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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 463 of 2024

Umicore Autocat India Private Limited, (after amalgamation of M/s Umicore Anandeya India Private Limited), Through its Director Mr. Kedar Satish Rele, Aged: 44 years, having registered office at 429, 4th floor, Kanakia Zillion, LBS Marg, Kurla (West), Mumbai, Maharashtra – 400 070.

... PETITIONER

Versus

1. Union of India, Through its Secretary to Government, Ministry of Finance, North Block, Cabinet Secretariat, Raisina Hill, New Delhi – 110 001.

2. Goods and Services Tax Network, 4th floor, Worldmark 1, East Wing, Asset 11, Hospitality District Aerocity, New Delhi – 110 037.

3. Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, North Block, New Delhi – 110 001.

4. The Goods and Services Tax Council (GST Council), The Ld. Secretary, Officer of the GST Council Secretariat, 5th floor, Tower II, Jeevan Bharati Building, Janpath Road, Connaught Place, New Delhi – 110 001.

5. The State Tax Officer, Office of Commercial Tax Officer, Panaji Ward, 1st floor, Serra Building, Near A.I.R., Altinho, Panaji, Goa – 403 001.

6. The Commissioner, CGST, Patto, Panaji, Goa.

... RESPONDENTS

Mr. Avinash Poddar with Mr. Vibhav Amonkar, Advocates for the Petitioner.

Ms. Asha Desai, Senior Standing Counsel 1 to 4 and 6.

Mr. Devidas J. Pangam, Advocate General with Mr. Shubham Priolkar, Additional Government Advocate for Respondent No. 5.

CORAM: **BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

RESERVED ON: **17th JUNE 2025**

PRONOUNCED ON: **10th JULY 2025**

JUDGMENT: (per BHARATI DANGRE, J.)

1. The Petition filed by the Umicore Autocat India Private Limited has raised a challenge to the action of the Respondents in restricting the transfer of the un-utilized Input Tax Credit [ITC] on account of merger/amalgamation, under Section 18(3) of the Central Goods and Services Tax Act, 2017 [hereinafter referred to as the CGST Act, 2017 for short] on the ground that the transfer is prohibited where it involve two distinct States.

The Petitioner, therefore, seeks a direction to the Goods and Services Tax Network [Respondent No. 2] to allow the transfer of credit between the Transferor and the Petitioner Company that neither Section 18(3) of the CGST Act 2017 nor Rule 41 of the Central Goods and Services Tax Rules, 2017 [hereinafter referred to as the CGST Rules of 2017, for short], impose any such restriction.

2. We have heard Counsel Mr. Avinash Poddar for the Petitioner. The learned Advocate General Mr Pangam, along with Mr. Priolkar, would represent the State Tax Officer [Respondent No. 5] whereas Respondent Nos. 1 to 4 and 6 are represented by Advocate Ms. Asha Desai.

Since the Petition is taken up for hearing at the stage of admission, we deem it appropriate to issue 'Rule', which is made returnable forthwith.

3. The Petitioner, a Private Limited Company situated and registered in the State of Maharashtra was formed in the wake of the scheme of amalgamation approved by the National Company Law Tribunal, Special Bench, Mumbai, [NCLT], by an order dated 26.05.2020, thereby according its sanction under Sections 230 to 232 of the Companies Act, 2013 to the scheme of amalgamation of Umicore Anandeya India Private Limited (Transferor Company) with Umicore Autocat India Private Limited (Transferee Company).

The Transferor, a manufacturing Company of zinc oxide has its manufacturing plant located at Sancole Industrial Estate, Goa whereas the Transferee Company is engaged in manufacturing automotive catalyst and has its manufacturing plant located in Shirwal, State of Maharashtra.

Both the Companies being part of Umicore Group engaged in material technology and recycling industry had a global presence and the scheme of amalgamation was approved in the backdrop of the fact that the manufacturing business and operations of the Umicore Group in India being carried out through the Transferee Company [Umicore Autocat India Private Limited], the Transferor Company [Umicore Anandeya India Private Limited], had ceased its operations and was non-operational for three years.

The NCLT on appreciating the scheme, which in its opinion was fair and reasonable and not violating any provision or affecting the public interest, sanctioned the scheme of amalgamation, by declaring the appointed rate of scheme as on 01.04.2019 and the Transferor Company was dissolved without winding up.

4. The Transferor Company, Umicore Anandeya India Private Limited with its principal place of business at Sancole at Zuari Nagar, South Goa, was registered and was issued a registration certificate under Rule 10(1) of the CGST Rules of 2017 as a 'Private Limited Company' from 01.07.2017. On the other hand, the Transferee Company, Umicore Autocat India Private Limited (The Petitioners) also received registration as a 'Private Limited Company' under the provisions of the Maharashtra Goods and Services Tax Act, 2017.

5. According to the Petitioner, the Transferor Company had the following credit in its credit ledger when it was amalgamated with the Transferee Company and the credit was reflected in its electronic credit ledger to the following effect:

Particulars	IGST (Rs.)	CGST (Rs.)	SGST (Rs.)
Electronic Credit Ledger	3,69,586	3,52,84,105	1,39,285

6. The Transferor Company made an attempt to file the prescribed form, GST ITC-02 on the GSTN portal to transfer the entire ITC from the Transferor Company to the Petitioner. However, the same was rejected with an error message “Transferee and Transferor should be of the same State/UT”.

Pursuant thereto, the Transferor Company raised a query on the GSTN portal for the above error and received a reply that the system is showing an error due to business logic.

The Transferor Company made a representation to the State Tax Officer on 17.08.2020 and received a reply on 06.10.2020 stating that they do not have the option or feature in their system to resolve the technical issues faced by it on the GSTN portal.

The Petitioner, therefore, filed Writ Petition (L) No. 4263 of 2022, which was withdrawn on 17.10.2022 with the liberty to file the same before the Goa Bench.

The aforesaid events resulted in the filing of the present Petition by the Petitioner.

7. Mr. Poddar, the learned Counsel for the Petitioner has invited our attention to the provisions enumerated in Chapter V of the CGST Act, 2017, pertaining to the ITC and specifically, Section 18 providing for availability of credit in special circumstances. He would rely upon sub-section (3) of Section 18, which clearly provide that where there is a change in the constitution of the registered person on account of sale, merger, demerger, amalgamation lease or transfer of the business with the specific provisions for transfer of liabilities, in such circumstances, the said registered person shall be allowed to transfer the ITC which is un-utilized in his electronic credit ledger to the sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

8. By inviting our attention to the CGST Rules of 2017 and in particular, Rule 41, which has set out the procedure for transfer of credit on sale, merger, amalgamation, lease or transfer of business, he would submit that the section imposes no restriction on the ITC, which is permitted to be transferred as projected by the Petitioner to a new entity, which has come into existence on amalgamation just because it is located in different State.

9. The learned Advocate General has strongly opposed the reliefs claimed in the Petition and according to him, Section 16 of the CGST Act, 2017 has determined the eligibility and conditions for awaiting the ITC and according to him, this benefit is available to every registered person, who is entitled to take credit of input tax filed, charged on supply of goods or services or both, which are used or intended to be used in the course of furtherance of his business and such amount shall be credited to the electronic credit ledger of such a person.

He would invite our attention to the definition of the term 'Registered Person' under Section 2(94) to mean a person who is registered under Section 25, but does not include a person having a Unique Identity Number.

Section 25, according to the learned Advocate General is a procedure for registration and according to him, every person who is liable to be registered under Section 22 or Section 24 in case of compulsory registration, in every such State or Union Territory, he may make an Application and sub-section (2) of Section 25 of the CGST Act which clearly provide that a person seeking registration shall be granted a single registration in a State or Union Territory.

A proviso to the provision add that a person having multiple places of business in Union Territory, may be granted a separate

registration for each such place of business subject to conditions as may be prescribed.

According to him, sub-section 4 of Section 25 of the CGST Act clearly provides that a person who has obtained or is required to obtain more than one registration whether in one State or Union Territory or more than one State or Union Territory, in respect of each such registration be treated as distinct person for the purpose of this Act and when registration has been obtained in respect of an establishment, it shall be treated as a different establishment.

10. According to Mr Pangam the learned Advocate General, sub-section (3) of Section 18 of the CGST Act, therefore, has to be read in consonance with the scheme of the enactment, to the effect that every registered person qua the establishment for which he is registered is completely a different entity. He has specifically urged before us that the provision imposes a restriction on the transfer of the ITC on account of sale, merger, demerger, amalgamation etc. from the Transferor entity to the Transferee entity situated in another State and this interpretation is ascribed by him in the wake of concept of 'Registered Person' meaning every individual entity is distinct from the other.

11. By way of an illustration, he would submit that if a particular Company has two units in the State of Maharashtra, one

in Pune and another in Solapur, in that case, on account of sale, merger, demerger, amalgamation etc., when the entity is desirous of transferring the ITC from one unit to the other, the transfer is allowed, but not when one unit is situated in State 'A' and another unit is situated in State 'B'. Similarly, the learned Advocate General would read Rule 41 and submit that a 'Registered Person', shall be understood as a person, who is registered and granted a single registration in one State or a Union Territory and when he is permitted to transfer ITC on account of any of the contingencies stipulated i.e. sale, merger, demerger, amalgamation etc. then the Transferee entity must have presence in that State only.

In short, according to him, if the ITC has been earned in a particular State then it must be utilized only in that State and its benefit cannot be extended in a State where it did not originate.

The learned Advocate General has placed reliance upon the decision of the Madras High Court in the case of **MMD Heavy Machinery (India) Pvt. Ltd. Vs. Assistant Commissioner, Chennai & Others¹** and according to him, the said decision provide an answer to the question before the Court as it is held that the ITC cannot be availed in a different State.

12. Ms. Asha Desai, the learned Counsel for the Revenue has opposed the relief in the Petition as she would submit that the

¹ (2021) 53 GSTL 3

State of Goa shall not be made to lose the revenue and in any case there is no mechanism for transfer of the Input Tax Credit, the Revenue is justified in not permitting it to be transferred from the Transferor Company in Goa to the Transferee Company which is situated in different State, i.e., Maharashtra.

13. The learned Counsel for the Petitioner in rejoinder has invited our attention to the provisions in the Constitution in the form of Articles 269-A and 289. He has taken us through the scheme of amalgamation, which is annexed by him at Exhibit-A to submit that the Petitioner being the Transferee Company has also been fastened with the liability and therefore, he is entitled for the benefit of ITC, which was credited to the account of the Transferor Company as the Petitioner shall also be discharging the liability. He has also invited our attention to Section 140 of the CGST Act 2017, pertaining to the transitional arrangement for the transfer of the ITC.

He has also placed reliance upon the Advance Tax Ruling before the Authority of Advance Ruling, Andhra Pradesh GST under sub-section 4 of Section 98 of the CGST Act and sub-section 4 of Section 98 of the Andhra Pradesh Goods and Service Tax Act, 2017, the Ruling as regards whether the return and transfer of unutilized ITC, from Vizianagaram, Andhra Pradesh unit to Bengaluru, Karnataka Unit would be covered by the GST and ITC-02, the Ruling is in the affirmative.

14. He would distinguish the decision of the Madras High Court in the case of **MMD Heavy Machinery** (supra) by submitting that it was not a case of ITC and moreover, the facts of the case reveal that the Petitioner had shut down its factory at Ambattur, Chennai in Tamil Nadu and shifted to Sri City, Andhra Pradesh much prior to implementation of the GST and the Petitioner had accumulated ITC under the Cenvat Credit Rules, 2004 which had remained un-utilized, owing to the fact that the Petitioner was engaged and it had requested the jurisdictional Assistant Commissioner of Central Excise to permit its transfer to its new factory in Sri City, Andhra Pradesh in terms of Section 10 of the Cenvat Credit Rules, 2004, which was declined.

According to him what was sought to be transferred was the ITC from the shut factory and its accumulation as a tax credit, which according to him is clearly a distinguishing factor of that case.

15. On hearing the respective Counsel, we have perused the scheme under the Central Goods and Services Tax Act, 2017 as well as the Integrated Goods and Services Tax Act, 2017 [hereinafter referred to as the IGST Act, 2017, for short] as well as the Goa Goods and Services Tax Act, 2017 [hereinafter referred to as the Goa GST Act, 2017, for short].

16. The aforesaid enactments are the outcome of the introduction of special provision with respect to Goods and Services Tax (GST) in Part XI of the Constitution, inserted by the Constitution (101st Amendment), which empower the legislature of the State to make law with respect to Goods and Services Tax imposed by the Union or by such State, all the while recognising that the Parliament has exclusive powers to make laws with respect to the GST, where the supply of goods or services, or both, take place in the course of inter State trade or commerce.

Article 269-A was also inserted by the same amending the Act of 2016 relating to levy and collection of goods and services tax in the inter State trade or commerce, providing that such tax shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by the Parliament by law on the recommendations of the Goods and Services Tax Council.

17. In the wake of the introduction of the aforesaid provisions in the Constitution, the CGST Act, 2017 is enacted by the Parliament to make a provision for levy and collection of tax on inter State supply of goods or services, or both, by the Central Government and for the matters connected therein, whereas the IGST Act, 2017 is an enactment for levy and collection of tax on inter State supply of goods or services, or both, by the Central Government.

Noticing that the existing tax system on goods and services

created several practical difficulties as it amounted to cascading of taxes, as taxes levied by the Central Government was not available, as set off against the taxes being levied by the State Governments and since certain taxes levied by the State Governments were not allowed as a set off for payment of other taxes being levied by them, in addition to the fact that the variety of value added tax in the Country with huge disparity in the tax rates and dissimilar tax practises divided the Country into separate economic spheres and this ultimately, called for high compliance cost for the tax payers. It was therefore deemed appropriate that different taxes, in form of service tax, central service tax, levied by the Central Government as well as the levied by the State Government in form of value added tax, entry tax, luxury tax, purchase tax etc. to be subsumed in a single tax to be referred as “Goods and Services Tax”, which shall be levied on goods or services, or both, at each stage of supply chain starting from manufacture or import and till the last retail level. It was therefore with the introduction of the new regime any tax presently levied by the Central Government or State Government on supply or goods or services was converged into GST, which proposed to be a dual levy, where the Central Government will levy and collect the tax in the form of CGST and the State Governments would levy tax and collect tax in the form of State GST on intra State supply of goods or services, or both.

18. The two legislations proposed by the Parliament were intended to simplify and harmonise the indirect tax regime in the Country and it was also expected to reduce the costs of production and inflation, in the economy, thereby making Indian trade and industry more competitive, both domestically as well as internationally.

The new regime focused upon the seamless transfer of ITC from one stage to another in the chain of value addition, through an inbuilt mechanism in the design of GST that would incentivise tax compliance by the tax payers. It was expected that the proposed GST would broaden the tax base and result in better tax compliance due to robust information technology in the infrastructure.

19. The CGST Act, 2017, therefore provided for the levy of tax on all intra State goods or services, or both, or except supply of alcoholic liquor for human consumption at a rate to be notified, on recommendation of the GST Council. One of its salient features was also to broad base the ITC by making it available in respect to taxes paid on any supply of goods or services, or both, used or intended to be used in the course or furtherance of the business.

Similarly, the IGST Bill of 2017 *inter alia* provide for levy of tax on all inter State supply of goods or services, or both, except supply of alcoholic liquor for human consumption and to provide for levy of tax on goods imported into India in accordance with the

Customs Tariff Act 1975 read with the provisions of the Customs Act, 1962 and to provide for levy of tax on import of services on reverse charge basis.

20. The new regime, therefore, intended to dispose the existing complex design, which was prevalent with multiple tax rates imposed under the indirect tax structure in the Country making the taxation system difficult and complex. Instead, Goods and Services Tax (GST) was introduced as a tax applicable on “Taxable Supply”, unlike the old regime tax on manufacturing, sales and services, which introduced two components; namely, the Central GST to be levied and collected by Central and the State GST, to be levied and collected by the State, in wake of the federal structure of the Country, which was to be applied simultaneously on the taxable supply, on goods and service at each stage with the benefits of set off of the earlier tax paid. The new regime, thus permitted the credit of the CGST for output liability of CGST in a seamless manner, irrespective of intra State or inter State supply though it imposed a restriction on set off of cross functional credit i.e. use of must CGST credit for SGST and vice-versa.

GST was thus identified as a destination based tax and it permitted the respective State where the goods or services are finally consumed to levy SGST.

21. Upon coming into force of the regime of GST wherein in both taxes i.e. the CGST and SGST were to be levied on the base value of goods and services, it avoided any cascading effect. The introduction of IGST in the case of inter State supply, credit was allowed to flow freely from one State to another as under the GST regime, both, the CGST as well as the SGST would be used simultaneously on the base price, which would remove the tax cascading from the tax structure.

The CGST Act, 2017, permitted levy of tax called as CGST on all intra State supply of goods and services, or both, except those goods specifically set out in sub-section (1) of Section 9 on the value determined under Section 15 and at such rates, as may be notified by the Government on the recommendations of the Council and collect the same in the manner prescribed to be paid by the taxable person. The composition of levy is specifically enumerated in Section 10 thereof and the CGST Act, 2017 has included a specific chapter i.e. Chapter V for Input Tax Credit.

22. The Act, 2017 has specifically defined 'Input Tax' under Section 2(62) in relation to a registered person, to mean the Central tax, State tax, integrated tax or Union Territory tax charged on any supply of goods or services, or both, made to him, which would include the IGST charge on import of goods as well as the tax payable under the CGST Act, 2017 and the IGST Act,

2017 as well as the tax payable under the respective State Goods and Services Tax Act. The term 'Input Tax Credit' is defined to mean the credit of input tax.

The word 'Input' is defined in Section 2(59) to mean any goods other than capital goods used or intended to be used by a supplier in the course of furtherance of the business.

23. Section 16 in Chapter V of the Goa GST Act, 2017 prescribes the eligibility and conditions for availing input tax credit and sub-section (1) thereof reads thus:

“(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.”

24. The specific stipulations for availing ITC include a condition that the person should be a registered dealer and he can apply the credit in respect of the taxable goods and exported goods, but he must maintain the invoices/credit notes. The ITC is not permitted to be availed on personal goods/services, but only the goods and services which are used for business purposes and one more stipulation necessarily is that, the GST already paid by the supplier

and the bills and invoices or debit note are adduced as proof thereof.

Section 18 in Chapter V is a provision for availability of credit in special circumstances and this provision permit credit of input tax in respect of inputs held in stock and contained in semi-finished or finished goods held in stock, when a person has applied for registration within 30 days from the date when he becomes liable for registration and has been granted such registration. A registered person, however, is not entitled to avail the benefit of ITC in respect of goods or services, or both, after expiry of one year from the date of issue of the tax invoice relating to such supply. Sub-section (3) of Section 18, is the provision with which we are concerned, which allows the transfer of un-utilized ITC and it reads thus:

“(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.”

25. The tax credit is the tax incentive which allows the tax payer to subtract the amount of credit which he has accrued from the total which he owes to the State and it may be a credit granted in

recognition of tax already paid or in the form of a “Discount” applied in certain cases. The tax credit in other words can be described as a “Rebate”.

The Input Tax Credit (ITC) refer to the tax paid on the purchases of business, which can be claimed as deduction at the time of paying tax on the output tax and when a person buy a product/good/service from a registered person and he has paid taxes on purchase and thereafter on the goods being manufactured which are sold, the taxes are collected and in such a case, it is permissible for him to adjust the taxes paid at the time of purchase with the amount of output tax and the balance liability of tax will be paid to the Government.

26. The Input Tax Credit can be claimed by a person registered under the GST, if they fulfill the following conditions:

- (i) The said goods/services have been received.
- (ii) The dealer should be in possession of the tax invoice.
- (iii) Tax charge has been paid to the Government by the supplier.
- (iv) The recipient must have paid towards the invoice or debit note within 180 days from the invoice date.
- (v) The ITC can be claimed only for the taxable supply of goods or services and the purchases made must be in the furtherance of such business. However, the ITC is not available for goods or services, exclusively used for personal use or exempt supplies.

27. The time limit to claim ITC is also clearly specified under the CGST Act of 2017 as it is prescribe that ITC can be availed by GSTR-3B on or before the time line defined by the GST Laws and

the time limit to claim ITC on the invoice or debit note issued in the financial year is earlier of the two dates i.e. 30th November of the year, following such financial year or the date of filing annual returns for that financial year.

ITC can be claimed after a thorough reconciliation of the entries in the invoice management system and the GSTR-2B is done with the purchase register. The manner in which the credit shall be transferred on sale, merger, amalgamation, lease or transfer of business, is clearly set out in Rule 41, which reads thus:

“41. Transfer of credit on sale, merger, amalgamation, lease or transfer of a business - (1) A registered person shall, in the event of sale, merger, demerger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, demerger, amalgamation, lease or transfer of business, in Form GST ITC-02, electronically on the common portal along with a request for transfer of un-utilized input tax credit lying in his electronic credit ledger to the transferee:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

[Explanation:– For the purpose of this sub-rule, it is hereby clarified that the “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon].

(2) The transferor shall also submit a copy of a certificate issued by a practising chartered accountant

or cost accountant certifying that the sale, merger, demerger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) The transferee shall, on the common portal, accept the details so furnished by the transfer or and, upon such acceptance, the un-utilized credit specified in Form GST ITC-02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

28. Chapter V read with Rule 41 is therefore, a whole scheme determining the eligibility and the conditions for availing the ITC. In this scheme, which permit the ITC to be availed by a registered person, we must turn our attention to the term “Registered Person” to mean a person who is registered under Section 25, but not to include a person having a Unique Identification Number.

Section 25 set out the procedure for registration and Section 22 set out as to who shall be liable for registration under the CGST Act, 2017 in the State or the Union Territory.

Every supplier, according to Section 22, shall be liable to be registered from where he makes taxable supply of goods or services or both, if his aggregate turnover in the financial year exceeds Twenty Lakhs Rupees.

Sub-section (4) of Section 22 is relevant as it reads, notwithstanding anything contained in sub-sections (1) and sub-section (3) and is applicable in case of a transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more Companies pursuant to an order of a High Court, Tribunal or otherwise, and in such a case, the Transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issue a certificate of incorporation giving effect to such order of the High Court or Tribunal.

The aforesaid provision is therefore indicative of the fact that the legislature was conscious of the situation when a new entity comes into existence, pursuant to a scheme or an arrangement for amalgamation/merger/demerger and the new entity necessarily must be registered with the Registrar of Companies from the date on which the scheme is given effect to.

29. The reading of sub-section (3) of Section 18, which permit transfer of the ITC, which has remain un-utilized, when there is change in the constitution of a registered person either on account of sale, merger, demerger, amalgamation, lease or transfer of the business and the credit lie un-utilized in his electronic credit ledger, to be transferred to the sold, merged, demerged, amalgamated, leased or transferred business, in such a manner as

may be prescribed. The manner in which the ITC is permitted to be transferred is set out in Rule 41 of the CGST Act, 2017.

30. Admittedly, the Petitioner is an entity which has come into existence after amalgamation of M/s Umicore Autocat India Private Limited (Transferee Company) and it seeks the transfer of the ITC from the Transferee Company which has been declined to it by displaying a message, “Transferee and Transferor should be of the same State/Union Territory”.

A careful reading of sub-section (3) of Section 18 along with Rule 41, however, does not impose any such restriction while it permit the transfer of un-utilized ITC in the electronic ledger to the new entity to which the business was sold, with which it was merged, amalgamated or transferred.

31. The procedure to be adopted for giving effect to such transfer is the one specified in Rule 41 which require him to furnish the details of sale, merger, demerger, amalgamation, lease or transfer of the business in form GST ITC-02 electronically, on the common portal along with the request for transfer of the un-utilized ITC lying in the electronic credit ledger to the Transferee. In addition, it is also necessary to produce a certificate issued by the practising Chartered Accountant certifying that there was a sale, merger, demerger, amalgamation, lease or transfer of

business with the specific provision of transfer of liability. Thereafter, the Transferee on the common portal shall accept the details furnished by the Transferor and upon such acceptance, the un-utilized credit shall be credited to his electronic credit ledger and shall be duly accounted for by the Transferee in his books of account.

32. It is not disputed before us that the Petitioner followed the said procedure, but could not receive the ITC from the Transferor as an error message flashed that the “Transferee and Transferor should be of the same State/Union Territory”. The Petitioner had filled in the necessary information in GST ITC-02, which was accompanied with the certificate of the Chartered Accountant, Suresh Hegde & Company, certifying that the Applicant, Umicore Anandeya India Private Limited is a registered person. The Chartered Accountant made the following declaration:

“Certificate under the State Goods and Services Tax Act, 2017 (in short “SGST Act”) and the Central Goods and Services Tax Act, 2017 (in short “CGST Act”) in terms of Section 18(3) of the said Acts.

1. M/s. Umicore Anandeya India Private Limited (hereinafter referred to as the ‘Applicant’ or ‘Transferor’) is a registered person vide GSTIN 30AAFCA3835M1ZS and is having its principal place of business at Ground Floor, Flat No GF, SY No. 208/1, C/o. Mr.Krishna A. Sahakari Building, Khadapaband, Ponda, Ponda, North Goa-403 401 in the State of Goa,

erstwhile it was having its registered office at Phase IIIA, Plot No 23 to 26, GOA IDC Industrial Area, Sancoale, Zuarinagar, South Goa, Goa-403 726. The principal place of business is in the State of Goa have been duly registered with effect from 01.07.2017.

2. In terms of Section 18(3) of the CGST and SGST Acts, where there is a change in the constitution of a registered person on account of Amalgamation of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains un-utilized in his electronic credit ledger to such Amalgamation business in the manner prescribed in the CGST/SGST Rules, 2017.

3. The Applicant has Amalgamated its business to M/s Umicore Autocat India Private Limited having GSTIN: 27AABCU 0407H1ZO (hereinafter referred to as 'Transferee') vide Amalgamation Order No CP (CAA) No. 316/MB-IV/2020 connected with CA (CAA) No. 3221/MB-IV/2019 Dated 26.05.2020 passed by The National Company Law Tribunal Special Bench, Mumbai.

4. We have examined the books of accounts and other relevant documents/records of the Applicant and on the basis of such examination & the information and explanation furnished to us, we hereby certify that the Applicant is entitled to transfer the input tax credit aggregating Rs. 3,57,35,305/- (Rupees Three Crore Fifty Seven Lakh Thirty Five Thousand Three Hundred and Five) (detailed below) to the Transferee.

<i>Nature of Credit</i>	<i>Amount of Matched ITC Available</i>	<i>Amount of Matched ITC to be Transferred</i>
<i>IGST</i>	<i>Rs. 3,69,586/-</i>	<i>Rs. 3,19,115/-</i>
<i>CGST</i>	<i>Rs. 3,52,84,105/-</i>	<i>Rs. 3,52,80,505/-</i>
<i>SGST</i>	<i>Rs. 1,39,285/-</i>	<i>Rs. 1,35,685/-</i>
	<i>Rs. 3,57,92,976/-</i>	<i>Rs. 3,57,35,305/-</i>

This certificate has been issued in terms of Section 18(3) of the CGST/SGST Acts, 2017 read with Rule 41(2) of the CGST/SGST Rules, 2017.

33. The Respondents through the Commissioner, CGST, Goa has filed an affidavit, raising a technical objection that the issue raised in the Petition is related to the GST portal and the Commissioner of the CGST, Panaji has no authority to make any modifications to the GST portal, which is managed by the Directorate General of Systems & Data Management under Central Board of Indirect Taxes and Customs. It is also stated that the GST system/portal is designed in alignment with the Circular No. 133/03/2020-GST, which mandate that the form GST ITC-02, can only be filed where both entities are registered in the same State, therefore, making it mandatory that both the Transferor and Transferee are registered in the same State to file form GST ITC-02 and therefore, the Companies involved in amalgamation or transfer of business may need to seek registration in the State where the Transferor Company is registered for the ITC transfer to be possible and the current system only facilitates intra State

transfers due to State specific nature of State GST credits and jurisdiction.

34. The learned Advocate General has urged before us that the principle of registration in Section 22 of the CGST Act, 2017 is that every entity should have registration in the State from where they make taxable supplies and in case of sale, merger, demerger, amalgamation, lease or transfer of business of an entity in one State to an entity in another State, it will amount to “Additional Place of Business” for the Transferee and therefore, as a consequence, it would result into cancellation or suspension of registration of previous entity i.e. the Transferor and the new entity shall take registration in the State of Transferor and file ITC-02 in line with the above mentioned provision.

35. Upon a thorough insight into the CGST Act, 2017 and the Rules, we do not find any such embargo imposed and what we have only observed is the provision in Section 25 which state a person seeking registration shall be granted single registration in a State or Union Territory, along with a proviso that the person having multiple places of business in the State may be granted separate registration for each place of business, subject to the condition as may be prescribed. Sub-section (4) prescribe that the person who has obtained or is required to obtain more than one registration, whether in one State or more than one State or Union

Territory in respect of each such registration, it shall be treated as a distinct person for the purposes of the Act.

Chapter VI of the CGST Act of 2017 prescribe the procedure for registration and sub-section (4) thereof has contemplated that upon a scheme of amalgamation/demerger of two or more Companies pursuant to an order of a High Court, Tribunal or otherwise, the Transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to the order of the High Court or Tribunal. However, while permitting the transfer of ITC under sub-section (3) of Section 18, no such stipulation has been specified.

Had the legislature had any intention to cast an embargo or impose a restriction with reference to sub-section (4) of Section 22 to the effect that, unless and until the Transferee is registered, ITC cannot be availed, it should have so specified, but sub-section (3) is merely suggestive of allowing the transfer of the un-utilized ITC in the electronic credit ledger of the Transferor to the Transferee, whenever there is change in the constitution of the registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with a specific provision of transfer of liability.

36. The Petitioner has placed before us the order passed by the NCLT, Special Bench, Mumbai under the Companies Act, 2013, which sought permission for the scheme of amalgamation of M/s Umicore Anandeya India Private Limited with M/s Umicore Autocat India Private Limited and their respective shareholders. The scheme contemplated the consolidation of the group entities of the Umicore Group in India so as to achieve simplification and streamlining of the management structure leading to better administration, reduction in costs, integration and optimisation of support functions, resources and assets and improve the organisational capability arising from the pooling of financial resources. The scheme approved by the Tribunal categorically records that the Transferee Company shall take over the liability of the Transferor Company, which shall stand dissolved from the appointed date i.e. 01.04.2019.

37. The Petitioner, the Transferor Company, has already registered under the GST regime, in the form of a Private Limited Company with Shirwal City, Khandala, Satara, Maharashtra being shown as its principal place of business. Since the Transferor Company, in the wake of the scheme of amalgamation, is dissolved w.e.f. 01.04.2019 and the Petitioner Company has undertaken the liabilities of the Company, it definitely, in the wake of sub-section (3) of Section 18 is entitled to enjoy un-utilized ITC in the electronic ledger of the Transferor Company irrespective of the

boundaries of the two Companies, the Transferor Company being registered under the GST regime in the State of Goa and the Transferee Company i.e. the Petitioner Company being registered under the GST in Satara (Maharashtra).

We do not find that the boundaries of the State would create any impediment as the Transferor Company has ceased to function and operate from 01.04.2019 and all its liabilities along with the ITC must go to the Transferee Company.

38. It is a well settled position that the intention of Legislature shall be primarily gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution or which results in rejection of words as meaningless shall be avoided.

Privy Council in ***Crawford v. Spooner***,² expressed this principle in the following words; “We cannot aid the Legislature’s defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there.” It is not permissible and contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Equally it is unacceptable to interpret a provision by substituting some words for words which are used by the Legislature with a particular

2 (1846) 6 Moore PC 1,

purpose and intention. Court cannot reframe the legislation as it has no power to legislate. It is not permissible to read words into an Act unless clear reason for it is to be found within the four corners of the Act itself.

It is an application of the same principle that a matter which should have been, but has not provided for in the statute, cannot be supplied by Courts, as to do so would amount of legislation and not construction.

Devlin, LJ in ***Gladstone v. Bower***³, paraphrasing *casus omissus*, observed thus:

“The court will always allow the intention of a statute to override the defects of wording but the court’s ability to do so is limited by recognised canons of interpretation. The Court may, for example, prefer an alternative construction which is less well fitted to the words but better fitted to the intention of the Act. But here, there is no alternative construction; it is simply a case of something being overlooked. We cannot legislate for *casus omissus*. I may be sure in this case that I know exactly what Parliament would do if it perceived a gap. But, if this rule were to be relaxed, sooner or later the court would be saying what Parliament meant and might get it wrong and thus usurp the law-making function.”

39. It is in the light of the aforesaid principle, when we have examined the sub-section (3) of Section 18 of the CGST Act, 2017, and with the background existing while enactment of the statute, to simplify the existing tax system by avoiding cascading of taxes, with no restriction imposed on transfer of the Input Tax Credit from one State to another, we are not ready to accept the
3 (1960) 3 All ER 353 (CA).

submission advanced, opposing the transfer of the unavailed Input Tax Credit from the Transferee Company to the Transferor Company, i.e. the Petitioner.

40. The decision of the Madras High Court in the case of **MMD Heavy Machinery** (supra) is cited before us by the Respondents where a Writ Petition was filed praying for a writ of mandamus to allow the Petitioner to file form GST ITC-02 to transfer the un-utilized ITC from their Chennai registration to their registration in Sri City, Andhra Pradesh or in the alternative to direct the Respondent to refund the amount of ITC.

The facts involved being peculiar, reveal that the Petitioner had shut down its factory in Ambattur, Chennai in Tamil Nadu and shifted it to Sri City, Andhra Pradesh in June 2016, much prior to implementation of GST and at that point of time, the Petitioner had accumulated the ITC under the Cenvat Credit Rules, 2004, which had retained un-utilized ITC, owing to the fact that the Petitioner was predominantly engaged in exporting final products. The Petitioner orally requested the Judicial Assistant Commissioner of Central Excise to permit the transfer of accumulated ITC lying un-utilized in its Cenvat Account to its new factory in Sri City, Andhra Pradesh in terms of Rule 10 of the Cenvat Credit Rules, 2004. Pertinent to note that the Petitioner's factory in Chennai was not a going concern, but it was shut.

Reliance was placed on Section 18(3) of the CGST Act, 2017 read with Rule 41 of CGST Rules and it was urged that the provision of transfer under sub-section (3) was confined to sale, merger, amalgamation, lease or transfer of the business and in the case before the Court, there was no change in constitution of the Petitioner, but it had shifted its unit from one State to another and this was not contemplated under sub-section (3) of Section 18 of the CGST Act, 2017.

41. It was also urged that in terms of Section 25 of the respective GST enactments, each unit in a different State is a distinct person, the concept of tax-free branch transfer, depot transfer or consignment sale, is thus not applicable and to claim credit in the Transferee State, the goods must be supplied with GST invoice from the Transferor State and without payment of GST, the credit available in one State, cannot be transferred to another State, even between the branches or depots or units or agents.

It is in this background, the Madras High Court adjudicated and dismissed the Petition by holding that the transfer of refund of ITC (Cenvat Credit), which was transitioned by the Petitioner by filing TRAN-1, is not permissible. The facts which were taken into consideration clearly refer to sub-section (2) of Section 25 of the CGST Act, 2017 to the effect that a person having multiple places

of business in a State or Union Territory may be granted a separate registration for each such place of business. Sub-section (4) of Section 25 of the CGST Act, 2017 was also pressed into service by recording that even though the Petitioner had closed down its operation at Ambattur location and obtained separate registration under the CGST, 2017 and is a “Distinct Person” different from the registration obtained under the provisions of the Act, the transition of the ITC lying un-utilized, availed under the provisions of the erstwhile Cenvat Credit Rules, 2004 is covered by Chapter XX. Section 139 to Section 142 of the CGST Act, 2017 which are *pari materia* with the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 and the proviso to sub-section (1) of Section 140 of the CGST Act, 2017, were specifically referred to. The proviso make it clear that a registered person shall not be allowed to take credit under the following circumstances:-

- (i) Where the said amount of credit is not admissible as input tax credit under the Act; or
- (ii) Where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
- (iii) Where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

42. It is on these grounds, the Court noted that the Petitioner did not mention/declare export clearances in its ER-1 Returns from January, 2015 to June, 2016 nor had he paid the duty while exporting the goods or even did not execute the bonds under the Central Excise Rules, 2002 and the duty payable on the exported goods was determined as Rs.4,23,51,107/- and the credit which was transitioned would have been sufficient to cover a part of the duty liability on the exported goods, so that the Petitioner could have availed rebate under the Central Excise Rules, 2002, but the Petitioner had not availed any of these modes while making exports and since he has neither paid the excise duty to claim the rebate under Rule 18 of the Central Excise Rules, 2002 nor claimed refund under Rule 5 of the Cenvat Credit Rules, he cannot take benefit under the CGST regime.

The aforesaid decision is completely distinguishable on facts as the transfer of the credit was sought from the unit of the Petitioner, which was completely shut down.

43. We have before us a Company, which in the wake 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 intention of the law makers in bringing the legislation and providing ITC was with a specific object i.e. 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 of 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.

NIVEDITA P. MEHTA, J. BHARATI H. DANGRE, J.