

Whether "Business Transfer Agreement" as a going concern on slump sale basis is exempted from the levy of GST in terms of serial no. 2 of the Notification No. 12/2017-Central Tax (Rate) HELD transfer of Sitarganj Business shall be treated as a going concern and is exempted from GST

Advance Ruling No. 20/2018-19 Dated 26th March, 2019

BEFORE THE AUTHORITY FOR ADVANCE
RULINGS FOR THE STATE OF UTTARAKHAND

(Goods and Services Tax)

Present:

Shri Vipin Chandra (Member)

Shri Amit Gupta (Member)

In

Application No: 18

1	Applicant	M/s Innovative Textiles Ltd., B-8, PH-1 SIDCUL Industrial Area, Sitarganj, Udham Singh Nagar, Uttarakhand
2	Jurisdictional Officer	Shri
3	Present for the Applicant	Mr. Bimal Jain (CA)
4	Concerned Officer	None
5	Present for the Jurisdictional Officer	None
6	Date of receipt of application	11.02.2019
7	Date of Personal Hearing	15.03.2019

Note:- Under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

1. This is an application under Sub-Section (1) of Section 97 of the CGST/SGST Act, 2017 (herein after referred to as Act) and the rules made thereunder filed by M/s Innovative Textile Limited, 13-8, PH-1, SIDCUL Industrial Area, Sitarganj, Udham Singh Nagar, Uttarakhand seeking an advance ruling on whether "Business Transfer Agreement" as a going concern on slump sale basis is exempted from the levy of GST in terms of serial no. 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (herein after referred to as "said notification").

2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

3. As per the said subsection (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:

- Classification of any goods or services or both
- Applicability of a notification issued under the provisions of this Act,
- Determination of time and value of supply of goods or services or both,
- Admissibility of input tax credit of tax paid or deemed to have been paid
- Determination of the liability to pay tax on any goods or services or both
- Whether the applicant is required to be registered
- Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term

4. In the present case applicant has sought advance ruling on applicability of exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 on "Business Transfer Agreement" as a going concern on slump sale basis. Therefore, in terms of said Section 97 (2)(b) of Act, the present application is hereby admitted.

5. Accordingly opportunity of personal hearing was granted to the applicant on 15.03.2019. Shri Bimal Jain, CA of applicant appeared for personal hearing on the said date and re-iterated the submissions given in the application. He also cited Advance Ruling dated 23.04.2018 in this regard and stated that the said question is covered under serial no. 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and is therefore exempted from GST. He has nothing more to add.

6. From the record we find that applicant is registered in Uttarakhand with GSTIN bearing no. 05AAAC10473J1ZS. The submissions of the applicant are summarized as under:

(i) That the applicant is seller and is carrying on the business of manufacturing of textile yarns, fabrics and garments.

(ii) That the applicant intends to sell their on going business of manufacturing, marketing and sale of textile yarn and fabrics from the textile manufacturing facility situated at Plot No. B-8, Ph-1 , SIDCUL Industrial Park, Sitarganj, Udham Singh Nagar, Uttrakhand to M/s S D Polytech (P) Ltd (herein after referred to as "the purchaser"), in the form of business transfer as a going concern on slump sale basis as a whole with all assests and liabilities. The purchaser has agreed to purchase "Sitarganj Business" as a going concern with all assests and liabilities on slump sale basis on the terms and conditions as set out in the Business Transfer Agreement.

(iii) Subject to the terms and conditions of the agreement, the purchaser agrees to purchase from the seller and the seller agrees to sell, transfer, convey and deliver to the purchaser all the rights, title and interest of the seller in the Sitarganj business free of all encumbrances on the transfer date with effect from the cut off date as a going concern on slump sale basis.

(iv) The seller shall hand over the physical possession on the appointed transfer date and transfer will get completed on the registry of the land.

(v) Sale of business as a going concern is exempted by virtue of serial no. 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. In support of their claim, they furnished Advance Ruling No. KAR ADRG 06/2018 dated 23.04.2018.

7. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which was filed for our consideration in the application. Now we proceed as under:

7.1 Whether "Business Transfer Agreement" as a going concern on slump sale basis is exempted from the levy of GST in terms of serial no. 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. To appreciate the legal position in this regard we reproduce the relevant portion of the said Notification as under:

Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017

G.S.R (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act. as is in excess of the said calculated at the rate as specified in the corresponding entry in column (4) of -said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

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

7.2 On perusal of serial no. 2 of the said notification we find that the services by way of transfer of a going concern, as a whole or an independent part thereof is to be treated as supply of service and covered under chapter 99 of the Service Code (Tariff) and is exempted from GST.

7.3 On perusal of "Business Transfer Agreement" we find that

- a. The applicant intends to sell the Sitarganj Business in the form of business transfer as a going concern on slump sale basis as a whole with all assets and liabilities to the purchaser;
- b. "assets" shall include all movable properties, plant & machinery and immovable properties physically available at site and debtors and deposits with Govt. or Utility agencies in audited Balance Sheet as on the cut off date in relation to Sitarganj Business;
- c. "Sitarganj Business" shall mean the ongoing business and as going concern of manufacturing, marketing and sale of textile yarn and fabrics manufactured in the Sitarganj facility including without limitation to any of the assets, liabilities, permits and employees etc;
- d. "Sitarganj facility" shall mean the textile manufacturing facility situated at B-8, PH-1 SIDCUL Industrial Park, Sitarganj
- e. Transfer means the completion of each and all the steps required for transfer of Sitarganj Business from the seller to the purchaser in a running state and as a going concern on slump sale basis with all assets and liabilities;
- f. The seller shall hand over the physical possession on.....and the transfer will get completed on the registry of land;
- g. The parties shall take all steps and measures required to the end and intent that the purchaser shall become the full and undisputed owner of the business;
- h. In respect of Sitarganj facility and any immovable assets forming part of the Sitarganj business, seller shall execute a general power of attorney on - in favour of the purchaser's nominated representative to collect original property documents and title deed from bankers of seller.

7.4 We find that the term "business has been defined in sub clause 17 of Section 2 of the Act and the same is reprocued as under:

Section 2(17) of the Act "business" includes- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit; (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a); (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency,

continuity or regularity of such transaction; (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business; (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members; (f) admission, for a consideration, of persons to any premises; (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation; (h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

7.5 From the above definition of the "business' we find that the acquisition of goods/services for commencement of business is covered under the said definition. We observe that a transfer of a business as a going concern is the sale of a business including assets. In terms of financial transaction 'going concern' has the meaning that at the point in time to which the description applies, the business is live or operating and has all parts and features necessary to keep it in operation. We further find that internationally accepted guidelines (applicable to the case in hand) issued by His Majesty's Revenue & Customs (HRMC) to treat transfer of business as a going concern are as under:

- a. The assets must be sold as part of a 'business' as a 'Going concern'
- b. The purchaser intends to use the assets to carry on the same kind of business as the seller
- c. Where only part of a business is sold it must be capable of separate operation
- e. There must not be a series of immediately consecutive transfers

7.6 From the record we find that the applicant is carrying on the business of manufacturing of textile yarns, fabrics and garments across India and one of them is situated at B-8, Phase-I, SIDCUL Industrial Park, Sitarganj, Udham Singh Nagar, Uttrakhand and on perusal of the agreement, we find that the applicant has intends to sale the ongoing Sitarganj business along with its all assets & liabilities and the said Sitarganj business is live/operating. The purchaser has purchased the Sitarganj business to carry on the same kind of business. Further as on date we find that there is no series of immediately consecutive transfers of the said business.

7.7 In view of the above we thus observe that the applicant has supplied services by way of transfer of Sitarganj Business as a going concern, and as per serial no. 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, the same is exempted from levy of GST as on date.

RULING

In view of the above discussion we hold that transfer of Sitarganj Business shall be treated as a going concern and is exempted from GST as on date in terms of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

VIPIN CHANDRA (MEMBER)

AMIT GUPTA (Member)