HCL Infosystems Ltd. v. Commissioner of State Tax & Anr.

A show cause notice and an assessment order under Section 73, issued to an amalgamating company after its registration stood cancelled on merger and its credit transferred by FORM GST ITC-02. At issue: whether proceedings against a company that has ceased

Date of Order: November 21, 2024
Case Law No: GIB-DHC-2024-17
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background.

Digilife Distribution and Marketing Services Ltd. amalgamated into HCL Infosystems under a scheme approved by the NCLT on 10.08.2022, with an appointed date of 01.04.2022. The amalgamating company applied for cancellation of its registration on 12.10.2022 and HCL filed FORM GST ITC-02 with a Chartered Accountant's certificate on the same day. The department nevertheless issued a show cause notice dated 03.12.2023 under Section 73 and a final order dated 27.04.2024 in the name of the dissolved company.

Observations of the Court.

The Court applied the line of authority in Maruti Suzuki India Ltd. and Spice Entertainment, holding that Section 160 of the CGST Act — being pari materia with Section 292B of the Income-tax Act, 1961 — cannot come to the rescue of the respondents or salvage a notice and order issued to a non-existent entity.

On Section 87, the Court held that the provision was placed on the statute book ex abundanti cautela, to preserve and identify transactions occurring between the amalgamating companies and to treat them as distinct companies for the period up to the date of the order approving the scheme, so that such transactions do not escape tax. It found itself unable to read Section 87 as enabling the respondents either to continue to place a non-existent entity on notice or to pass an assessment order against it. In terms of Section 87 itself, the liabilities of the non-existent company stand transposed onto the amalgamated entity, so the revenue is not deprived of its right to subject the transactions to tax.

Final verdict.

The writ petition was allowed. The show cause notice dated 03.12.2023 and the order dated 27.04.2024 were quashed, leaving it open to the respondents to draw such proceedings as may otherwise be permissible in law.