Show Cause Notice issued to a non-existent amalgamated company is void ab initio and cannot be saved by Section 87 of the CGST Act

The Hon'ble Bombay High Court in the case of ***Kanakia Spaces Realty Private Limited v. Union of India & Ors. [Writ Petition No. 2586 of 2026 dated June 24, 2026]*** set aside the Order-in-Original confirming a GST demand of Rs. 42.65 crores which was passed on the basis of a Show Cause Notice issued under Section 74 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) in the name of a company that had ceased to exist upon its amalgamation, and held that a Show Cause Notice issued to a non-existent entity is without jurisdiction and the entire proceedings initiated thereunder are vitiated and rendered void ab initio. It was further held that Section 87 of the CGST Act operates only for the intervening period from the date on which the amalgamation order takes effect till the date of the order, and in no manner confers authority on the Department to issue a Show Cause Notice on a non-existent entity post merger/amalgamation.

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Facts:

M/s. Kanakia Spaces Realty Private Limited (**"the Petitioner"**) is a company incorporated under the Companies Act, 1956. M/s. Kanakia Supremo Construction Private Limited (**"KSCPL"**), along with another group company, merged with the Petitioner pursuant to a scheme of amalgamation approved by the Hon'ble Bombay High Court vide order dated November 29, 2016, with the appointed date of the merger being April 1, 2015. Consequently, KSCPL stood dissolved and its name was struck off from the records of the Registrar of Companies.

On February 22, 2017, KSCPL duly informed the Superintendent of Central Excise, Service Tax Commissionerate-V, Mumbai about the fact of its amalgamation with the Petitioner and the transfer of the balance unutilized CENVAT credit in accordance with Rule 10 of the CENVAT Credit Rules, 2004. Upon introduction of the GST regime, the service tax registration of KSCPL was automatically migrated under Section 139 of the CGST Act and a GSTIN was allotted to KSCPL without any intimation to it.

When a notice dated June 20, 2019 was issued in the name of KSCPL for non-filing of Form GSTR-3B, the Petitioner, vide reply dated July 18, 2019, once again informed the Department that KSCPL had already amalgamated with the Petitioner and had ceased to exist. Thereafter, on February 17, 2020, the GST registration of KSCPL was cancelled by the tax authorities after determining NIL liability.

However, based on intelligence gathered by the DGGI that KSCPL and its connected entities had not discharged GST liability pertaining to flats/commercial properties allotted to owners, investigation and search proceedings under Section 67 of the CGST Act were initiated. Despite the Petitioner having submitted the relevant details on October 28, 2022, including particulars of service tax of Rs. 62,78,041/- already paid by KSCPL along with the registration cancellation order, an intimation in Form DRC-01A dated May 21, 2025 followed by a Show Cause Notice dated June 25, 2025 (**"the Impugned SCN"**) were issued under Section 74 of the CGST Act in the name of the dissolved company i.e. KSCPL, demanding GST of Rs. 44,78,61,113/- along with interest and penalty.

The Petitioner replied to the Impugned SCN denying the liability and asserting that the proceedings against KSCPL were null and void as the notice was issued to a non-existent entity. Ignoring the same, the Adjudicating Authority passed the Order-in-Original dated December 31, 2025 (**"the Impugned Order"**) confirming the GST demand of Rs. 42,65,34,393/- along with interest under Section 50 and penalty under Section 74 of the CGST Act.

The Revenue contended that, in view of Section 85 read with Section 74 of the CGST Act, since KSCPL had defaulted in discharging its liability, the Authority would be entitled to recover the unpaid dues even after the merger of the transferor company. Hence, aggrieved by the Impugned Order, the Petitioner filed the present writ petition before the Hon'ble Bombay High Court.

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Issue:

Whether the Order-in-Original passed on the basis of a Show Cause Notice issued under Section 74 of the CGST Act to a company that had ceased to exist pursuant to its amalgamation is sustainable in the eyes of law?

Held:

The Hon'ble Bombay High Court in ***Writ Petition No. 2586 of 2026*** held as under:

- Observed that, the core issue in the proceedings was not whether the dues of KSCPL were recoverable under the law, but whether any proceeding for recovery of outstanding tax/GST dues based on a Show Cause Notice served on a non-existent entity would be maintainable in law.

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- Noted that, the Hon'ble Supreme Court in ***Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd. [(2019) 416 ITR 613]*** has held that if, despite being informed that the amalgamating company has ceased to exist as a result of the scheme of amalgamation, proceedings are initiated against such non-existent company, then such proceedings would be void ab initio. The said principle has been followed by the Co-ordinate Benches of the Bombay High Court in ***Reliance Industries Limited v. P. L. Roongta [(2025) 479 ITR 770] and Vodafone Idea Ltd. v. Union of India and Ors. [2026 (5) TMI 162 – Bombay High Court]***.

- Observed that, the conditions/ingredients of Section 87 of the CGST Act are only in respect of the intervening period from the date on which the amalgamation order takes effect till the date of the order, and the same in no way affects or gives the Department the authority to issue a Show Cause Notice on a non-existent entity post merger/amalgamation, since post merger the amalgamating entity has no status in the eyes of law and no proceedings can be initiated against it.

- Rejected the Department's contention that the decision in *Maruti Suzuki India Ltd. (supra)*, having been rendered in the context of the Income Tax Act, 1961, would not apply where Section 87 of the CGST Act is attracted, as the said contention already stood negated in *Vodafone Idea Ltd. (supra)*.

- Held that, any Show Cause Notice issued to an amalgamating company after it had ceased to exist pursuant to its merger would be without jurisdiction and, therefore, any proceeding initiated thereunder would also be null and void.

- Held that, the Impugned Order dated December 31, 2025 is set aside, while clarifying that the Court has not expressed any opinion on the merits of the claims and counter claims of the parties, and that the order would not come in the way of the Revenue initiating any proceeding, in accordance with law, for recovery of unpaid GST dues along with interest and penalty from the Petitioner (successor company), if the same is otherwise permissible under the law.

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Our Comments:

Section 87 of the CGST Act deals with "Liability in case of amalgamation or merger of companies". Section 87(1) of the CGST Act provides that when two or more companies are amalgamated or merged in pursuance of an order of a court or Tribunal or otherwise, and the order is to take effect from a date earlier to the date of the order, then the transactions of supply and receipt of goods or services or both between such companies during the period commencing from the date on which the order takes effect till the date of the order, shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly. Further, Section 87(2) of the CGST Act provides that notwithstanding anything contained in the said order, for the purposes of the CGST Act, the said companies shall be treated as distinct companies for the period up to the date of the said order, and their registration certificates shall be cancelled with effect from the date of the said order.

A plain reading of the provision makes it clear that Section 87 of the CGST Act is a limited deeming fiction confined to the intervening period between the appointed date and the date of the amalgamation order, essentially to capture inter-se supplies between the merging companies within the tax net. It is neither a machinery provision for assessment nor does it keep the transferor company alive for the purpose of initiation of proceedings after the amalgamation takes effect. Similarly, Section 85 of the CGST Act, which fastens joint and several liability on the transferor and the transferee in case of transfer of business, only addresses the recoverability of dues from the successor and does not cure the fundamental jurisdictional defect of issuing a Show Cause Notice in the name of a dead/non-existent entity.

The present ruling is in line with the settled position of law laid down by the Hon'ble Supreme Court in ***Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd. [(2019) 416 ITR 613],*** wherein it was held that upon amalgamation, the amalgamating company ceases to exist and an assessment order passed in its name, despite the Department having been informed of the amalgamation, is a substantive illegality and not a mere procedural defect capable of being cured. Earlier, the Hon'ble Delhi High Court in ***Spice Enfotainment Ltd. v. Commissioner of Income Tax***, as affirmed by the Hon'ble Supreme Court, had also held that framing of assessment against a non-existent entity goes to the root of the matter and is not a curable defect.

In the GST regime as well, the Hon'ble Delhi High Court in *HCL Infosystems Ltd. v. Commissioner of State Tax, Delhi* set aside a demand raised under Section 73 of the CGST Act against an amalgamating company, holding that an assessment framed in the name of a company which stands dissolved upon amalgamation is a substantive illegality. Likewise, the Hon'ble Bombay High Court in ***Vodafone Idea Ltd. v. Union of India and Ors. [2026 (5) TMI 162 – Bombay High Court]*** categorically held that Section 87 of the CGST Act cannot be invoked to carry forward proceedings contemplated in a Show Cause Notice issued to a non-existent amalgamating company.

However, it is pertinent to note the contrary outcome in ***Principal Commissioner of Income Tax v. Mahagun Realtors (P) Ltd. [(2022) 443 ITR 194 (SC)],*** wherein the Hon'ble Supreme Court upheld the assessment made in the name of the amalgamating company on the peculiar facts of that case, since the assessee had not disclosed the factum of amalgamation to the Department and had, in fact, participated in the proceedings representing itself as the amalgamating company. Thus, the protection against proceedings initiated on a non-existent entity is available only where the Department has been duly informed of the amalgamation, as was undisputedly the position in the present case where the Revenue was intimated of the merger as far back as in the year 2017 and again in 2019, much before the issuance of the impugned notices.

The present judgment reaffirms that participation of the successor company in the proceedings or the availability of recovery provisions such as Sections 85 and 87 of the CGST Act cannot validate proceedings which are void ab initio at inception. Taxpayers who have undergone merger/amalgamation should, as a matter of caution, promptly intimate the jurisdictional authorities of the scheme along with the sanction order, seek cancellation of the registration of the transferor entity, and place the factum of amalgamation on record at every stage of any proceeding, so as to effectively assail any notice or order issued in the name of the non-existent entity.

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