



Tax alert: **Bombay High Court allows inter-state transfer of unutilized input tax credit of IGST, CGST, post amalgamation**

25 July 2025

The Bombay High Court allows inter-state transfer of unutilized Input Tax Credit (ITC) of Integrated GST and Central GST, from transferor company located in one state to the transferee company, located in another state, post-amalgamation.

In a nutshell



Petitioner is an amalgamated company (Transferee) registered in the state of Maharashtra. The amalgamating company (Transferor) registered in Goa, had attempted to transfer ITC using ITC-02 Form on GST portal. The Reserve Bank of India (RBI) had permitted petitioner to receive forex after netting off forex payments on monthly basis on a pan-India level.



The transfer of ITC was rejected as the GSTN portal does not have an option for inter-state transfer of ITC. Revenue was of the view that transfer of ITC under the GST law on account of amalgamation is prohibited, where it involves two distinct states.



The Bombay High Court observed that there is no embargo imposed under the GST law for inter-state transfer of ITC. It permitted transfer of CGST and IGST by physical mode for time being. It also requested GST Council and the GST Network to update the GST portal.



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Background

- The petitioner¹, registered in the state of Maharashtra, was formed under the scheme of amalgamation approved by the National Company Law Tribunal under the Companies Act, 2013.
- The Transferor company is involved in the manufacture of zinc oxide; Its manufacturing plant is located in the state of Goa. The Transferee company i.e., the petitioner is engaged in the manufacture of automotive catalyst; its manufacturing plant is located in Maharashtra.
- The scheme of amalgamation was approved against the backdrop of the fact that the manufacturing business and operations of the group in India is being carried out through the Transferee company; the Transferor company had ceased its operations and was non-operational for three years.
- After the sanction of the scheme of amalgamation, the Transferor Company was dissolved without winding up.
- The Transferor company attempted to transfer its unutilized ITC of IGST, CGST and SGST in its electronic credit ledger, to the Transferee company using the GST ITC-02 Form, on the GST portal. But the transfer was rejected with an error message stating that the Transferee and Transferor should be in the same State/Union Territory.
- The petitioner filed a petition challenging the action of the Revenue, in restricting transfer of unutilized ITC on account of merger/amalgamation under section 18(3) of the Central Goods and Services Tax Act, 2017 (CGST Act) on the grounds that transfer is prohibited where it involves two distinct states.
- The petitioner sought allowance of such transfer of ITC as, neither section 18(3) of CGST Act nor Rule 41 of Central Goods and Services Tax Rules, 2017 (CGST Rules) impose any such restriction.

Observations of High Court

- A careful reading of section 18(3) of CGST Act along with Rule 41 of CGST Rules permits the transfer of unutilized ITC in the electronic credit ledger to the new entity to which the business was sold, with which it was merged, amalgamated or transferred.
- Section 22(4) of CGST Act contemplated that upon a scheme of amalgamation/ demerger pursuant to an order of a High Court, Tribunal or otherwise, the Transferee shall be liable to be registered with effect from the prescribed date. However, no such stipulation has been specified while permitting the transfer of ITC under section 18(3) of CGST Act.
- Had the legislature any intention to cast an embargo or impose a restriction with reference to section 22(4) of CGST Act to the effect that, unless and until the Transferee is registered, ITC cannot be availed, it should have so specified. But section 18(3) of CGST Act is merely suggestive of allowing the transfer of unutilized ITC in the electronic credit ledger of the Transferor to the Transferee under the specified circumstances.
- It is a well settled position that the intention of legislature shall be primarily gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said.
- The Court distinguished the Madras High Court judgement in the case of **MMD Heavy Machinery (India) Pvt. Ltd. Vs. Assistant Commissioner, Chennai & Others [(2021) 53 GSTL 3]** as in that case, the petitioner had shifted its unit from one state to another and there was no change in constitution. The transfer of credit was sought from the unit of petitioner which was completely shut down.

¹ Umicore Autocat India Private Limited (after amalgamation of M/s. Umicore Anandeya India Private Ltd.) Vs Union of India 2025-VIL-746-BOM

- As far as the CGST and IGST are concerned, which are collected by the Central Government under the CGST, the benefits are claimed by the Central Government, whereas under the IGST the benefits shall be claimed by the Central Government or the State Government and upon the unutilized ITC being utilised in the state of Maharashtra (Transferee's state), the Central Government has nothing to lose.
- While there appears to be some issue about SGST, as the SGST is to be collected by the state, and it will be consumed by the state and permitting the SGST to be utilized in the state of Maharashtra would result in financial loss to the state of Goa. But as far as the unutilized SGST is concerned, the petitioner has given up its claim for its transfer.
- Against this background, it was held that transfer of IGST and CGST in the electronic credit ledger is permitted to be transferred to the petitioner by physical mode for time being subject to the adjustments to be made in future.
- The difficulty that the GSTN portal does not allow such transfer can be no grounds to deny the benefit to the petitioner, if it is so entitled in the wake of the statutory scheme.
- The High Court also requested the GST Council and the GST Network to provide for mechanism to deal with such contingencies when the ITC is sought to be transferred from one state to another state / Union Territory, by updating its network.

Comments

This judgement provides significant relief to the industry, as it validates inter-state transfer of unutilized input tax credit of CGST and IGST in scenarios of business transfers / merger / demerger prescribed in the GST law. The ruling underscores the Court's interpretation of the GST law to facilitate business operations and uphold the legislative intent of a seamless tax credit system across states.



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