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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6637 OF 2025

Vodafone Idea Ltd.
(Formerly known as Vodafone Mobile Services Ltd.) ...Petitioners
Versus
Union of India & Ors. ...Respondents

Mr. Darius Shroff, Senior Counsel a/w Rahul Jain i/b. Alpha Chambers for Petitioner.

Mr. Y. S. Bhate for Respondent No.1.

Mr. Siddharth Chandrashekhar a/w Suman Kumar Das for Respondent No.2.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 29 APRIL 2026

P.C.

1. This Petition under Article 226 of the Constitution of India is filed praying for the following substantive:-

> "(a) For a Writ of certiorari or a writ, direction or after in the nature of certiorari or any other appropriate writ, direction or rotor under Article 226 of the Constitution of India calling for the records of the said impugned Order dated 29.1.2025 (being Exhibit "A" hereto) and after considering the same quashing and for setting aside the same.
>
> (b) For a writ of Mandamus or a writ, direction or odour in the nature of mandamus or any other writ, order or direction under Article 226 of the Constitution of India directing the Respondents to:
>
> (i) forthwith withdraw and cancel the said impugned Order dated 29.1.2025 (being Exhibit "A" hereto); and

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ii) forbear from taking any action in pursuance of or in implementation of the said impugned Order dated 29.1.2025 (being Exhibit "A" hereto).

(c) For an order and declaration of this Hon'ble Court declaring serial No. 2 of notification no. 12/2017 ultra vires (being Exhibit "P" hereto).

(d) For an interim order of an injunction of this Hon'ble Court, pending the hearing and final disposal of this petition:

(i) Staying the operation of the said impugned Order dated 29.1.2025 (being Exhibit "A" hereto); and

(ii) restraining the Respondents by themselves, their officers, subordinates, servants and agents from taking any steps or proceedings in pursuance of and/or in furtherance of and/or in implementation of said impugned Order dated 29.1.2025 (being Exhibit "A" hereto);"

2. The Petition has been pressed only in respect of prayer clauses (a) and (b). Accordingly, we have not delved on the Petitioner's case in prayer clause (c), which pertains to the challenge to Notification No. 12/17.

3. Briefly, the facts are as under:-

i. On 30th August 2018, an order came to be passed by the National Company Law Tribunal (NCLT), by which the Petitioner is the merged entity of Vodafone Mobile Services Ltd (VMSL) and Vodafone India Limited with Idea Cellular Limited. The fact of such merger was informed to the Goods Services Tax (GST) authorities at the time of amendment of the GST registration of Idea Cellular Limited.

ii. It is the case of the Petitioner that prior to the merger, the business of VMSL was divided broadly in two distinct businesses: (i) Mobile Telecommunication Services; (ii) Renting of Tower Business; VMSL owned/leased and operated passive

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infrastructure at telecom sites across all circles other than the Mumbai circle. It is stated that it had 10004 towers in India, however only 354 towers in the State of Maharashtra, and that such towers were majorly for captive consumption.

iii. On 13th November 2017, VMSL entered into a Business Transfer Agreement with ATC Telecom Infrastructure, under which it had sold the entire tower business with all rights and liabilities as a going concern on a slump sale basis. It is the Petitioner's case that the slump sale, which was a sale of the entire business, could not be considered as 'supply' in the course of business, or furtherance of business and sale of entire business cannot be so, hence, the same was never declared in the GST returns. It is also contended that since the tower business was on pan India basis, and the calculation of the said slump sale transaction for each State/circle was not possible, hence no invoice was issued. However, the consideration for such slump sale was recorded in the books of account.

iv. It is on such backdrop that the Petitioner contends that in the period between March 2022 to July 2022, the office of the Directorate General of GST Intelligence (DGGI), Chennai demanded documents from time to time, which were furnished by the Petitioner. Thereafter, for almost after two years, no action was taken till 7th February 2024. On 7th February 2024, the DGGI commenced investigation by issuing summons to the Petitioner under Section 70 of the Central Goods and Services Tax Act, 2017 (CGST Act). A copy of the same is annexed at Exhibit-G to the Petition.

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v. On such backdrop, on 1st August 2024, a show-cause notice was issued to the Petitioner, demanding INR 363 crores under Section 74 of the CGST Act, along with penalty on the ground that the services by way of transfer of a going concern as a whole or independent part thereof is an exempted supply, and VMSL was not entitled to take Input Tax Credit (ITC) as per provisions of CGST Act.

vi. On 8th November 2024 and 14th November 2024, the Petitioner submitted detailed replies to the show-cause notice dated 1st August 2024, which were uploaded on the portal, and the same were physically submitted. Consequent thereto, on 29th January 2025, an order of even date (impugned order) was passed by Respondent No. 2 without considering the submissions made by the Petitioner. It is in the aforesaid circumstances that the present Petition has been filed praying for the reliefs which are reproduced hereinabove.

4. Mr. Shroff, learned Senior Counsel appearing for the Petitioner, submitted that the impugned order is a nullity, being passed against a non existent entity hence the same is wholly without jurisdiction. He further contended that the order is vitiated by breach of the principles of natural justice, as none of the Petitioner's submissions regarding the legal effect of the merger have been considered. It is his primary contention that the impugned demand being raised against a non-existent entity is contrary to the settled principles of law laid down by the Supreme Court in ***Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd***[1]. He submitted that once the proper officer was duly informed of the merger and its consequences, namely that the amalgamating

1 [2019] 416 ITR 613

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company ceased to exist upon the approval of the scheme of amalgamation/merger, the officer lacked jurisdiction to issue the notice. According to him, this would go to the root of the matter, as the very basis for invoking jurisdiction is fundamentally at odds with the legal principle that an amalgamating entity ceases to exist upon approval of the scheme, as recognized in the aforesaid decision.

5. In this context, Mr. Shroff placed reliance on the decision of this Court in ***Reliance Industries Limited v. P. L. Roongta***[2], wherein, applying the principles laid down by the Supreme Court in *Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd.* (supra), the Court made the following observations:

> "**33.** In our view, the facts of the present appellant-assessee before us are similar to the significant facts in the case of *Maruti Suzuki India Ltd.* (*supra*) on the basis of which the Supreme Court has held that inspite of the fact of the Assessing Officer being informed of the amalgamating company having ceased to exist as a result of the scheme of amalgamation, if the proceedings are initiated against the non-existing companies, then such proceedings are void ab initio although the amalgamated company participated in the proceedings. In our view, in the present case also although RIL-amalgamated company participated in the proceedings, the respondent-revenue having knowledge of the amalgamation still passed an order in the name of the amalgamating companies which would make the assessment order dated 27 March 1997 void ab initio.
>
> **34.** The appellant-assessee is justified in relying on the decisions of the High Courts of Gujarat, Calcutta, Delhi and Madras, which are referred to in the paragraph dealing with the submissions made on behalf of the appellant-assessee. These have considered the decisions in the cases of *Maruti Suzuki India Ltd.* (*supra*) and *Mahagun Realtors Pvt. Ltd.* (*supra*), and have come to a conclusion that proceedings against non-existing entities are bad in law. In our view, the reliance placed on these decisions by the appellant-assessee supports the submissions made by them on the proposition that the proceedings against an amalgamating company post the amalgamation orders are void ab initio if the revenue had knowledge of the amalgamation prior to the proceedings."

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2 [2025] 479 ITR 770

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6. *Per Contra*, learned Counsel for Respondent No. 2 Mr. Chandrashekhar contended that the decision in *Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd.* (supra) is not applicable in the facts of the present case, inasmuch as the same is rendered in the context of the Income Tax Act, 1961. He further contended that in the facts of the present case, the provisions of Section 87 of the CGST Act are attracted. Mr. Chandrashekhar would rely on the affidavit-in-reply filed by Mr. Ravindra Dange, Commissioner of CGST and Central Excise, on behalf of the Respondents in support of his contentions. The relevant paragraphs of the affidavit-in-reply filed by Mr. Ravindra Dange in relation to the issuance of a show cause notice to a non-existent entity upon merger/amalgamation, are reproduced below:

> "8. Now to deal with the Grounds taken by the Petitioner as under.
>
> 8.1 With reference to the contents of the grounds in Para A, I say and submit that the contention of the petitioner is merely a conjecture and without any basis. It is pertinent to note that GST statute is a complete code in itself and has provisions for fixing the past liabilities including in case of amalgamations and mergers. S. 87(2) of the Act governs the liability in case of amalgamation or merger of companies and states that "Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order.....".
>
> This clearly means that date of the order is relevant for the purpose of fixing GST liability even if the merger order says otherwise. In other words, all the GST liabilities for the period upto the date of order of merger is to be fixed on the erstwhile GSTIN registered with the department even if the recovery proceedings are initiated after the merger.
>
> Since SEN No. 50/2024-25 (GST) dated 01.8.2024 issued to M/s VMSL covers the period 2017-18, which is prior to the effective date of the order of merger, it has been rightly issued to VMSL in total conformity with the clear and unambiguous provisions of Act as mentioned above.

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> The contention of the petitioner that "Thus, registration certificate of VMSL stands cancelled from 30 August 2018 itself is factually incorrect and misleading as any GST registration can be cancelled either on application of the taxpayer or suo moto by the jurisdictional officer on the basis of grounds mentioned in S. 29 of the CGST Act, 2017. It is pertinent to mention that the petitioner had applied for cancellation of their GST registration only on 07.11.2024, this is contradictory to their own position that "registration certificate of VMSL stands cancelled from 30 August 2018 itself. If the contentions of the petitioner are to be accepted, no action can be taken against taxpayer whose registration has been cancelled, which is contrary to the provisions of the Act. S. 29 (3) of the CGST Act categorically states that cancellation of the registration shall not affect the liability of the person to pay tax and other dues for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.
>
> The ratio of Maruti Suzuki India Limited relied upon by the petitioner is not applicable in this case as it is based on the interpretation of the Income Tax Act which did not have an express and elaborate provision like S. 87 of the CGST Act covering cases of amalgamation and merger of companies."

7. Having heard learned counsel for the parties and having perused the record, we find that the contentions urged on behalf of the Petitioner, particularly in view of the order dated 30th August 2018 passed by the NCLT is to the effect that the Petitioner is an entity formed pursuant to the merger of VMSL and Vodafone India Limited with Idea Cellular Limited. It is not in dispute that the said fact was duly intimated to the GST authorities at the time of amendment of the GST registration of Idea Cellular Limited. The same was also brought to their notice in the detailed replies filed in response to the show-cause notice dated 1st August 2024.

8. The Petitioner had also contended that in regard to the legal effect brought about by the order passed by the NCLT sanctioning the scheme of amalgamation, the amalgamating entities ceased to exist upon such merger. Thus, the present case would squarely be governed by the principles of law laid down by

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the Supreme Court in *Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd.* (supra). The relevant paragraphs of the said decision read thus:

> 19. While assessing the merits of the rival submissions, it is necessary at the outset to advert to certain significant facets of the present case:
>
> (i) Firstly, the income which is sought to be subjected to the charge of tax for AY 2012-13 is the income of the erstwhile entity (SPIL) prior to amalgamation. This is on account of a transfer pricing addition of Rs. 78.97 crores;
>
> (ii) Secondly, under the approved scheme of amalgamation, the transferee has assumed the liabilities of the transferor company, including tax liabilities;
>
> (iii) Thirdly, the consequence of the scheme of amalgamation approved under Section 394 of the Companies Act 1956 is that the amalgamating company ceased to exist. In Saraswati Industrial Syndicate Ltd., (supra) the principle has been formulated by this Court in the following observations:
>
> "5. Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganisation of scheme of arrangement. In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England (4th edition volume 7 para 1539). Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity."
>
> (iv) Fourthly, upon the amalgamating company ceasing to exist, it cannot be regarded as a person under Section 2(31) of the Act 1961 against whom assessment proceedings can be initiated or an order of assessment passed;

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> (v) Fifthly, a notice under Section 143 (2) was issued on 26 September 2013 to the amalgamating company, SPIL, which was followed by a notice to it under Section 142(1);
>
> (vi) Sixthly, prior to the date on which the jurisdictional notice under Section 143 (2) was issued, the scheme of amalgamation had been approved on 29 January 2013 by the High Court of Delhi under the Companies Act 1956 with effect from 1 April 2012;
>
> (vii) Seventhly, the assessing officer assumed jurisdiction to make an assessment in pursuance of the notice under Section 143 (2). The notice was issued in the name of the amalgamating company in spite of the fact that on 2 April 2013, the amalgamated company MSIL had addressed a communication to the assessing officer intimating the fact of amalgamation. In the above conspectus of the facts, the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio.
>
> ……..
>
> 33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment (supra) on 2 November 2017. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment (supra)."

9. A Coordinate Bench of this Court in *Reliance Industries Limited v. P. L. Roongta* (supra), as noted above, has also categorically held that despite the Assessing Officer having been informed that the amalgamating company had ceased to exist pursuant to the scheme of amalgamation, any proceedings initiated against such a non-existent entity are void *ab initio*.

10. We are further of the view that the provisions of Section 87 of the CGST Act are not applicable to the facts of the case, inasmuch as the conditions/ingredients stipulated therein are not attracted/applicable to the facts of

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the present case. For ease of reference, the provisions of Section 87 of the CGST Act are reproduced below:-

> 87. Liability in case of amalgamation or merger of companies.— (1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.
>
> (2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.

11. On a plain reading of the aforesaid provisions, it is clear that the same is applicable on fulfillment of the below mentioned conditions/ingredients:-

i. When two or more companies have amalgamated or merged in pursuance of an order of court or of a tribunal or otherwise, and the order of amalgamation or merger is to take effect from a date earlier to the date of order of amalgamation or merger, and if in that intervening period, the two companies have supplied or received any goods or services or both to or from each other, then such transaction of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they will be liable to pay tax accordingly.

ii. The two companies which have amalgamated/merged will be treated as distinct companies for the period upto the date of the order and the registration certificate of the said companies would stand cancelled from the date of the order of amalgamation/merger.

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12. These conditions, to our mind, are 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 affect or give the Department the authority to issue a show-cause notice on a non-existent entity post merger/amalgamation. This in view of the fact that post merger/amalgamation the merged entity has no status in the eyes of law, and therefore no proceedings can be initiated against it. We are therefore inclined to reject the submissions made on behalf of Respondent No. 2 that the provisions of Section 87 of the CGST Act are applicable to the facts of the present case.

13. Considering the facts of the present case, we are of the opinion that the conditions/ingredients of Section 87 of the CGST Act cannot be invoked to carry forward the proceedings as contemplated in the show-cause notice dated 1st August 2024. The show-cause notice itself having been issued without jurisdiction, the proceedings stand vitiated and are rendered void *ab initio*, as held in *Reliance Industries Limited v. P. L. Roongta* (supra).

14. We are in agreement with Mr. Shroff and also find support in the decision of the Delhi High Court in *HCL Infosystems Ltd. v. Commissioner of State Tax and Another*[3], wherein, while interpreting Section 87 of the CGST Act, the following observations were made: :-

> "16. As is manifest from the above, Section 87 essentially seeks to preserve and identify the transactions which may have occurred between two or more companies which ultimately amalgamate and merge. In order to fix the liabilities that would accrue under the CGST Act and to avoid a contention being raised that the Amalgamating Company and transactions undertaken with it would no longer, be subject to tax, the Legislature, ex abundanti cautela, has come to place Section 87 on the statute book and which bids us to bear in mind that

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> notwithstanding an order of amalgamation or a scheme of merger coming to be approved, for the purposes of the CGST Act, the two entities would be treated as a distinct companies for the period up to the date of the order of the competent court or tribunal approving the scheme and the registration certificate of the companies being cancelled.
>
> 17. We thus find ourselves unable to read Section 87 as enabling the respondents to either continue to place a non-existent entity on notice or for that matter to pass an order of assessment referable to Section 13 against such an entity. In fact, in terms of Section 87, the liabilities of the non-existent company would in any case stand transposed to be borne by the amalgamated entity. This is, therefore, not a case where the Revenue would stand to lose or be deprived of their right to subject transactions to tax.
>
> 18. In our considered opinion, the principles that we had identified in International Hospital albeit in the context of the IT Act would equally apply to the CGST Act."

15. In light of the above discussion, we are of the opinion that the Petition needs to succeed. It is accordingly allowed in terms of prayer clause (a).

(AARTI SATHE, J.) (G. S. KULKARNI, J.)

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