

# TAX INFO

Dated 06/04/2022

Latest update on GST Law: Information regarding ITC allowed through GSTR-3B in absence of ITC-02A on GST Portal given in Judgment by Rajasthan High Court.

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<b>Name of Petitioner</b>	Pacific Industries Ltd.
<b>Name of Respondent</b>	Union Of India
<b>Court</b>	RajasthanHigh Court
<b>Date of Judgement</b>	15.03.2022
<b>Appeal No.</b>	D.B. Civil Writ Petition No. 12190/2019

## **Brief Facts of the Case:**

Prior to 01.02.2019, a person having various business verticals within a State, was not entitled to seek separate registrations for multiple places of business. However, by effect of amendment dated 01.02.2019, a person having multiple businesses at different places became entitled to separate registrations for each location where his business verticals were being operated. After coming into force of the amendment dated 01.02.2019, separate registrations as per location of business were allowed and accordingly, the tax liability as well as ITC would be calculated individually for each unit. Rule 41A was introduced in the GST Rules of Center [CW-12190/2019] as well as State vide notification dated 29.01.2019. This rule prescribes transfer of unutilised ITC lying in the Electronic Credit Ledger of a registered unit to the newly registered unit of an assessee within the same State as per Section 25(2) of the Act. **In order to give effect to this mode of filing ITC Credit, Form GST ITC-02A was prescribed which was to be submitted on the GSTN Portal within a month of obtaining the new registration as per Section 25(2) of the GST Act so that the unutilised ITC could be transferred from the previously registered unit to the newly registered unit of the assessee.** The petitioner was deprived from submitting the Form GST ITC-02A online and as a consequence, the petitioner was deprived from availing the ITC to the tune of Rs.2,58,03,590/- through GSTR-3B.

## **Contention of the Petitioner:**

The petitioner has raised a pertinent grievance in this writ petition that the Form GST ITC-02A was not available on the GSTN Portal for the entire period of 30 days from the registration of its separate business verticals and even till the date of filing of the instant writ petition and as a consequence, the petitioner was denied the opportunity of transferring the unutilized input tax credit to its new registration which became effective on 16.04.2019. The petitioner claims to have uploaded a manual copy and submitted the same to the Deputy Commissioner on 14.05.2019 but the same was not accepted. The petitioner claims to be suffering immense financial difficulty on account of not being able to use the unutilised input tax credit of GST to fulfill the tax liability of the new business registration. The petitioner also raised this issue with the GST Helpdesk and a ticket No.201905145915528 was issued to it on 14.05.2019. In response to this ticket, the petitioner was forwarded a tutorial link. However, this tutorial link was regarding filing of the Form GST ITC-02 and not Form GST ITC-02A. The petitioner submitted another letter to the Deputy Commissioner raising an issue regarding Form GST ITC-02A and the steps taken by the petitioner to submit the said form, but no response was received.

## **Decision of the Court:**

The petitioner was deprived of the opportunity to furnish the Form GST ITC-02A because the Form was not available on the GSTN Portal. The fact regarding the petitioner having raised the issue with the GST Helpdesk within the period of 30 days, is manifested from the response mail dated 21.05.2019 sent by GST Helpdesk. The impugned action whereby, the Department have failed to acknowledge and transfer the ITC accruing to the petitioner pursuant to the registration of its new business unit in accordance with Rule 41A of the GST Rules, is grossly illegal, arbitrary and unjust. The Department was directed to regularise the ITC in favour of the petitioner as per entitlement. The petitioner shall be allowed to avail the Input Tax Credit of Rs.2,58,03,590/- through the next GSTR-3B return.

**Suresh Aggarwal, Advocate**

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