Chief Justice's Court

Case :- WRIT TAX No. - 701 of 2025

Petitioner :- Max Estates Limited
Respondent :- Union of India and another
Counsel for Petitioner :- Mahima Jaiswal
Counsel for Respondent :- A.S.G.I., Abrar Ahmad, Ankur Agarwal, S.C.

Hon'ble Arun Bhansali, Chief Justice
Hon'ble Kshitij Shailendra, J.

1. This petition has been filed by the petitioner aggrieved of the orders dated 29.11.2023, 27.04.2024 and 26.08.2024 passed by respondent no. 2 under Section 73(9) of the Goods and Services Tax Act, 2017 (for short 'the Act') for the financial years 2017-18, 2018-19 and 2019-20 respectively issued in the name of Max Ventures and Industries Limited (for short 'MVIL').

2. Submissions have been made that the petitioner is a public limited company registered under the CGST Act and UPGST Act. It is indicated that the company MVIL was merged with the petitioner company pursuant to an order of National Company Law Tribunal (for short 'NCLT') dated 21.07.2023. In light of the merger, an application for surrender of GST registration was filed on 02.11.2023, the GST registration was suspended with effect from 10.10.2023 by order dated 10.11.2023 passed by the respondents.

3. It is claimed that while submitting the GST surrender application, the contact details including the petitioner's address were provided for future correspondence. No notices under Section 73 of the Act were received by the petitioner, however, in January

2025, the petitioner received a call indicating pending tax demand in relation to MVIL.

4. Submissions have been made that once MVIL had merged with the petitioner company by order dated 21.07.2023 passed by the NCLT, the existence of the said company came to an end and as the orders impugned have been passed against a non-existent entity, the same are liable to be quashed and set aside. It was submitted that the law in this regard stands settled in view of judgments in **Pr. Commissioner of Income Tax Vs. Maruti Suzuki India Limited : [2019] 416 ITR 613 (SC); HCL Infosystems Ltd. Vs. Commissioner of State Tax : 2024:DHC:9098-DB** and **M/s. Trelleborg India Private Limited Vs. State of Karnataka: Writ Petition No. 15620 of 2024**, decided on 02.07.2024 by Karnataka High Court and, therefore, orders impugned deserve to be quashed and set aside.

5. Learned Standing Counsel appearing for the respondents supported the orders impugned relying on provisions of Section 87 of the Act. It is submitted that the proceedings in question can continue against transferor company despite merger and, therefore, the petition deserves dismissal.

6. We have considered the submissions made by counsel for the parties and have perused the material available on record.

7. Undisputed facts are that before the three assessment orders were passed, the company MVIL stood merged with the petitioner company and, therefore, the orders in question were passed against a non-existent company. The Hon'ble Supreme Court in the case of **Maruti Suzuki India Limited (supra)**, in a case pertaining to income tax, came to the conclusion that the issuance of notice to a non-existent entity was fundamentally at odds with the legal

principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation, the judgment applies to the present case as well.

8. Delhi High Court in the case of **HCL Infosystems Ltd. (supra)** in similar circumstances, after taking note of provisions of Section 87 of the Act, reiterated the same principles and came to the conclusion that the provision does not enable the respondents to continue proceedings against a non-existent entity.

9. In view of the legal position as laid down by Hon'ble Supreme Court and followed by Delhi High Court, we do not find any reason to differ with the ratio of the judgment in the case of **HCL Infosystems Ltd. (supra)**.

10. Consequently, the writ petition is **allowed**. The orders dated 29.11.2023, 27.04.2024 and 26.08.2024 passed under Section 73(9) of the Act are quashed and set aside. We leave it open for the respondents to pursue the proceedings against the appropriate entity regarding the subject matter of orders, as is permissible in law.

Order Date :- 5.3.2025
AHA

(Kshitij Shailendra, J) (Arun Bhansali, CJ)