

SYNOPSIS OF PROVISIONS OF GST LAW CASE OF DEATH OF SOLE PROPRIETOR.

KNOWLEDGE CONTRIBUTION BY AN ANONYMOUS KNOWLEDGE DONOR

Introduction

There are number of circumstances when and where the transfer of business takes place few of them are as follows:

- a) sale of the business(On Going Concern basis),
- b) merger,
- c) de-merger,
- d) insolvency,
- e) Death of sole proprietor,
- f) Dissolution of firm,
- g) Liquidation of company
- h) Partition of HUF or AOP
- i) Termination of TRUST or Society etc.

In the present article, I am going to discuss the relevant provisions of GST law applicable in case of death of sole proprietor.

Possible Situations after death of Sole Proprietor

In event after death of proprietor two situations arise

Situation 1 : The business is transferred as going concern to legal heir and is continued.

Situation 2: The business is discontinued.

Situation 1 : The business is transferred as going concern to legal heir and is continued.

In the situation where the legal heirs have inherited the Business on event after death of sole proprietor and have decided to continue the same, the applicable provisions of GST Law are as follows.

A. NEW REGISTRATION BY TRANSFeree OR SUCCESSOR.

The legal heir/legal representative or successor of deceased person shall have to proceed with the application for new registration at common portal of GST by filing FORM GST REG- 01. At the time of filing FORM GST REG -01 the reason to obtain registration specific option "Death of the proprietor" is to be selected. The other reason for obtaining new registration is that the GST registration is PAN based registration and the PAN of both proprietor and legal heir is different. Legal provision in backdrop of which the registration is to be obtained is as follows

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Section 22

(1)...

(2)...

(3) Where a business carried on by a

taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

B. TRANSFER OF INPUT TAX CREDIT.

If there is any unutilised credit is available in the electronic credit ledger of deceased person, the successor/legal heir has to follow procedure prescribed in Rule 41 to the transfer the Input Tax Credit. Further if there is no ITC available in the electronic credit ledger of the deceased person then there is no need to file form GST ITC-02 and follow procedure as per Rule 41, by the transferor or transferee.

The legal backdrop for transfer of Input Tax Credit is as follows

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Section 18

(1)

(2)

(3) “Where there is a change in the constitution of a registered person on account of the 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.

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The procedure as per Rule 41 of CGST Rules is as follows

Rule 41 of CGST Rules prescribes the manner of transfer of input tax credit from one Electronic credit ledger to another electronic credit ledger which is as follows:

1. A registered person shall, in the event of a sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of the business for any reason, file 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.
2. The transferor shall also submit a copy of a certificate issued by a practising 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 accept the details so furnished by the transferor at common portal in FORM GST ITC-02 and that unutilised credit shall be credited to his electronic credit ledger of transferee.
4. The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

This entire procedure of transfer of credit is to be done on GSTN Portal.

Transfer of Only Credit Balance lying in the Electronic Credit Ledger

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HARYANA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX (2019-VIL-46-AAR)

GST - Haryana AAR - merger of his proprietorship firm as a going concern with a private limited company - Whether the input tax credit available in the credit ledger account or cash ledger account of proprietorship firm shall be transferred to the respective credit ledger and cash ledger account of the private limited company, consequent upon merger - HELD - The applicant, on merger of his proprietorship firm as a going concern with a private limited company, is not liable to pay tax under CGST/SGST Act on the fixed assets and current assets including stocks of raw material, semi-finished and finished goods - The input tax credit available in the credit ledger account proprietorship firm shall be transferred to the respective credit ledger account of the private limited company, consequent upon merger, subject to the provisions of Section 18(3) of the CGST/HGST Act, 2017 and Rule 41 of the CGST/HGST Rules, 2017 - **The provisions of Section 18(3) of the CGST/HGST Act, 2017 and Rule 41 of the CGST/HGST Act, 2017, are not applicable to the balance lying in electronic cash ledger**

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From the above Advance Ruling it can be

inferred that **only balance lying in Electronic Credit ledger can be transferred** to successor/legal heir. The Balance lying in Electronic cash ledger cannot be transferred.

C. CANCELLATION OF GST REGISTRATION.

The legal heir shall proceed with the filing of application for cancellation of GSTIN in FORM REG-16 of the deceased person after filing of ITC-02 and after discharge of all liabilities.

The legal backdrop for cancellation of GSTIN is as follows



Section 29

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,-

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of;....

”

So, it is clear under law that if the proper officer did not take any action on his own then the legal heir of deceased proprietor shall make an application through online portal for cancellation of registration by filing FORM GST REG-16.

Now, it is also important to note that no tax payment will be required on the stock as per section 29(5) at the time of cancellation in this situation where the business is being continued by legal heir. The reasoning behind no payment of tax is required is that, the inputs held in stock or inputs contained in semi-finished or finished goods held in stock and of capital goods held in stock on the date of death of proprietor is transferred to the legal heir by filing FORM GST ITC - 02 and there will be no stock at the point of cancellation, hence there will be no need of payment of tax on the same.

D. OUTSTANDING LIABILITY AT THE TIME OF SUCCESSION OR ANY FUTURE GST LIABILITY

Two sections of CGST Act, 2017 deals with transfer of liability, outstanding in the name of transferor or deceased proprietor, where the business is transferred to the legal heir/legal representative of deceased person and the same is continued by the legal heir or legal representative. i.e section 85 and section 93 of CGST Act, 2017.

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Section 85(1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person up to the time of such

transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

Section 93(1)(a) of CGST Act, 2017 states that if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act;

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Hence as per the provisions of section 85(1) and section 93(1)(b) the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person up to the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

Situation 2 : The business is discontinued.

In the situation where the legal heirs have inherited the Business on event after death of sole proprietor and have decided not to continue the same, the applicable provisions of GST Law are as follows.

A. FILING OF PENDING RETURNS.

It is the first liability of legal heir/legal representative / successor of deceased person to file all the pending returns due after the death of proprietor and discharge the tax liability for the tax period during which the proprietor is died. It may be GSTR-1, GSTR- 3B, GSTR

4, GSTR 4A, GSTR-9, GSTR-9A, GSTR-9C etc. Otherwise it may attract late fee, interest, penalty and prosecution against the legal heir / legal representative / successor of deceased person.

B. CANCELLATION OF REGISTRATION & PAYMENT OF TAX ON AVAILABLE STOCK.

The legal heir shall proceed with the filing of application for cancellation of GSTIN in FORM REG-16 of the deceased person

The legal backdrop for cancellation of GSTIN is as follows

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Section 29

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,–

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of;...

(2)....

(3)....

(4)....

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic

cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

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So, it is clear under law that if the proper officer did not take any action on his own then the legal heir of deceased proprietor shall make an application through online portal for cancellation of registration by filing FORM GST REG-16.

Further, **section 29(5)** deals with the provision that every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods,

whichever is higher, calculated in such manner as may be prescribed: Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

So, here the law bounds to the legal heir/legal representative or successor of deceased person to pay the liability outstanding against the deceased person in respect of input held in stock, inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery by debiting the amount in electronic credit ledger or electronic cash ledger.

C. OUTSTANDING LIABILITY AT THE TIME OF SUCCESSION OR ANY FUTURE GST LIABILITY

Section 93 of CGST Act, 2017 deals with transfer of liability, outstanding in the name of transferor or deceased proprietor, where the business is transferred to the legal heir/legal representative of deceased person and the same is not continued by the legal heir or legal representative.

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Section 93(1)(b) of CGST Act, 2017 states that if the business carried on by the person is discontinued, whether before or after his death, his legal

representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.;

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Hence as per the provisions of section 85(1) and section 93(1)(b) the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person up to the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

So, here the law bounds to the legal heir/legal representative or successor of deceased person to discharge the liability of tax, interest or penalty out of the estate of deceased person, whatever has been determined before his death but has remained unpaid or is determined after his death.

CONCLUSION

Thus one needs to keep aforementioned provisions of GST law in mind before proceeding with the transfer of credit and closure of business in event of death of Sole Proprietor. If the aforementioned provisions are complied with, unwarranted penalties and liabilities can be avoided.