

Breaking the Code: Nuances of the Bombay HC judgment in the case of Umicore on Cross-State ITC Transfer on account of Merger

- **CA Shyama B, CA Spudarjunan S**

➤ **Introduction**

The Goods and Services Tax (GST) was envisioned as a uniform, destination-based levy that would eliminate cascading and ensure seamless credit flow across the supply chain. Yet, eight years after its rollout, the friction between its statutory framework and digital infrastructure continues to surface.

A recent example is the Bombay High Court at Goa's ruling in **Umicore Autocat India Pvt. Ltd. (after amalgamation of M/s Umicore Anandeya India Pvt. Ltd.) v. Union of India & Ors., 2025 (7) TMI 1188 (Bombay HC)**. The crux of dispute was whether unutilised ITC (specifically IGST and CGST) lying in one State could be transferred to an amalgamated entity in another, when the GST portal blocks such cross-State transfers through Form ITC-02 without any powers delegated by the law.

The Court's reasoning in Umicore reassures and vindicates the position of the law on a critical theme: when technology and statutory rights collide, law must prevail.

➤ **Facts of the case: The Umicore Amalgamation**

- **Transferor:** *Umicore Anandeya India Pvt. Ltd.*, registered in Goa.
- **Transferee:** *Umicore Autocat India Pvt. Ltd.*, registered in Maharashtra.
- **NCLT Sanction:** Effective 01.04.2019, transferee took over the liabilities of the transferor. The transferor was dissolved without winding up.
- **Matter of Concern:** Around ₹3.57 crores of ITC stood unutilised in Goa registration. When attempting transfer through ITC-02, the GSTN portal rejected it, citing the reason that the "**Transferor and Transferee should be of the same State/UT**". The petitioner attempted to resolve the said system limitation through raising grievances and representation before the jurisdictional officers, however received a blatant response that they do not have any option or feature in their system to resolve the technical issues of GSTN.

Thus, while the merger carried assets, contracts, and employees across borders, ITC was left behind creating a working capital deadlock.

Caveat: The petitioners do not challenge the requirement of transfer of SGST balance, and they had made a categorical submission to give up the claim for its transfer. Therefore, the transfer of SGST in this case is not considered.

➤ **The Statutory Triad: Section 18(3), Rule 41, and Section 25(4)**

Three provisions lie at the heart of the dispute:

1. **Section 18(3), CGST Act, 2017** – allows transfer of unutilised ITC upon sale, merger, demerger, amalgamation, lease, or transfer of business.
2. **Rule 41 of the CGST Rules, 2017** – operationalises Section 18(3), prescribing transfer through **Form ITC-02**.
3. **Section 25(4), CGST Act, 2017** – treats distinct registrations in different States as **separate taxable persons**.

➤ **Submissions made before the Hon'ble HC**

Petitioner's Arguments	Respondent's Arguments
<p>1. Section 18 is a special provision which <u>allows a registered person to avail input tax credit in special circumstances</u>. [Para 7]</p> <p>2. Section 18(3) of the CGST Act, 2017, permits transfer of unutilized ITC in cases of change in constitution due to amalgamation, without restriction on state boundaries. [Para 8]</p> <p>3. Rule 41 of the CGST Rules, which governs the procedure for ITC transfer, also does not prescribe restrictions for different states. [Para 8]</p> <p>4. The NCLT-approved scheme of amalgamation explicitly provides for transfer of liabilities; therefore, they are entitled to transfer the tax credits. [Para 7]</p> <p>5. The submissions referring to Article 269A, 289 of the Constitution of India, section 140 of the CGST Act 2017, an Advance Ruling given by the Authority of Andhra Pradesh¹ were made. [Para 13]</p> <p>6. The decision of MMD Heavy Machinery (India) Pvt. Ltd. was distinguished stating that the facts and circumstances are not identical and moreover, the said</p>	<p>1. Input Tax Credit under GST law is a benefit available to every registered person. [Para 9]</p> <p>2. Section 25 of the CGST Act mandates state-specific registration (one registration per State/UT). [Para 9]</p> <p>3. Entities with registrations in different states are treated as 'distinct persons' under Section 25(4). [Para 9]</p> <p>4. Section 18(3) should be read in consonance with the said scheme. Hence the term registered person should be interpreted as the person registered within the State. [Para 10]</p> <p>5. Reliance made on the decision of Madras HC in the case of MMD Heavy Machinery (India) Private Limited vs Assistant Commissioner, Chennai & Others (2021) 53 GSTL 3. [Para 11]</p> <p>6. Commissioner of GGST, Panaji submitted that they have no authority to make any modifications to GST portal. GST portal is aligned as per the Circular No. 133/03/2020- which mandates that Form GST ITC-02 can only be filed if both</p>

¹ Shilpa Medicare Limited – AAR No. 05/AP/GST/2020 dated 24.02.2020

<p>matter dealt with CENVAT credit and not input tax credit. [Para 14]</p> <p>7. The Petitioner complied with all procedural requirements, including submission of a Chartered Accountant's certificate certifying the amalgamation and transfer of liabilities. [Para 32]</p>	<p>entities are registered in the same state. [Para 33]</p> <p>7. Moreover, conjoint reading of section 22 and section 18 with rule 41, the transferee should take a registration in the State of transferor and thereafter transfer the credit via ITC-02. [Para 34]</p> <p>8. Interstate transfer would result in revenue loss to the originating state (e.g., SGST of Goa being used in Maharashtra). [Para 12]</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

➤ **Court's Judicial Analysis: "Law Over Code"**

1. Literal Construction of Section 18(3)

The Court stressed that **Section 18(3) allows ITC transfer in cases of amalgamation** without any explicit territorial restriction. The legal principle of statutory interpretation was applied: Courts cannot add or amend provisions by construction where none exist.

2. Scope of Section 25(4)

While Section 25(4) treats GST registrations as distinct persons, the Court clarified that this principle applies to **levy and compliance**, not to corporate reorganisations pursuant to statutory mergers approved by NCLT. Applying it to block ITC flow would unduly curtail merger transactions and frustrate legislative intent.

3. No Revenue Risk

- CGST and IGST are central levies—transfer of credits causes no loss of revenue.
- The transferee waived the SGST claim to avoid State disputes. Thus, the objection was more **administrative** than fiscal.

4. Doctrine of Technological Neutrality

Perhaps the most critical reasoning: **Portal architecture cannot override statutory rights**. The Court directed manual facilitation until the GSTN system adapts. This reinforces the principle that **substantive law prevails over procedural**

➤ **Comparative Judicial Reasoning**

The Revenue cited **MMD Heavy Machinery (Madras HC, 2021)** which held cross-State ITC transfer impermissible. The Court distinguished it:

- Facts are specific and the petitioner in this case had shut down the factory prior to implementation of GST. Hence not a going concern.
- The accumulated CENVAT Credit was unutilised since petitioner was engaged in exporting final products. The request was made to transfer unutilised CENVAT credit to new factory in another state under Rule 10 of CCR 2004
- Section 18(3) of the CGST Act, 2017 read with Rule 41 of CGST Rules does not cover case where there is no change in constitution but a shift from one state to another.

Transfer between inter-State branches are not tax free under GST regime. (Liability to be paid off so transfer of ITC is not allowed).

- The petitioner had failed to declare export clearances in ER-1 returns for the period January 2015 to June 2016, had neither paid excise duty on exported goods nor executed bonds under the Central Excise Rules 2002, and had also not availed the statutory mechanisms of rebate under Rule 18 or refund under Rule 5 of the Cenvat Credit Rules, despite having sufficient transitional credit to partly discharge the export duty liability, and therefore was not entitled to claim any corresponding benefit under the CGST regime.

Thus, the precedential weight of *MMD Machinery* was limited in the GST context.

➤ **Our Analysis**

This decision is highly relevant for the GST litigations where taxpayers face blockages in the seamless flow of ITC, particularly involving technical constraints on the GST portal or complications arising from place of supply rules.

The principles enunciated in *Umicore* are not confined to amalgamations but extend to any scenario where legitimate use or transfer of ITC is denied due to administrative or system-level constraints. Its direction that authorities allow manual credit transfer until the backend is upgraded sets a clear precedent: procedural or system errors must not defeat substantive rights conferred by law.

The underlying rationale from *Umicore* provides robust support for taxpayers challenging denial of ITC arising from place of supply errors or state-based coding distinctions that have no statutory backing.

For example, in cases where a person registered in Kerala receives a supply in Karnataka and is invoiced CGST plus Karnataka SGST, the inability to utilize the CGST credit due to a portal constraint is fundamentally at odds with the GST's intent of avoiding tax cascading. The manner of reporting such credit has been addressed in Circular No. 170/02/2022-GST dated

06.07.2022, which clarifies that where the recipient of an intrastate supply is located in a State or Union Territory different from the place of supply, the credit may be disclosed in Table 4D(2) of GSTR-3B and shall not form part of ITC availed in Table 4A(5). However, denial of otherwise eligible input tax credit merely for administrative convenience or operational ease renders the circular vulnerable to challenge. In this regard, reliance is placed on the judgment of the Delhi High Court in **M/s Pitambara Books Pvt Ltd, 2020(2) TMI 169-HC-GST** wherein it was held that circulars may supplant but cannot supplement the law. While circulars may alleviate the rigours of statutory provisions by granting administrative relief, the Central Government has no authority to curtail benefits or impose conditions beyond those contemplated under the statute. Similar principles have been affirmed in **M/s Malabar Fuel Corporation v The Assistant Commissioner Central Tax and Central Excise and Others 2024 (1) TMI 1203 Kerala High Court**.

The Court's focus on revenue neutrality stating that as long as there is no loss to the exchequer, technical constraints should not block credit bolsters the argument that entitlement to CGST and IGST should be honoured, regardless of system limitations.

At this juncture, it is also relevant to look into the decision of Kerala HC in case of **Rejimon Padickapparambil Alex v. Union of India [2024 (12) TMI 399 - Kerala High Court]** which adds significant clarity to the treatment of technical errors in GST credit reporting. In this case, the Kerala High Court quashed the demand proceedings initiated under Section 73 of the GST Act, emphasizing that a mere mismatch wherein IGST credit was inadvertently reported as CGST/SGST in Form GSTR-3B does not constitute wrongful availment of input tax credit. The Court underscored the principle of revenue neutrality and procedural justice, confirming that credit legitimately accrued through IGST paid on inter-state supplies cannot be denied for technical lapses in form reporting, provided there is no actual loss of revenue to the exchequer.

The Umicore judgment is a progressive step towards enabling an integrated GST system that matches the economic realities of business and interstate commerce. Its guiding principle that procedure and technology must not eclipse statutory rights gives taxpayers a robust basis for challenging technical blockages to ITC in future disputes.

Going forward, it is imperative for the GST Council and GSTN to overhaul the backend to accommodate for such technical difficulties faced by assesses. Only then will GST truly live up to its promise of a unified, seamless tax ecosystem.

➤ **Conclusion**

The judgment also raises a practical question for taxpayers who are closing their business due to amalgamation. Should they seek a refund of unutilised

credit in light of the decision of the Sikkim High Court in **Sicpa India Private Limited and Another v. Union of India and Others WP(C) No. 54 of 2023**, or should they rely on the Umicore ruling of the Bombay High Court to transfer their balance of central and integrated tax credit?

Even though the Division Bench of the Sikkim High Court has reversed the decision of the Single Judge in the Sicpa case, it can be distinguished based on facts.

Notwithstanding these divergent judicial views and factual distinctions, one principle remains constant. The GST framework is a creature of statute, and technological architecture such as the common portal is intended only to operationalise legislative intent. Procedural or system-driven limitations cannot determine the availability of substantive rights under the law. Ultimately, technology must remain subservient to the statute it seeks to implement and cannot be permitted to dictate outcomes contrary to the scheme of the law.

For Feedback or input, kindly mail to shyama@hnaindia.com / arjun@hnaindia.com

Caveat: The present article was originally published on **TaxTmi**. The same is reproduced here for informational purposes