

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO.7006 of 2024****FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA****and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

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Approved for Reporting	Yes	No
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EMERSON PROCESS MANAGEMENT (INDIA) PVT LTD**Versus****UNION OF INDIA & ORS.**

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Appearance:**UCHIT N SHETH(7336) for the Petitioner(s) No. 1****NOTICE SERVED for the Respondent(s) No. 1****SHASHVATA U SHUKLA, SENIOR STANDING COUNSEL for the
Respondent(s) No. 2,3,4,5**

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CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA**and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 05/03/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1 **RULE** returnable forthwith. Learned Senior Standing Counsel Mr.Shashvata Shukla waives service of notice of rule on behalf of the respondents. Since short issue is involved, the matter is taken up for final disposal.

2 At the outset, learned advocate Mr.Uchit Sheth appearing for the petitioner has submitted that the issue is squarely covered by the decision of High Court of Bombay in the case of Umicore Autocat India (P) Ltd Vs. Union of India., [2025] 176 taxmann.com 616 (Bombay).

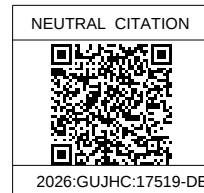
3 The relevant facts leading to filing of the present writ petition are as under:

3.1 The petitioner is a private limited company having place of business at Plot No.C1, Talegaon Industrial Area, Talegaon, MIDC Phase 2, Mindewadi, Taluka Mawal, District: Pune, Maharashtra, 410 506, and registered under the Central / Maharashtra Goods and Service Tax Act, 2017.

3.2 The petitioner-company is engaged in the business of manufacture and sale of safety valves and components, was registered under the GST Acts in the States of Gujarat, Maharashtra, Tamil Nadu, Karnataka and Andhra Pradesh.

3.3 The petitioner through a scheme of amalgamation which was approved by the National Company Law Tribunal (for short "the NCLT") vide order dated 14.11.2019 got amalgamated M/s. Pentair Valves and Controls India Pvt Ltd. As per such scheme, the entire business of the transferor company, including all assets and liabilities was transferred to the petitioner i.e. the transferee company. Pursuant to such merger, the unutilized Input Tax Credit (for short "the ITC") balance existing in the books of accounts of the transferor company was also transferred to the petitioner.

3.4 The unutilized ITC is shown in the credit in the books of the transferor company was primarily pertaining to the Central Goods and Service Tax Act, 2017 (for short "the CGST Act") since such tax credit had been brought from the earlier Central excise regime by the transferor company by filing



Form GST TRAN 1. The petitioner attempted to transfer ITC, but was not allowed due to error message shown on the portal. Thereafter, a reminder letter was given on 08.08.2022, to which the jurisdictional officer orally conveyed that it is trying to sort out the issue, but no positive resolution has been provided. In this regard, the representative of the petitioner met the concerned authority on number of occasions, after which, another reminder was sent on 26.03.2024.

3.5 Learned advocate Mr.Uchit Sheth appearing for the petitioner, while referring to the provisions of Section 18(3) of the Central Goods and Service Tax Act, 2017 (for short “the CGST Act”) read with Rule 41 of the Central Goods and Service Tax Rules, 2017 (for short “the CGST Rules”), has submitted that the transfer of the ITC is done through the filing of Form GST ITC-02 on the on-line portal of the GST which the petitioner did. However, a message is displayed on the portal as “Transferee and Transferor should be of the same State -U.T”.

4 Learned advocate Mr.Uchit Sheth appearing for the petitioner has submitted that the statute nowhere prohibits the transfer of the ITC after amalgamation of the companies through GST Form ITC-02 and the endorsement which has been made on the Form ITC-02 by the respondents (GSTIN Portal) is illegal as the respondents cannot incorporate something which is not provided in the statute.

4.1 Thus, it is submitted that since the statute does not prohibit the transferor and transferee company which are located in different states on amalgamation to transfer the ITC, more particularly in wake of the Scheme of Amalgamation approved by the NCLT, the action of the respondents in not permitting the transfer of ITC is illegal. It is submitted that on a similar issue, the Bombay High Court, in the case of ***Umicore Autocat India (P) Ltd (supra)***, has allowed such transfer of the ITC, wherein, the entities are located in different states.

4.2 Mr.Uchit Sheth, learned advocate, has also referred to Section 20 of the Integrated Goods and Service Tax Act, 2017 (for short “the IGST Act”) and submitted that Section 20 of the IGST Act expressly borrows provisions of the CGST Act relating to the ITC which would include provisions relating to the transfer of ITC.

5 Opposing the present writ petition, learned Senior Standing Counsel Mr.Shashvata Shukla appearing for the respondents, while placing reliance on the similar provisions, has attempted to distinguish the decision of the Bombay High Court in case of ***Umicore Autocat India (P) Ltd (supra)***. It is submitted that under the current GST provision, the ITC transfer in case of amalgamation or merger is restricted to within the same state and for the entities with registrations in different states, ITC cannot be transferred across state lines.

5.1 It is further submitted that such transfer would introduce audit challenges, increasing the risk of tax evasion

and fraud, thereby impacting the GST system's integrity. He has also referred to the Circular No. 133 03/2020-GST dated 23.03.2020 providing a clarification in respect of apportionment of ITC in cases of business reorganization. Thus, it is submitted that in absence of any provision of inter State ITC transfer, both the entities which are situated in different states cannot be allowed to transfer the ITC on amalgamation.

5.2 Finally, it is submitted by learned Senior Standing Counsel Mr. Shashvata Shukla appearing for the respondents that the judgement of the Bombay High Court in the case of Umicore Autocat India (P) Ltd (supra), is challenged before the Hon'ble Supreme Court by way of Special Leave Petition (Civil) Diary No. 67126 of 2025, wherein the Supreme Court has issued notices.

6 We have heard the learned advocates appearing for the respective parties at length.

6.1 The aforementioned fact about the amalgamation of the petitioner-company pursuant to the order of the NCLT dated 14.11.2019 is not in dispute. The unutilized ITC is shown in the credit in the books of the transferor-company was primarily pertaining to the Central Goods and Service Tax Act, 2017 (for short "the CGST Act"), since such tax credit had been brought from the earlier Central excise regime by the transferor company by filing Form GST TRAN 1. The petitioner attempted to transfer ITC, but was not allowed due to error message shown on the portal.



6.2 Accordingly, when the petitioner attempted to transfer the unutilized balance of ITC from the transferor company by filing Form GST ITC-02, on the GST portal, the same was denied by the respondents by marking an endorsement in the very same form ITC-02 to the extent that “*Transferee and Transferor company should be of the same State / U.T*”. Thus, in the statutory Form ITC-02, the respondent department has made an endorsement denying the transfer of ITC on the ground that both the companies / entities should be of the same State / Union Territory.

6.3 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 endorsement at page 32 reflects that the same has been made below the GSTIN number of the transferee and thus the same is displayed on the portal. In absence of clear demarcation, it becomes difficult to trace out the opinion of the concerned officer who has made the endorsement on the statutory Form ITC-02. 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.

6.4 At this stage, we may refer to the decision of the Bombay High Court in the case of Umicore Autocat India (P) Ltd (supra), delivered on an identical issue on the transfer of the ITC by two companies on they being amalgamated. After threadbare analysis of the statutory provisions of Section 18(3) and Section 22 of the CGST Act as well as the provisions of Sections 25 of the CGST Act along with Rule 41 of the CGST Rules, the Bombay High Court has held thus:

"43. We have before us a Company, which in the sake of the order of the Tribunal passed under the Companies Act has been amalgamated into the Petitioner-Company under the scheme of amalgamation and undertook all the liabilities of the Transferee Company and therefore, is entitled to take benefit of sub-section (3) of Section 18 of the CGST Act, 2017.

As far as the Union of India is concerned, according to us, it does not suffer any loss, even though, the ITC is permitted to be utilized in the State of Maharashtra for the reason that we know that there are two components of the GST, one is the CGST and IGST, which is to be levied by the Central Government whereas the other component is the SGST, which is levied and collected by the State. Since the imposition of GST is based on the transaction value of products and services, both components operate at the same time as they are destination based tax consumption. The imention of the law makers in bringing the legislation and providing ITC was with a specific object is to provide a continuous chain of set off from original producers point and the service providers point up to the retailers level and thus eliminate the burden of tax cascading. The credit CGST output liability, if it is to be availed seamlessly, it shall be allowed to be availed, irrespective of intra State or inter State supply.

In any case, 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 un-utilized ITC being utilised in the State of Maharashtra, the Central Government has nothing to lose.

44. 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 since the learned Counsel for the Petitioner has instructions to make a

categorical statement that as far as the un-utilized SGST in the sum of Rs 1,39,285/- is concerned, he will give up his claim for its transfer.

We are of the clear view that the transfer of the IGST to the tune of Rs. 3,69,586/- and CGST of Rs. 3,52,84,105/- in the electronic credit ledger, deserve to be transferred to the Petitioner.

45. Now the difficulty that is sought to be projected for not giving effect to sub-section (3) of Section 18 on the part of the Respondents-Authorities is that the GSTN portal does not allow such transfer.

This, according to us, can be no ground to deny the benefit to the Petitioner, if it is so entitled in the wake of the statutory scheme.

In the peculiar circumstances, we permit the IGST and CGST amount lying in the electronic credit ledger of the Transferor Company to be transferred to the Petitioner Company by physical mode for the time being, subject to the adjustments to be made in future. However we also request the GST Council i.e. Respondent No. 4 as well as the GST Network i.e. Respondent No 2 to provide for mechanism to deal with such contingencies, when the ITC is sought to be transferred from one State to another or from one State to any Union Territory by updating its network to deal with such a situation.

We expect the Respondents to do the needful, within a period of six weeks from today

Writ Petition made absolute in above terms."

6.5 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.

6.6 It is pertinent to note that the balance of ITC has been manually transferred into the books of the petitioner and hence the non-transfer through the portal of the unutilized input tax credit is contrary to the scheme approved by the NCLT. Since the petitioner has restricted his transfer of ITC to the CGST only, the transfer of ITC relating to the GST enactments are not touched upon by us also since before the Bombay High Court, the petitioner therein had given up the claim for unutilized ITC.

6.7 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.

7 With these observations, the writ petition is ***allowed***. Rule is made absolute to the above extent.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)