



JUDGEMENT

GST ITC as a Transferable Business Asset Can't Be Denied Due to State-Wise Registrations

Issued By:	Gujarat High Court
In Case Of:	M/s. Emerson Process Management (India) Pvt Ltd
Order Date:	5th Mar 2026
Order No:	R/SCA 7004 of 2024

FACTS & OBSERVATIONS

- Pursuant to an NCLT-approved amalgamation (14.11.2019), the **transferor entity merged into the applicant, with all assets, liabilities, and accumulated ITC—including transitional CGST credit** via TRAN-1—intended to vest in the applicant.
- The **applicant attempted transfer of ITC through Form GST ITC-02; however, the GST portal rejected the filing citing a “same State/UT” restriction** between transferor and transferee registrations.
- The **applicant challenged the denial before the High Court, contending that neither Section 18(3) of the CGST Act nor Rule 41 of the CGST Rules prescribes any such geographical limitation.**
- Reliance was placed on Umicore Autocat India Pvt. Ltd., while the **revenue argued GST is State-specific, cited administrative circulars**, and highlighted pendency of challenge before the Supreme Court.

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- The High Court held that **Section 18(3) read with Rule 41 permits transfer of ITC upon amalgamation without imposing any “same State” condition**; the portal restriction lacks statutory backing.
- It was observed that **procedural tools (such as Form ITC-02) cannot introduce substantive conditions absent in the parent legislation**, nor can system limitations override vested statutory rights.
- The Court endorsed the reasoning in Umicore Autocat India Pvt. Ltd., reiterating that **seamless flow of ITC is a foundational objective of GST, and inter-State distinctions do not justify denial of eligible credit**.
- The **department was directed to allow manual filing and processing of Form ITC-02 to give effect to the ITC transfer** until appropriate system functionality is implemented.

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