Lawgics

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Section 85 of CGST Act, 2017

85. Liability in case of transfer of business.

(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 upto 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.

(2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

Rule 19 – Amendment of registration (Already discussed in Lawgics No. 26 dated 10.02.2023)

Our Interpretation

Section 85	This provision applies when a taxable person who is liable to pay tax transfers his business either **wholly** or **in part**, by way of: • Sale • Gift • Lease • Leave and license • Hire, or • In any other manner **Tax liability in such cases**: Both transferor and transferee will be **jointly** and **severally** liable for payment of taxes, interest or penalty, **due upto the time of transfer of business** (wholly or partly). Section 85(1) provides that in case of the transfer of business in whole or in part, the

	transferor, as well as the transferee, shall be jointly and severally liable wholly or to the extent of the transfer to pay the tax, interest or any penalty due from the transferor upto the time of transfer irrespective of **whether such liability has been determined before the date of transfer and remains unpaid** or **the liability has been determined thereafter**. Since Section 85(1) covers all forms of transfer (by using the expression ‘in any other manner whatsoever’), even the demerger of business which entails the transfer of an undertaking from the demerged company to the resulting company shall be covered within its ambit. <u>Example</u>: ABC Industries, a registered person under GST, has sold whole of its business to XYZ Manufactures and tax, interest or any penalty under GST Law is due from ABC Industries upto the time of such transfer. ABC Industries & XYZ Manufacture will be, liable, jointly and severally, wholly or to extent of such transfer to pay above stated amount of tax, interest or penalty. Section 85(2) provides that the transferee shall be liable to pay the tax on the supply effected by him with effect from the date of such transfer and if the transferee is already registered person then, he shall apply for the amendment of the certificate of registration. As per Rule 19, the registered person shall submit an application duly signed or verified through electronic verification code, electronically in REG-14 within 15 days of such change, along with the documents relating to such change. In case of a demerger to a resulting company which is already in existence and registered under GST, an amendment in the registration certificate for including the details of the transferred business will be required. These are recovery provisions and the demands for the liabilities upto the time of transfer are required to be determined only against the demerged company. It is only on non-recovery of the same that the recovery can be initiated against the resulting company.