THE WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14, Beliaghata Road, Kolkata – 700015
(Constituted under Section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Yogesh Sugdeo Chitte
Joint Commissioner, CGST & CX

Jaydip Kumar Chakrabarti
Additional Commissioner, SGST

Preamble

a) A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

b) Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	**Vivek Hetamsaria**
Address	2nd Floor, 3, Digambar Jain Temple Road, Kolkata, Kolkata, West Bengal, 700007
GSTIN	19ABMPH6030L1ZE
Case Number	WBAAR 03 of 2026-27
ARN	AD190526008104B
Date of application	May 15, 2026
Jurisdictional authority (State)	Jorasanko Charge
Jurisdictional authority	Shyambazar Division,

(Centre)	Kolkata North Commissionerate
Order number and date	14/WBAAR/2026-27 Dated 09.09.2026
Applicant's representative heard	Mr. Aman Harlalka, CA

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like manner except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression "GST Act" would mean the CGST Act and the WBGST Act both.

1.2 The applicant, Vivek Hetamsaria proprietor of M/s Ambika Diamond is a proprietorship concern engaged in the wholesale and retail business of gold and diamond ornaments as well as loose diamonds, including natural and lab-grown diamonds. The applicant proposes to transfer its entire proprietorship business as a going concern to M/s Ambika Jewelvista LLP, in which the proprietor is one of the partners, by transferring all assets and liabilities including fixed assets, closing stock, receivables, deposits, cash balances, employees, business rights and other obligations, without any consideration. Upon such transfer, the proprietorship concern would cease to exist and the business would continue uninterrupted under the LLP. In this background, the applicant has sought an advance ruling on whether such transfer of business from the proprietorship concern to the LLP constitutes a supply under GST, whether it is a supply of goods or services, whether it is covered under Entry No. 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and, if not, whether GST would be leviable on the transfer of existing stock, assets and other items.

1.3 The applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made thereunder, seeking an advance ruling in respect of the following question:

1. Whether the transaction of transfer of business by way of merger of two

registration/distinct person would constitute supply under GST Law?

2. Whether the transaction would amount as supply of goods or supply of services?
3. Whether the transaction would cover under sl.no.2 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?"
4. If the answer to Q3 is negative, then whether GST is leviable on the transfer of existing stock (closing stock) assets, Fixed Assets etc. from proprietorship concern to the partnership concern?

1.4 The aforesaid question on which the advance ruling is sought are found to be covered under clause (a), (b), (e) and (g) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The Applicant submits that M/s Ambika Diamond, a proprietorship concern of Mr. Vivek Hetamsaria, holding GSTIN 19ABMPH6030L1ZE, is a registered jewellery firm engaged in the wholesale and retail business of gold, diamond ornaments and loose diamonds, including natural and lab-grown diamonds. The Applicant proposes to transfer the entire business of the proprietorship concern to M/s Ambika Jewelvista LLP, a partnership firm in which Mr. Vivek Hetamsaria is also a partner, as a going concern. The proposed transfer is intended to be undertaken as on as is basis transaction, whereby the entire business, together with all its assets, liabilities, rights, claims, employees, customers and other components necessary for continuation of the business, would be transferred to the partnership concern. The Applicant submits that the business of M/s Ambika Jewelvista LLP would continue substantially in the same manner and without interruption after such transfer.

2.2 The Applicant states that the proposed merger/transfer of the proprietorship concern into the partnership concern would be implemented through an internal Memorandum of Understanding between the two parties. In terms of the said arrangement, all assets

relating to the proprietorship concern, including fixed assets, closing stock, debtors, deposits and cash balance, would be transferred to M/s Ambika Jewelvista LLP. Similarly, all liabilities relating to the proprietorship concern, including capital, unsecured loans, sundry creditors and current liabilities, would also be transferred to the partnership concern. The employees of the proprietorship concern would continue to serve the partnership firm without any interruption or break in service. The transferee would also carry on the business in the ordinary course and in substantially the same manner as it was being conducted by the proprietorship concern, while preserving the existing business relationships with customers and ensuring continuity of the business.

2.3 The Applicant further submits that, pursuant to the proposed arrangement, all rights, title, ownership, interest in and to the business, assets and customers, together with the liabilities, would stand transferred to the partnership concern as a going concern. The entire business of the proprietorship concern would thus be transferred and the proprietorship concern would cease to exist after completion of the necessary statutory compliances and filing of the requisite returns. Thereafter, the Applicant would undertake the necessary procedure for cancellation of the GST registration of the proprietorship concern. The present and future assets, liabilities, rights, claims, employees and business operations would be taken over by M/s Ambika Jewelvista LLP, and future GST liabilities arising in the ordinary course of business would be discharged by the partnership concern.

2.4 The Applicant submits that the proposed transfer is specifically structured to ensure continuity of the existing business. The very basis of the proposed arrangement is that the partnership concern would continue the same business which was being carried on by the proprietorship concern prior to the transfer. The Applicant relies upon the decisions of various Advance Ruling Authorities dealing with transfer of business as a going concern. In particular, reliance has been placed upon Advance Ruling No. 16/WBAAR/2022-23 dated 22.12.2022 in the case of Mr. Jayesh Popat, Advance Ruling No. GUJ/GAAR/R/46/2021 in the case of Airport Authority of India, AAR No. 04/AP/GST/2021 dated 12.01.2021 in the case of M/s SCV Sky Vision, AAR No. 02/WBAAR/22-23 dated 22.04.2022 in the case of M/s Cosmic Ferro Alloys Limited and AAR No. KAR ADRG 06/2018 dated 23.04.2018 in the case of M/s Rajashri Foods Pvt. Ltd.

2.5 The Applicant is of the opinion that the transaction proposed in the present case constitutes a supply within the meaning of Section 7 of the CGST Act, 2017. Section 7 provides that the expression "supply" includes all forms of supply of goods or services or

both, such as sale, transfer, barter, exchange, licence, rental, lease or disposal, made or agreed to be made for a consideration in the course or furtherance of business, as well as the activities specified in Schedule I which are treated as supply even when made without consideration. The Applicant submits that the proposed permanent transfer of the proprietorship concern to the partnership concern constitutes a transfer of the business in the course or furtherance of business and accordingly falls within the scope of supply under the GST law.

2.6 The Applicant further submits that Section 7(1A) of the CGST Act provides that where certain activities or transactions constitute a supply in accordance with Section 7(1), such activities or transactions shall be treated either as a supply of goods or a supply of services as referred to in Schedule II. In the present case, the Applicant has relied upon the decisions in the cases of Mr. Jayesh Popat, M/s Cosmic Ferro Alloys Limited, M/s Rajashri Foods Pvt. Ltd. and Airport Authority of India, wherein transfer of a business or business unit as a going concern has been treated as a supply of services and has been held to be covered under Entry No. 2 of Notification No. 12/2017-Central Tax (Rate), subject to fulfilment of the conditions relating to transfer as a going concern.

2.7 In respect of the nature of the supply, the Applicant opines that the proposed transaction cannot be regarded as a supply of goods. Section 2(52) of the CGST Act defines goods to mean every kind of movable property, other than money and securities, subject to the inclusions specified therein. The Applicant submits that the business itself cannot be regarded as movable property and consequently the transfer of the business as a whole cannot be treated as a transfer of goods. On the other hand, Section 2(102) defines services to mean anything other than goods, money and securities, subject to the specified inclusion relating to activities concerning the use or conversion of money. Accordingly, the transfer of the business by way of merger would constitute a supply of services.

2.8 The Applicant argues that the provisions of the CGST Act and Rules themselves recognise transfer of business as an event having legal and tax consequences. The expression "transfer of business" finds reference in Section 18(3), Section 22(3), Section 85 of the CGST Act, Schedule II and Rule 41 of the CGST Rules. Section 18(3) permits transfer of unutilised input tax credit upon change in constitution on account of sale, merger, demerger, amalgamation, lease or transfer of business where specific provisions for transfer of liabilities exist. Section 22(3) specifically deals with registration where a business is transferred as a going concern, while Section 85 provides for joint and several liability of the transferor and transferee in respect of tax, interest or penalty due up to the time of transfer. Rule 41 further provides for furnishing the details of sale, merger,

demerger, amalgamation, lease or transfer of business in Form GST ITC-02 for transfer of unutilised input tax credit.

2.9 The Applicant submits that the statutory provisions referred to above demonstrate that transfer of business is recognised under the GST law as an event arising pursuant to a business arrangement. The Applicant accordingly submits that the proposed permanent transfer of M/s Ambika Diamond to M/s Ambika Jewelvista LLP constitutes a transfer of business and is therefore a supply of services. The entire proprietorship concern, along with all assets, liabilities and employees, is proposed to be transferred and the transferee would continue the business. Thus, the transfer cannot be treated as a mere transfer of individual goods or closing stock. The closing stock and other assets form part of the business being transferred as a whole and consequently partake of the character of the transfer of business as a going concern.

2.10 The Applicant points out that Entry No. 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 specifically provides exemption in respect of "Services by way of transfer of a going concern, as a whole or an independent part thereof." The rate prescribed under the said entry is Nil. Since the transaction proposed by the Applicant involves transfer of the entire proprietorship business as a going concern to M/s Ambika Jewelvista LLP, the Applicant submits that the transaction is covered under the aforesaid exemption entry and is accordingly exempt from GST, subject to satisfaction of the conditions necessary for treating the transaction as a transfer of a going concern.

2.11 The Applicant submits that the proposed transaction satisfies the essential characteristics of a transfer of a going concern. The concept of "going concern" has not been specifically defined under the CGST Act. It is an accounting concept indicating that the business is expected to continue its operations for the foreseeable future and that there is no intention to liquidate or discontinue the business. The Applicant submits that a transfer of a going concern means transfer of a running business capable of being carried on by the transferee as an independent business. Such transfer ordinarily involves comprehensive transfer of the assets and liabilities and other components necessary for continuation of the business, including employees, goodwill, unexecuted orders and other business attributes.

2.12 The Applicant relies upon the decision of the Karnataka Authority for Advance Ruling in the case of M/s Rajashri Foods Pvt. Ltd., wherein it was held that transfer of a going concern constitutes a supply of service and that the transfer of one of the units of the Applicant as a going concern is covered under Serial No. 2 of Notification No. 12/2017-Central Tax (Rate), subject to the condition that the unit is a going concern. The Applicant

also relies upon the decision of the Gujarat Authority for Advance Ruling in the case of Airport Authority of India, wherein the subject supply of transfer of going concern service was held to be a supply under Section 7 of the CGST Act and was held to be covered under Entry No. 2 of Notification No. 12/2017-Central Tax (Rate).

2.13 The Applicant submits that in the present case there would be a change in the constitution of the business from proprietorship to partnership, with the proprietorship concern having GSTIN 19ABMPH6030L1ZE and the partnership concern having GSTIN 19ACMFA5259P1ZJ. The entire business of the proprietorship concern is proposed to be transferred to the partnership concern, including all assets, liabilities, rights, claims, employees and business operations. The transferee would manage and continue the business in the normal course as an independent business without any hindrance or stoppage for the foreseeable future. The transaction would therefore result in continuation of the business in the hands of the transferee rather than its discontinuation or liquidation.

2.14 The Applicant further submits that the transfer of the business as a whole, along with all present and future assets, liabilities, rights, claims, employees and business operations, establishes that there is a permanent transfer of the entire business as a going concern. The transfer is not confined merely to the closing stock or any isolated asset. Rather, the business itself, together with the necessary components required for its continued operation, is being transferred. The employees would continue without interruption, the business relationships would be preserved and the transferee would continue the same business. These circumstances, according to the Applicant, satisfy the tests applicable for determining whether a business has been transferred as a going concern.

2.15 The Applicant also relies upon the decision of the Hon'ble Madras High Court in State of Tamil Nadu v. T.M.T. Drill (Private) Limited, wherein the Court considered the requirement of transfer of the assets of a business for determining whether a business is sold as a whole or as a going concern. The Applicant further refers to the decision of the Hon'ble Delhi High Court in Indo Rama Textile Ltd., wherein the concept of a going concern was considered and it was held that a company is transferred as a going concern when the assets and liabilities transferred constitute a business activity capable of being independently carried on for the foreseeable future. The Applicant also relies upon the decision of the Hon'ble Supreme Court in Allahabad Bank v. ARC Holding, wherein transfer of a company as a going concern was considered along with the transfer of liabilities relevant to the business or undertaking.

2.16 The Applicant is of the opinion that all the aforesaid tests are satisfied in the present case. There would be a change in constitution from proprietorship to partnership and the two concerns have different PANs. M/s Ambika Jewelvista LLP would take over and manage the entire operation in the ordinary course of business as an independent business without hindrance or stoppage. The transfer would include the assets required for running the business and the employees would also be transferred so that the business can continue without interruption. Thus, the business would continue in the hands of the new entity with regularity and permanency. The Applicant accordingly submits that the proposed transaction clearly constitutes a transfer of business as a going concern as a whole and is covered under Entry No. 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

2.17 The Applicant submits that, in view of the foregoing statutory provisions and judicial and advance ruling precedents, the proposed transfer of the proprietorship concern to M/s Ambika Jewelvista LLP would constitute a supply under the GST law. Since the subject matter of the transaction is the transfer of the business as a whole and the business itself cannot be regarded as movable property, the transaction would constitute a supply of services. Further, since the entire business is being transferred along with all the assets, liabilities, employees, rights, claims and other attributes necessary for its continued operation, the transaction qualifies as a transfer of a going concern as a whole.

2.18 The Applicant submits that the proposed transfer is therefore covered by Serial No. 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, which specifically exempts services by way of transfer of a going concern as a whole or an independent part thereof. Accordingly, no GST would be payable on the transfer of the business as a going concern, including the assets and closing stock forming part of the business being transferred, subject to fulfillment of the applicable conditions.

3. Submission of the Revenue

3.1 The concerned officer from the revenue has not expressed any view on the merit of the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representatives of the applicant during personal hearing. The Revenue has not

given any view on the merit of the case.

4.2 As per the facts and evidences submitted before us, the applicant Vivek Hetamsaria is the proprietor of M/s. Ambika Diamond. The concern is a firm (wholesaler and retailer) dealing in gold, diamond ornaments and loose diamond (natural and lab grown). The applicant is registered under the Goods and Services Tax (GST). Under the proprietorship concern the applicant has fixed assets and current assets in the form of inventory, receivables, deposits and others.

According to the submissions made before us, Vivek Hetamsaria along with Rashmi Hetamsaria being partners have formed a Limited Liability Partnership Firm under the name of M/s Ambika Jewelvista LLP holding GSTIN number 19ACMFA5259P1ZJ**,** having registered address at 3, Digambar Jain Temple Road, 2nd Floor, Kolkata, West Bengal, 700 007. The profit sharing ratio between the two partners is 50% for Vivek Hetamsaria and 50% for Rashmi Hetamsaria.

As per the submissions, Vivek Hetamsaria, the applicant and proprietor of the concern M/s. Ambika Diamond proposes to merge as Going Concern with M/s Ambika Jewelvista LLP, the partnership concern. All assets and liabilities of M/s. Ambika Diamond will be transferred to the said partnership firm. According to the submissions made, this transfer of business by the applicant will be of no consideration.

4.3 Under this circumstance the applicant has placed the following question before this authority:

Question 1: Whether the transaction of transfer of business by way of merger of two registrations/ distinct persons would constitute supply under the GST law?

Question 2: Whether the transaction would amount to supply of goods or supply of services?

Question 3: Whether the transaction would be covered under serial no. 2 of Notification No. 12/2017 – Central Tax (Rate) Dated 28.06.2017?

Question 4: If the answer to Question 3 is negative, then whether GST is leviable on the transfer of existing stock (closing stock) of assets, fixed assets from proprietorship concern to the partnership concern?

4.4 The applicant submits that the proposed transaction of transfer of business by way of merger will be implemented by entering into an internal Memorandum of Understanding (MoU) between the two parties, which *inter alia* includes the following clauses:

Transfer of Assets and Liabilities

All assets including fixed assets, closing stock, debtors, deposits and cash balance and all liabilities including the capital, unsecured loan, sundry credit and or, current liabilities related to the proprietorship concern shall get transferred to the partnership concern.

Transfer of Employees

The Employees shall continue to serve in the partnership firm without any interruption or break in service.

Conduct of business - During the period the firm agrees that it shall:

- carry on the business in the Ordinary Course of Business in substantially the same manner as heretofore conducted;
- pay its debts and Taxes when due;
- pay or perform other obligations as and when due;
- preserve intact the Business, keep available the services of its present employees, if the employees do not leave at their own will;
- preserve its relationship with, customers, having business dealing with it, to the end that its ongoing ability to provide services shall be unimpaired at the Closing; and
- Conduct business to ensure continuity

In terms of MoU all rights, title, ownership, interest in and to the business, assets, and customers including liabilities will get transferred as a going concern. In short, the entire business will be transferred. The proprietorship firm M/s. Ambika Diamond will cease to exist after filing all the necessary returns and all necessary compliance will be undertaken before surrendering the registration.

Foreseeable Future: All present and future assets, liabilities, rights, claims, employees, businesses, etc., shall be taken over by M/s Ambika Jewelvista LLP partnership firm. All future liabilities of GST, as and when arise, shall be met by the firm, in the normal course of business without any hindrances or stoppages. After the merger, M/s. Ambika Diamond (Proprietorship Concern) shall apply for cancellation of registration as prescribed.

4.5 The applicant believes that in the present scenario, there is a permanent transfer of the proprietorship concern to the partnership concern along with all the assets and liabilities. Thus, all the conditions mentioned under the definition of supply as per section 7(1) of CGST Act, are getting satisfied and accordingly transaction of transfer of business by way of merger qualifies as supply under GST. Here reference has been made to the definition of supply as per Section 7 of the CGST Act, 2017 and Schedule I appended to the act. This schedule refers to the activities which are to be treated as supply even if made without consideration. The applicant mentions the advance rulings given in the cases of Jayesh Popat (16/WBAAR/2022-23 dated 22.12.2022), Cosmic Ferro Alloys Limited (02/WBAAR/22-23 Dated 22.04.2022) and Rajashri Foods Pvt. Ltd. (KAR ADRG 06 / 2018 Dated: 23.04.2018). In all these referred rulings the Advance Ruling Authority considered transfer of business or any unit of a business as supply of service.

4.6 The applicant is of the opinion that in the instant case, he intends to transfer his entire proprietorship concern along with all the assets as well as the liabilities of the said concern along with their employees and such transfer of a business cannot be treated as supply of goods since business cannot be said to be a movable property so as to qualify as 'goods' as defined in clause (52) of section 2 of the GST Act. Further, anything other than goods, money and securities falls within the meaning of 'services' as defined in clause (102) of section 2 of the GST Act. Transfer of stock of the proprietorship concern would come under the preview of business as the entire business along with all the assets and liabilities is being transferred as a whole and not the only stock, thus would be construed as supply of services.

The applicant supports his argument by referring to the provisions of Section 2(102), 18(3), 22(3) and 85(1) and Schedule II of the CGST Act, 2017 and Rule 41(1) of the CGST Rules, 2017. Reference has also been made to the advance rulings pronounced in the cases of Cosmic Ferro Alloys Limited (02/WBAAR/22-23 Dated 22.04.2022) and Airport Authority of India (GUJ/GAAR/R/46/2021) where transfer of business has been considered as supply of services.

4.7 The Revenue has not given any view regarding the matters placed in the application.

4.8 The first two questions placed before us relate to the issues whether the above noted transfer amounts to supply under the GST Acts and if it is a supply, whether it is a supply of goods or supply of services. To understand the scope of supply we are referring to the

relevant portions of Section 7 of the CGST Act, 2017.

> *Section 7. Scope of supply.- (1) For the purposes of this Act, the expression - "supply" includes-*
>
> *(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
>
> *(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. Explanation.- For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]*
>
> *(b) import of services for a consideration whether or not in the course or furtherance of business and;*
>
> *(c) the activities specified in Schedule I, made or agreed to be made without a consideration;*
>
> *(d) [Omitted].*
>
> *(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.*

Since the concept of 'Scope of Supply' *supra* is an inclusive provision, it goes beyond the expression '*all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business'*. Even if the transfer of business is not done in the course or furtherance of business, still it will amount to supply. In fact, Section 7(1A) reinforces this proposition.

Transfer of business, for all practical considerations, is done neither in the usual course of business nor for furtherance of business. However, by virtue of the inclusive nature of the scope of supply in the GST Acts, transfer of business can be regarded as supply.

4.9 Here in our case as per the Memorandum of Agreement signed between the applicant

and the partnership firm to whom the entire business of the applicant will get transferred, all assets including fixed assets, closing stock, debtors, deposits and cash balance and all liabilities including the capital, unsecured loan, sundry credit and or, current liabilities related to the proprietorship concern shall get transferred. The Employees of the applicant shall continue to serve in the partnership firm without any interruption or break in service. In terms of the proposed MoU all rights, title, ownership, interest in and to the business, assets, and customers including liabilities will get transferred.

In our considered view, such a transfer of business, even if for without consideration and not in the usual course of business will be considered as supply under the provisions of the CGST Act, 2017.

4.10 Now we will move to the issue of the nature of supply in the present case i.e. whether it is a supply of goods or supply of services.

Section 7(1)(c) of the CGST Act, 2017 stipulates that supply includes 'the activities specified in Schedule I, made or agreed to be made without a consideration'. If we refer to Schedule I, we will find that Entry No. 1 specifies that 'permanent transfer or disposal of business assets where input tax credit has been availed on such assets' shall be treated as supply even if made without consideration.

Section 7(1A) of the CGST Act, 2017 leads us to Schedule II appended to the act. This Schedule refers to 'activities [or transactions] to be treated as supply of goods or supply of services'. Serial no. 4 of Schedule II relates to transfer of business assets. The entries under this serial number are reproduced as under:

> ***Transfer of business assets***
>
> *(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;*
>
> *(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such goods is a supply of services;*
>
> *(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*

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

For our purpose we should refer to clause (c) above. It appears from the said clause that transfer of business as a going concern will not amount to supply of goods. As per definition provided in Section 2(102) "services" means anything other than goods, money and securities but includes activities relating to the use of 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. Again activities or transactions that feature in Schedule II appended to the CGST Act, 2017 must be either supply of goods or supply of services. If transfer of business as a going concern to another person is not supply of goods, it must be supply of services.

In our considered view, the applicant's referred activity is a supply of services.

4.11 At this point of discussion we come to the concept of 'going concern'. Since the CGST Act does not define going concern, we will have to understand it in the context of common parlance and financial standards.

From a common parlance, going concern is a company which is assumed to continue its operations, such as trading and providing services, and will not be forced to liquidate its assets in the near future.

On the other hand, from financial point of view a going concern must exhibit the following features:

- **Financial stability:** The company is expected to meet its financial obligations as they become due. This includes paying debts on time and having sufficient resources.
- **Financial health:** Companies typically show strong financial health, consistent revenue streams, and a capacity to handle financial challenges without major restructuring.
- **Long-term planning:** There is an absence of any intention or need to liquidate or materially curtail the scale of operations in the near future.
- **Asset valuation:** Financial statements are prepared under the assumption that assets will be used over their useful life, not sold off immediately at a lower liquidation value.
- **Operational integrity:** The core products or services of the company are considered viable and have a reasonable market position.

4.12 For the purpose of taxation, the only reference to going concern in the GST regime can be found in Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017, as

amended. The relevant entry is reproduced hereinunder:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
2	Chapter 99	Services by way of transfer of a going concern, as a whole or an independent part thereof.	Nil	Nil

The above noted services are applicable to both the cases - transfer of a going concern as a whole or transfer of an independent part of a going concern.

4.13 In the case in our hand the applicant has not furnished any documentary evidence to prove that his business is a going concern. During the course of personal hearing, on a specific query raised by this authority, the applicant's representative has replied that the applicant has a running business and has been filing GST returns on a regular basis. So we are not in a position to determine whether the business operated by the applicant qualifies as a going concern. However, if it is a going concern by all standards the transfer of the business will definitely be covered by Entry no. 2 supra.

In the similar contexts in the case of Cosmic Ferro Alloys Limited and in the case of Joyesh Popat this Authority reached at the conclusion that the transaction of transfer of business amounts to supply of services and the transaction will be covered by Serial no. 2 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017, as amended, if the conditions of going concern is fulfilled.

It is to be noted that if the applicant's business fails to qualify as a going concern, the transfer of stock of goods, closing stock of assets etc. will be considered as supply of goods by virtue of Entry no. 4(c) of Schedule II appended to the CGST Act, 2017 and will be taxed accordingly as per the rate applicable for the respective goods.

In view of the foregoing, we rule as under:

RULING

Question 1: Whether the transaction of transfer of business by way of merger of two registrations/ distinct persons would constitute supply under the GST law?

Answer: The answer is in the affirmative.

Question 2: Whether the transaction would amount to supply of goods or supply of services?

Answer: The transaction will amount to supply of services.

Question 3: Whether the transaction would be covered under serial no. 2 of Notification No. 12/2017 – Central Tax (Rate) Dated 28.06.2017?

Answer: The answer is in the affirmative subject to the condition that the business qualifies as a going concern by all standards.

Question 4: If the answer to Question 3 is negative, then whether GST is leviable on the transfer of existing stock (closing stock) of assets, fixed assets from proprietorship concern to the partnership concern?

Answer: if the applicant's business fails to qualify as a going concern, the transfer of stock of goods, closing stock of assets etc. will be considered as supply of goods by virtue of Entry no. 4(c) of Schedule II appended to the CGST Act, 2017 and will be taxed accordingly as per the rate applicable for the respective goods.

Sd/-
(YOGESH SUGDEO CHITTE)
Member
West Bengal Authority for
Advance Ruling

Sd/-
(JAYDIP KUMAR CHAKRABARTI)
Member
West Bengal Authority for
Advance Ruling

Place: Kolkata
Date: 9th September, 2026

To,
Vivek Hetamsaria
2nd Floor, 3, Digambar Jain Temple Road,
Kolkata, West Bengal, 700007

Copy to,

(1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata - 700107

www.taxcode.in

(2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata - 700015

(3) The Commissioner, CGST & CX, Kolkata North Commissionerate, 180, Shantipally, R.B.Connector, Kolkata – 700107

(4) The Charge Officer, Commercial Taxes, Jorasanko Charge, Sales Tax Building, Jalasampad Bhavan, DF Block. Sector-1. Salt Lake .Kolkata -700091

(5) Office Copy