THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009

Advance Ruling No. KAR ADRG 47/2021
Dated: 30.07.2021

Present:

1. Dr. M.P. Ravi Prasad
   Additional Commissioner of Commercial Taxes (State) . . . . Member

2. Sri. Mashhood Ur Rehman Farooqui,
   Joint Commissioner of Customs & Indirect Taxes (Central) . . . .Member

1.	Name and address of the applicant	M/s. IBM India Private Limited, SA.No.12, Subramanya Arcade, Bannerghatta Road, Bengaluru-560029.
2.	GSTIN or User ID	29AAACI4403L1ZK
3.	Date of filing of Form GST ARA-01	18-06-2021
4.	Represented by	Sri Sachin Agarwal, Chartered Accountant & Duly Authorised Representative
5.	**Jurisdictional Authority – Centre**	The Commissioner of Central Taxes, Bangalore South GST Commissionerate, South Division 4, Bengaluru (RANGE-BSD4)
6.	Jurisdictional Authority – State	ACCT, LGSTO-040, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act & Rs.5,000-00 under SGST Act vide CIN SBIN21052900013197 Dated 05.05.2021

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017

M/s. IBM India Private Limited, SA.No.12, Subramanya Arcade, Bannerghatta Road, Bengaluru-560 029 having GSTIN 29AAACI4403L1ZK, have filed an application for Advance Ruling under Section 97 of CGST Act,

2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in Form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a Private Limited Company registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST Act respectively) dealing in information technology products and services and is primarily engaged in producing, selling or licensing computer hardware, middleware and software and in providing IT implementation, hosting and consulting services in areas ranging from mainframe computers to nanotechnology.

3. The applicant has sought advance ruling in respect of the following question:

i. *Whether the value of assets which are outside the purview of GST is required to be included in the value of assets for the purpose of apportionment towards transfer of input tax credit in case of de-merger in terms of Section 18(3) of CGST Act, 2017 read with Rule 41(1) of CGST Rules, 2017?*

ii. *If the answer to Question (i) is yes, whether following assets are required to be considered for the purpose of determining the value of assets for apportionment towards transfer of input tax credit in case of de-merger in terms of Section 18(3) of CGST Act, 2017 read with Rule 41(1) of CGST Rules, 2017:*
   a. *Assets which are created only to comply with the requirements of the Accounting Standards;*
   b. *Assets which are not being transferred as part of de-merger.*

iii. *If the answers to Question 1 and / or 2 are yes, whether the assets which are not attributable to any particular GSTIN be considered in the GSTIN of the head office of the Company for the purpose of computation of asset ratio?*

4. Admissibility of the application: The question is about "determination of the liability to pay tax on any goods or services or both" and hence is admissible under Section 97(2)(d) of the CGST Act 2017.

BRIEF FACTS OF THE CASE

5. The applicant furnishes some facts relevant to the issue:

5.1 The applicant states that they are dealing in information technology products and services and is primarily engaged in producing, selling or licensing computer hardware, middleware and software and in providing IT

implementation, hosting and consulting services in areas ranging from mainframe computers to nanotechnology.

5.2 The applicant belongs to the group of International Business Machines Corporation ("IBM"). IBM is a global brand and has its presence in 170 countries and operates through multiple locations across globe. IBM has announced its intention to separate its Managed Infrastructure Services ("MIS") unit into a new company. MIS business means the business of infrastructure services unit of IBM's Global technology services (GTS) segment, including the security, regulatory and risk management services and identity management services offerings, but excluding the public cloud platform offering of the Infrastructure service unit.

5.3 In connection to the global intent, they intend to transfer its MIS business to a resulting company ("New Co.", "Transferee" or "Demerged Company"). Pursuant to such transfer, they shall carry out the remaining business.

5.4 Consequent to proposed de-merger, the balance of unutilized input tax credit ("ITC") pertaining to the business division which is being demerged, is allowed to be transferred to the resulting company as per the provisions of Section 18(3) of CGST Act, 2017 read with Rule 41(1) of CGST Rules,2017. For transferring the balance of unutilized ITC pertaining to demerged business, ITC is required to be apportioned in the ratio of value of assets of the new unit as specified in the demerger scheme. "Value of assets" has been defined to mean value of assets of the business, whether or not ITC has been availed thereon. In this regard, the applicant requires certain clarification with respect to the value of assets to be considered for the purpose of transfer of credit.

6. Applicant's Interpretation of Law:

6.1 Section 18(3) of the CGST Act, 2017 provides for the transfer of input tax credit which remains unutilized in the electronic credit ledger in cases of business re-organization. It is stated that where there is a change in the constitution of a registered person on account of sale, merger, demerger, etc. with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in the electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed. Extract of the same has been enumerated as below:

> *'(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 unutilized in his electronic credit*

ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.'

6.2 Further, Rule 41(1) of the CGST Rules, 2017 relates to transfer of credit on account of sale, merger, amalgamation, lease or transfer of a business, states that in the event of sale, merger, de-merger, etc. a registered person shall furnish the details of sale, merger, de-merger, etc. in FORM GST ITC- 02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in the electronic credit ledger to the transferee. Extract of the same has been enumerated hereunder:

'1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business forany reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.'

6.3 Furthermore, the proviso to aforementioned Rule states that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. Relevant extract of the same has been enumerated hereunder:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

6.4 Also, explanation to the same provides that for the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon. Relevant extract of the same has been provided hereunder:

Explanation: - For the purpose of this sub-rule, it is hereby clarified that the"value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

6.5 The Central Board of Indirect Taxes & Customs ("CBIC") has also issued *Circular No.* 133/03/2020-GST dated 23rd March 2020, clarifying various industry issues with respect to the apportionment of input tax credit in casesof business reorganization under Section 18(3) of CGST Act, 2017 read with Rule 41(1) of CGST Rules, 2017.

6.6 While this circular clarifies certain ambiguities as regards the procedures to transfer input tax credit in case of business re-organization; however, the circular as well as the legal backdrop produced above is *inter alia* ambiguous to

the extent of inclusion of the below assets for the computation of asset ratio required to transfer ITC:

a. Assets which are outside the purview of GST
b. Assets which are created only to comply with the requirement of the Accounting Standards;
c. Assets which are not being transferred as part of de-merger to the transferee;

6.7 The applicant relies on the judgment of the Hon'ble Supreme Court in the case of *West Bengal State Warehousing Corporation Vs. Indrapuri Studio Pvt. Ltd.* (Civil Appeal No. 3865 of 2006) has examined the meaning of 'inclusive' and 'exhaustive' definitions as appearing in various statutes.

6.8 Based on the above, the word `includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. It is a more extensive definition and requires to also include such similar things as provided in a particular definition. The word "means and includes" or "means" on the other hand, indicates an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.

6.9 In the instant case, the 'value of assets' has been defined as below:

'value of assets means the value of the entire assets of the business, whether or not input tax credit has been availed thereon'.

Given the above, the aforementioned definition of 'value of assets' shall qualify as an exhaustive definition and therefore the meaning, for the purposes of the Act, must invariably be attached to these words or expressions. Thus, nothing apart from the aforementioned definition shall be considered as part of the value of assets for determination of assets for apportionment towards transfer of credit.

The value of assets which are outside the purview of GST are not required to be considered for the purpose of computing the assets ratio for apportionment of ITC

6.10 As highlighted above, the explanation to Rule 41(1) states *'value of assets means the value of the entire assets of the business, whether or not input tax credit has been availed thereon'*. Given the same, it is inferred that only those assets which are within the purview of GST i.e. the assets having a levy of GST on it and where there exists a possibility to either avail such credit or not avail the credit as per the provisions of the GST law, would qualify within the said

definition.

6.11 For instance, based on the said explanation, it can be inferred that value towards capital goods (such as fixed assets, intangible assets etc.) leviable to GST would be required to be included in the value of assets required for computation of asset ratio for the purpose of apportionment of ITC. Such inclusion would be irrespective of the fact whether ITC has been availed on such capital goods or amount of ITC has been capitalized in the books of accounts. However, those assets where there does not exist any levy of GST, such as trade receivables, cash/ bank balances, security deposits, etc., which are outside the purview of GST should not be considered for the said asset ratio as including the same may lead to adoption of incorrect asset ratio and incorrect transfer of ITC consequently.

6.12 Other assets which are outside the purview of GST i.e. cash and bank balance, security deposit, etc. shall not qualify the said definition and accordingly the value of such assets should not be included in the value of assets for the purpose of computing the assets ratio for apportionment of ITC.

The value of assets created to comply with the requirements of the Accounting Standards are not required to be considered for the purpose of computing the assets ratio for apportionment of ITC

6.13 The applicant states that 'assets' have not been defined under GST. Accordingly, as per the Oxford Dictionary, *'asset means an item of property owned by a person or company, regarded as having value and available to meet debts, commitments, or legacies'*. In the instant case, the assets which are created due to the requirement of Accounting Standard i.e. Building leases and deferred tax asset shall not be having any value to meet debts, commitments or legacies as it shall largely be treated as book adjustments and not an asset per se. Therefore, as the same is not qualifying the definition of assets, it should not be considered in the numerator as well as the denominator as part of "value of assets" for the purpose of computing the asset ratio required for apportionment for transfer of input tax credit in case of de-merger as including the same may lead to adoption of incorrect asset ratio and incorrect transfer of ITC consequently.

6.14 Also, in common parlance, assets of the business include the assets purchased, used, set up in the course of and in relation to business activities of an entity. Given the same, in common parlance, the term assets of the business would generally do not include the assets created merely as part of complying with Accounting Standards and the same would typically not qualify as assets of the business.

The value of assets not getting transferred as a part of de-merger

are not required to be considered for the purpose of computing the assetsratio for apportionment of ITC

6.15 Further, the proviso to Rule 41(1) of CGST Rules 2017 states that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. Thus, based on the same only such assets which have been specifically mentioned in the demerger scheme as being transferred to the new unit are required to be considered for calculating the asset ratio. Given that there exists assets which are not being transferred at all as part of the de-merger scheme i.e. advance tax, income tax paid under protest, investments and non-current trade receivables, the same should not be considered as part of the value of assets in the denominator for determination of asset ratio required for apportionment towards transfer of credit as including the same may lead to adoption of incorrect asset ratio and incorrect transfer of ITC consequently.

In light of the above background, only such assets which are leviable to GST and are being transferred as part of de-merger would be required to be included in the value of assets required for computation of asset ratio for the purpose of apportionment of ITC.

6.16 Even if it is assumed that the below mentioned assets should be considered for apportionment of the GST credit, the Company would like to highlight the following assets cannot be bifurcated into different GSTINs:

- Investment in subsidiaries
- Cash and cash equivalents
- Non-current tax assets including Deferred tax asset
- Certain Other Current Assets

6.17 Considering the nature of such assets, value pertaining to such assets cannot be attributed to different GST registrations and hence, entire value pertaining to such assets should be allocated to the head office of IBM India for the purpose of computing the asset ratio for transfer of input tax credit.

PERSONAL HEARING / PROCEEDINGS HELD ON 30-06-2021

7. Sri Sachin Agarwal, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings held on 30-06-2021 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and KGST Act, 2017 are in *pari-materia* and have the same

provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing. We have also considered the issues involved on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law.

10. The applicant is a private limited company and has intended to separate its Managed Infrastructure services ("MIS") unit into a new company. Pursuant to such transfer, the applicant shall carry out the remaining business.

10.1 The applicant has also stated that consequent to the proposed demerger, the balance of the unutilised input tax credit pertaining to the business division which is being demerged, is allowed to be transferred to the resulting company as per the provisions of section 18(3) of the CGST Act, 2017 read with Rule 41(1) of the CGST Rules, 2017. For transferring the balance of unutilized ITC pertaining to demerged business, ITC is required to be apportioned in the ratio of value of assets of the new unit as specified in the demerger scheme. "Value of assets" has been defined to mean value of assets of the business whether or not ITC has been availed thereon. In this regard, the applicant has sought certain clarification with respect to the value of assets to be considered for the purpose of transfer of credit.

10.2 Section 18(3) of the CGST Act, 2017 reads as under:

> ***"18. Availability of credit in special circumstances.-***
>
> *(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."*

10.3 From the above, it is clear that whenever there is reconstitution of a registered person, by way of demerger, with a specific provision for transfer of liabilities, the said registered person is allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to the demerged businesses in the manner as may be prescribed.

10.4 The term "prescribed" is defined in clause (87) of Section 2 of the CGST Act, 2017 as under:

> *"(87) "prescribed" means prescribed by rules made under this Act on the recommendations of the Council;"*

From the above, it is clear that the manner in which the unutilized ITC should be as per the Rules made in this regard.

10.5 Rule 41 of the CGST Rules, 2017 reads as under:

> ***"41. Transfer of credit on sale, merger, amalgamation, lease or transfer of a business.-***
>
> *(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:*
>
> *Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.*
>
> *[Explanation: - For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.]*
>
> *(2) The transferor shall also submit a copy of a certificate issued by a practicing-chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.*
>
> *(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.*
>
> *(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account."*

10.6 From the above, it is clear from the proviso to the sub-rule (1) that the input tax credit shall be apportioned between the new units in case of a demerger in the ratio of the "value of assets" of the new units as specified in the demerger scheme.

10.7 Regarding the meaning of "value of assets", the explanation to the sub-rule (1) of Rule 41 of the CGST Rules states that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed or not.

11. The Central Board of Indirect Taxes and Customs (CBIC), Government of India has issued Circular No.133/03/2020-GST dated 23.03.2020 in which the value of assets for the purpose of proviso to Rule 41(1) of the CGST Rules has clarified as under:

"*a (i) In case of demerger, proviso to rule 41 (1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all-India level.*

Clarification: Proviso to sub-rule (1) of rule 41 of the CGST Rules provides for apportionment of the input tax credit in the ratio of the value of assets of the new units as specified in the demerger scheme. Further, the explanation to sub-rule (1) of rule 41 of the CGST Rules states that "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon. Under the provisions of the CGST Act, a person/ company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for the purpose of apportionment of ITC pursuant to a demerger under sub-rule (1) of rule 41 of the CGST Rules, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level.

Illustration: A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth Rs. 100 crore, while its assets in State of M.P. and U.P are Rs 60 crore and Rs 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to Rs 30 Crore are transferred to company ABC in State of M.P, while assets amounting to Rs 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to Rs 40 crore at all-India level are transferred from XYZ to ABC). The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. 30/60 = 0.5 and not on the basis of all-India ratio of value of assets, i.e. 40/100=0.4. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P.,i.e. 10/40 = 0.25.

c (i) Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each

of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess?

Clarification: No, the ratio of value of assets, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.

Illustration A: The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh and 10 lakh respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e. 12 lakh.

d. (i) In order to calculate the amount of transferable ITC, the apportionment formula under proviso to rule 41(1) of the CGST Rules has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.

Clarification: According to sub-section (3) of section 18 of the CGST Act, "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 unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed." Further, sub-rule (1) of rule 41 of the CGST Rules prescribes that the registered person shall file the details in FORM GST ITC-02 for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.

A conjoint reading of sub-section (3) of section 18 of the CGST Act along with sub-rule (1) of rule 41 of the CGST Rules would imply that the apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC – 02 by the transferor.

(ii) Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?

Clarification: According to section 232 (6) of the Companies Act, 2013, "The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date". The said legal provision appears

to indicate that the "appointed date of demerger" is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under rule sub-rule (1) of rule 41 of the CGST Rules, the ratio of the value of assets should be taken as on the "appointed date of demerger".

In other words, for the purpose of apportionment of ITC under sub-rule (1) of rule 41 of the CGST Rules, while the ratio of the value of assets should be taken as on the "appointed date of demerger", the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC."

12. From the above, it is very clear that the words used is "entire assets" and hence all the assets that are apportioned between the two entities that come out of the demerger are to be taken for the calculation of the amount of ITC apportioned between the two demerged entities.

13. The argument of the applicant is that the value of assets which are outside the purview of GST, the assets which have been created to comply with the requirements of Accounting Standards and the assets which are not being transferred to the transferee do not qualify within the meaning of "value of assets" under explanation to Rule 41(1) of the CGST Rules, 2017. The applicant contends that as per the Rules of Interpretation of Statutes, a statutory definition has been categorized as an inclusive definition and an exhaustive definition and when the words "means" is used, it indicates an exhaustive explanation of the meaning which for the purposes of the Act, must invariably be attached to these words or expressions. He also argues that nothing apart of the assets covered under the definition should be considered as part of the value of assets for determination of assets for apportionment towards transfer of credit.

13.1 The above contention of the applicant is verified and found that when the words "means" is used in a definition, no other item can be included and is exhaustive. But the definition states that "value of assets means the value of entire assets" and hence the value of all the assets has to be taken into consideration.

14. The applicant argues that the value of assets which are outside the purview of GST are not required to be considered for the purpose of computing the assets ratio for apportionment of ITC cannot be accepted in view of the use of the words "the entire assets" in the definition. The use of 'whether or not input tax credit has been availed thereon" is only used to make it immaterial whether input tax credit is availed or not and does not however limit the scope of the meaning of the words "entire assets" by limiting it to the assets where input tax credit is there. Hence the contention

of the applicant is not acceptable.

15. In the case of The J.K.Cotton and Weaving Mills vs. State of Uttar Pradesh 1961 AIR 1170 and in the case of Union of India vs. Hansoli Devi and Others (2002) 7 SCC 273, the Hon'ble Supreme Court has held that "in the interpretation of statutes the court shall always presume that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature cannot be accepted."

15.1 From the above judgement, the words "entire assets" should be given meaning to denote all the assets of the business which are allotted to the demerged companies. The words "whether or not input tax credit has been availed thereon" only gives more clarity to the words "entire assets", what should be considered and what not. It only states that the availment or not of ITC would not preclude the consideration of the assets in the calculation of the ITC to be apportioned between the demerged entities.

16. Regarding the question 1, as explained earlier, the assets which are outside the GST also form the "assets" and is included in the scope of "entire assets" and hence the value of assets which are outside the purview of GST is required to be included in the value of assets for apportionment towards transfer of input tax credit in case of demerger in terms of Section 18(3) of CGST Act, 2017 read with Rule 41(1) of CGST Rules, 2017.

17. Regarding the question whether the assets which are created to comply with the requirements of accounting standards are also forming the part of the "entire assets" and hence are includible in the scope of "entire assets", since there is no specific exclusions contemplated in the provisions of Act or rules made thereunder, these assets are also includible in the "entire assets".

18. Regarding the assets which are not transferred as part of the demerger scheme, the attention is drawn to the proviso to Rule 41(1) of the CGST Rules which states as under:

"Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme."

The above proviso clearly states that the input tax credit shall be apportioned as per a ratio and that ratio is the ratio of the value of assets of the new units as specified in the demerger scheme. From the clarification given in the para 3(a) Board Circular No. 133/03/2020 dated 23.03.2020 it is noticed that if a company is having a 60% of its entire assets in a state and it transfers 20% of its assets to the demerged entity, the ratio for ITC apportionment would be 20/60. Hence the value of assets of the new units

as per demerger scheme should be taken. It is not possible that some assets will not be transferred to the two units coming into existence as the same needs to be transferred to either of the units as per the demerger scheme. The proviso does not state any exclusion for the assets transferred or not transferred as part of the demerger and hence would include all assets.

19. Regarding the third question, the assets are a part of the balance sheet of any company and they have to be a part of either one or other GSTIN. We find that the question posed is similar to the question in para 3(ii) (b) above. We observe that for the purpose of computation of asset ratio, the assets which are transferred to the new units has to be considered to the total assets which the company was maintaining in the particular state and accordingly ITC apportionment is to be calculated. This is also clarified in the clarification issued in question (a) in para 3 of Circular No.133/03/2020 – GST dated 23.03.2020.

20. In view of the foregoing, we rule as follows

RULING

1. *The value of assets which are outside the purview of GST is required to be included in the value of assets for apportionment towards transfer of input tax credit in case of demerger in terms of Section 18(3) of CGST Act, 2017 read with Rule 41(1) of CGST Rules, 2017*

2. *The value of assets includes the assets which are created only to comply with the requirement of accounting standards and also the assets which are not being transferred as part of demerger.*

3. *There is no question of assets which are not being attributed to any particular GSTIN. For the purpose of computation of asset ratio, the assets which are transferred to the new units has to be considered to the total assets which the company was maintaining in the particular state and accordingly ITC apportionment is to be calculated.*

(Dr. M.P. Ravi Prasad)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

(Mashhood Ur Rehman Farooqui)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Place : Bengaluru

Date : 30.07.2021

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore South GST Commissionarate, South Division-4, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-40, Bengaluru.
5. Office Folder.