

GST ARTICLE

Inter-State Transfer of ITC on Amalgamation: Bombay High Court Reaffirms "One Nation, One Tax"

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In a significant and welcome judgment that could have far-reaching effects on taxpayers' working capital, the Goa Bench of the Bombay High Court in **Umicore Autocat India Pvt Ltd vs Union of India & Ors.** ([2025-VIL-746-BOM](#)) has ruled that, in cases of merger and amalgamation, the closing balance of ITC in CGST and IGST lying in the e-credit ledger of the transferor company can be transferred to the transferee-even when both companies are registered in **different states**-by filing Form GST-ITC-02 under [Section 18\(3\)](#) of the CGST Act read with Rule 41 of the CGST Rules.

This ruling not only resolves a practical problem many businesses face during mergers, but also reinforces the GST's fundamental promise of removing the cascading effect of taxes and promoting economic integration-making "One Nation, One Tax" closer to reality.

Factual Background

The petitioner challenged the action of the Respondent Department in disallowing the transfer of unutilized ITC from the transferor company registered in Goa to the transferee company registered in Maharashtra.

The merger had been approved under Sections 230-232 of the Companies Act, 2013 by the National Company Law Tribunal (NCLT), Special Bench, Mumbai. The transferor was engaged in manufacturing zinc oxide in Goa; the transferee

(petitioner) manufactures automotive catalysts in Maharashtra under the same group.

When the transferor company attempted to file GST ITC-02 on the common portal to transfer ITC, it was rejected with the error message: *"Transferee and Transferor should be of the same State/UT."*

Thereafter grievances and representations to the department failed, leading to the writ petition before the High Court.

Petitioner's Arguments

1. **Statutory text is clear:** Section 18(3) of the CGST Act, read with [Rule 41](#) of the CGST Rules, permits transfer of closing ITC balance in case of merger or amalgamation. Nowhere does the law impose a restriction based on the location of transferor and transferee in different states.
2. As per the merger scheme, the transferee company assumes all liabilities of the transferor. Therefore, denying the corresponding ITC benefit would violate the seamless credit design of GST.

Respondent Department's Arguments

1. Under [Section 16](#) of the CGST Act, ITC is available only to a "registered person" (as per [Section 2\(94\)](#)), and registration under [Section 25](#) is State-specific.
2. Each GST registration is treated as a distinct person; ITC earned in one state must be utilized in that state alone.
3. Permitting inter-state transfer would result in revenue loss for the originating state (Goa) with no legal mechanism to offset.
4. Reliance on MMD Heavy Machinery (India) Pvt Ltd vs Assistant Commissioner, Chennai & Others ([2021-VIL-507-MAD](#)), which disallowed such cross-state ITC benefit.

5. The GST portal itself lacks functionality to process such inter-state transfers, evidencing legislative intent to disallow them.

High Court's Findings & Discussion

1. Context and Purpose of GST

- The Court traced GST's evolution: from fragmented, cascading indirect taxes to a harmonised, destination-based tax enabled by the 101st Constitutional Amendment Act.
- Articles 246A and 269A empowered Parliament and States to create a seamless framework of CGST, SGST, and IGST-allowing free credit flow and promoting competitive, integrated trade.

2. Interpretation of Section 18(3) and Rule 41

- Section 18(3) and Rule 41 specifically allow transfer of unutilised ITC in the event of merger/amalgamation.
- The law does not impose a condition restricting transfer only within the same state.
- The transferee must, of course, be registered (as per Section 22(4))-which naturally happens post-merger.

3. Substance over form and legislative intent

- GST was created to remove artificial economic barriers and cascading taxes-not to trap credit in the state where it originated.
- The Court noted that had the legislature intended to restrict inter-state transfers, it would have said so explicitly.

4. On revenue loss

- The Central Government, which collects CGST and IGST, suffers no revenue loss if ITC is transferred and used in another state.

- The scheme of IGST already allows seamless cross-state movement and credit utilisation.
- The Petitioner had, in any case, given up its claim to SGST credit, which is state-specific.

5. On absence of IT mechanism

Portal limitations cannot override statutory rights. The Court directed authorities to process the ITC transfer **manually**.

6. Distinguishing Madras HC decision

- The earlier Madras HC decision dealt with pre-GST credits and closure of business-not merger/amalgamation.

Why This Judgment Matters

This ruling isn't just about procedural compliance-it directly affects taxpayers' working capital, especially in industries where mergers and consolidations are common. By confirming that unutilised ITC can move across state registrations post-merger, the Court removes a practical barrier that could have locked substantial funds and distorted merger decisions.

The judgment also shows the judiciary's willingness to read GST law in light of its forward looking economic objective, rather than letting form override substance.

Concluding Thoughts

This case is a timely reminder that while GST law is built upon the structure of State-wise registration, it ultimately serves a higher objective: a unified national market where tax credit flows seamlessly, and business decisions aren't distorted by artificial tax barriers.

For businesses, the takeaway is practical:

- Review your merger or restructuring plans in light of this judgment.
- Be prepared to challenge procedural or portal-based denials if the statute itself supports your claim.
- Align compliance processes with the spirit of GST, not just its form.

More broadly, this judgment marks only the dawn of deeper interpretational questions that will arise as GST matures—from cross-State ITC transfers, partial demergers, to treatment of common credits.

And so, a final question for industry leaders and tax teams:

Are your ITC strategies built around the true design and spirit of GST- or still caught in the pre-GST mindset of state-wise silos?

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