Vodafone Idea Ltd. (formerly Vodafone Mobile Services Ltd.) v. Union of India

A Section 74 demand of about Rs. 363 crore, raised on a company merged out of existence, on the theory that its pre-merger going-concern transfer of a tower business was an exempt supply restricting input tax credit. At issue: jurisdiction over a non-exis

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Case Law No: GIB-BHC-2026-75
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CASE DESCRIPTION / SUMMARY

Background.

By NCLT order dated 30.08.2018, Vodafone Mobile Services Ltd. and Vodafone India Ltd. merged into Idea Cellular Ltd., the merger being intimated to the GST authorities at the time of amendment of registration. Earlier, on 13.11.2017, VMSL had transferred its entire tower business to ATC Telecom Infrastructure, with all rights and liabilities, as a going concern on a slump-sale basis; it was not declared in the GST returns and no invoice was raised. DGGI issued a show cause notice dated 01.08.2024 under Section 74 demanding INR 363 crore with penalty, on the footing that transfer of a going concern is an exempted supply and VMSL was therefore not entitled to input tax credit. The order followed on 29.01.2025.

Observations of the Court.

The Court held that the conditions in Section 87 operate only in respect of the intervening period from the date on which the order takes effect till the date of the order, and in no way authorise the department to issue a show cause notice on a non-existent entity post merger or amalgamation, since a merged entity has no status in the eyes of law and no proceedings can be initiated against it. The submission that Section 87 applied on these facts was rejected.

The department's contention that Maruti Suzuki India Ltd., having been rendered under the Income-tax Act, would not apply where Section 87 was attracted, was not accepted. The Court drew support from Reliance Industries Limited v. P. L. Roongta and from the Delhi High Court's reasoning in HCL Infosystems Ltd., which it extracted. It is to be noted that prayer clause (c), challenging Serial No. 2 of Notification No. 12/2017 as ultra vires, was not pressed and remains undecided.

Final verdict.

he petition succeeded and was allowed in terms of prayer clause (a), the impugned order being quashed as void ab initio for want of jurisdiction. The exempt-supply and consequent credit-restriction theory underlying the demand was not adjudicated on merits.