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Neutrality or Friction: Re-Examining GST Treatment of Slump Sales, Demergers, and Credit Transfers in Corporate Restructuring

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***Abstract* – For some time now, the guiding policy across company law and income tax has been one of neutrality: when a company reorganises to hived off a division, merge with a subsidiary, or move assets within a group, the reorganisation itself is not meant to be a taxable event. Goods and Services Tax (GST) has not fully absorbed this principle. It addresses restructuring through a scatter of independent provisions, an exemption for transfer of a business as a going concern, a credit apportionment mechanism under Rules 41 and 41A of the CGST Rules, and the procedural requirement of filing FORM GST ITC-02, which were not designed to operate together and do not always do so in practice. This paper examines three points at which that gap becomes visible. The first is the going-concern exemption itself, which the Authorities for Advance Ruling and courts test against inconsistent standards of proof. The second is the mismatch between the "appointed date" fixed by a Tribunal-sanctioned scheme under company law and the transaction-based method by which GST fixes the timing of registration and supply. The third is the absence of a clear mechanism for dividing a common, non-vertical-specific credit ledger among the entities that emerge from a restructuring. For companies undergoing restructuring, these gaps can translate into real compliance exposure and financial risk. The timing of this review matters. The paper closes with a coherent, implementable framework designed to bring consistency to how these disputes are resolved, reduce litigation, and strengthen the credibility of the GST regime for all stakeholders.**

Keywords - **GST; Corporate Restructuring; Slump sale; Demerger; Input Tax Credit apportionment; GST 2.0; Tax neutrality; GST Appellate Tribunal..**

I. INTRODUCTION

Corporate restructuring, slump sales, demergers, amalgamations, and intra-group asset transfers are routine features of how Indian businesses reorganise for efficiency, succession, or capital-raising. Company law, through the National Company Law Tribunal's scheme-sanctioning process, and direct tax law, through provisions such as those governing slump sales and amalgamations, are both built around a shared premise: a reorganisation that keeps the underlying business intact should not itself trigger a fresh tax charge. GST, introduced in 2017 as a destination-based, transaction-focused levy, was not built around that premise in the same integrated way.

Instead, GST addresses restructuring through discrete tools bolted onto a supply-based architecture. Schedule II and Section 7 of the CGST Act determine whether a transaction is a supply at all ; Notification No. 12/2017-Central Tax (Rate) exempts the transfer of a business as a going concern ; and Section 18(3) read with Rules 41 and 41A governs how unutilised input tax credit follows the business when it is reorganised . These provisions were drafted at different times, for different purposes, and without a single integrated lens for restructuring. The result is a set of tools that work adequately in isolation but create friction at the seams in interpretation, in timing, and in credit division.

This paper argues that the friction is not merely technical. It has real consequences for deal certainty, for the pricing of transactions, and for litigation volumes before the Authorities for Advance Ruling (AAR) and appellate forums. With the GST 2.0 reforms of September 2025 rationalising rate structures and establishing the GST Appellate Tribunal, the regime appears to be entering a phase where structural inconsistencies of this kind are more likely to be addressed. The paper is written against that institutional backdrop.

Objectives of the Study

- To examine how the going-concern exemption under GST is interpreted across Advance Rulings and courts, and to identify the inconsistencies in the evidentiary standards applied to slump sales and business transfers .
- To analyse the mismatch between the company law "appointed date" of a scheme of demerger or amalgamation and the transaction-based timing rules GST uses for registration and supply, and to assess the compliance risk this mismatch creates during the transition period .
- To evaluate the adequacy of the credit apportionment mechanism under Rules 41 and 41A of the CGST Rules and FORM GST ITC-02/ITC-02A in dividing common, non-vertical-specific input tax credit among resulting entities, and to propose a framework aligned with the institutional momentum created by the GST 2.0 reforms .

II. RESEARCH PROBLEM

GST law treats corporate restructuring as an assembly of separate compliance events: an exemption claim, a registration timeline, and a credit transfer form, rather than as a single, coherent transaction. This creates three

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recurring points of friction. First, the going-concern exemption under Notification No. 12/2017-Central Tax (Rate) uses an undefined term ("going concern") that AAR benches and courts have tested using inconsistent evidentiary standards, producing unpredictable outcomes for otherwise similar transactions. Second, the "appointed date" fixed by a company-law scheme of arrangement does not automatically align with the transaction-based triggers GST uses to determine the timing of supply and registration, creating a period of legal uncertainty between sanction and implementation. Third, once a restructuring produces two or more resulting entities, there is no settled statutory mechanism for dividing common, non-vertical-specific input tax credit and credit that cannot be traced to a single unit or division, leaving apportionment to formulas designed primarily for demergers with clearly separable asset pools.

The research problem this paper addresses, therefore, is whether these three points of friction are avoidable design gaps that can be closed through interpretive clarity, procedural alignment, and rule amendment, or whether they are inherent to a transaction-based levy attempting to accommodate an entity-continuity principle borrowed from company and income-tax law.

III. RESEARCH GAP

The gap this paper responds to sits between two well-developed bodies of literature that rarely engage each other directly. Tax literature on GST exemptions and credit mechanics tends to be provision-specific: commentary on Rule 41, doctrinal notes on individual AAR rulings, and practitioner guides to FORM GST ITC-02 that treat each compliance event as a discrete problem to be solved in isolation. Company-law literature on schemes of arrangement, by contrast, is concerned almost entirely with NCLT procedure, shareholder approval, and the legal effect of the appointed date, with GST treated as an ancillary compliance step rather than a substantive concern. Neither literature interrogates why a company-law fiction and an income-tax reading-back rule fail to carry over into GST, or why an exemption drafted for ordinary business transfers has been left to do the work of a restructuring-specific carve-out. The going-concern rulings surveyed in this paper are commonly cited as isolated illustrations of interpretive inconsistency, not as evidence of a shared structural cause. The literature on credit apportionment, correspondingly, largely stops with what Circular No. 133/03/2020-GST clarified, and does not go on to ask whether the underlying asset-value ratio is conceptually coherent for the categories of credit that fall outside the circular's scope.

This paper's contribution is to draw these two disconnected threads together and to show that the going-concern inconsistency, the appointed-date mismatch, and the credit-apportionment gap are symptomatic of one deeper design choice: the decision to graft continuity-based reorganisation concepts onto a transaction-based statute without adopting the interpretive and procedural scaffolding that gives those concepts operative content elsewhere. Filling this gap is a doctrinal task rather than an empirical one; it requires reading statutory text, ruling practice, and company law and income tax precedent together in a way that existing commentary, confined within its own disciplinary silo, has not attempted.

IV. LITERATURE REVIEW

The neutrality principle underlying company-law treatment of restructuring is reflected in Section 232(6) of the Companies Act, 2013, which requires a scheme of arrangement to specify an appointed date and treats the scheme as effective from that date irrespective of when the sanctioning order is actually passed . Commentary on GST's going-concern exemption consistently notes that the term "going concern" is not defined anywhere in the CGST Act, leaving Authorities for Advance Ruling to borrow tests from company law and accounting practice.

In Rajashri Foods, the Karnataka AAR held that the transfer of a business unit as a going concern fell within the Notification No. 12/2017 exemption where the unit was live and capable of being carried on independently by the transferee . The Uttarakhand AAR reached a similar conclusion in Innovative Textiles, treating the sale of an operating textile unit along with its assets and liabilities as an exempt transfer of a going concern . By contrast, in SCV Sky Vision, the Andhra Pradesh AAR insisted that two conditions must be independently satisfied: an actual transfer, and the transfer of a going concern as such, and that merely labelling an agreement as a "going concern" transfer does not satisfy the exemption . More recently, the Gujarat AAR in RDB Realty & Infrastructure examined a project-unit transfer and, while granting the exemption, expressly declined to decide whether the transaction also amounted to a "slump sale" under income-tax concepts, treating that classification as outside its jurisdiction . Scholarly commentary on this line of rulings draws on the Supreme Court's reasoning in Allahabad Bank v. ARC Holding, which required that a going concern be capable of continued operation for the foreseeable future , and on the Delhi High Court's treatment of going-concern status in Indo Rama Textile . Taken together, this body of rulings shows a spectrum running from a functional, substance-based test to a stricter, liability-inclusive test, with no binding authority settling which controls.

On the credit side, the literature is more procedural than doctrinal. Circular No. 133/03/2020-GST addressed several open questions on apportionment under Rule 41(1) , confirming that the ratio of asset values is to be taken at the State (distinct-person) level rather than an all-India level, that FORM GST ITC-02 need only be filed in States where both transferor and transferee hold registration, that the apportionment formula applies to the transferor's credit balance as it stands on the date FORM GST ITC-02 is

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filed, and that the underlying asset-value ratio is fixed as on the appointed date of the demerger scheme . Rule 41A extends a parallel mechanism, through FORM GST ITC-02A, to the narrower case of credit transfer between newly separated registrations of the same PAN within a State . Practitioner commentary generally treats these clarifications as useful but incomplete: they resolve mechanical questions of ratio and timing but do not address how credit that cannot be attributed to any single resulting unit — common overhead credit, for instance, should be divided when the demerger scheme itself is silent on the point.

A separate strand of commentary situates these debates within the broader GST 2.0 reform narrative. The rationalisation of rate slabs, the expansion of e-invoicing, and the constitution of the GST Appellate Tribunal and a National Appellate Authority for Advance Rulings from September 2025 are described as evidence that the regime is consolidating its institutional architecture, which in turn is treated as the natural next stage at which longstanding structural gaps, including those relating to restructuring, are likely to be addressed.

V. METHODOLOGY

This paper adopts a doctrinal, black-letter methodology. Primary sources consist of the CGST Act, 2017 in particular Sections 7, 18, and Schedule II, the CGST Rules, 2017, Rules 41 and 41A, Notification No. 12/2017-Central Tax (Rate), and Circular No. 133/03/2020-GST. These are read alongside rulings of the Authorities for Advance Ruling in Karnataka, Uttarakhand, Andhra Pradesh, and Gujarat, and relevant company-law and general-law precedent on the meaning of a going concern.
The analysis proceeds by comparative case-note analysis: rulings on the going-concern exemption are compared against one another to identify the evidentiary standard each Authority actually applied, rather than the standard it purported to apply. The statutory and circular material on credit apportionment is read conjointly with company-law provisions on the appointed date to identify points of textual and procedural mismatch. The paper does not undertake empirical or quantitative analysis of litigation volumes or revenue impact; its claims are doctrinal and interpretive, supported by the decisions and government clarifications examined, and are offered as a basis for the policy recommendations that follow.

VI. ANALYSIS

The three frictions identified above are not independent defects; they share a common analytical root, and examining that root explains both why they arise and why the going-concern rulings in particular have proved so difficult to reconcile.

Textual ambiguity and the interpretive default

The absence of a statutory definition for "going concern" does not leave Authorities for Advance Ruling free to choose whichever test seems fairest on the facts. Indian courts have repeatedly held that where the terms of an exemption notification are ambiguous, they must be read strictly against the person claiming the benefit and resolved in favour of revenue . On that reading, the Andhra Pradesh AAR's insistence in SCV Sky Vision that liabilities, and not merely assets, must pass before the exemption applies is not an outlier; it is the doctrinally conservative position that strict construction predicts. The Karnataka and Uttarakhand benches, by contrast, appear to have imported a different interpretive source: the accounting conception of going concern, which frames it as a presumption of continued operation rather than a checklist of transferred liabilities . The inconsistency in the case law is therefore not simply inattention on the part of individual benches; it reflects two competing interpretive disciplines, fiscal construction and accounting substance, being applied to the same undefined term without any statutory signal as to which should govern. A binding circular that adopts a disjunctive, continuity-based test, as recommended above, would need to do more than restate a preferred outcome; it would need to displace the strict-construction default that is otherwise available to any assessing officer inclined to read the exemption narrowly.

The temporal design flaw

The appointed-date mismatch is often described as a gap, but it is closer to a divergence in how different statutes have chosen to treat the same fact. Direct tax law has, in effect, resolved this question already: once a scheme of amalgamation is sanctioned, the appointed date fixed in the scheme is treated as effective for income-tax purposes even though the sanctioning order necessarily follows later, so that the intervening period is read back into the merged entity's return . GST has no equivalent reading-back mechanism for supply and registration generally, but it is not entirely silent on the point either: Section 87 of the CGST Act already deems merging companies to be distinct persons in respect of supplies exchanged between them during the interval between the appointed date and the Tribunal's order, and requires the resulting entity's registration to be amended to reflect that period . What the provision does not do is specify, in practical terms, which entity issues the invoice, reports the supply in its returns, or bears the compliance burden if the two parties disagree about the point. The deeming solution proposed above therefore does not need to invent a new legal fiction; it needs to operationalise one that Section 87 already contains but leaves procedurally incomplete.

Credit apportionment as a valuation problem

The asset-value ratio in Rules 41 and 41A works passably well for demergers precisely because a demerger, by statutory definition, requires the transferred undertaking's assets and liabilities to be identifiable at book values immediately before the transfer . That definitional discipline is what makes an asset-based ratio a defensible proxy for how credit should follow the business. Common, non-vertical-specific credit has no such anchor: overhead and shared-service credit was never tied to a particular asset in the first place, so applying an asset-value ratio to it is not really apportionment in the sense Rule 41 contemplates, it is an administrative convenience dressed up as a formula. Treating this as a residual compliance question, as the current framework does, understates it; it is a valuation problem that happens to surface through a GST form, and any rule amendment should be judged by whether it preserves revenue neutrality across the resulting entities rather than merely by whether it is easy to file.

Read together, these three strands converge on a single diagnosis: GST has borrowed vocabulary, and in the case of Section 87 partial machinery, from company and income-tax law, but has not consistently borrowed the interpretive and procedural apparatus that gives that vocabulary its operative meaning elsewhere. The friction identified in this paper is therefore best understood not as three unrelated drafting oversights but as the recurring cost of transplanting continuity-based concepts into a transaction-based statute without also transplanting the rules that make those concepts workable .

Findings and Recommendations

The going-concern exemption: an inconsistent test

The rulings surveyed show that Authorities for Advance Ruling have not converged on a single test for what makes a transfer a transfer “as a going concern.” Some rulings look primarily to functional continuity, whether the transferee can carry on the same business without interruption, while others insist that liabilities, and not merely assets, must also pass to the transferee before the exemption can apply. Because each AAR ruling binds only the applicant and the jurisdiction in which it is issued, businesses structuring pan-India transactions cannot rely on a favourable ruling in one State to predict the outcome in another. The recommendation is a binding circular, issued under Section 168 of the CGST Act, that codifies a single, disjunctive-conditions test, continuity of operations, transfer of assets necessary for that continuity, and an intention that the transferee will in fact continue the business — without making transfer of every liability a mandatory precondition, consistent with the functional approach taken in the Karnataka and Uttarakhand rulings .

The appointed-date mismatch

Company law treats the appointed date fixed in a scheme of arrangement as the date from which the reorganisation is legally effective, even though the NCLT's sanctioning order, and consequent filings, may follow months later. GST, by contrast, ties registration cancellation, fresh registration, and the timing of supply to actual transactional events possession, invoicing, or portal filings which typically occur only after sanction. The intervening period leaves open questions such as which entity should report supplies, issue invoices, and remit tax for transactions occurring between the appointed date and the date of sanction. The recommendation is a deeming provision, whether by rule amendment or circular, that treats the transferee as the supplier for GST purposes from the date of the NCLT order (not the earlier appointed date), while permitting retrospective invoice correction for the intervening period without penal consequence, so that GST timing is anchored to a verifiable event without disturbing the appointed date's effect under company law .

Apportionment of common, non-vertical-specific credit

Circular No. 133/03/2020-GST resolved several mechanical questions on credit apportionment but did not address common credit and credit relating to shared services, corporate overheads, or centrally procured inputs that cannot be attributed to any single resulting unit and that a demerger scheme may not separately allocate. Applying the general asset-value ratio to such credit is a workable default but is not compelled by the statute, and taxpayers currently have no safe harbour method for handling it. The recommendation is an amendment to Rule 41 clarifying that, absent an explicit allocation in the scheme, common credit is to be apportioned in the same asset-value ratio used for the balance of the credit ledger, with an option for the resulting entities to agree upon and jointly file a different ratio, subject to revenue neutrality .

A framework for GST 2.0

Read together, these three recommendations do not require a re-engineering of the GST supply framework. They require the regime to treat restructuring as a recognised category of transaction with its own interpretive and procedural rules, rather than as an incidental application of exemption, registration, and credit provisions designed with ordinary commercial supplies in mind. The institutional infrastructure created by GST 2.0, a functioning GST Appellate Tribunal, and a National Appellate Authority for Advance Rulings capable of resolving the inter-State inconsistency identified in Section 6.1, makes this an achievable, rather than aspirational, reform.

VII. CONCLUSION

GST was designed as a transaction-based levy, and corporate restructuring sits uneasily within that design because it is, at heart, an exercise in continuity rather than transaction. The going-concern exemption, the appointed-date mismatch, and the gap in common-credit apportionment are three distinct symptoms of that same underlying tension. None of them is intractable: each can be resolved through a binding circular, a deeming rule, or a rule amendment, without disturbing the basic architecture of the CGST Act. With the GST Appellate Tribunal and the National Appellate Authority for Advance Rulings now part of the institutional landscape from September 2025, the timing is right to convert these interpretive gaps into settled law, reducing litigation and giving businesses the same certainty in GST that they already enjoy in company law and income tax when they restructure.

This paper's scope has been deliberately confined to a doctrinal reading of the statute, the rules, and the rulings; it has not attempted to quantify how much litigation or revenue leakage the three frictions actually produce, and that quantitative picture remains open for future work, ideally once the GST Appellate Tribunal begins generating a body of appellate decisions on restructuring-related disputes rather than the more limited first-instance Advance Rulings this paper has drawn upon. There is also room for comparative research: jurisdictions that operate a genuine group-relief or reorganisation-relief mechanism within their VAT or GST systems, rather than relying on repurposed exemption and credit provisions, may offer a template for the restructuring-specific regime that this paper's recommendations gesture towards without fully designing.

What the doctrinal analysis does establish is that the three frictions are not scattered irritants to be resolved piecemeal as they surface in individual disputes; they are the predictable consequence of asking a transaction-based levy to accommodate a continuity-based principle without giving that principle a statutory home of its own. The three recommendations advanced above, a binding circular on the going-concern test, a deeming rule anchoring GST timing to the Tribunal's order, and a rule amendment on common credit, are calibrated to that diagnosis: each closes a specific interpretive or procedural gap without requiring Parliament to rewrite the CGST Act's basic supply architecture. If adopted, together they would let a business that has restructured under company law and income tax with reasonable certainty proceed through GST with that same certainty, rather than treating GST compliance as the least predictable part of an otherwise well-settled transaction.

“Corporate restructuring is about continuity; GST is built around transactions. Bridging this gap requires certainty, consistency, and clear rules.”

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