

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrish Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted IMoot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

INTER-STATE TRANSFER OF INPUT-TAX CREDIT DURING MERGER AND AMALGAMATION- BRIDGING LEGISLATIVE GAPS AND SYSTEMATIC ROADBLOCKS IN GST LAWS

AUTHORED BY: ADV. PRITI ACHARJEE

Modern Law College (LLM-I YEAR)

Abstract:

The introduction of Goods and Services Tax (GST) marked India's vision towards establishing a unified tax system, by replacing multiple indirect taxes and ensuring seamless credit flow across the supply chain. One of core features of GST is the mechanism of Input Tax Credit, which allows for claiming credit for the tax paid on the input purchased, and further adjusting it on the output tax. This mechanism is helpful for businesses to reduce tax burden and prevent the issue of double taxation in the country. However, though the law is in place for the seamless operation of such a mechanism. But back then, there were some system limitations for the transfer of ITC in case of a cross-state merger.

This article mainly focuses on understanding the recent ruling passed by the Bombay High Court in the case of Umicore Autocat India Pvt. Ltd. v. Union of India, where the court clarified and resolved a system default issue restricting the seamless transfer of ITC in case of inter-state amalgamation. The court emphasized that denying such credit contradicts the spirit of GST. This study also highlights the unresolved issue of SGST credit transfer in such scenarios and suggests realistic policy and administrative reforms, such as system upgrades, clarity in law, and better dispute resolution mechanisms. The article concludes that alignment of legal provisions with digital infrastructure is essential to uphold the GST framework's integrity and foster a business-friendly environment.

INTRODUCTION:

Imagine how it would be to be in a nation where you need to pay tax at every stage of production and distribution; however, you are not allowed to claim any credit for the paid taxes as a business enterprise. This would lead to the gushing tax burden, ultimately inflating the cost of goods and services. Hence, it is of paramount importance that such inefficiency in the Input-Tax Credit (ITC) mechanism in the Goods and Services Tax (GST) regime that seeks to be eliminated. In the modern Taxation era, the introduction of Goods and Services Tax marked as a paradigm move towards unifying the indirect tax system, by removing the barriers to freely trade across state boundaries and simplifying compliance structures for businesses. One of the main aspects of the GST laws is the mechanism of Input Tax Credit (ITC). ITC is mechanism by which the business claims their credit for the tax paid by them on the purchases and further can set it off against the tax liability. This chain of flow of credit not only ensures neutrality of taxation but also boosts the overall economic efficiency.

The mechanism of ITC is based on the philosophy of “value addition” stipulating that taxes must be levied on the value added at each stage rather than the entire value of transaction¹. Previously in India, ITC was regulated by various taxation system such as VAT, Central Excise, Service Tax, and Entry Tax, having no credit availability across the levies. ITC allows the taxpayers to the claim the credits for paying taxes on inputs used in the manufacturing and supply of goods and services. Manufacturers or Service providers often feels the burden to pay tax on inputs leading to artificial inflation in the market of pricing. After GST was implemented in 2017, there is a dynamic change in the fundamental mechanism of tax. It’s a unified regime subsumes multiple taxes, introducing a comprehensive ITC mechanism across goods and services creating a common national market. However, there was many complications and challenges in its implementation. There were various practical and legal question arose post-GST, especially talking about the issue of transferring of ITC during cross-states merger, demergers or amalgamations garnered considerable attention in the absence of a direct statutory bar or enabling mechanism in the GST law or system infrastructure.

Companies undergoing restructuring through amalgamations or mergers approved by the courts or tribunals, assets and liabilities stands transferred to the transferee. In principle such transfer including tax assets like unutilized ITC. However, many a times it has been seen that

¹ Director General of Taxpayer Services, *Input Tax Credit Mechanism* (Central Board of Indirect Taxes & Custom), https://tnvat.tn.gov.in/ctdportal/menus/documents/gst_corner/itc_eng.pdf (last visited July 28, 2025)

credit transfer across different jurisdiction with different GST registration has hindered by interpretational disputes, technical limitation on the GST portal, and resistance from state tax authorities often on revenue related grounds. One of the fundamental concept under GST is the requirement to obtain separate registration in each state for business to operate from the home office. To precisely explain suppose a company operating both in Goa and Maharashtra having two distinct state GST regulations. Now legally the two business are consider as two sperate legal entity under GST. However, while in practice this complicates the ITC transfer process in case where there is reorganization of the business involving consolidating or absorption of a company registered in one state by a company register in another.

Now as per Section 18(3) of the Central Goods and Service Tax (CGST) Act, 2017 read with Rule 41 of the CGST Rules allows for the transfer of unutilized ITC in case of reorganization of business². The main issue here is that the said lacks an explicit explanation of whether such a transfer can happen between two different state registrations of the same or merger entity. These lack in explanation creates casus omissus creating a legal vaccum leading to bundles of administrative ambiguity, inconsistent interpretation by tax authorities and hardship for genuine taxpayers. Though law in hand yet companies undergo difficulties in legitimate transfer of ITC lying in the books of the transferor entity due to limitations of the GSTIN portal, with technical error as Transferor and Transferee must be from the same state³. These result into the paradox that law permits for such transfer but only due to some default in system infrastructure denied to claim there credits leading to a infringement of taxpayers statutory rights and undermining the spirit of GST. The issue becomes more pronounced when examined with the perspective of federal taxation and the revenue interest of state government.

Under GST regulation we have observed that taxes are categorized into two: (i) Center – CGST and IGST; (ii) State- (SGST). For states, it has a protective tax base and when a transfer of ITC is proposed from a business registered in State A to one registered in State B, there may exist a fear of a loss of revenue. Courts in India repeatedly stated that any technical limitation or administrative constraints should not override the substantive rights granted under the law. In

² Adv, Venkatnaryana G.M. & C.A. Spudarjunan S., *Impact of ITC & Refund Due to Merger, Demerger, Spin-off, and Split Within India as well as Outside India*, HIREGANGE & ASSOCIATES LLP (May 29, 2020), <https://hnallp.com/a/impact-of-its-refund-due-to-merger-demerger-spinoff-and-split-within-india-as-well-as-outside-india> (last visited July 28, 2025)

³ *GST ITC Transfer not Allowed Between Merged Companies in Different States*, e-FileTax Blog (July 2025), <https://www.efiletax.in/blog/gst-its-transfer-not-allowed-between-merged-companies-in-different-states/> (last visited July 28, 2025)

the case of Umicore Autocat India Pvt. Ltd. v. Union of India, the Bombay High Court recently ruled in favor of allowing the inter-state transfer of ITC post-amalgamation, despite any limitation in the GSTN system⁴. The court further quoted that no law restricts such transfer and hence denying the same would forfeit the objective of GST. The judgement relied on the doctrine of Casus Omissus, asserting that court must not insert word or restriction that the legislature has consciously omitted. The ruling reaffirmed the foundational ethos of implementing GST laws and reinforce the idea that tax system must evolve in tandem with the economic realities of business operations. A clarity in the statutory provision along with upgradation of technical infrastructure of the GSTIN with legal provisions and judicial directions. The disconnect between law and technology cannot become the ground for denying taxpayer rights, especially in a digital-first tax regime. From a policy standpoint the issue also raises broader questions about the federal structure of GST, revenue sharing between states and the governance role of the GST Council. In a truly integrated market, credit should flow unhindered across borders, and mechanism must be put in place to reconcile inter-state transaction in a fair and transparent manner. This includes automated inter-state ITC reconciliation, cross-verification tools, and protocols for dispute resolution.

As India moves towards to greater ease of business with global investors on board, it is crucial that tax policies and administration reflects business-friendly practice. Complexities in ITC transfer during mergers, If not proactively addressed can deter genuine business restructuring, leading to unnecessary litigation and ruining taxpayers confidence. This article examine the legal, procedural, and technological challenges surrounding the inter-state transfer of ITC during merger or amalgamations. By critically analyzing recent developments and suggesting actional reforms, the article aims to contribute to the broader discussion on strengthening the ITC framework and upholding the foundational principles of the GST regime.

WHAT IS AN INPUT TAX CREDIT?

Input Tax Credit (ITC) mechanism refers to the situation where business owners pay taxes on the purchase of input products which can later be claimed as deduction while paying for output

⁴ *No Embargo In Transferring GST ITC Between Amalgamating Companies Located In Distinct States*, GST Judgement (Bombay High Court, July 23, 2025) discussing Umicore Autocat India Pvt.Ltd. v. Union Of India, Writ Petition No. 463 of 2024, reported by A2Z Taxcorp, <https://a2ztaxcorp.net/no-embargo- in-transferring-gst- itc-between-amalgamating-companies-located-in-distinct-states/> (last visited July 28, 2025)

tax⁵. It refers to the credit that a registered taxpayer is entitled to claim for the GST paid on inputs used in the course or furtherance of business. Suppose a manufacturer paid GST of Rs.1000/- on purchase of raw materials and further liable to pay GST of Rs. 1500/- on the final product, can as per provision of ITC claim a deduction of Rs. 1000/- on the total GST payable on the final product and deposit the rest Rs.500/- as tax.

In order to claim for ITC under GST Laws there are following condition that the taxpayer need to fulfil⁶. They are as follows:

1. Businesses only registered under GST can claim for ITC.
2. Dealer must have possession of valid tax invoice or debit note issued by the registered supplier.
3. The Goods and Services in the transaction process must have been actually received by the recipient.
4. The recipient is obliged to fill the monthly return in Form GSTR-3B for the relevant tax period.
5. The payment for supply along with the tax must be paid by the recipient within the time limit of 180 days from the date of invoice, failure to which mandates reversal of ITC along with applicable interest.
6. In case goods are received in instalments or lots, ITC can be availed only upon receipt of the final lot or instalment.
7. ITC is allowed only when inward supply of goods or services is used or intended to make taxable outward supplies in the course of business.
8. In case where depreciation is claimed on the tax component of the capital goods under the Income Tax Act, ITC will not be applicable.
9. ITC should be claimed on or before 30th November of the next financial year following the year in which the invoices are raised. Further the last date of filing the Annual Return in Form GSTR-9 becomes the last to claim ITC.
10. ITC claimed in GSTR-3B must be in accordance with the eligible credit reflected in the auto-generated GSTR-2B form.
11. Taxpayer opting for Composition Scheme under Section 19 of CSGT Act is not eligible to claim ITC.

⁵ Annapoorna, *Input Tax Credit (ITC) under GST*, Clear Tax (Dec 4, 2024), <https://cleartax.in/s/gst-input-tax-credit> (last visited on July 27th, 2025)

⁶ Rajagopal K, *Documents Required for Claiming Input Tax Credit (ITC) under GST*, TaxGuru (June 8, 2025) <https://www.taxtmi.com/article/detailed?id=14737> (last visited on July 27th, 2025)

EVOLUTION OF ITC

Before the implementation of GST, India followed a fragmented Indirect Tax Regime. There were different taxes being levied by the Center and States, each of which has its own mechanism. Previously manufacturers and service providers would claim credit of central excise duty or service tax paid on inputs and its services. However, there was no set off rule against state taxes like the VAT and vice versa. During that time only state allows credit if VAT paid on purchases, but only within the same state and only for VAT liability. On the other hand central taxes were not generally creditable. The major issue was about cross-credit between central and state taxes, leading to a tax-on-tax effect, increasing the cost of goods and services.

After the implementation of GST in 2017, India adopted a unified tax structure design to merge multiple indirect taxes. The prime object of legislature was to create a seamless flow of credit across the supply chain cross-state⁷. The reform aimed to remove the cascading effect of credit, promoting a transparent and efficient tax law without increasing tax burden of the business owners. This evolution from a disjointed credit system to a unified and comprehensive ITC mechanism under GST marked as a major milestone in India's indirect tax landscape. However, even after the enactment of GST in India, various practical issues continue to raise mainly in case of complex transaction like Merger and Amalgamations and inter-state credit Transfer, requiring close examination and policy refinement.

COMPARATIVE ANALYSIS: OLD AND NEW ITC REGULATION

SR. NO.	PARTICULARS	OLD TAX REGIME (PRE-GST)	NEW TAX REGIME (GST)
1.	ITC Scope	ITC was limited to same tax types -e.g. VAT credit could not be used for excise duty or service tax.	ITC is available across goods and services, making the credit system more comprehensive
2.	Cross-Utilization	No cross-utilization, credit could not be set off against a	Cross-utilization allowed under specified rules e.g.

⁷ Sourabh Singhal & Tushar Agarwal, "Seamless Flow of Credit under GST"- In Principle or Reality?, in Lakshmikumaran & Sridharan, GST Insights (2022) <https://gst.lakshmisri.com/data/art/Article8.pdf> (last visited July 28, 2025)

		different tax.	ICGST can be set off against CGST and SGST
3.	Credit on Services	Manufacturers often couldn't claim credit on services.	Full ITC available on both goods and services for all registered business.
4.	Credit on Capital Goods	Available in some taxes like excise, but not VAT.	Full credit allowed on capital goods, except for some blocked items.
5.	Credit Chain	Broken chain-tax paid on inputs often couldn't be credited at output stage	Seamless credit chain throughout the supply chain from raw materials to final sale.
6.	Invoice Matching	No system for matching invoices between buyers and sellers.	ITC allowed only is the invoices matched and reflected in GSTR-2B
7.	Refund of ITC	Refunds were time consuming and allowed in few cases only.	Refund of unutilized ITC is allowed under specific conditions improving cash flow
8.	Transparency	In the old regime ITC was difficult to track due to manual filing and different laws.	ITC are digitally traceable through GST portal reducing the chances for fraud.
9.	Blockages and Restriction	As per old regime, many taxes had separate restrictions on what can qualifies as claim credits	GST clearly clarifies blocked credits, improving clarity.
10.	Ease of Claiming ITC	Requires Separate returns and documentation for each type of tax	Requires for a unified filing system, simplifying and consolidate ITC claims.

IMPORTANCE OF INPUT TAX CREDIT IN THE GST FRAMEWORK

Input Tax Credit is the main pillar of the GST, ensuring efficiency, neutrality and economic fairness. The mechanism allows for tax levied on each stage of supply chain value addition, achieving the core objective of GST:

- 1. Eliminates the Tax-on-Tax Effect:** Before the implementation of GST, businesses are suppose to pay taxes on each step both on the inputs and during the final products, leading to double taxation issue known as the cascading effect or tax-on-tax effect. However, with ITC under GST, businesses now can deduct the tax that they already paid on inputs from the tax it owes on output. This eliminates the double taxation issue and reduce the overall tax burden⁸. Suppose a manufacturer buys raw materials worth Rs. 10000/- paying a GST of Rs. 1800/-. Now when he will sell the finished products for Rs. 15000/- instead of paying the full GST of Rs. 2700/-, the manufacturer can claim credit of Rs. 1800, i.e. the GST on the raw materials (inputs). The manufacturer now only had to pay the difference of Rs. 900/- as GST to the government. This way the manufacturer can avoid paying tax again on the same value, reducing his overall tax burden and improving cash flow in the business.
- 2. Promotes seamless Flow of credit:** GST allows for a seamless ITC mechanism, where businesses can claim credit on every stage of supply chain. From manufacturing, to wholesaler, to retainer, each registered business now can claim the tax credit for purchase made for business purposes and pay tax only in the output flow. This creates a seamless flow of credit where taxes are adjusted across stage without any breaks or leakages⁹.
- 3. Reduce the cost of Goods and Services:** The ITC mechanism reduce the cost on tax paid by the manufacturer, leading to reduction in the final price of the output good. Earlier if a business paid Rs. 1000/- tax on raw materials, it would include that in the final price. Now with ITC, the business get Rs.1000/- back as a credit, so it can offer the product at a lower pricing.

⁸ Rutuja Khedekar, *GST Input Tax Credit Made Simple: Insider Tips for Success*, CaptainBiz (July 6, 2025), <https://www.captainbiz.com/blogs/gst-input-tax-credit-made-simple-insider-tips-for-success/> (last visited July 28, 2025)

⁹ *All about GST Input Tax Credit*, Avalara (Mar. 2017) <https://www.avalara.com/blog/en/apac/2017/03/gst-input-tax-credit.html>. (last visited July 28, 2025)

4. **Encourages Formalization of Economy**: The new ITC mechanism requires for a formal registration process, registration under GST, and maintaining proper tax invoices along with filing a regular GST returns. This encourages unregistered or informal business to join the formal economy in order to take advantages of ITC. Even a small shopkeeper buying goods from a registered dealer can claim ITC only if he is registered under GST.
5. **Enhance Working Capital Efficiency**: When businesses pay tax on purchases, that money is blocked until they claim it as ITC, under GST this claim is more faster and more smoothly, so money doesn't stuck for long leading for free up working Capital, which helps manage business operation more efficiently.
6. **Supports Export Competitiveness**: The interesting fact that exports under GST are zero-rated. Exporters only pay tax on inputs which they claim as refund keeping the cost of goods low and helps exporters compete in the global market.
7. **Boots Transparency and Digital Compliance**: India moving through GST is seemingly entering the digitalization. Business are required to upload invoices, match their purchases with sales and maintain a digital record of all. Claiming for ITC requires clean and transparent records which reduces fraud and improves compliance.

STATUTORY PROVISIONS OF ITC ESPECIALLY IN REFERENCE TO MERGERS AND AMALGAMATIONS IN GST LAWS

Under the GST framework, the main statutory provisions for ITC dealing with Merger and Amalgamations are as follows:

1. **Section 18 (3) of the CGST ACT 2017**¹⁰: This provision explicitly allows that a registered person is free to transfer its unutilized ITC in case of its businesses going through structural changes due to merger, demerger, amalgamation, lease and more. Provided that there are specific provisions of transfer of liabilities.

¹⁰ India, *The Central Goods and Service Tax Act, No. 12 of 2017, sec. 18(3)*, Gazette of India, Apr. 12, 2017

- 2. Rule 41 of the CGST Rules 2017**¹¹: It outlines procedure of transferring ITC, mandating online filing through GSTN portal followed by acceptance by the transferee on the common portal.

CHALLENGES IN THE INTER-STATE ITC TRANSFER DUE TO STATE WISE GST REGISTRATION:

As per Section 25 (4) of the CGST Act each business with separate GST registration even with same pan in different state will be considered as distinct person¹². This led to the confusion that whether ITC was state-specific leading to an administrative roadblock in seamless transfer of ITC even in absence of any such explicit restriction.

CASE STUDY: UMICORE AUTOCAT INDIA PVT. LTD.

V. UNION OF INDIA

1. Facts of the Case:

The company namely Umicore Autocat India Pvt. Ltd. V. Union of India engaged in manufacturing of automotive catalyst (hereinafter referred to as 'Transferee Company') duly registered in Maharashtra under Section 230 to 232 of the Companies Act opt for amalgamation with a cross-state company namely Umicore Anandays India Pvt. Ltd. engaged in manufacturing of Zinc oxide (hereinafter referred to as 'Transferor Company') as per the order by the NCLT Mumbai Bench on 26.05.2020¹³.

The transferor company was duly registered under Rule 10(!) of the CGST Rules, 2017 as a private Limited Company and on the other hand the Transferee company was registered under the Maharashtra Goods and Service Tax Act, 2017. As per the claim of the Transferor company it has a credit of Rs. 3,69, 586/-, Rs. 3,52,84,105/- and Rs. 1,39,285/- as IGST, CGST, and SGST respectively duly reflecting in its electronic credit ledger during its amalgamation with the transferee company. The transferor company specified that they made due attempt to file for transfer of entire ITC to the credit of Transferee company. However, due to same technical error within the GST portal the same gets reject every time with the remark 'Transferee and

¹¹ India, *The Central Goods and Service Tax Rules, 2017, Rule 41*, Ministry of Finance (Dept. of Revenue), Notification No. 3/2017-Central Tax, June 19, 2017.

¹² India, *The Central Goods and Service Tax Act, No. 12 of 2017, sec. 25 (4)*, Gazette of India, Apr. 12, 2017

¹³ Srishti, *Cross-State ITC Transfer Allowed Post-Amalgamation: A Landmark GST verdict*, CAclubIndia (July 21, 2025) <https://www.caclubindia.com/articles/cross-state-its-transfer-allowed-post-amalgamation-a-landmark-gst-verdict-53794.asp> (last visited July 27, 2025)

Transferor should be of the same state/UT¹⁴. The same was also reported as a query into GSTN portal by the transferor company, to which they received a reply, that the system is showing an error due to business logic.

Later, when the transferor approached the State Tax Officer on 17.08.2020, they were responded that the authority has no option or system available to them for resolving issue faced on the GSTN portal. Aggrieved by the same the petitioner opt to file for writ petition before the Bombay high court later withdraw the same with liberty to file it before the GOA bench.

2. Points of Argument from Both Parties

Petitioner Arguments

- a) The petitioner argues that as per the provisions of Section 18(3) of the CGST Act 2017 and Rule 41 of the CGST Rule, allows for transfer of ITC of the old company to new one.
- b) The petitioner vehemently states that the law didn't specify for any geographical restriction on the transfer hence restricting transfer in that case just on the mere basis that the GSTIN's are in different state and there are portal limitation in filing for it doesn't make any sense.
- c) ITC are businesses valuable assets and should be transferred in case of merger or amalgamation to the new company irrespective of any jurisdictional barrier.
- d) Denial of inter-state transfer of ITC truly violates the intent of GST as a seamless credit system.
- e) The petitioner also argued that any system error cannot limit the legal rights of an individual or in this case business. Hence the portal limitation for filing of inter-state transfer is totally meaningless.
- f) The petitioner also talks about the voluntary relinquishment of SGST to avoid conflict showing the bona fides and cooperative intent of the petitioner.
- g) The petitioner also relied on Article 269A and the structure of GST that focus on the principle of jurisdiction based consumption tax and seamless ITC flow.

¹⁴ Bimal Jain, *No Bar on Transferring GST ITC Between Amalgamating Companies in Different States*, Taxguru (July 23, 2025), <https://taxguru.in/goods-and-service-tax/bar-transferring-gst-itc-amalgamating-companies-states.html> (last visited July 27, 2025)

Respondent Arguments:

- a) The respondent argued that under Section 25 (4) of the CGST Act every registration is treated as a separate legal entity. So, if a business is registered in both Goa and Maharashtra, these registrations are considered distinct person even if belong to same corporate group.
- b) The respondent highlights the loss of potential state revenue. They feared that allowing such inter-state ITC could disturb the GST revenue sharing model between Center and State.
- c) They also specified that the GST portal limits the transfer of ITC interstate, hence even law allows for it the system support cannot make it possible to implement.
- d) The respondent also relied on the decision in MMD Heavy Machinery Pvt. Ltd. vs. Assistant Commissioner Case where cross unit ITC transfer was denied under the old CENVAT regime.

3. Court Order:

The bench comprising of Justice Bharati Dangre and Justice Nivedita P. Mehta on 10th July 2025 passed the landmark judgement as follows¹⁵:

- a) The court upheld the argument laid by the petitioner that there is restriction imposed in the law for inter-state transfer of ITC. Therefore, the error message in the GSTN portal is supported by law.
- b) The Court apply the principle of casus omissus, stating that the court cannot insert words or restrictions into a statute where the legislature has not done so. Hence, any such restriction is without the authority of law.
- c) The court reiterated that core purpose of the GST is to ensure the seamless flow of credit across the value chain. Hence denying ITC transfer due to a state boundary would defeat the objective of a unified tax system and violates the rights of the businesses.
- d) The court also highlighted on the issue that while separate registration under GST are treated as distinct person, but the same is only for compliance and procedural purposes that doesn't over ride or restrict the rights given under section 18 (3) of the CGST Act.
- e) The court also emphasis on the reliance of MMD Heavy Machinery case considering it as irrelevant to the present scenario as both facts of the case are different.

¹⁵ *Umicore Autocat India Pvt. Ltd. V. Union Of India*, Writ Petition No. 463 of 2024 (Bombay H.C., Goa Bench, July 10, 2025).

- f) The court permitted the transfer of CSGT and IGST. However as the petitioner voluntarily relinquish its SGST claims the issue was not adjudicated. The court also directed the GST council and GST network to develop and implement a mechanism within six weeks to allow for inter state ITC transfer in merger and amalgamation cases.

4. Impact on Current Rules and Regulations

- a) The ruling stand as landmark judgement impacting on the interpretation and practical application of provisions under the GST framework, especially in case of cross-state merger and amalgamation.
- b) The judgement clearly focus on the fact that the GST laws doesn't impose any restriction in cross-state transfer of ITC reducing the administrative roadblock restricting such transfer arbitrarily.
- c) The court also order the GST council and GSTN portal to correct the system default which establish that any default in system design cannot override the legal rights of the citizens.
- d) The case also highlight the sensitive issue in regard to state revenue allocation in the GST regime. Although in this case the petitioner voluntarily relinquish its claim for SGST, but said case also raised broader questions about how to balance the federal structure with seamless credit transfers. This could be a prompt for the ST council to frame rules or guidelines to address revenue sharing mechanism in future inter-state mergers.

5. Critical Analysis

The case brings forth a critical flaw in the GST framework. These gap between statutory provisions and practical implementation when it comes to inter-state transfer of ITC in case of merger and amalgamations. Though the law under Section 18 (3) of the CGST Act and Rule 41 of the CGST rules talks about transfer of ITC in case of business reorganization, the same is silent on whether such transfer can occur across state lines. This legislative ambiguity backed with GSTN portal rigid design create an unjust barriers for the companies undergoing genuine structural changes. The judicial intervention rightly emphasized the importance of upholding substantive rights over procedural constraints.

However, the case due to voluntary relinquishment of the petitioner, lacks a conclusive legal stance on inter-state SGST transfer leaving a gray area of whether SGST be legally transferred

across state during amalgamation?

6. Suggestions:

- a) One of the most pressing questions that arise after the judgment was in regard to SGST component in inter-state mergers? While the courts have permitted the transfer of CGST and IGST, however yet the position on SGST remains ambiguous. The law is silent on whether SGST, being a state tax, can be transferred across states when two companies merge. The transfer of SGST in cross-state merger is a complex concept considering state reluctance to forgo their share of tax revenue. Therefore, proper application of law is required to justify the transfer or non-transfer- balancing the principle of natural and equity, ensuring fair treatment to businesses while also safeguarding the legitimate fiscal interests of the state.
- b) Now to address the concern of potential revenue loss among states during such transfer, the Centre and GST Council should design a transparent revenue-sharing formula or adjustment mechanism for SGST when ITC is transferred from one state GSTIN to other. This could involve offsetting credits internally between state accounts via the central clearing mechanism.
- c) The dispute was a result of limitation in the GSTN portal that actually could have been resolved at administrative level. It is pertinent to note that courts are already overburden with backload of cases. Hence, it is crucial to have a strong grievance redressal that can addresses such technical glitches saving the time of both litigant and court.
- d) The government can also establish a centralized GST clearance or approval cell specifically to deal with ITC issues arising from mergers, demergers, and amalgamations. This cell can work in coordination with ROC, NCLT, and tax departments to streamline cross-departmental processes and avoid duplication or contradiction. Further, it is also of primary importance tax officials handling must undergo special training to interpret such complex merger cases for proper adjudication of matter.

CONCLUSION:

The ITC mechanism is one of the most important part in the GST framework helping business to reduce their tax burden by allowing them to claim credit for the tax they have already paid on their purchase. However, there were some constraints as per practical application of the law due to technical limitation when it comes to the transfer of ITC especially in case of cross-state

merger or amalgamation. As we learned from above that as per the new tax laws under Section 18(4) of the CGST Act allows for cross state transfer of ITC in case of merger or amalgamation. But due system default the actual implication of the law was blocked. This technical issue was then wrongly justified by referring to legal provision. The judicial intervention further clarify the standing upholding that system deign cannot override the legal entitlement, thereby setting a precedent for aligning portal functionalities with substantive provisions. It also demonstrated the judicial role in facilitating commercial clarity and strengthening GST's core objective.

The case while clears the status of transfer in regard to CGST and IGST but there still remain the underlining question in regard to inter-state transfer of SGST. There is still a need for broader policy clarity from the GST council or judiciary. It is also further crucial for monitoring GST functioning time to time for meeting the legislative intent of introducing a seamless tax law in the country. Hence to conclude, it is essential that technological system must align with the legal provisions enduring to uphold the true spirit of GST as a unified and business friendly tax regime.

