

GST Implications of Amalgamation

Registration, Cancellation and Treatment of Unutilized ITC

By Ashu Dalmia



The Alstom Transport India Limited

Gujarat High Court Ruling

On January 23, 2006, the Gujarat High Court delivered a significant ruling in the case of *Alstom Transport India Limited*. This case tackled a crucial question: Can post-amalgamation activities like transferring ITC via ITC-02 and filing a refund application happen simultaneously?

The court dived deep into the legal framework, exploring key aspects like:

- ✓ When should the transferor's registration be cancelled?
- ✓ When must the transferee obtain new registration?
- ✓ The role of Section 87 in such cases.

Referencing landmark Supreme Court judgments (*Safari Retreats* and *VKC Food Limited*), the court reaffirmed essential principles of tax law interpretation.



Foundational Legal Principles

VKC Footsteps Case

Established principles on refund as statutory creation and legislative authority to prescribe conditions

Safari Retreats Case

Reinforced strict interpretation of taxing statutes and procedural compliance requirements

The Gujarat High Court referenced these landmark Supreme Court judgments to reaffirm essential principles of tax law interpretation in the context of amalgamation.

Key Principles from VKC Footsteps

01

Refund is Statutory, Not Inherent

The right to claim refund of unutilized Input Tax Credit does not arise automatically but exists only to the extent and manner expressly provided under the statute. Refund is governed entirely by Section 54(3) of the CGST Act.

02

Legislative Authority to Restrict

While the statute may recognize an entitlement to refund, the legislature is competent to define, restrict, and regulate the circumstances under which such refund can be claimed, including procedural and substantive limitations.

03

Prescribed Mechanisms Must Be Followed

Where the statute provides a specific mechanism for dealing with unutilized ITC—such as transfer under Section 18(3) read with Rule 41 in cases of amalgamation—claims relating to such ITC must operate within that framework.

Key Principles from Safari Retreats



Strict Interpretation

Tax provisions read strictly by statute language

Procedural Compliance

Adherence to statutory steps is essential

No Equitable Override

Equity cannot alter statutory conditions

Strict Interpretation Required

Provisions relating to levy, credit, transfer, or refund of tax must be interpreted strictly on the basis of the language used in the statute, without importing equitable considerations, presumptions, or implied relaxations.

Compliance with statutory procedures—such as valid registration status and adherence to prescribed forms and timelines—is integral to any claim concerning ITC. Where the statute clearly prescribes conditions, such conditions must be satisfied strictly.

Understanding Amalgamation Dates



Transferee's Registration Obligation

The Court analysed Section 22(4) read with Section 25 of the CGST Act, 2017 and provided critical clarity on timing requirements.

When Does Liability Arise?

In cases of amalgamation sanctioned by the NCLT, the transferee company becomes liable to obtain GST registration only from the date on which the Registrar of Companies issues the certificate of incorporation giving effect to the amalgamation.

Application Timeline

The statutory obligation to apply for registration arises after the ROC certificate date, and the application is required to be filed within thirty days as prescribed under Section 25.



Transferor's Cancellation Obligation

Legal Framework

The Court analysed Section 29(1)(a) of the CGST Act, 2017 read with Rule 20 of the CGST Rules, 2017 to determine the transferor's obligations.

Upon amalgamation, the transferor company is required to apply for cancellation of its GST registration by filing FORM GST REG-16 within thirty days of the occurrence of the event warranting cancellation.

While Section 29 or Rule 20 do not explicitly explain what constitutes the event warranting cancellation, the Hon'ble High Court has interpreted it as the date of ROC certification.



Section 87(2) and Registration Cancellation



Effective Date

Section 87(2) provides that amalgamating companies shall be treated as distinct companies only up to the date of the order passed by the Court or Tribunal



Registration Cancellation

GST registration certificates of such companies shall be cancelled with effect from the date of the said order, notwithstanding anything in the amalgamation order

Section 18(3) and ITC Transfer

Statutory Mechanism for ITC

Section 18(3) of the CGST Act provides that where there is a change in the constitution of a registered person on account of amalgamation, the registered person shall be allowed to transfer the input tax credit which remains unutilized in the electronic credit ledger to the transferee business.

The transfer is required to be carried out in the manner prescribed in Rule 41 of the CGST Rules, 2017, and is contingent upon the scheme providing for transfer of liabilities.

No Partial Transfer or Refund of ITC

1

Specific Statutory Mechanism

Section 18(3) read with Rule 41 provides a specific statutory mechanism for dealing with unutilized ITC in cases of amalgamation, namely transfer through FORM GST ITC-02

2

No Encashment Option

The statute does not contemplate encashment or refund of unutilized ITC retained by the transferor once amalgamation has taken place

3

Strict Compliance Required

ITC lying in the electronic credit ledger is required to be dealt with strictly in the manner prescribed—no parallel course is permitted

4

Court's Finding

The transferor, having opted to invoke Section 18(3), could not adopt a parallel course by retaining part of the ITC and seeking refund under Section 54(3)

Thank You

Email

hello@gstindia.biz

WhatsApp

+91 981089343

LinkedIn

[linkedin.com/in/ashudalmia](https://www.linkedin.com/in/ashudalmia)

Disclaimer

This communication is intended for general informational purposes only and does not constitute legal, tax, financial, or other professional advice. No action should be taken based on the information contained herein without seeking independent professional advice appropriate to the specific facts and circumstances.

No representation or warranty (express or implied) is made as to the accuracy, completeness, or reliability of the information contained in this communication, and no liability is accepted for any loss or damage arising directly or indirectly from reliance on this communication.

© 2026 Ashu Dalmia