Amalgamation - GST Cannot Ignore Corporate Death and Consequent Refund Rights

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Feb '26

This article was published at https://www.taxtmi.com/article/detailed?id=15891

India's evolving economic landscape today, marked by sustained emphasis on *Make in India*, Services from India, ease of doing business and progressive liberalisation of foreign investment norms, has resulted in a significant uptick in cross-border capital flows as well as domestic consolidation. Multinational groups are increasingly using India as both a manufacturing and operational hub, including the setting up of numerous GCC's in the service front, while Indian businesses continue to expand overseas. Inevitably, this has translated into a rise in mergers, amalgamations and internal restructurings, undertaken to achieve operational efficiencies, regulatory alignment and business synergies.

While such transactions are typically structured in line with the Companies Act, 2013, their execution span multiple legal regimes, including income tax, GST, FEMA and allied laws, each with its own compliance architecture and consequences. However, these tax and regulatory statutes do not operate in isolation. They are supplemental to the underlying legal transaction and must be applied in harmony with its basic structure, timing and legal effect.

The recent decision of the Gujarat High Court in *Alstom Transport India Limited* serves as a timely reminder that tax benefits and entitlements cannot be viewed divorced from the foundational principles governing amalgamations, and that the form and substance of the transaction must first be correctly understood before assessing its tax implications.

Against this backdrop, this decision of the Gujarat High Court merits close examination, as it illustrates how foundational principles governing amalgamations operate when tax provisions are applied to complex restructuring transactions.

In this decision the Gujarat High Court examined the permissibility of refund of unutilised input tax credit (ITC) claimed by a transferor company after its amalgamation, where only part of the ITC had been transferred to the transferee entity.

Background and factual matrix

The dispute arose out of an amalgamation approved by the NCLT by order dated 10 Aug 23, whereby Alstom Rail Transportation India Pvt. Ltd. (ARTIPL), along with two other group entities, stood amalgamated into Alstom Transport India Limited (ATIL).

The flow of events is as below:

S. No.	Event	Date
1	ATIL filed FORM GST REG-1 under Rule 8 of the CGST Rules, 2017 (in anticipation of NCLT order)	10.05.2023
2	GST registration granted to ATIL **w.e.f.**	25.05.2023
3	NCLT order approving scheme of amalgamation of erstwhile ARTIPL and two other entities into ATIL	10.08.2023
4	Certified copy of NCLT order issued	28.08.2023
5	RoC certification of ATIL issued	22.09.2023
6	**Cancellation of ARTIPL's GST registration prospectively after a department SCN**	29.11.2024

Prior to amalgamation, ARTIPL had effected zero-rated exports in Apr 23 and, as on the date of amalgamation, had accumulated unutilised ITC of approximately ₹242.02 crore.

On 20 Oct 23, ARTIPL filed FORM GST ITC-02 and transferred only ₹192.87 crore of ITC to ATIL, while retaining a balance of ₹49.14 crore in its electronic credit ledger.

Subsequently, ARTIPL filed refund applications under Rule 89 for the retained ITC attributable to exports made in Apr 23 (after the amalgamation became effective). One such claim of ₹2.56 crore was sanctioned by the department, and the amount was disbursed. However, the refund sanction was later reviewed, and the appellate authority set aside the refund.

Issue before the Court

The core issue before the Court was whether, in case of amalgamation, the transferor company could partially transfer unutilised ITC to the transferee instead of transferring the entire ITC in accordance with section 18(3) of the CGST Act read with rule 41 of the CGST Rules.

Also, after the amalgamation has taken effect whether the transferor company can still file refund claim in respect of exports made during pre amalgamation period.

Findings and reasoning

The High Court dismissed the writ petitions and upheld the denial of refund, holding that the course adopted by ARTIPL was contrary to the statutory framework governing amalgamation under GST.

The Court reiterated that once an amalgamation scheme is sanctioned and becomes effective, the transferor entity ceases to exist as a distinct legal person. Any rights or liabilities thereafter must be examined strictly within the statutory scheme applicable to amalgamation.

Under GST law, section 18(3) read with rule 41 provides a specific mechanism for transfer of unutilised ITC in cases of merger or amalgamation, namely through filing FORM GST ITC-02. The Court held that this statutory mechanism does not contemplate encashment of ITC by way of refund as an alternative to transfer. Refund of unutilised ITC is a statutory benefit and can be availed only in situations expressly permitted by law.

The Court took serious note of the fact that ARTIPL transferred only part of the ITC and retained the balance for claiming refund. Such partial transfer of ITC followed by refund of the residual amount was held to be impermissible, as it defeats the legislative intent underlying Section 18(3). Once the transferee company becomes entitled to registration, the entire unutilised ITC of the transferor must move to the transferee, leaving no residual ITC with the transferor for independent monetisation.

The Court also highlighted multiple procedural irregularities, including:

- registration obtained by the transferee, well before the date of amalgamation order coming into effect, in anticipation of amalgamation,
- delayed cancellation of the transferor's registration contrary to section 87(2) of the CGST Act , and
- facilitation of these irregularities by jurisdictional officers.

However, the Court clarified that procedural lapses cannot be relied upon to legitimise a refund claim that is otherwise substantively impermissible.

Importantly, the Court observed that ATIL itself had not effected the exports, and therefore could not claim a refund in its own right, while ARTIPL could not survive post-amalgamation to claim a refund independently.

Reliance on precedents

In arriving at its conclusion, the Court relied upon:

- Chief Commissioner of CGST v. Safari Retreats Pvt. Ltd., emphasising strict interpretation of taxing statutes and ITC provisions; and
- Mahagun Realtors Pvt. Ltd., reiterating the legal consequences of amalgamation and cessation of the transferor entity.

Key take away for business: One aspect to note from this decision is that the GST law cannot operate in isolation. One has to understand the basic purpose and outcome of any structuring and accordingly ensure that the tax laws are applied.

Even before this decision was delivered, in the GST landscape there have been many decisions in the context of death of a proprietor (Sambul Shahid[1], Mudit Gupta (Legal Heir To Pushpa Gupta)[2]) where the Courts have held that no proceedings, be it a show cause notice or order, can be issued against a deceased person. In such cases the legal representative should be given the notice for a response.

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[1] 2025 (12) TMI 937 - ALLAHABAD HIGH COURT

[2] 2025 (9) TMI 181 - ALLAHABAD HIGH COURT

Additional aspect to be noted is that just because the department had cancelled registration much after the effective date of the amalgamation, it does not regularise the error of filing of the refund application in the name of the non-existent transferor company. Hence, businesses should ensure that they do not blindly rely on the words and actions of the officers, rather they should consider taking advice from competent and mature consultants in their own fields (who would all enable a 360 degree advice after looking at the tax laws including the allied laws) and take other necessary steps to ensure being compliant.

Additionally, whether the portal is designed/updated & the officers possess suitable knowledge, in line with the above decision delivered by the Court to enable the transferee company to file the necessary applications and claim refund. The answer is a big NO. Considering this backdrop somewhere the judiciary should have taken a lenient view and provided a mechanism through which the Petitioner could have regularised the refund claim since there is no doubt regarding the exports. This is more so when the department officer himself is not aware of the governing provisions and there is no suitable infrastructure available to enable compliance by the taxpayer, it would be too harsh to expect the taxpayer to comply as per Court's interpretation of the law. Substantial rights of the taxpayers should not be jeopardised due to such technicalities.

For the taxpayer, considering the existing scheme of things, in case a business re-structuring takes place, from GST perspective the following aspects should be taken care of. These aspects should be given attention to, at least 6 months before the effective date of the restructuring:

1. From GST perspective, the transactions need to be conducted in the resulting/amalgamated entity from the date of the Court order. Efforts should be made to conclude all open transactions (price difference adjustments by issuing credit notes, ITC reconciliation and resultant entries in GST returns, filing of refund claim etc) before such date.
2. Application for Cancellation of registration for the merging entity should be filed well within statutory time limit.
3. Transfer of full ITC should be strictly as per 18 (3) read with Rule 41.
4. New entity should obtain registration with effective date as envisaged under the law.
5. There should be proactive communication to the jurisdiction office well before the Court order. All these should be in writing as well.
6. While cancellation of GST number should be done, there should be frequent check of the portal to see if any notices etc are issued by department.

Government should also come up with issuance of a removal of difficulty order to facilitate the businesses as it may not be practically feasible for operative businesses to bring it to a standstill from a particular date. While legally the business ceases to exist and gets merged in new entity, the requirement of portal is not fully aligned with the law. Proper transitional period should be given to execute open transactions, performance of reconciliations, transfer of ITC, surrender and obtaining of registrations etc.

Additionally, the department officers should also be trained with the nuances of the other laws in respect of these business restructurings, to ensure that they becomes partners in helping businesses comply with the tax laws in spirit. The department should consider itself as the

taxpayer's guide and support to enable compliance with the law rather than wait for the taxpayers to make mistakes and then milk out revenue. Department needs to understand that a good proportion of today's businesses wish to comply with the law and remain at peace rather than get into the complex litigations.

The views expressed are strictly personal and cannot be regarded as an opinion. For any queries or feedback please write to *shilpijain@hnaindia.com* and ashish@hnaindia.com.