**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 thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

| **Name of the applicant** | **Jai Mata Di Jewellers** |
|---|---|
| Address | 2nd Floor, Room No. - 207, 3 - Digambar Jain Temple Road,, Burrabazar, Kolkata, West Bengal, 700007 |
| GSTIN | 19AAHFJ3418Q1ZS |
| Case Number | WBAAR 12 of 2026-27 |
| ARN | AD1908260060429 |
| Date of application | August 20, 2026 |
| Jurisdictional authority (State) | Postabazar Charge |
| Jurisdictional authority (Centre) | Shyambazar Division,<br>Kolkata North Commissionerate |


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| | |
|---|---|
| Order number and date | 19/WBAAR/2026-27 Dated 01.10.2026 |
| 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 the dissimilar provisions are specifically mentioned, a reference to the CGST Act also refers to the corresponding provisions in the WBGST Act. Further, for the purposes of these proceedings, the expression "GST Act" means both the CGST Act and the WBGST Act.

**1.2** The applicant, M/s Jai Mata Di Jewellers, is a partnership concern comprising Mr. Sumeet Saraf and Mr. Akash Saraf as its partners. The applicant is engaged in the business of wholesale, retail and manufacture of jewellery, including gold ornaments, articles and bullion, and is registered under the Goods and Services Tax law bearing GSTIN 19AAHFJ3418Q1ZS. The applicant proposes to transfer its entire business as a going concern to M/s Jai Mata Di Gold and Jewels Private Limited, a private limited company promoted by the same persons, along with all its assets, liabilities, employees, rights, interests, inventory and other components of the business, without any consideration. The transferee company shall continue the same business without interruption, following which the partnership concern proposes to cease its business and surrender its GST registration.

**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 partnership concern to the private limited company?

**1.4** The aforesaid questions on which the advance ruling is sought are found to be covered under clause (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, M/s Jai Mata Di Jewellers, is a partnership concern registered under the Goods and Services Tax Act bearing GSTIN 19AAHFJ3418Q1ZS and having its registered address at 3, Digambar Jain Temple Road, 2nd Floor, Kolkata, West Bengal, 700007. The applicant is engaged in the business of wholesale, retail and manufacture of jewellery, including gold ornaments, articles and bullion. The partners of the applicant are Mr. Sumeet Saraf and Mr. Akash Saraf. The applicant has various fixed and current assets, including inventory, receivables, deposits and other assets, as well as corresponding liabilities.

**2.2** A private limited company under the name and style of M/s Jai Mata Di Gold and Jewels Private Limited has been incorporated bearing CIN No. U32111WB2026PTC289066 and GSTIN 19AAHCJ5413E1ZO, having its registered address at 3, Digambar Jain Temple Road, 2nd Floor, Kolkata, West Bengal, 700007. Mr. Sumeet Saraf and Mr. Akash Saraf are the two directors of the said company, holding 50 percent shareholding each. Both the existing partners of M/s Jai Mata Di Jewellers are therefore also directors of the proposed transferee company.

**2.3** The applicant proposes to transfer the entire business of the partnership concern to the aforesaid private limited company as a going concern. The proposed transfer shall include all the assets and liabilities of the partnership concern, including fixed assets, closing stock, debtors, deposits, cash balance, capital, unsecured loans, sundry creditors and other current liabilities. The employees of the partnership concern shall also continue

to serve the company without any interruption or break in service. The proposed transfer is to be made without any consideration.

**2.4** The proposed transaction shall be implemented through an internal Memorandum of Understanding between the parties. In terms of the said arrangement, all assets relating to the partnership concern, including fixed assets, closing stock, debtors, deposits and cash balance, shall be transferred to the company and all liabilities, including capital, unsecured loans, sundry creditors and current liabilities, shall also be transferred to the company. The employees shall continue their services with the company without interruption.

**2.5** The arrangement further provides for continuity of the existing business. The partnership concern shall continue to carry on the business in the ordinary course and in substantially the same manner as it has been conducted hitherto. The business shall be conducted in such a manner as to preserve its relationship with existing customers and to ensure continuity of business operations. The services of the existing employees shall also be retained so that the ongoing ability to conduct the business remains unimpaired.

**2.6** In terms of the proposed MOU, all rights, title, ownership, interest in and to the business, assets and customers, together with the liabilities, shall stand transferred to the company as a going concern. Thus, the entire business of the partnership concern, and not merely individual assets or the closing stock, shall be transferred. Upon completion of the transfer and after undertaking the necessary statutory compliances and filing the requisite returns, the partnership firm shall cease to exist and shall apply for cancellation of its GST registration.

**2.7** The proposed transfer is intended to ensure that the same business continues to be carried on by the private limited company without any hindrance or stoppage. The applicant submits that the transfer is being made on an as-is basis and the operations of the business shall continue uninterrupted. The purpose of the transfer is to enable the business to continue under one GST registration, namely GSTIN 19AAHCJ5413E1ZO.

**2.8** The applicant submits that the transaction involves a change in the constitution of the business from a partnership concern to a private limited company, with different PAN and GST registrations. However, the business itself shall remain operational and shall continue in the hands of the transferee company. The assets, liabilities, employees, customers, rights, title, ownership and interest in the business shall be transferred as a whole, thereby enabling the transferee to carry on the same business independently and continuously.

**2.9** The applicant submits that section 7 of the CGST Act defines the expression "supply" and 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. Further, activities specified in Schedule I are treated as supply even when made without consideration. Schedule I specifically includes supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business.

**2.10** 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), they shall be treated either as supply of goods or supply of services as referred to in Schedule II. In the present case, the transfer involves the entire business undertaking along with its assets and liabilities and therefore the transaction is required to be examined as a transfer of the business as a whole.

**2.11** The applicant submits that the proposed transfer constitutes a supply under the GST law. There is a permanent transfer of the entire partnership concern to the private limited company together with all the assets and liabilities, employees and other components necessary for continuation of the business. The business is not being discontinued or liquidated, but is being transferred in such a manner that the same business shall continue to be operated by the transferee. Accordingly, the transaction satisfies the ingredients of supply under section 7 of the CGST Act.

**2.12** As regards the nature of supply, the applicant submits that the transfer of the business as a whole cannot be regarded as a supply of goods. Section 2(52) of the CGST Act defines "goods" as every kind of movable property, subject to the exclusions and inclusions specified therein. A business as a whole is not movable property and therefore the transfer of the business undertaking cannot be regarded as a transfer of goods merely because the business includes movable assets such as inventory and other assets.

**2.13** On the other hand, section 2(102) of the CGST Act defines "services" to mean anything other than goods, money and securities, subject to the inclusions contained therein. Since the transfer of the entire business as a going concern is not a supply of goods, the same constitutes a supply of services. The applicant therefore submits that the proposed transaction of transfer of the partnership business to the private limited company is a supply of services.

**2.14** The applicant relies upon the decisions of various Authorities for Advance Ruling in support of its contention. In the case of M/s Cosmic Ferro Alloys Limited, AAR No.

02/WBAAR/22-23 dated 22.04.2022, it was held that the transaction of transfer of a business unit shall be treated as a supply of services and that the transaction would be covered under Entry No. 2 of Notification No. 12/2017-Central Tax (Rate), subject to fulfilment of the conditions to qualify as a going concern. Similar findings were recorded in the case of M/s Rajashri Foods Pvt. Ltd., AAR No. KAR ADRG 06/2018 dated 23.04.2018.

**2.15** The applicant further relies upon the Advance Ruling in the case of M/s Airport Authority of India, Advance Ruling No. GUJ/GAAR/R/46/2021, wherein it was held that the transfer of a going concern constitutes supply under section 7 of the CGST Act and that the subject supply is a transfer of going concern service covered under Entry No. 2 of Notification No. 12/2017-Central Tax (Rate). Similar treatment was also accorded in the case of M/s SCV Sky Vision, AAR No. 04/AP/GST/2021 dated 12.01.2021.

**2.16** The applicant submits that section 18(3), section 22(3) and section 85 of the CGST Act, as well as Rule 41 of the CGST Rules, specifically recognise transactions involving sale, merger, demerger, amalgamation or transfer of a business. Section 18(3) provides for transfer of unutilised input tax credit in cases of sale, merger, demerger, amalgamation, lease or transfer of business where specific provisions are made for transfer of liabilities. Section 22(3) also specifically deals with transfer of a business 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 provides for transfer of unutilised input tax credit through Form GST ITC-02.

**2.17** The applicant submits that the aforesaid provisions demonstrate that transfer of business is recognised under the GST law as an event arising pursuant to a business arrangement. The proposed transaction involves transfer of the business undertaking as a whole, along with all the assets and liabilities necessary for carrying on the business. The transfer of the business as a going concern is therefore in the nature of supply of services. The transfer of the closing stock along with the entire business does not alter the character of the transaction, since the stock is only one component of the business undertaking being transferred as a whole.

**2.18** The applicant further submits that Serial No. 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 specifically provides exemption to "Services by way of transfer of a going concern, as a whole or an independent part thereof", with the applicable rate being Nil. Accordingly, once the proposed transaction is established to be a transfer of the entire business as a going concern, the same would qualify for exemption under the aforesaid entry.

**2.19** The applicant submits that the proposed transaction satisfies the essential characteristics of a going concern. Although the expression "going concern" is not defined under the CGST Act, it is an accounting concept indicating that a business is intended to continue its operations for the foreseeable future. A going concern represents a live and operating business having the necessary components and features required for its continued operation. Transfer of a going concern denotes transfer of a running business capable of being carried on by the transferee as an independent business.

**2.20** In the present case, there shall be a complete transfer of the business from the partnership concern to the private limited company. All present and future assets, liabilities, rights, claims, employees, business operations and other components necessary for carrying on the business shall be taken over by the company. The employees shall continue in service without interruption, the existing customers and business relationships shall be preserved and the company shall carry on the same business in the ordinary course. Thus, the business shall continue in the hands of the transferee with regularity and permanency.

**2.21** The applicant further submits that both the transferor partnership concern and the transferee private limited company have different PANs and GST registrations and are therefore distinct persons for the purposes of the GST law. The proposed transaction is consequently a transfer of the business from one person to another, while the entire business undertaking is being transferred as a going concern. The applicant relies upon the decisions in M/s Cosmic Ferro Alloys Limited, M/s SCV Sky Vision, M/s Rajashri Foods Pvt. Ltd., M/s Airport Authority of India and M/s Crystal Corp Protection Limited, wherein transfer of a business as a going concern was treated as supply of services and covered under Serial No. 2 of Notification No. 12/2017-Central Tax (Rate), subject to satisfaction of the conditions relating to going concern.

**2.22** The applicant submits that all the tests required for determining whether a business is transferred as a going concern are satisfied in the instant case. There is a change in constitution from partnership to private limited company, the transferee has a different PAN and GST registration, the entire operation of the business shall be taken over by the company, all assets and liabilities shall be transferred, the employees shall continue with the transferee and the business shall continue without interruption or stoppage for the foreseeable future. The transfer therefore constitutes a transfer of the business as a going concern as a whole.

**2.23** In view of the facts and circumstances stated above, the applicant submits that the proposed transfer of the entire business of M/s Jai Mata Di Jewellers, partnership

concern, bearing GSTIN 19AAHFJ3418Q1ZS, to M/s Jai Mata Di Gold and Jewels Private Limited, bearing GSTIN 19AAHCJ5413E1ZO, constitutes a supply under the GST law. However, the said supply is in the nature of supply of services, being transfer of the business as a going concern, as a whole. The applicant therefore submits that the transaction is covered under Serial No. 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and is consequently exempt from GST.

## 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 S Sumeet Saraf and Akash Saraf are the partners of M/s. Jai Mata Di Jewellers (hereinafter referred to as 'Applicant'). The concern is a jewellery firm (wholesaler, retailer and manufacturer) trading in gold ornaments, article and bullion. The applicant is registered under Goods and Services Tax (GST). Under the partnership concern, the applicant has fixed assets and current assets in the form of inventory, receivables, deposits and others.
As per the submissions of the applicant, one Private Limited Company has been formed under the name of M/s Jai Mata Di Gold and Jewels Private Limited (CIN No.: U32111WB2026PTC289066) (hereinafter referred to as company), holding GSTIN number 19AAHCJ5413E1ZO**,** having registered address at 3, Digambar Jain Temple Road, 2nd Floor, Kolkata, West Bengal, 700 007. It is informed that Sumeet Saraf and Akash Saraf are the directors of the company so formed each having 50% hold on the company. Both the partners of the concern M/s. Jai Mata Di Jewellers, propose to merge as Going Concern with the company and all assets and liabilities will be transferred to the company. Transfer of business by the applicant will be for no consideration i.e., without consideration.

**4.3** Under these circumstances, the applicant has placed the following questions 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 partnership concern to the private limited company?

**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 partnership concern shall get transferred to the private limited company.

**Transfer of Employees**

The Employees shall continue to serve in the private limited company 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 the MoU, all rights, title, ownership, interest in and to the business, assets, and customers, including liabilities, will be transferred as a going concern. In

short, the entire business will be transferred. The partnership firm Jai Mata Di Jewellers 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 Jai Mata Di Gold and Jewels Private Limited. All future liabilities of GST, as and when arise, shall be met by the company, in the normal course of business without any hindrances or stoppages. After the merger, Jai Mata Di Jewellers (Partnership 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 partnership concern to the private limited company along with all the assets and liabilities. Thus, all the conditions mentioned under the definition of supply as per section 7(1) of the CGST Act are getting satisfied and accordingly, the 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 partnership concern along with all the assets as well as the liabilities of the said company 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 partnership 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 of whether the above-noted transfer amounts to a supply under the GST Acts and, if it is a supply, whether it is a supply of goods or a 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 the present case as per the Memorandum of Agreement signed between the applicant and the private limited company 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 partnership concern shall get transferred. The Employees of the applicant shall continue to serve in the private limited company 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 purposes, 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 a supply of goods or a 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 hereunder:

| 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 cases - transfer of a going concern as a whole or transfer of an independent part of a going concern.

**4.13** In the present case, 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 partnership concern to the private limited company?**

**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: 1st October, 2026

**To,**
Jai Mata Di Jewellers,
2nd Floor, Room No. - 207, 3 - Digambar Jain Temple Road,
Burrabazar, Kolkata, West Bengal, 700007

**Copy to:**

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

**(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, Postabazar Charge, 14, Beliaghata Road, Kolkata - 700015

**(5)** Office Copy