

AUTHORITY FOR ADVANCE RULING, TAMILNADU
DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri B. Senthilvelavan, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Thiru Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A., Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No. 06 /ARA/2021 Dated: 16.03.2021

| | | |
|--|------------------------|---|
| GSTIN Number, if any / User id | | 33ABNFS5242G1Z4 |
| Legal Name of Applicant | | SHIV SANKARA HEALTH CARE ENTERPRISES |
| Trade Name of the Applicant | | SHIV SANKARA HEALTH CARE ENTERPRISES |
| Registered Address / Address provided while obtaining user id | | Raguvel Towers, First Floor, No.18, Nedunchezhan street, Manali, Chennai-600068 |
| Details of Application | | Form GST ARA – 001 Application SI.No. 44/2019 dated 31.10.2019 |
| Concerned Officer | | State: The Assistant Commissioner, Manali Assessment Circle Centre: Chennai North Commissionerate |
| Nature of activity(s) (proposed / present) in respect of which advance ruling sought for | | |
| A | Category | Service Provision |
| B | Description (in brief) | The applicant is a partnership firm acting as Clearing and forwarding agents and distributors for Pharma products and other business. |
| Issue/s on which advance ruling required | | Determination of liability to pay tax on any services |
| Question(s) on which advance ruling is required | | Whether the goodwill paid to the partners at the time of retirement is liable to be taxed under GST Act. |

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

SHIV SANKARA HEALTH CARE ENTERPRISES, Raguvel Towers, First Floor, No.18, Nedunchezian Street, Manali, Chennai-600068 (hereinafter called the 'Applicant') is registered under the GST Vide GSTIN 33ABNFS5242G1Z4. The applicant is a partnership firm acting as clearing and forwarding (C&F) agents and distributors for Pharma products and other business. They have sought Advance Ruling to clarify

whether the good will paid to the partners at the time of retirement is liable to be taxed under GST Act.

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they are a partnership firm functioning in the name and style 'SHIV-SANKARA HEALTH CARE ENTERPRISES' acting as C&F agents and distributors for Pharma Products and other business consisting of the following partners with effect from 15/10/2008 as per partnership deed dated 14/10/2008- a) R. SELVARAJ; b) R. SANKAR; c) S. SIVAPRAKASAM with profit sharing ratio of 1/3rd each. They have stated that the above partnership was modified and the following two partners were admitted in addition to the existing partners vide partnership deed dated 15/10/2010 with effect from the same date and with profit sharing ratio of 20 % each- a) D. KARPUKKARASI ; b) V. RANI. The

applicant has stated that as per Deed of Retirement dated 30/03/2019 it was decided that with effect from 31/03/2019 the newly admitted partners: a) Mrs. D. KARPUKKARASI & b) Mrs. V. RANI will be retired from the partnership and the other three partners will continue as "Continuing Partners". It was agreed by the continuing partners that the retiring partners will be paid a consideration of Rs. 1,40,00,000/-each in total. The break-up of the consideration is as under:

| Retiring partners | Share of profit | Good will | Total |
|--------------------|-----------------|---------------|---------------|
| Mrs V.Rani | 82,73,000/- | 57,27,000/- | 1,40,00,000/- |
| Mrs.D.KARPUKKARASI | 82,23,000/- | 57,77,000/- | 1,40,00,000/- |
| | 1,64,96,000/- | 1,15,04,000/- | 2,80,00,000/- |

They have further stated that the above amount of Rs. 1,64,96,000/-in total will be towards share of profit standing to their credit in the books of accounts as on the date of retirement and the balance amount of Rs. 1,15,04,000/- will be towards good will. The share of profit Rs. 1,64,96,000/-and Goodwill Rs. 1,15,04,000 /-will be non-taxable in the hands of retiring partners. The appropriate tax if any shall be paid by the partnership firm/continuing partners and also both the amount mentioned above were paid to the retiring partners by way of Cheque/RTGS on 25/04/2019.

2.2. The applicant is of the view that the amount paid to retiring partners as good will amounting to Rs 1,15,04,000/- cannot be considered as a " supply " under Section 7 of the CGST Act, since this transaction cannot be treated as "in the course of or for the furtherance of business". Further, they have stated that Goodwill is not mentioned in any of the Schedules prescribed under the GST Act. Hence, the applicant is of opinion that this "Supply " is not liable to tax under the GST Act. They have also stated that the goodwill generated is an intangible asset, eligible for depreciation under section 32 of the Income Tax Act. However, it cannot be described as an 'asset' within the terms of section 45 of the IT Act, 1961 (or of section 12B of the Indian IT Act, 1922). The applicant has referred to the case CIT vs. R. Lingamallu Rajkumar [247 ITR 801], wherein, it was held that amount paid to a partner upon retirement after taking accounts and upon deduction of liabilities did not involve an element of transfer within meaning of section 2(47) and not chargeable to income tax following the decision in the case of Prashant S. Joshi

v. ITO. In view of the above facts, the applicant has sought the authority to clarify whether the goodwill paid to retiring partners is liable to GST.

3.1 The applicant was extended an opportunity to be personally heard on 13.12.2019. The applicant appeared before the authority and submitted copy of retirement deed. They stated that two partners were retiring from the partnership firm and they were given a share of profit and goodwill. They stated that the retiring partners have stated that any tax liability should be paid by the applicant. They also stated that they will submit details of financial accounts, details of how consideration was arrived at. They also stated that this is a transfer of a going concern and exempted under Notification 12/2017 CT (Rate). They were informed by the authority that in this case the supply of services of goodwill is made by the retiring partners and hence the applicant is the retiring partner. They stated that the application may be considered and informed that they will submit a written submission. They also requested for another Personal Hearing.

3.2 As requested by the applicant, another personal hearing was conducted on 29.01.2020. The applicant appeared before the authority and stated that they have submitted copies of original agreement, partnership agreement and modified one along with payment particulars through bank. They stated that though original partnership agreement said in clause 18, no goodwill will be given, the same was given. They stated that they will clarify if any other documents are available permitting to give such amount as goodwill. They also stated that they will clarify in writing in 2 weeks' time and will submit balance sheet for 2018-19. The authority has recorded in the hearing that the applicant is yet to submit details of financial accounts for the year 2018-19 & 2019-20 and the details of how goodwill is arrived at. They stated that they will submit in writing the details in 2 weeks' time.

3.3 The applicant vide their letter dated 29.01.2020 submitted the following documents:

- Deed of partnership dated 15.10.2008 between i. Mr. R. Selvaraj, ii. Mr. R.Sankar, iii. Mr. R. Sivaprakasam with profit sharing ratio 1/3rd each.
- Modified Partnership deed dated 21.03.2010 admitting the following two partners: i. Mrs. D.Karpukarasi, ii. Mrs.V.Rani with profit sharing ratio of 20% each among all five partners

- Deed of retirement dated 30.03.2019 for the following retiring partners- i. Mrs. D.Karpukarasi, ii. Mrs.V.Rani
- Amendment to partnership deed dated 01/04/2019 between the existing partners: i. Mr. R. Selvaraj, ii. Mr. R.Sankar, iii. Mr. R. Sivaprakasam with profit sharing ratio 1/3rd each.
- Proof of payment made to retiring partners towards their share of profit carried over and goodwill
 - i. Indian Bank Account Statement from 03.04.2019 to 30.04.2019
 - ii. Indian Bank Account Statement dated 07.05.2019
 - iii. RTGS payment made on 07.05.2019
- Documents for changes made in GST Registration Certificate
 - i. GST Registration Certificate dated 02.08.2018 issued with five partners
 - ii. Amended GST Registration Certificate dated 08.07.2019 issued with three existing partners
- Copies of current account of retiring partners from 01.04.2010 to 31.03.2019 showing the carried over profit
- Copy of journal voucher showing the entry made for goodwill payment made to the retiring partners.

In the cited letter the applicant has stated that as per retirement deed the taxes if any, income tax/GST is to be paid on payment towards share of profit/goodwill, it has to be observed by the continuing partners and retiring partners will not have any liability on it.

4. The State Jurisdictional officer vide their letter dated 12.12.2019 submitted that there is no show cause notice/ issue pending adjudication and also no demand is pending in respect of the applicant.

5. The centre Jurisdictional authority vide their letter dated 19.03.2020 submitted the following comments on the issue raised in the advance ruling application of the applicant:

- Good will is an intangible asset associated with a business combination. Goodwill is recorded when a company acquires (purchases) another company and the purchase Price is greater than
 - 1) the fair value of the identifiable tangible and intangible assets acquired, minus
 - 2) the liabilities that were assumed.

In the issue on hand, Goodwill is paid to the retiring partners of the firm. This amount paid as goodwill would represent the amount paid for the retiring partners for giving up their right in the existing goodwill of the firm. Further, the Partners had also extinguished their rights to claim any share in the fixed assets of the Partnership firm. For this the Partnership firm have paid a goodwill amount to the retiring Partners for transferring their rights to the new Partners. Both the partners have transferred their goodwill for a consideration. As per Section 2 (52) of CGST Act, 2017, "Goods" means every kind of movable Property other than money and securities but includes actionable claims, 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; Further, as per Section 2 (102) of CGST Act, 2017, "services" means anything other than goods, money and securities but includes activities relating to the use money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged; As per Section 7(a) of the CGST Act, 2017, the expression 'supply' includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business and excludes activities or transactions specified in Schedule III of CGST Act. Hence the goodwill amount is a taxable supply (service) under CGST Act. As per Rule 31 read with 51(1c) of the Rules, anything not mentioned in the harmonized system nomenclature will face 18%. These are called residual entries in technical sense and the same principle is already in place for GST on services. Since intangibles such as trademarks and goodwill do not find a mention in the schedule they would fall in the category of residual entry and goodwill will be covered under the Service Accounting Code 999799. In view of the above, the supplier of service would be the retiring partners and applicant would be recipient of service and the tax chargeable on supply needs to be paid by the retiring partners only. The clause in their agreement that the appropriate tax if any shall be paid by the partnership firm / continuing partners will not hold good by the provisions of CGST Act. Further, they have stated that there are no pending proceedings in respect of the applicant's case.

6. The applicant vide their submissions had not provided the details as to how the goodwill was arrived and the details of financial accounts of 'Goodwill Account' for 18-19 & 19-20, which are necessary to ascertain the liability to GST. Therefore,

another hearing was decided to be extended. Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the appellant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media vide e-mail dated 03.07.2020. The applicant vide email dated 03.07.2020 submitted that due to COVID-19 issue their office will be closed till 31.07.2020. Accordingly, virtual Hearing was fixed on 15.10.2020 and the applicant was intimated. In response, the applicant stated that their consultant is out of country and they are not able to attend the Virtual hearing. Another opportunity was extended to be heard on 19.11.2020 through virtual mode to which the applicant vide their email dated 09.11.2020 informed that their consultant is out of country and to fix a date in January 2021 for Virtual Personal hearing. Accepting the same, the applicant was again extended an opportunity to be heard on 22.01.2021 virtually. It was further informed that no further extension can be extended. The applicant vide their email dated 20.01.2021, stated that the consultant is out of country and they are unable to attend the hearing and asked not to extend the same. They also informed that they are withdrawing the case. Though the applicant vide their e-mail stated that they are withdrawing the application, the signed letter for withdrawal was not furnished by them. Therefore, the applicant was addressed to attend a hearing on 12.03.2021 for which the applicant vide their e-mail dated 08th March 2021 enclosed a letter requesting to permit withdrawal of the application filed by them requiring ruling on the applicability of GST on Goodwill as already requested vide e-mail dated 20.01.2021.

7. We have carefully considered the application, various submissions of the applicant, remarks of the jurisdictional officers and the request for withdrawal made by the applicant. The issue on the applicability of GST on the 'Goodwill' extended by the applicant to the retiring partners can be arrived at only after analyzing the details as to how the goodwill was arrived at and the related accounts which have not been furnished by the applicant. The applicant for the reasons that their consultants are not available has requested for withdrawal of the application. In this scenario, we find that the withdrawal is to be permitted as the issue cannot be decided based on the submissions made by the applicant. Therefore, withdrawal is permitted without offering any observation/comment on the admissibility of the application under Section 97(2) of the TNGST/CGST Act 2017 and the applicability of the GST on the 'Goodwill'.

8. In view of the above facts, we rule as under:

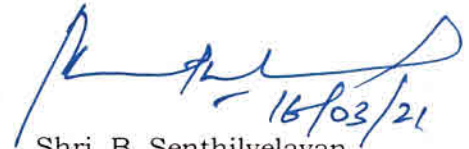
RULING

The application filed by the applicant seeking advance ruling is disposed as withdrawn.



16/3/2021

Shri Kurinji Selvaan
(Member SGST)



16/03/21

Shri B. Senthilvelavan
(Member CGST)

To

Tvl. SHIV SANKARA HEALTH CARE ENTERPRISES
Raguvel Towers, First Floor,
No.18, Nedunchezian street,
Manali, Chennai-600068.

// By RPAD//

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Additional Chief Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Principal Commissioner of GST & Central Excise,
Chennai North Commissionerate, 26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai-600034
4. The Assistant Commissioner (ST) Manali Assessment Circle,
Integrated Commercial Taxes Office Complex, 1st floor, Elephant gate Bridge
Road, Chennai- 600 003.
5. Master File/ Spare-2.