Vodafone Idea Ltd. v. Union of India & Ors.

Validity of Section 74 CGST proceedings against an amalgamating company after merger, and whether Section 87 permits such proceedings against a non-existent entity.

Date of Order: April 29, 2026
Case Law No: GIB-BHC-2026-113
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CASE DESCRIPTION / SUMMARY

Background

Pursuant to an order of the NCLT dated 30 August 2018, Vodafone Mobile Services Ltd. and Vodafone India Limited merged with Idea Cellular Limited, resulting in the petitioner being the merged entity. The fact of the merger was intimated to the GST authorities at the time of amendment of the GST registration. Before the merger, one of the businesses of the amalgamating company was its tower business, which was transferred as a going concern on a slump-sale basis. The petitioner contended that the transfer of the entire business was not a supply in the course or furtherance of business and therefore was not declared in GST returns.

Between March and July 2022, the DGGI sought documents from the petitioner. Thereafter, summons under **Section 70 of the CGST Act** were issued on 7 February 2024, followed by a show-cause notice dated 1 August 2024 demanding **₹363 crores under Section 74**, along with penalty, on the ground that transfer of a going concern was an exempt supply and that ITC had been wrongly availed. Detailed replies were filed, but the impugned order dated 29 January 2025 was passed without considering the submissions concerning the merger.

2. Court Observation

The Court noted that the merger pursuant to the NCLT order was undisputed and that the GST authorities had been informed of the merger. The Court accepted the principle laid down in **Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd.** that once an amalgamating entity ceases to exist pursuant to an approved scheme of amalgamation, proceedings initiated against that non-existent entity are **void ab initio**.

The Court specifically examined **Section 87 of the CGST Act** and held that its provisions operate in relation to the intervening period between the effective date of merger and the date of the merger

order, where transactions between the amalgamating companies have to be accounted for. Section 87 does not confer authority upon the Department to issue a show-cause notice against a **non-existent entity after the merger**. Post-merger, the amalgamating entity has no legal status and proceedings cannot be initiated against it.

The Court therefore held that the ingredients of Section 87 could not be invoked to continue the proceedings contemplated by the show-cause notice. Since the show-cause notice itself was issued without jurisdiction, the proceedings were **vitiated and void ab initio**.

3. Final Verdict

The Bombay High Court held that **Section 87 of the CGST Act could not be invoked to continue the proceedings against the non-existent amalgamating entity**. The show-cause notice dated 1 August 2024, having been issued without jurisdiction, and the proceedings arising from it, were held to be **void ab initio**.

Accordingly, the Court held that the petition **succeeded and was allowed in terms of prayer clause (a)**, thereby quashing the impugned order dated 29 January 2025.

4. Cases Referred by Court

Case	Court	Date / Citation
Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd.	Supreme Court of India	[2019] 416 ITR 613; specific order date not stated in the PDF
Reliance Industries Limited v. P. L. Roongta	High Court of Bombay	[2025] 479 ITR 770; specific order date not stated in the PDF
HCL Infosystems Ltd. v. Commissioner of State Tax and Another	High Court of Delhi	2024 SCC OnLine Del 8287; specific order date not stated in the PDF

The Court relied particularly on **Maruti Suzuki India Ltd.** for the principle that proceedings initiated against an entity that had ceased to exist following amalgamation are void ab initio, and on **Reliance Industries Ltd. v. P. L. Roongta** for applying that principle to proceedings against a non-existent amalgamating entity.

The Court also found support in **HCL Infosystems Ltd. v. Commissioner of State Tax and Another**, which interpreted Section 87 as preserving the tax treatment of transactions during the relevant period but not as authorising proceedings or an assessment against a non-existent amalgamating company.

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