020 dated 24 Feb 2020

<sup>9</sup> AAAR/AP/07/GST/2020 dated 10 November 2020

# Contact us

To know more, please visit [www.grantthornton.in](http://www.grantthornton.in) or contact any of our offices as mentioned below:

---

## NEW DELHI

National Office,  
Outer Circle,  
L 41, Connaught Circus,  
New Delhi - 110001  
T +91 11 4278 7070

## NEW DELHI

6th Floor, Worldmark 2,  
Aerocity,  
New Delhi - 110037  
T +91 11 4952 7400

## AHMEDABAD

Unit No - 603 B, 6th Floor,  
Brigade International  
Financial Center,  
GIFT City Gandhinagar,  
Ahmedabad - 382355  
T +91 11 4278 7070

## BENGALURU

5th Floor, 65/2, Block A,  
Bagmane Tridib,  
Bagmane Tech Park,  
CV Raman Nagar,  
Bengaluru - 560093  
T +91 804 243 0700

---

## CHANDIGARH

B-406A, 4th Floor,  
L&T Elante Office Building,  
Industrial Area Phase I,  
Chandigarh - 160002  
T +91 172 433 8000

## CHENNAI

9th floor, A wing, Prestige  
Polygon, 471 Anna Salai,  
Mylapore Division, Teynampet,  
Chennai - 600035  
T +91 44 4294 0000

## DEHRADUN

Suite No 2211, 2nd Floor,  
Building 2000, Michigan Avenue,  
Doon Express Business Park,  
Subhash Nagar,  
Dehradun - 248002  
T +91 135 264 6500

## GURGAON

21st Floor, DLF Square,  
Jacaranda Marg,  
DLF Phase II,  
Gurgaon - 122002  
T +91 124 462 8000

---

## HYDERABAD

Unit No - 1, 10th Floor,  
My Home Twitza, APIIC,  
Hyderabad Knowledge City,  
Hyderabad - 500081  
T +91 40 6630 8200

## KOCHI

6th Floor, Modayil Centre Point,  
Warriam Road Junction,  
MG Road  
Kochi - 682016  
T +91 484 406 4541

## KOLKATA

10C Hungerford Street,  
5th Floor,  
Kolkata - 700017  
T +91 33 4050 8000

## MUMBAI

11th Floor, Tower II,  
One International Center,  
SB Marg Prabhadevi (W),  
Mumbai - 400013  
T +91 22 6626 2600

---

## MUMBAI

Kaledonia, 1st Floor,  
C Wing,  
(Opposite J&J Office),  
Sahar Road, Andheri East,  
Mumbai - 400069

## NOIDA

Plot No 19A, 2nd Floor,  
Sector - 16A,  
Noida - 201301  
T +91 120 485 5900

## PUNE

3rd Floor, Unit No 310-312,  
West Wing, Nyati Unitree,  
Nagar Road, Yerwada  
Pune - 411006  
T +91 20 6744 8800

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For more information or for any queries, write to us at [GTBharat@in.gt.com](mailto:GTBharat@in.gt.com)



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