Emerson Process Management (India) Pvt. Ltd. v. Union of India

FORM GST ITC-02 blocked by a departmental endorsement embossed on the statutory form itself, insisting that transferor and transferee be of the same State or Union Territory. At issue: the legality of that condition and the manner in which departmental re

Date of Order:	March 5, 2026
Case Law No:	GIB-GUJHC-202678
Source:	GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background.

The petitioner, engaged in the manufacture and sale of safety valves and components and registered in Gujarat, Maharashtra, Tamil Nadu, Karnataka and Andhra Pradesh, amalgamated M/s Pentair Valves and Controls India Pvt. Ltd. into itself under an NCLT order dated 14.11.2019, the entire business including all assets and liabilities being transferred to it. The transferor's unutilised credit pertained largely to CGST brought forward from the central excise regime through FORM GST TRAN-1. Attempts to file FORM GST ITC-02 were met with an endorsement made on the statutory form itself — that the transferee and transferor company should be of the same State or Union Territory — followed by reminders in 2022 and 2024 that produced no resolution.

Observations of the Court.

The Court found that the incorporation had been made in the statutory form itself without reference to any provision under which it was passed. Reasons assigned by the department must be separate and must clearly demarcate its opinion, and must not be embossed on the statutory form. The endorsement had been placed below the transferee's GSTIN and displayed on the portal, and in the absence of clear demarcation it was difficult to trace the opinion of the officer concerned. Form ITC-02, issued under Rule 41, contains no column for recording an officer's opinion or reasons for not accepting the form.

On merits the Court referred to the Bombay High Court's decision in Umicore Autocat India (P) Ltd. on an identical issue, delivered after a threadbare analysis of Sections 18(3), 22 and 25 read with Rule 41, and found no convincing reason to take a contrary view. It noted the department's submission that Umicore Autocat is under challenge before the Supreme Court in S.L.P. (C) Diary No. 67126 of 2025, in which notice has been issued, and it recorded that the balance of credit had in fact been manually transferred into the petitioner's books.

Final verdict.

The writ petition was allowed and rule made absolute. The Court clarified that until a proper amendment or mechanism is provided for uploading FORM GST ITC-02, the department shall accept such forms manually and process them, and directed that the petitioner be allowed to fill up the form manually, the same to be processed within six weeks from receipt of the order.