Max Estates Limited v. Union of India and Another

Three assessment orders under Section 73(9), passed against a transferor company after its merger into the petitioner and the suspension of its registration. At issue: whether such orders are void for being passed against a non-existent entity, Section 87

Date of Order:	March 5, 2025
Case Law No:	GIB-AHC-2025-57
Source:	GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background.
Max Ventures and Industries Limited merged into Max Estates Limited pursuant to an NCLT order dated 21.07.2023. An application for surrender of registration was filed on 02.11.2023 and the registration was suspended with effect from 10.10.2023. Three orders under Section 73(9) for FY 2017-18, 2018-19 and 2019-20 were nonetheless passed in the name of the merged-out company.

Observations of the Court.
It was undisputed that before the three assessment orders were passed, the transferor company stood merged with the petitioner, so the orders were passed against a non-existent company. The Court held that the conclusion of the Supreme Court in Maruti Suzuki India Ltd. — that issuance of notice to a non-existent entity is fundamentally at odds with the principle that the amalgamating entity ceases to exist upon an approved scheme — applies equally outside the income-tax context.

The revenue’s reliance on Section 87 to contend that proceedings may continue against the transferor company despite the merger was rejected, the Court following the Delhi High Court in HCL Infosystems Ltd., which had taken note of Section 87 and held that the provision does not enable continuation of proceedings against a non-existent entity.

Final verdict.
The writ petition was allowed and all three orders dated 29.11.2023, 27.04.2024 and 26.08.2024 under Section 73(9) were quashed and set aside, with liberty to the respondents to pursue proceedings against the appropriate entity as permissible in law.