

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.P.No.15955 of 2021**Between:**

1. M/S SHILPA MEDICARE LIMITED, SURVEY NO. 207, MODAVALASA VILLAGE, DENKADA MANDAL, VIZIANAGARAM-531162. ANDHRA PRADESH.
2. HAVING THEIR CORPORATE AND ADMIN OFFICE, AT. M/S. SHILPA MEDICARE LIMITED, SHILPA HOUSE 12-6-214/A-1, HYDERABAD ROAD, RAICHUR-584 135, KARNATAKA.
3. REPRESENTED BY ITS FINANCE MANAGER, SHRI. RAMAKANT INNANI, S/O.NATHMAL INNANI AGED 43 YEARS, R/O. H. NO. 7-5-204, JAWAHAR NAGAR, RAICHUR - 584 101 KARNATAKA.

...PETITIONER(S)**AND**

- \$1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) NO.137, NORTH BLOCK, NEW DELHI-110001.
2. UNION OF INDIA, REPRESENTED BY ITS SECRETARY MINISTRY OF LAW AND JUSTICE, 4TH FLOOR, A, WING, RAJENDRA PRASAD ROAD, SHASTRI BHAVAN, NEW DELHI -110 001.
3. THE GOODS AND SERVICES TAX COUNCIL, REPRESENTED BY ITS SECRETARY OFFICE OF THE GST COUNCIL SECRETARIAT, 5TH FLOOR, TOWER II, JEEVAN BHARTI BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI-110 001.
4. THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS CHIEF SECRETARY, BUILDING 1, 1ST FLOOR, INTERIM GOVERNMENT COMPLEX, A.P. SECRETARIAT, VELAGAPUDI, GUNTUR- 522 503, ANDHRA PRADESH.
5. THE APPELLATE AUTHORITY FOR ADVANCE RULING, FOR THE STATE OF ANDHRA PRADESH (GOODS AND SERVICE TAX),

OFFICE OF THE CHIEF COMMISSIONER OF STATE TAX,
GOVERNMENT OF ANDHRA PRADESH, BUNDER ROAD,
EDUPUGALLU, VIJAYAWADA - 521 151, ANDHRA PRADESH.

6. THE AUTHORITY FOR ADVANCE RULING, ANDHRA PRADESH, (GOODS AND SERVICE TAX), D. NO. 5-56, BLOCK-B, R.K. SPRING VALLEY APARTMENTS, EDUPUGALLU, VIJAYAWADA - 521 151, ANDHRA PRADESH.
7. THE DEPUTY COMMISSIONER OF CENTRAL TAX, VIZAINAGARAMCENTRAL GST DIVISION, NEAR DANDUMARAMMA TAMPLE, CONTONMENT AREA, VIZAINAGARAM - 535 003 ANDHRA PRADESH.

...RESPONDENT(S):

Date of Judgment pronounced on : 31-01-2026

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

HON'BLE SRI JUSTICE T.C.D SEKHAR

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

HON'BLE SRI JUSTICE T.C.D.SEKHAR

+ W.P.No.15955 of 2021

% Dated: 31-01-2026

1. M/S SHILPA MEDICARE LIMITED, SURVEY NO. 207, MODAVALASA VILLAGE, DENKADA MANDAL, VIZIANAGARAM-531162. ANDHRA PRADESH.
2. HAVING THEIR CORPORATE AND ADMIN OFFICE, AT. M/S. SHILPA MEDICARE LIMITED, SHILPA HOUSE 12-6-214/A-1, HYDERABAD ROAD, RAICHUR-584 135, KARNATAKA.
3. REPRESENTED BY ITS FINANCE MANAGER, SHRI. RAMAKANT INNANI, S/O.NATHMAL INNANI AGED 43 YEARS, R/O. H. NO. 7-5-204, JAWAHAR NAGAR, RAICHUR - 584 101 KARNATAKA.

...PETITIONER(S)

AND

- \$1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) NO.137, NORTH BLOCK, NEW DELHI-110001.
2. UNION OF INDIA, REPRESENTED BY ITS SECRETARY MINISTRY OF LAW AND JUSTICE, 4TH FLOOR, A, WING, RAJENDRA PRASAD ROAD, SHASTRI BHAVAN, NEW DELHI -110 001.
3. THE GOODS AND SERVICES TAX COUNCIL, REPRESENTED BY ITS SECRETARY OFFICE OF THE GST COUNCIL SECRETARIAT, 5TH FLOOR, TOWER II, JEEVAN BHARTI BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI-110 001.

4. THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS CHIEF SECRETARY, BUILDING 1, 1ST FLOOR, INTERIM GOVERNMENT COMPLEX,A.P. SECRETARIAT, VELAGAPUDI, GUNTUR- 522 503, ANDHRA PRADESH.
5. THE APPELLATE AUTHORITY FOR ADVANCE RULING, FOR THE STATE OF ANDHRA PRADESH (GOODS AND SERVICE TAX), OFFICE OF THE CHIEF COMMISSIONER OF STATE TAX, GOVERNMENT OF ANDHRA PRADESH, BUNDER ROAD, EDUPUGALLU, VIJAYAWADA - 521 151, ANDHRA PRADESH.
6. THE AUTHORITY FOR ADVANCE RULING, ANDHRA PRADESH, (GOODS AND SERVICE TAX), D. NO. 5-56, BLOCK-B, R.K. SPRING VALLEY APARTMENTS, EDUPUGALLU, VIJAYAWADA - 521 151, ANDHRA PRADESH.
7. THE DEPUTY COMMISSIONER OF CENTRAL TAX, VIZAINAGARAMCENTRAL GST DIVISION, NEAR DANDUMARAMMA TAMPLE, CONTONMENT AREA, VIZAINAGARAM - 535 003 ANDHRA PRADESH.

...RESPONDENT(S):

! Counsel for petitioner : Sri V. Raghuraman, the learned Senior Counsel appearing on behalf of Sri Anil Kumar Bezawada

^Counsel for Respondents : Sri P.S.P. Suresh Kumar

<GIST :

>HEAD NOTE:

? Cases referred:

APHC010274472021



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3529]

SATURDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 15955/2021

Between:

1. M/S SHILPA MEDICARE LIMITED, SURVEY NO. 207, MODAVALASA VILLAGE, DENKADA MANDAL, VIZIANAGARAM-531162. ANDHRA PRADESH.
2. HAVING THEIR CORPORATE AND ADMIN OFFICE, AT. M/S. SHILPA MEDICARE LIMITED, SHILPA HOUSE 12-6-214/A-1, HYDERABAD ROAD, RAICHUR-584 135, KARNATAKA.
3. REPRESENTED BY ITS FINANCE MANAGER, SHRI. RAMAKANT INNANI, S/O.NATHMAL INNANI AGED 43 YEARS, R/O. H. NO. 7-5-204, JAWAHAR NAGAR, RAICHUR - 584 101 KARNATAKA.

...PETITIONER(S)

AND

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) NO.137, NORTH BLOCK, NEW DELHI-110001.
2. UNION OF INDIA, REPRESENTED BY ITS SECRETARY MINISTRY OF LAW AND JUSTICE, 4TH FLOOR, A, WING, RAJENDRA PRASAD ROAD, SHASTRI BHAVAN, NEW DELHI -110 001.

3. THE GOODS AND SERVICES TAX COUNCIL, REPRESENTED BY ITS SECRETARY OFFICE OF THE GST COUNCIL SECRETARIAT, 5TH FLOOR, TOWER II, JEEVAN BHARTI BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI-110 001.
4. THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS CHIEF SECRETARY, BUILDING 1, 1ST FLOOR, INTERIM GOVERNMENT COMPLEX, A.P. SECRETARIAT, VELAGAPUDI, GUNTUR- 522 503, ANDHRA PRADESH.
5. THE APPELLATE AUTHORITY FOR ADVANCE RULING, FOR THE STATE OF ANDHRA PRADESH (GOODS AND SERVICE TAX), OFFICE OF THE CHIEF COMMISSIONER OF STATE TAX, GOVERNMENT OF ANDHRA PRADESH, BUNDER ROAD, EDUPUGALLU, VIJAYAWADA - 521 151, ANDHRA PRADESH.
6. THE AUTHORITY FOR ADVANCE RULING, ANDHRA PRADESH, (GOODS AND SERVICE TAX), D. NO. 5-56, BLOCK-B, R.K. SPRING VALLEY APARTMENTS, EDUPUGALLU, VIJAYAWADA - 521 151, ANDHRA PRADESH.
7. THE DEPUTY COMMISSIONER OF CENTRAL TAX, VIZAINAGARAM CENTRAL GST DIVISION, NEAR DANDUMARAMMA TAMPLE, CONTONMENT AREA, VIZAINAGARAM - 535 003 ANDHRA PRADESH.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus to declare the order of the respondent No. 5 in Order/AAAR/AP/07(GST)/2020 dated 10th November 2020 without following due process of law as arbitrary, in the interest of justice.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to direct the respondents not to proceed against the petitioner, without following due process of law pending disposal of the Writ Petition in the interest of justice.

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to grant leave to the respondent to file the counter affidavit and pass

Counsel for the Petitioner(S):

1. ANIL KUMAR BEZAWADA

Counsel for the Respondent(S):

1. DEPUTY SOLICITOR GENERAL OF INDIA

2. P S P SURESH KUMAR

Date of Reserved : **05.01.2026**

Date of Pronouncement : **31.01.2026**

Date of Upload : **31.01.2026**

The Court made the following Order:

(per Hon'ble Sri Justice R. Ragunandan Rao)

Heard Sri V. Raghuraman, the learned Senior Counsel appearing on behalf of Sri Anil Kumar Bezawada, learned counsel for the petitioner and Sri P.S.P. Suresh Kumar, the learned Standing Counsel appearing for the respondents.

2. The petitioner herein is a limited company which undertakes Research and Development in Pharmaceuticals including active pharmaceutical ingredients, formulation of molecules and manufacture of formulation products. The petitioner had one Research and Development Center situated in Karnataka State and another in Modavalasa Village, Denkada Mandal, Vizianagaram District of Andhra Pradesh. The unit in Vizianagaram was registered under the GST Act with Registration No.37AADCS8788F1ZR. Similarly, the Bangalore Unit of the petitioner was also registered, in the State of Karnataka, with GST No.29AADCS8788F1ZO. The petitioner had been allotted a Permanent Account Number, under the Income Tax Act, bearing PAN No.AADCS8788F. The petitioner decided to transfer its R&D Center in Vizianagaram to Bangalore. For this purpose, the Vizianagaram Unit as well as the Bangalore Unit entered into a Business Transfer Agreement, dated 26.06.2019. Under this agreement, the business assets and business liability of the Vizianagaram Unit, as a going concern,

was transferred to the Bangalore Unit for Zero consideration. The R&D business undertaking, which was the subject matter of the transfer, was defined, under the business transfer agreement of 26.06.2019 in the following manner:

R&D Business Undertaking" means the undertaking of the R&D Business consisting of the following:

- a) Movable Property of the R&D Business Undertaking As a part of Annex-1.
- b) All Assets Book debts, advances, deposits, receivables as per books of record on the date of transfer.
- c) All Liabilities including statutory on the date of transfer.
- d) All Employees to this Agreement, on the same terms and conditions of service as they are employed by the Transferor, including as to length and continuity of service including long term & short Term benefit.
- e) Books, Records and Ledgers: Customer contracts, know-how, brands and other Intangibles, as may be mutually agreed between the Parties and;
- f) Technical or other information if any used primarily in connection with (a) to (e) above and as agreed between the Parties on or prior to the Closing Date.

3. After executing this agreement, the petitioner had approached the Authority for Advance Ruling for a ruling, on the following three questions:

1. Whether the transaction would amount to supply of goods or supply of services or supply of Goods & Services?"

2. Whether the transaction would be covered Sl.No.2 of the Notification No.12/2017- Central Tax (Rate) dated 28.6.2017?

3. Can we file GST ITC-02 return and transfer unutilized ITC from Vizianagaram, Andhra Pradesh unit to Bengaluru, Karnataka Unit?

4. The authority for advance ruling by its decision, dated 24.02.2020, in AAR No.05/AP/GST/2020, had held that the transaction was a supply of services, which was covered under SL.No.2 of Notification No.12/2017-Central Tax (Rate), exempting the said transaction from tax. The authority also held in the affirmative, that the unutilized input tax credit available in the Vizianagaram Unit could be transferred to the Bangalore Unit. The said input tax credit was Rs.2,29,24,118/- under the IGST Act, Rs.50,50,789/- under the CGST Act and Rs.35,40,668/- under the APGST Act.

5. Aggrieved by the decision of the Authority for Advance Ruling, the Deputy Commissioner of Central Tax, Vizianagaram Central GST Division, moved an application, on 25.08.2020, before the Appellate Authority on Advance Ruling, seeking clarification whether such a ruling was correct. The appellate authority for advance ruling, by its order, dated 10.11.2020, in order/AAAR/AP/07(GST)/2020, set-aside the findings of the Authority for Advance Ruling and held that the transaction under question was a supply of goods which was taxable as per the prevailing provisions of the CGST/APGST

Act, 2017 and that the petitioner was not entitled to transfer the input tax credit available with the Vizianagaram Unit to the Bangalore Unit in the State of Karnataka.

6. Aggrieved by this order of the Appellate Authority for Advance Ruling, the petitioner has approached this Court, by way of the present Writ Petition.

7. Heard Sri V. Raghuraman, the learned Senior Counsel appearing on behalf of Sri Anil Kumar Bezawada, learned counsel for the petitioner and Sri P.S.P. Suresh Kumar, the learned Standing Counsel appearing for the respondents.

8. The case of the writ petition is that-

A) The transfer of goods in the course of the sale or transfer of the entire business undertaking, as a going concern, is not taxable at all. This contention is raised on the ground that the definition of 'business' in section 7(1) of the CGST Act would exclude the sale of entire business undertaking as a going concern. Apart from this, there is no consideration for the said transfer and as such, the provisions of Section 7 of the CGST Act, including entry No.2 of Schedule-I would not be attracted, as the transfer is not in the course of or in furtherance of business.

B) The transaction would not be a supply of service also as the transfer of goods, in the course of sale of a business, would not constitute a taxable supply and as such, cannot be treated as supply of services also.

C) Even if the transfer of business is to be treated as "a supply of services", the same would be exempt in view of entry No.2 of Notification No.12/2017-CT (R), dated 28.07.2017.

D) The input tax credit available with the Vizianagaram Unit, can be transferred to the Bangalore Unit, in view of the Section 18(3) of the CGST Act, which stipulates that Where there is a change in the constitution of a registered person on account of sale, merger, etc., of the business with the specific provisions for transfer of liabilities, the input tax credit can be transferred to the person who shall be running a business which is transferred. The finding of the Appellate Authority for Advance Ruling that the provisions of Section 18(3), read with relevant rules, would be available only to two separate persons and would not be available to the petitioner inasmuch as the transfer is only within the branches of the petitioner, is incorrect. Section 29 which provides for cancellation of registration on account of business for any person read with the provisions of Section 25(4) and 25(5) of the GST Act which requires the separate registration for the same business entity and which stipulates that such separate registration will result in the same person being treated as separate and distinct persons for the purpose of the Act.

E) The finding of the appellate authority for advance ruling that there is no provision for transfer of input tax credit inasmuch as the same would deprive Andhra Pradesh of its share in tax is incorrect as the Goods and

Services Tax Act, 2017 provides for settlement between Centre and States on account of gross utilization including the transfer by ISD.

9. The 7th respondent, Deputy Commissioner of Central tax has filed a counter affidavit, reiterating the findings of the appellate authority for advance ruling. It is the case of the 7th respondent, as contended by Sri P.S.P. Suresh Kumar, that the findings of the appellate authority for advance ruling does not require any reconsideration for the following reasons:

- i) The question of transfer of input tax credit would arise only where there is a transfer for consideration. In the present case, the transfer agreement itself states that there is no consideration paid for this transfer. Consequently, the question of transfer of input tax credit does not arise.
- ii) Even if there is a transfer of business, the input tax credit available to the petitioner, in the State of Andhra Pradesh, cannot be transferred to the State of Karnataka. Such transaction is not provided under any of the provisions of the GST Acts and any such transfer would be in violation of the law, inasmuch as the input tax credit, which was credited to the petitioner arose in the State of Andhra Pradesh under the APGST act and there is no provision for transfer of such input tax credit, to the State of Karnataka which is governed by the Karnataka Goods and Services Tax Act. Transfer of Assets during transfer of business is included in the definition of business set out in section 2(17)(d) of the CGST Act. The judgment of the Andhra Pradesh High Court in **Paradise Food Court vs. State of**

Telangana¹., in the context of A.P VAT Act, had held that business cannot be treated as movable property or goods. Consequently, the said transfer can only be treated as a supply of services. Entry 4(c) of Schedule-II of the CGST Act defines transfer of business assets where business is transferred, as a going concern, to another person. In the present case, the transfer is between two units of the petitioner and there is no 'another person', to whom the business is sold and consequently, the petitioner cannot claim that the transfer of the R&D Unit amounts to sale of the business itself. This is further fortified by the fact that both the units had the same PAN number and cannot be treated as separate persons, though they may be "distinct persons" under the provisions of the GST Act.

iii) Section 18(3), relied upon by the petitioner for transfer of input tax credit, requires a change in the constitution of the registered person, on account of transfer of business or part of the business. In the present case, there is no such change in the constitution of the registered person and consequently Section 18(3) and the rules to be read with this provisions, would not be applicable to the case.

Consideration of the Court:

10. Section 9 of the CGST Act as well as the APGST Act levies tax, on all Intra State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. The tax on supply of petroleum and its products is also excluded till it is brought within the fold of the GST Act, at

¹ 2018(16) G.S.T.L.361 (A.P.)

some later stage. The levy of tax is, therefore, dependent on whether there is "supply" of goods or services. The term "supply" is defined in Section 7. Section 7(1)(a) and (c) which read as follows, are relevant:

Section 7(1)(a) and (c)

- (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;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration.

11. Section 7(1)(a) would be applicable when the supply is made "in the course or furtherance of business". Section 7(1)(c) stipulates that activities in Schedule-I, even if made without consideration would fall within the ambit of "supply". Entry No.2 in Schedule-I reads as follows:

- 2. 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:

Even here, the relevant factor is whether such supply is made in the course or furtherance of business.

12. The question of whether sale of goods, in the course of transfer of the business itself, as a going concern, under the provisions of the APGST Act as well as the A.P. VAT Act came to be considered by the erstwhile High Court of Andhra Pradesh as well as the erstwhile High Court of Judicature at

Hyderabad for the State of Telangana and the State of Andhra Pradesh in **Coromandal Fertilizers Limited vs. State of Andhra Pradesh**², and **Paradise Food Court vs. State of Telangana**. In **Coromandal Fertilizers Limited vs. State of Andhra Pradesh**, a Division Bench, of the erstwhile High Court of Andhra Pradesh, had referred the following issue to a Full Bench:

"Whether in a transaction of sale of an undertaking as a going concern with all assets and liabilities for a lump sum without stipulating any price for individual items, the assessing authority could consider that there was a sale of goods within the meaning of section 2(n) read with sections 2(h) and 2(s) for charging the same to tax under section 5 of the Andhra Pradesh General Sales Tax Act."

13. The Full Bench after considering the earlier judgments of the Hon'ble High Court at Madras in **Deputy Commissioner (CT) vs. Behanan Thomas**³ and other judgments of other high courts had disposed of the reference in the following manner:

70. We are therefore of the view that transfer of goods involved in the process of disposing of the entire cement manufacturing unit hitherto owned by the petitioner-company does not tantamount to "business" within the meaning of section 2(1)(bbb) of the Act and the sale is not "in the course of business". The charge to tax is therefore not attracted under the APGST Act. The conclusion which we have reached is in accord with the view taken by Madras, and Madhya Pradesh High Courts in the cases referred to supra. The view of the

² 1999 (112) STC 1

³ 1977 (39) STC 325 (Madras)

Full Bench of the Kerala High Court is also that there is no taxable sale in a transaction of this nature

71. In the view, we have taken, there is no need to answer the question whether the disputed transactions can be regarded as "sales" within the meaning of the Sale of Goods Act and any sale price is attributable to the movables involved in the transfer of the business undertaking.

14. The aforesaid view was on the basis of definition of sale under Section 2 (1) (n) and the definition of "business" under section 2 (1) (bbb), of the A.P.G.S.T. Act, which reads as follows:

section 2(1)(n):

"Every transfer of the property in goods (whether as such goods or in any other form in pursuance of a contract or otherwise) by one person to another in the course of trade or business, for cash, or for deferred payment, or for any other valuable consideration....."

Section 2 (1) (bbb):

"Business includes-

(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on or undertaken with a motive to make gain of profit and whether or not any gain or profit accrues there from; and

(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern."

15. A similar issue came up before the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in **Paradise Food Court vs. State of Telangana**. This case came up under the Telangana State VAT Act. The Division Bench after noticing the definition of sale of goods etc., in the Telangana State VAT Act, 2005 had held as follows:

22. As we have stated earlier, the Act seeks to define the word "business" under Section 2(6), for the simple reason that in a few specific places such as Section 2(28), Section 4(4) and Section 13(1), the Act uses the expressions "in the course of business" and "for use in the business". Therefore, it must be made clear at the outset that what is sought to be charged under the Act is only the sale of the goods or transfer of right to use the goods in the course of business and not the sale of business itself as a whole.

29. But the above contention loses sight of one important aspect. As we have pointed out earlier, sale of business as a whole is not made taxable even now under the charging provision. It is only the sale of goods which is chargeable under Section 4(1). The definition of the expression 'sale' would apply to a case only if the sale takes place in the course of trade or business, as per Section 2(28). A business in entirety, cannot be sold in the course of trade of business, as there will be no business left thereafter, to deal with. Therefore, the amendment brought forth to the definition of the expression "business" could not have changed the dynamics of the game, when the charging provision and the definition of the expression "sale" remained the same. Hence the reliance placed upon the decision of the Full Bench of the Madras High Court in Natesa Mudaliar, is completely misplaced.

38. As we have indicated earlier, the transfer of business as a whole is not *per se* included in the charging provision. It is only by virtue of a logic that every transfer of business would also include a sale of goods of the business that the charging provision is sought to be invoked. When the transfer of business by itself is not made chargeable to tax and when the definition of the word "sale" would apply when there is a sale in the course of business or trade, the very nomenclature given in Rule 36 as though the transfer of business is exempt from VAT, is redundant.

45. In the case on hand another important feature is that the petitioner which is a partnership firm, sought to transfer the entire business as going concern under a business transfer agreement to provide limited company of which the partners of the petitioner were the shareholders. In consideration of the transfer of the business as a whole, the partners of the petitioner were allotted equity shares and preferential shares in the company. Therefore, to treat the same as a sale of goods merely on the ground that all the assets of business are individually mentioned in the Schedule together with their value, is completely contrary to the Statutory prescription. Therefore, the impugned order has been passed on an assumed jurisdiction, where none exists. The impugned order has been passed on a complete misunderstanding of the purport of the decision of the Full Bench in Coromandal Fertilisers Limited, the effect of Section 2(6) read with Section 2(28) and Rule 36. It is not the case of the respondent that the petitioner had claimed Input Tax Credit under Section 13(5)(b) so as to treat the case as not one of transfer of business as a whole.

16. The ratio, set down in these judgments, would apply to the provisions of the GST Acts, as the language in these provisions is similar to the language of the provisions, in the Sales Tax Act and the Value Added tax

Act. The aforesaid judgments make it clear that it is only sales which are in the course of or for the furtherance of business, and not sale of the business itself, which can be taxed under the provisions of the GST Acts. In the present case, there was a transfer of the entire R&D Unit, as a going concern, including the assets and liabilities. Such a transaction would be the sale of a business itself and not sale/supply of individual goods.

17. Notification No.12/2017 treats the transfer of a going concern as a whole or an independent part, thereof as supply of services and exempts the same from payment of tax. There is a doubt as to whether such services could have been brought within the purview of the GST regime, once the GST Act itself does not provide for taxation of supply of services or to even treat transfer of business as a going concern, as a supply of service. However, this Court is leaving this issue open inasmuch as the petitioner would still be entitled to the benefit of exemption by virtue of the notification.

18. The question of whether the input tax credit available with the Vizianagaram Unit could be transferred to Bangalore remains. The 7th respondent contends that such a transfer is impermissible on two grounds. Firstly, there has to be a change in the constitution of the registered person, under Section 18(3) of the CGST Act whereas there is no change in the registered person in the present case. Secondly, input tax credit which accrued under the APGST Act cannot be transferred to the credit of the petitioner in Karnataka which is governed under the KGST Act.

Section 18(3) reads as follows:

18(1)----

(18)(2)----

(18)(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

19. This provision states that there could be transfer of unutilized input tax credit when there is a change in the constitution of the registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business. The term "change in the constitution" has been understood, by the appellate authority for advance ruling, to mean that the structure of the registered person has to change from a proprietary firm to a partnership firm or from a partnership firm to a company etc. This construction of the term "change in the constitution of the registered person" does not appear to be correct. In the case of a sale, the transaction would be between a seller and buyer, who are two separate persons or entities. There would not be any change on account of a sale. However, the language of Section 18(3) provides for transfer of input tax credit in cases of sale also. Similarly, in the case of a merger or amalgamation or lease, the registered person who is transferring the business goes out of the picture and it is only the transferee of the business that would be given the benefit of transfer of input tax credit. In

such cases also, there would be no change in the constitution of the registered person.

20. In the circumstances, full meaning and benefit cannot be given to the phrase “change in the constitution of the registered person” if it is understood to mean that there has to be an internal change, in the registered person, on account of certain forms of transfer/supply or that the business itself moves from one registered person to another person. Any such interpretation would cut out same of the forms of transfer such as sale, merger, lease of business etc. To that extent, it would have to be held that change in constitution cannot be taken to be change in the constitution of the transfer or and that the benefit of transfer of input tax credit would not be available to a transferee which is a separate entity. This phrase would have to be understood to mean that there can be transfer of input tax credit from the ledger of the transferor to the transferee.

21. Apart from the above, the input tax credit available, in the ledger of the transferor, arises out of the tax component paid on the goods, by the transferor, etc. The input tax so credited has to be used, to discharge further liability, to the tax authorities. This is one of the assets available with the transferor. In the case of a sale of the entire business, it would only be reasonable that this asset, in the form of input tax credit, is also transferred. Section 18(3) is giving a statutory basis for such transfer.

22. Another aspect which has been raised, is the contention that the transfer from a registered person, should be to “another person” for availing the benefit of the above provisions. In the normal course, both the units in Andhra Pradesh and Karnataka, would be treated as part of one entity namely the petitioner and there would be no transfer of business or supply of goods between the unit of the petitioner in Andhra Pradesh and the unit of the petitioner in Karnataka. Section 25(4) and 25(5) of the GST Act requires separate registration for the same business entity, in certain circumstances. These provisions further stipulate that such separate registration will result in the same person being treated as “distinct persons” for the purpose of the Act. The petitioner has separate registrations in the state of Andhra Pradesh and the State of Karnataka. Due to these registrations, the unit of the petitioner, in Karnataka, is treated as a separate person from the unit of the petitioner in Andhra Pradesh. On account of this situation, the transfer of business, within the petitioner, is sought to be taxed. In such a situation, the authorities having treated these two units of the petitioner, as separate entities, cannot contend that these two units are parts of the same registered person and that there is no transfer.

23. The second objection, raised by the appellate authority is that there can be no transfer of Input Tax Credit, available under the APGST Act, to the petitioner, under the KGST Act. Sri Raghuraman contends that this is permissible as the credit, so given, under the KGST Act, can be adjusted under the available provisions. We do not foresee any such problems in

relation to the input tax credit available under the Central GST Act or the IGST Act, as the authority administering these Acts is the Central Government. In the case of transfer, of input Tax Credit, from the APGST Act to the KGST Act, any decision would affect the State of Andhra Pradesh and the State of Karnataka. However, the State of Karnataka, is not before us. As such, it would be appropriate that this issue should be placed before the authorities, under the KGST Act as well as the APGST Act, for a decision, as to the admissibility of such a transfer between the APGST Act and the KGST Act. The petitioner, may approach the authorities, in this regard and agitate it's rights.

24. Accordingly, this writ petition is disposed of, by setting aside the ruling of the Appellate Authority for Advance ruling, dated 10.11.2020. Further consideration of the issue, by the authorities, shall be on the basis of the observations, in this order.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

RJS

THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION No: 15955 of 2021

(per Hon'ble Sri Justice R.Raghunandan Rao)

31.01.2026

RJS

