

TAX INFO

Dated 04/06/2022

Latest update on GST Law: Information regarding **Transfer of business as a going concern is supply of services chargeable at NIL rate of tax** as given in **Ruling by AAR-West Bengal.**

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| Name of Applicant | Cosmic Ferro Alloys Limited |
| Authority | GST AAR West Bengal |
| Date of Ruling | 22/04/2022 |
| Ruling No. | 02/WBAAR/2022-23 |

Brief Facts of the Case:

The applicant is stated to be engaged in manufacturing of Ferro alloys and Cold Rolled Formed Sections having its entire operations segmented in the said two units i.e. FERRO Unit and CRF Unit and both the units are functional and running independently. The applicant intends to sell its CRF unit as a whole which involves transferring of all the assets to the purchaser which includes taking over all the liabilities due and payable as on the date of transfer for a lump sum consideration.

Brief Facts of the Case:

1. Whether the transaction would amount as supply of goods or supply of services or supply of goods and services?
2. Whether the transaction would be covered under Entry No. 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017?

Submission of the Applicant:

The CRF unit has fixed assets in the form of land, building, plant and machinery, inventories and other current assets and he has also availed credit facilities from financial institutions and also has other outstanding short-term liabilities. The proposed transaction is for the sale of CRF unit owned by the applicant as a going concern, as a whole envisages transfer of the entire business of the CRF unit to the purchaser who is taking over the assets as well as the liabilities of the said CRF unit which includes the employees and their benefits. The business of the CRF unit will continue as it is after the transfer. The proposed transaction is transfer of business as a going concern wherein all assets and liabilities have been agreed to be transferred to the purchaser and the said purchased unit will continue its business without any hindrances and or stoppages. The BTA dated 19.01.2022 establishes the intent of the purchaser and seller to conclude the transaction for sale/purchase of one independent self-sustained unit of the seller along with its liabilities and employees. It is assumed that the enterprise has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the operations. Thus, the main ingredients of going concern are operation in foreseeable future & steps taken for business continuity.

Therefore, the transaction contemplated being sale of an independent unit is a supply of service as a going concern and in view of the Entry No 2 of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, the said transaction is to be charged at NIL rate of tax.

Findings and Ruling:

The applicant has entered into a Business Transfer Agreement (BTA) intending to sell of his CRF unit as a whole with assets and liabilities to Cosmic CRF Limited.

Whether the transfer of the business of the CRF unit involved in the instant case shall qualify as a supply of services or not?

The applicant intends to sell his entire CRF unit where the purchaser agrees to take over the assets as well as the liabilities of the said CRF unit along with the employees and their benefits. Therefore, such transfer of a unit of a business cannot be treated as supply of goods since business cannot be said to be a movable

Therefore, the transaction of transfer of business property so as to qualify as goods as defined in section 2(52) of the GST Act. Further, anything other than goods, money and securities falls within the meaning of services as defined in section 2(102) of the GST Act. Hence unit of the applicant shall be treated as a supply of services.

Now, the term 'going concern' is not defined under the GST Act or rules framed there under. The concept of going concern has been defined in Accounting Standards –1 issued by ICAI which states that a fundamental accounting assumption is that of Going Concern according to which —the enterprise is normally viewed as a going concern, that is, as continuing in operation for the foreseeable future. It means it is assumed that the enterprise has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the operations. In this case, the purchaser has also agreed to purchase the CRF business having assets and all liabilities attached to the said CRF Unit as a going concern. The BTA further refers that the purchaser shall continue to employ the current employees of CRF Unit even after the takeover of the CRF business. Furthermore, the seller i.e., the applicant has agreed that he shall not be entitled to engage in any business competing with the activities of the purchaser in respect of existing CRF business.

Both the clauses indicate that the business will continue by the purchaser with regularity. But, the applicant has not furnished any documentary evidences from the auditor with regard to the entity's ability to continue in operation for the foreseeable future in absence of which we are unable to conclude that the applicant has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the operations.

RULING

1. The transaction of transfer of business unit of the applicant involved in the instant case shall be treated as a supply of services.
2. The transaction would be covered under Entry No. 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 subject to fulfilment of the conditions to qualify as a going concern.

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