Transfer of a Business as a Going Concern

GST Implications, Input Tax Credit Transfer and Compliance Framework

Position of law as on 29 August 2026 | Financial Year 2026-27

1. Executive Summary

The transfer of an entire business, or of an independent part of it, to another person is one of the few commercial transactions where the Goods and Services Tax law departs from its normal asset-wise logic. Instead of taxing each item of plant, stock and intangibles at its own rate, the law treats the transfer of a going concern ("TOGC") as a single supply of service and exempts it at Nil rate.

The position, in brief, is as follows:

- A transfer of a going concern is a supply of service, not a supply of goods, because Paragraph 4(c) of Schedule II to the CGST Act, 2017 expressly carves such a transfer out of the deeming provision that would otherwise treat business assets as supplied on cessation of taxable status.
- Such a supply is chargeable at Nil rate under Entry 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 ("Services by way of transfer of a going concern, as a whole or an independent part thereof"), read with the corresponding entry of Notification No. 9/2017-Integrated Tax (Rate) dated 28.06.2017 and the parallel State Tax (Rate) notification. This entry was not disturbed by the rate rationalisation effected from 22.09.2025 through Notification No. 16/2025-Central Tax (Rate) dated 17.09.2025.
- Unutilised input tax credit in the transferor's electronic credit ledger may be transferred to the transferee under Section 18(3) of the CGST Act read with Rule 41 of the CGST Rules, 2017, by filing FORM GST ITC-02, provided the transfer is accompanied by a specific provision for the transfer of liabilities.
- The exemption is not automatic. It is conditional on the transaction genuinely amounting to a going concern — a live and operable business capable of being carried on by the transferee. An itemised sale of assets dressed up as a business transfer will be taxed asset by asset.
- The exemption carries a cost: a Nil-rated supply is an exempt supply under Section 2(47), which brings the transaction within the common-credit reversal machinery of Section 17(2) read with Rules 42 and 43. This exposure is frequently overlooked at the structuring stage.

2. Statutory Architecture

2.1 Is the transaction a supply at all?

Section 7(1)(a) of the CGST Act, 2017 defines supply to include all forms of supply of goods or services made for a consideration in the course or furtherance of business. A one-time sale of the business itself is arguably not made "in the course or furtherance of business". However, the definition is inclusive, and Section 7(1A) read with Schedule II resolves the classification question. The Karnataka Authority for Advance Ruling addressed this reasoning directly in M/s Rajashri Foods Pvt. Ltd., Advance Ruling No. KAR ADRG 06/2018 dated 23.04.2018, holding that the scope of "supply" extends beyond activities in the course or furtherance of business by virtue of the word "includes".

2.2 Why it is a supply of service and not of goods

Paragraph 4(c) of Schedule II to the CGST Act provides that where a person ceases to be a taxable person, the goods forming part of the assets of the business are deemed to be supplied by him immediately before he ceases to be a taxable person — unless the business is transferred as a going concern to another person, or is carried on by a personal representative deemed to be a taxable person.

The consequence of this exclusion is decisive. Where the business moves as a going concern, the underlying goods are not deemed to be supplied as goods. What is supplied is the business itself, which the law treats as a service. This is the settled position adopted in Rajashri Foods (supra) and followed consistently thereafter.

2.3 The exemption entry

Entry 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, issued under Section 11(1) of the CGST Act, covers "Services by way of transfer of a going concern, as a whole or an independent part thereof" under Chapter 99, at a rate of Nil, with no condition specified in column (5) of the Table.

Two points of currency deserve note. First, Notification No. 12/2017-CT (Rate) continues in force as amended; it was not superseded by the 56th GST Council rate reset. Notification No. 16/2025-Central Tax (Rate) dated 17.09.2025, effective 22.09.2025, amended that notification only in respect of Sl. No. 18 (local delivery services), the newly inserted Sl. Nos. 36C, 36D and 36E (life and health insurance), and certain definitions in paragraph 2. Entry 2 stands untouched. Second, for an inter-State transfer the corresponding entry of Notification No. 9/2017-Integrated Tax (Rate) dated 28.06.2017 applies, and for an intra-State transfer in Maharashtra the parallel State Tax (Rate) notification issued under the MGST Act, 2017 must be cited alongside the central notification.

3. What Constitutes a "Going Concern"

Neither the CGST Act nor the Rules define "going concern". The expression is drawn from accounting and auditing literature — the assumption that an entity will continue in operation for the foreseeable future and has neither the intention nor the necessity of liquidating or curtailing materially the scale of its operations. Advance ruling authorities have imported this meaning wholesale.

In M/s Innovative Textiles Ltd., Ruling No. 20/2018-19 dated 26.03.2019, the Uttarakhand Authority for Advance Ruling observed that a transfer of a business as a going concern is the sale of a business including its assets, and that in financial terms a going concern means that at the relevant point in time the business is live or operating and has all the parts and features necessary to keep it in operation. On that basis the transfer of the Sitarganj undertaking, on a slump sale basis with all assets and liabilities, was held exempt under Entry 2 of Notification No. 12/2017.

Conversely, in M/s SCV Sky Vision, Advance Ruling No. 04/AP/GST/2021 dated 12.01.2021, the Andhra Pradesh Authority declined the exemption where the business transfer agreement excluded liabilities arising out of past business relations and the transferor retained the employees; the transaction was treated as a transfer of business assets and taxed accordingly.

3.1 Working test for practitioners

Test	What must be demonstrated	Evidence to place on record
Operability	The undertaking is live and operating on the appointed date, and possesses every part and feature needed to keep it running.	Production/sales records up to the appointed date; utility connections; subsisting licences.
Transfer as a whole	All assets and liabilities of the undertaking pass to the transferee; the transferor retains no core element without which the business cannot run.	Business Transfer Agreement ("BTA") with schedules of assets and liabilities; closing balance sheet of the undertaking.

Test	What must be demonstrated	Evidence to place on record
Independence (part transfer)	Where only a part is transferred, that part is separately identifiable and capable of being carried on as an independent business.	Unit-wise trial balance, separate cost centres, standalone licences and workforce.
Continuity of business	The transferee intends to, and does, carry on the same business without interruption.	Recital of intention in the BTA; board resolution; continuity of employees, vendor and customer contracts.
No intent to liquidate	There is neither an intention nor a necessity to liquidate or materially curtail operations.	Management representation; audited accounts prepared on going concern basis; auditor's report.

Advisory position: Where employees, or the liabilities of the undertaking, or its subsisting contracts are consciously excluded, the exemption should not be assumed. A conservative structure transfers the workforce and the trade liabilities with the undertaking and records that intention expressly in the BTA. Where commercial reasons compel exclusions, an advance ruling under Section 97 of the CGST Act is the safer route than a self-assessed exemption.

4. Consequences Mapped: Going Concern versus Itemised Sale

The characterisation drives the entire tax outcome. The comparison below sets out the practical difference.

Particulars	Transfer as a going concern	Itemised sale of assets
Nature of supply	Single supply of service (Schedule II, Para 4(c) exclusion).	Supply of goods and/or services, asset by asset.
Rate	Nil — Entry 2, Notification No. 12/2017-CT (Rate).	Rate applicable to each asset; capital goods attract Section 18(6) read with Rule 44.
Character of supply	Exempt supply under Section 2(47).	Taxable supply.
Document	Bill of supply under Section 31(3)(c) read with Rule 49.	Tax invoice under Section 31 read with Rule 46.
ITC of transferor	Unutilised balance transferable under Section 18(3) via FORM GST ITC-02.	No transfer; credit remains with transferor, subject to Section 18(6)/Rule 44 on capital goods.
ITC to transferee	Credit received in electronic credit ledger on acceptance of ITC-02.	Credit of tax charged on each asset, subject to Sections 16 and 17.
Rule 42/43 exposure	Present — the exempt turnover enters the common credit formula.	Absent on this count.
Cash flow	No GST outflow on the transaction.	Significant GST outflow, recovered by the transferee only through credit.

5. Transfer of Unutilised Input Tax Credit

5.1 The enabling provision

Section 18(3) of the CGST Act provides that 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 specific provision for transfer of liabilities, the registered person shall be allowed to transfer the unutilised input tax credit lying in his electronic credit ledger to the transferee, in the prescribed manner.

The condition to note is the phrase "with specific provision for transfer of liabilities". A business transfer agreement that is silent on liabilities, or that expressly excludes them, will defeat the credit transfer even if the exemption itself is otherwise available. The BTA must contain an express covenant on the assumption of liabilities by the transferee.

5.2 The mechanism — Rule 41 and FORM GST ITC-02

Rule 41 of the CGST Rules, 2017 prescribes the procedure. The transferor furnishes details of the sale, merger, demerger, amalgamation, lease or transfer of business in FORM GST ITC-02 electronically on the common portal, along with a request for transfer of the unutilised credit. In the case of demerger, the proviso to Rule 41(1) requires the credit to be apportioned in the ratio of the value of the assets of the new units as specified in the demerger scheme. The transferor must submit a certificate from a practising Chartered Accountant or Cost Accountant certifying that the transfer has been done with a specific provision for the transfer of liabilities. The transferee accepts the details on the common portal, whereupon the unutilised credit is credited to his electronic credit ledger, and he records the inputs and capital goods so transferred in his books of account.

5.3 CBIC clarification on apportionment

Circular No. 133/03/2020-GST dated 23.03.2020 (F. No. CBEC-20/06/13/2019-GST) settles four recurring questions on apportionment under Section 18(3) read with Rule 41(1):

- The value of assets of the new units is to be taken at State level, not at all-India level, and FORM GST ITC-02 is required to be filed only in those States where both the transferor and the transferee are registered.
- The apportionment formula in the proviso to Rule 41(1) applies to all forms of business reorganisation resulting in a partial transfer of business assets along with liabilities, and not to demerger alone.
- The ratio of the value of assets is to be applied to the total unutilised credit of the transferor — that is, the sum of the CGST, SGST/UTGST and IGST balances. The formula need not be applied separately to each head; the transferor may allocate the aggregate transferable amount across heads at his option, subject to the balance actually available under each head.
- The apportionment formula operates on the credit balance of the transferor as available in the electronic credit ledger on the date of filing of FORM GST ITC-02.

5.4 Illustration A — Apportionment on a partial transfer

A registered person in Maharashtra transfers one of three manufacturing units as a going concern, with a specific provision for the transfer of liabilities. The figures below are illustrative; the arithmetic has been independently verified.

Particulars	Amount (₹)
Unutilised CGST credit in electronic credit ledger	12,00,000
Unutilised SGST credit in electronic credit ledger	12,00,000
Unutilised IGST credit in electronic credit ledger	6,00,000
Total unutilised ITC (A)	30,00,000
Value of assets of the transferred unit (Maharashtra) (B)	6,00,00,000

Particulars	Amount (₹)
Value of total assets of the transferor (Maharashtra) (C)	15,00,00,000
Apportionment ratio (B ÷ C)	40.00%
ITC transferable through FORM GST ITC-02 (A × 40%)	12,00,000
ITC retained by the transferor	18,00,000

The transferor may split the transferable ₹12,00,000 across the CGST, SGST and IGST heads as he considers appropriate, provided the amount allocated under each head does not exceed the balance available under that head, and the aggregate does not exceed ₹12,00,000. This flexibility flows directly from paragraph 3(c) of Circular No. 133/03/2020-GST.

Explanation to Rule 41(1): for the purpose of apportionment, the "value of assets" means the value of all assets of the business, whether or not input tax credit has been availed on them. Exempt assets and non-creditable assets therefore enter the denominator and the numerator alike.

6. The Overlooked Cost: Common Credit Reversal

A Nil-rated supply is an exempt supply. Section 2(47) defines exempt supply to include a supply attracting Nil rate of tax. Section 17(2) requires that where goods or services are used partly for taxable supplies and partly for exempt supplies, credit is restricted to so much as is attributable to taxable supplies, and Rules 42 and 43 prescribe the apportionment machinery.

The consequence is that in the tax period in which the going concern is transferred, the consideration for the transfer enters the value of exempt supplies in the Rule 42 formula. Because a business transfer consideration is typically large relative to a single month's turnover, the reversal of common credit for that month can be substantial.

6.1 Illustration B — Rule 42 exposure in the month of transfer

Particulars	Amount (₹)
Taxable turnover for the tax period	2,00,00,000
Exempt turnover — consideration for transfer of going concern (E)	10,00,00,000
Total turnover for the tax period (F)	12,00,00,000
Common credit for the tax period (C2)	5,00,000
Exempt turnover as a proportion of total turnover (E ÷ F)	83.33%
Credit attributable to exempt supplies — D1 = C2 × E ÷ F	4,16,666.67
Common credit retained	83,333.33

The reversal of ₹4,16,667 (rounded) is a real cash cost that has no counterpart in the itemised-sale route. Arithmetic verified independently.

6.2 The competing view, and the advisory position

A view is taken in practice that a one-time transfer of a business is not a supply in the ordinary course, that the transferor's common inputs of the month bear no functional relationship to it, and that Section 18(3) — which permits the entire unutilised credit to move to the transferee — would be rendered incoherent if a simultaneous reversal were demanded. That argument is respectable, but it has no statutory anchor: neither Rule 42 nor the Explanations to Chapter V of the CGST Rules exclude the value of a going concern transfer from exempt turnover, and there is no CBIC clarification on the point.

Recommendation: the exposure should be quantified and disclosed to the client before the appointed date is fixed, and should be built into the commercial negotiation as a defined cost. Where the exposure is material, the reversal should be made and, if the client wishes to contest, a refund or protest route preserved. Claiming full credit and litigating later is not advised: the exposure is computable, the transferor's registration is usually surrendered soon after the transfer, and recovery then falls on the transferee under Section 85.

7. Registration Consequences

Provision	Effect
Section 22(3), CGST Act	Where a business carried on by a registered taxable person is transferred, on going concern or otherwise, to another person, the transferee (or successor) is liable to be registered with effect from the date of such transfer or succession.
Section 22(4), CGST Act	Where the transfer is under a scheme of amalgamation or demerger sanctioned by an order of a High Court, Tribunal or otherwise, the transferee is liable to be registered with effect from the date on which the Registrar of Companies issues the certificate of incorporation giving effect to the order.
Section 29(1)(a), CGST Act	The proper officer may cancel the registration of the transferor where the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with another legal entity, demerged, or otherwise disposed of. Application is made in FORM GST REG-16.
Section 85, CGST Act	Where a taxable person transfers his business in whole or in part, the transferor and the transferee are jointly and severally liable, wholly or to the extent of the transfer, to pay the tax, interest or penalty due up to the time of the transfer, whether determined before or after the transfer.
Section 87, CGST Act	Where two or more companies amalgamate or merge under an order with retrospective effect, they are treated as distinct companies for the period up to the date of the order, and the registration certificates are cancelled with effect from the date of the order.

Section 85 is the transferee's principal risk. It fastens joint and several liability for the transferor's pre-transfer dues irrespective of whether those dues were determined before or after the transfer. Due diligence must therefore extend to the transferor's return filing history, GSTR-2B versus GSTR-3B reconciliations, pending show cause notices, and any credit availed on invoices from suppliers whose registrations were subsequently cancelled retrospectively. The BTA should carry an unqualified indemnity, survival of that indemnity beyond closing, and — where the exposure warrants it — an escrow retention.

8. Documentation, Invoicing and Returns

Compliance point	Requirement
Transaction document	Business Transfer Agreement recording transfer as a going concern, a specific provision for transfer of liabilities, schedules of assets, liabilities, employees and contracts, and the appointed date.
Tax document	Bill of supply under Section 31(3)(c) read with Rule 49 — the supply being exempt, a tax invoice is not to be issued.
Movement of goods	Delivery challan under Rule 55 where goods physically move, and an e-way bill under Rule 138 where the consignment value exceeds the prescribed threshold. The exemption is of the service of transferring the business; it does not dispense with the documentation for movement of goods.
Return reporting — transferor	Value of the exempt supply reported in GSTR-1 (nil-rated/exempted supplies) and in Table 3.1(c) of GSTR-3B; Rule 42/43 reversal reported in Table 4(B) of GSTR-3B.
Credit transfer	FORM GST ITC-02 filed by the transferor with a certificate from a practising Chartered Accountant or Cost Accountant; acceptance by the transferee on the common portal.
Cancellation	FORM GST REG-16 by the transferor, citing transfer of business, only after ITC-02 has been accepted.
Books	Transferee to record the inputs and capital goods received, in his books of account, as required by Rule 41(4).

8.1 Sequencing — the order in which steps must be taken

Sequencing errors are the most common cause of credit being lost in a business transfer. The correct order is set out below.

Step	Action	Why the order matters
1	Transferee obtains registration in the same State (Section 22(3)).	FORM GST ITC-02 cannot be filed without a valid transferee GSTIN in that State.
2	Execute the BTA containing the specific provision for transfer of liabilities.	The Section 18(3) condition and the CA certificate both depend on this clause.
3	Transferor files all returns up to the appointed date and reconciles the credit ledger.	The apportionment formula operates on the ledger balance as on the date of filing ITC-02.
4	Transferor computes and discharges the Rule 42/43 reversal for the tax period.	Reversal must precede the credit transfer, otherwise credit that ought to have been reversed migrates to the transferee.
5	Transferor files FORM GST ITC-02 with the CA/CMA certificate; transferee accepts on the portal.	Credit is transferred only on acceptance.
6	Transferor applies for cancellation in FORM GST REG-16.	Cancellation before acceptance of ITC-02 renders the accumulated credit irrecoverable.

Note on the electronic cash ledger: Section 18(3) and Rule 41 permit the transfer of the unutilised balance in the electronic credit ledger only. A balance lying in the electronic cash ledger cannot be transferred to the transferee; it must be claimed by the transferor as a refund of the balance in the electronic cash ledger under Section 49(6) read with Section 54, before cancellation of registration.

9. Elements Outside the Exemption

The Nil rate attaches to the transfer of the going concern. It does not extend to consideration separately identified and separately contracted for. The following require independent examination:

- Non-compete consideration. An obligation to refrain from an act, or to tolerate an act, is a supply of service under Paragraph 5(e) of Schedule II. Where the BTA ascribes a distinct consideration to a non-compete covenant, that component stands outside Entry 2 and is taxable at the standard rate. Where the covenant is an integral and unpriced term of the business transfer, the better view is that it is subsumed in the composite transfer — but the drafting must support that view.
- Transitional service arrangements. Where the transferor continues to provide services (accounting, IT, warehousing, secondment of personnel) after the appointed date for a consideration, those are ordinary taxable supplies.
- Immovable property. Sale of land, and sale of a building after issuance of the completion certificate or after first occupation, is neither a supply of goods nor a supply of services under Paragraph 5 of Schedule III. Stamp duty under the applicable State legislation remains payable and is a separate cost head.
- Assets excluded from the transfer. Any asset retained by the transferor and later sold separately is taxed on its own footing, and, if it is a capital good on which credit was availed, attracts Section 18(6) read with Rule 44.

10. Risk Matrix

Risk	Trigger	Consequence	Mitigation
Denial of exemption	Liabilities, employees or key contracts excluded; undertaking not operable on its own.	Tax on each asset at applicable rates, plus interest under Section 50 and penalty.	Transfer the undertaking whole; document continuity; consider an advance ruling under Section 97.
Loss of accumulated credit	Registration cancelled, or ITC-02 not filed, before acceptance.	Unutilised credit lapses; no refund route.	Follow the sequencing in paragraph 8.1 without deviation.
Rule 42/43 reversal	Exempt turnover in the month of transfer.	Cash reversal of common credit, quantified in Illustration B.	Quantify before the appointed date; disclose; build into the price.
Successor liability	Pre-transfer dues of the transferor determined later.	Joint and several liability of the transferee under Section 85.	Diligence on returns and notices; indemnity; escrow retention.
Non-compete component	Separate consideration ascribed in the BTA.	Standard-rate tax on that component.	Deliberate drafting decision, taken with the exposure quantified.
Documentation gap on movement	Goods moved without delivery challan or e-way bill.	Detention and penalty under Section 129.	Rule 55 challan and Rule 138 e-way bill for every consignment.

11. Interface with Direct Tax and Other Laws

This note is confined to GST. The GST characterisation of a transaction as a transfer of a going concern does not determine its treatment under other statutes, and the two analyses must be run in parallel rather than inferred from one another. In particular:

- A transfer for a lump sum consideration without values being assigned to individual assets and liabilities is a slump sale for income tax purposes, computed under Section 50B read with Rule 11UAE, with the accountant's report in Form 3CEA. The corresponding provisions of the Income-tax Act, 2025 govern from the tax year in which that Act applies, and the section mapping should be verified against the enacted text before it is cited in a client deliverable.
- The GST exemption does not exempt the transaction from stamp duty, which is levied by the State on the instrument and is computed on the property comprised in the conveyance.
- Where the transferor or transferee is a company, the Companies Act, 2013 requirements — Section 180(1)(a) for the disposal of an undertaking, and Sections 230 to 232 where a scheme of arrangement is used — apply independently.

12. Conclusion

The GST treatment of a business transfer is, at the level of principle, settled and favourable: a transfer of a going concern is a single supply of service exempt at Nil rate, and the transferor's accumulated credit follows the business to the transferee. The difficulty is never with the principle. It lies in whether the transaction genuinely answers the description of a going concern, in whether the agreement carries the specific provision for transfer of liabilities on which Section 18(3) is conditioned, in the common credit reversal that the exemption silently triggers, and in the sequence in which the portal formalities are completed.

Each of these is capable of being addressed before the appointed date is fixed, and none of them can be repaired afterwards. The structuring advice should therefore be taken at the drafting stage of the business transfer agreement, not at the stage of executing it.

Sources Relied Upon

Instrument	Particulars
CGST Act, 2017	Sections 2(47), 7, 11(1), 16, 17(2), 18(3), 18(6), 22(3), 22(4), 29(1)(a), 31(3)(c), 49(6), 54, 85, 87, 97, 129; Schedule II Paragraphs 4(c) and 5(e); Schedule III Paragraph 5.
CGST Rules, 2017	Rules 41, 42, 43, 44, 49, 55, 138.
Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017	Entry 2 — services by way of transfer of a going concern, as a whole or an independent part thereof — Nil.
Notification No. 9/2017-Integrated Tax (Rate) dated 28.06.2017	Corresponding exemption for inter-State supplies of services.
Notification No. 16/2025-Central Tax (Rate) dated 17.09.2025	Amendments to Notification No. 12/2017-CT (Rate) effective 22.09.2025; Entry 2 not amended.
Circular No. 133/03/2020-GST dated 23.03.2020	F. No. CBEC-20/06/13/2019-GST — apportionment of ITC in cases of business reorganisation under Section 18(3) read with Rule 41(1).

Instrument	Particulars
M/s Rajashri Foods Pvt. Ltd.	Advance Ruling No. KAR ADRG 06/2018 dated 23.04.2018 (AAR, Karnataka).
M/s Innovative Textiles Ltd.	Ruling No. 20/2018-19 dated 26.03.2019 (AAR, Uttarakhand).
M/s SCV Sky Vision	Advance Ruling No. 04/AP/GST/2021 dated 12.01.2021 (AAR, Andhra Pradesh).
Official portals	www.cbic.gov.in; www.gst.gov.in; gstcouncil.gov.in; www.mahagst.gov.in.

Advance rulings are binding only on the applicant and the jurisdictional officer in relation to that applicant, under Section 103 of the CGST Act. They are cited here for their persuasive reasoning and not as binding precedent.
