Emerson Process Management (India) Pvt. Ltd. vs Union of India & Ors.

Whether unutilized ITC of a transferor company can be transferred to a transferee company located in a different State, pursuant to an NCLT-approved scheme of amalgamation, through Form GST ITC-02 under Section 18(3) of the CGST Act read with Rule 41 of t

Date of Order: March 5, 2026
Case Law No: GIB-GUJHC-2026-32
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CASE DESCRIPTION / SUMMARY

BACKGROUND

Emerson Process Management (India) Pvt. Ltd., registered under GST in multiple states including Gujarat and Maharashtra, amalgamated M/s Pentair Valves and Controls India Pvt. Ltd. into itself pursuant to an NCLT-approved scheme of amalgamation dated 14.11.2019. As part of the merger, all assets and liabilities of the transferor company — including its unutilized ITC balance — were transferred to the petitioner. The unutilized ITC pertained primarily to CGST, having been transitioned from the Central Excise regime through Form GST TRAN-1. When the petitioner attempted to transfer this ITC through Form GST ITC-02 on the online GST portal, the portal displayed an error message: "*Transferee and Transferor should be of the same State - U.T.*" Despite multiple reminders dated 08.08.2022 and 26.03.2024, and several personal visits to the jurisdictional officer, no resolution was provided. The petitioner approached the Gujarat High Court under Article 226 of the Constitution challenging the portal restriction as illegal and contrary to the provisions of Section 18(3) of the CGST Act read with Rule 41 of the CGST Rules.

COURT OBSERVATIONS (Verbatim)

On the illegal endorsement on statutory form:

"*We find that such incorporation has been made in the statutory form itself without referring to any provisions under which the same is passed. In our considered opinion, the reasons assigned in the statutory form should be separate, clearly demarcating the opinion of the department and shall not be embossed on the statutory form which has been done in the present case.*"

"*The statutory ITC form which is issued under Rule 41 of the CGST Rules does not contain any such*

column of specifying or recording of the opinion of the concerned officer assigning his/her reason for not accepting the statutory form."

On absence of statutory prohibition:

"*We do not find any convincing reason to take a contrary view to that taken by the Bombay High Court. The transfer of the ITC on amalgamation of the company is permissible as per the provision of Section 18(3) of the CGST Act read with Rule 41 of the CGST Rules. Neither of the provision prohibits or debars transfer of the ITC on the ground that the transferee and the transferor company are located in different states.*"

"*We are of the opinion that the respondent department cannot incorporate something in a statutory form ITC-02 on GST Portal which is absent in the statutory provisions. The remark which is mentioned on the Form GST ITC-02 does not find place in the statute. Neither the statute permits nor debars the transfer of ITC after the scheme of amalgamation has been approved by the NCLT. Such an action of restricting the transfer of ITC on the on-line GST portal is de hors the intention of the provision of Section 18(3) of the CGST Act read with Rule 41 of the CGST Rules.*"

On manual processing (interim direction):

"*We clarify that till proper amendment or mechanism is provided in uploading the Form ITC-02, the respondent department shall accept such forms manually and process the same. We direct that the petitioner should be allowed to fill up the Form ITC-02 manually. The same shall be processed within a period of six weeks from the date of receipt of order of this Court.*"

FINAL VERDICT

Writ petition allowed. Rule made absolute. The GST portal restriction of "same State/UT" in Form ITC-02 held to be without any statutory basis and illegal. Department directed to accept Form ITC-02 manually and process transfer of CGST ITC within six weeks.

ADDITIONAL FOOTNOTES

CITATIONS REFERRED BY THE COURT

Case	Citation
Umicore Autocat India (P) Ltd. v. Union of India	[2025] 176 taxmann.com 616 (Bombay)

Note: The Bombay High Court judgment in Umicore Autocat India (P) Ltd. (supra) has been challenged before the Supreme Court by way of SLP (Civil) Diary No. 67126 of 2025, wherein the Supreme Court has issued notices. The Gujarat High Court has nonetheless followed the Bombay High Court's view on the

issue.

India, [2025]

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