Shilpa Medicare Limited v. State of Andhra Pradesh

Transfer of a research and development unit between two units of the same company across two States — held exempt by the Advance Ruling Authority but a taxable supply of goods with no transferable credit by the Appellate Authority. At issue: the reach o

Date of Order:	January 31, 2026
Case Law No:	GIB-APHC-2026-80
Source:	GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background.

The petitioner transferred its research and development unit at Vizianagaram, Andhra Pradesh to its own unit at Bengaluru, Karnataka, the agreement covering all liabilities including statutory liabilities, all employees on the same terms and continuity of service, books, records, customer contracts, know-how, brands and other intangibles. The Authority for Advance Ruling held, on 24.02.2020, that the transaction was a supply of service covered by Sl. No. 2 of Notification No. 12/2017-CT (Rate) and that the unutilised credit of the Vizianagaram unit — IGST Rs. 2,29,24,118, CGST Rs. 50,50,789 and APGST Rs. 35,40,668 — could be transferred to the Bengaluru unit. On the department's application, the Appellate Authority for Advance Ruling set that aside on 10.11.2020, holding the transaction to be a taxable supply of goods with no entitlement to transfer the credit to Karnataka.

Observations of the Court.

On exemption, the Court held that the petitioner would in any event be entitled to the benefit of the exemption by virtue of the notification, while expressly leaving open the larger doubt whether such services could have been brought within the purview of GST at all, given that the Act does not provide for taxing a transfer of business as a going concern as a supply of service.

On credit, the Court rejected the Appellate Authority's construction of "change in the constitution of a registered person" as connoting an internal structural change, such as a proprietary firm becoming a partnership. Such a reading would cut out sale, merger and lease, in each of which the transferor exits the picture and there is no internal change; the phrase must be understood as permitting transfer of credit from the ledger of the transferor to the transferee. The Court further observed that unutilised credit is an asset in the hands of the transferor, and on a sale of the entire business it is only reasonable that this asset also travels, Section 18(3) supplying the statutory basis. It also held that the authorities, having treated the Andhra Pradesh and Karnataka units as distinct persons under Sections 25(4) and 25(5) so as to tax the transfer, cannot simultaneously contend that the two units are parts of the same registered person and that there is no transfer. As regards the credit under the Central and Integrated levies it foresaw no difficulty, the administering authority being the Central Government; but the transfer from the APGST Act to the KGST Act would affect two States, and Karnataka was not before the Court.

Final verdict.

The writ petition was disposed of by setting aside the ruling of the Appellate Authority for Advance Ruling dated 10.11.2020, with the direction that further consideration of the issue by the authorities shall be on the basis of the observations in the order. The question of admissibility of transfer between the APGST Act and the KGST Act was directed to be placed before the authorities under both enactments, the petitioner being at liberty to approach them and agitate its rights.