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**29.09.2026**
**Court No. 10**
AGM

**In The High Court At Calcutta**
**Constitutional Writ Jurisdiction**
**Appellate Side**

**W.P.A. 13216 of 2024**
**IA No: CAN1/2025**

**ISS Facility Services India Private Ltd.**
**-versus**
**Union of India & Anr.**

**Mr. Prakash Shah. Sr. Adv. (V.C)**
**Mr. Mihir Mehta.**
**Mr. Dipankar Majumdar.**
**...For the Petitioner.**

**Mr. Sujit Bhunia.**
**Ms. Renesa Dey.**
**... For the Union of India.**

**Ms. Manasi Mukherjee.**
**Mr. Bijitesh Mukherjee.**
**... For the CGST Authority.**

**1.** The present writ petition challenges, inter alia, the legality, validity and sustainability of the show cause notice and the consequential order of adjudication dated 30.1.2024 passed by the respondent no. 2 for the period from October 2016 to March 2017.

**2.** The core issue involved herein is as to whether a show cause notice and adjudication order dated 30.1.2024 issued in the name of transferor company which stood amalgamated with the petitioner company, is sustainable in law.

**3.** Learned counsel appearing for the petitioner submits that the petitioner submits that one ISS Integrated Facility

Services India Private Limited has already been merged and amalgamated with ISS Facility Services India Private Ltd being the petitioner herein, with effect from 1.4.2012 pursuant to a scheme of Amalgamation and Arrangement approved by the High Court of Bombay vide order dated 16.8. 2013.

**4.** Despite such amalgamation, the impugned show cause notice has been issued by the respondent GST Authorities in the name of ISS Integrated Facility Services India Private Limited, being the transferor company.

**5.** Learned counsel contends that issuance of notice and passing of adjudication order in the name of a non-existent entity post amalgamation is not sustainable in the eye of law and is liable to quashed.

***6.*** Learned counsel appearing for the petitioner places reliance on the judgment dated 5.5.2025 passed by the Hon'ble High Court at Bombay in petitioner's own case, whereby the impugned order and the recovery notice has been quashed in the light of the judgment of the Hon'ble Apex Court in the case of Pr. Commissioner of Income Tax, New Delhi –Vs- Maruti Suzuki India Limited reported in 2019 (7) TMI1449, to contend that issuance of notice and adjudication against a non-existent entity is *non est and void ab initio.*

**7.** It is further contended that despite prior intimation regarding amalgamation and surrender of service tax registration, the issuance of show cause notice and

consequential orders against non-existing entity is without jurisdiction and nullity.

**8.** Learned counsel appearing for the petitioner relies upon the following judgments:

i. Pr. Commissioner of Income Tax, New Delhi –versus- Maruti Suzuki India Limited reported in 2019 (7) TMI 1449- Supreme Court.

ii. Kamala Muthiah as the erstwhile Director of M/s. M. Ct. M. Corporation Pvt. Ltd (Now Dissolved) –Versus- The Assistant Commissioner of Income Tax reported in 2020 (3) TMI 49- Madras High Court.

**9.** The petitioner relies upon paragraph nos. 32 to 35 of the Pr. Commissioner of Income Tax, New Delhi –versus- Maruti Suzuki India Limited which are reproduced below:

> *"32 On behalf of the Revenue, reliance has been placed on the decision of this Court in Commissioner of Income Tax, Shillong v Jai Prakash Singh (1996) 3 SCC 525 ("Jai Prakash Singh"). That was a case where the assessee did not file a return for three assessment years and died in the meantime. His son who was one of the legal representatives filed returns upon which the assessing officer issued notices under Section 142 (1) and Section 143 (2). These were complied with and no objections were raised to the assessment proceedings. The assessment order mentioned the names of all the legal representatives and the assessment was made in the status of an individual. In appeal, it was contended that the assessment proceedings were void as all the legal representatives were not given notice. In this backdrop, a two judge Bench of this Court held that the assessment proceedings were not null and void, and at the worst, that they were defective. In this context, reliance was placed on the decision of the Federal Court in Chatturam v CIT (1947) 15 ITR 302 (FC) holding that the jurisdiction to assess and the liability to pay tax are not conditional on the validity of the notice the liability to pay tax is founded in the charging sections and not in the machinery provisions to determine the amount of tax. Reliance was also placed on the decision in Maharaja of Patiala v CIT (1943) 11 ITR 202 (Bombay) ("Maharaja of Patiala"). That was a case where two notices were issued after the death of the assessee in his name, requiring him to make a return of income. The notices wer served upon the successor Maharaja and the assessment order was passed describing the assessee as "His Highness... late*

*Maharaja of Patiala". The successor appealed against the assessment contending that since the notices were sent in the name of the Maharaja of Patiala and not to him as the legal representative of the Maharaja of Patiala, the assessments were illegal. The Bombay High Court held that the successor Maharaja was a legal representative of the deceased and while it would have been better to so describe him in the notice, the notice was not bad merely because it omitted to state that it was served in that capacity. Following these two decisions, this Court in Jai Prakash Singh held that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where the liability is created by a distinct substantive provision. The omission or defect may render the order irregular but not void or illegal. Jai Prakash Singh and the two decisions that it placed reliance upon were evidently based upon the specific facts. Jai Prakash Singh involved a situation where the return of income had been filed by one of the legal representatives to whom notices were issued under Section 142(1) and 143(2). No objection was raised by the legal representative who had filed the return that a notice should also to be served to other legal representatives of the deceased assessee. No objection was raised before the assessing officer. Similarly, the decision in Maharaja of Patiala was a case where the notice had been served on the legal representative, the successor Maharaja and the Bombay High Court held that it was not void merely because it omitted to state that it was served in that capacity*

*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 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.*

*34 We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.*

*35 For the above reasons, we find no merit in the appeal. The appeal is accordingly dismissed. There shall be no order as to costs."*

**10.** The petitioner relies upon paragraph nos. 15 to 17 of the Kamala Muthiah as the erstwhile Director of M/s. M. Ct. M. Corporation Pvt. Ltd (Now Dissolved) –Versus- The Assistant Commissioner of Income Tax which are reproduced below:

*"15. In the instant case, assessee company had demerged and the appellant herein is the erstwhile Director of the assessee company which was dissolved pursuant to the demerger. This fact was also informed to the assessing Officer. In fact, there was also a dissolution of the company without winding up. Thereafter, the respondent Department issued notice under Section 148 of the IT Act, 1961 for reopening the assessment of M/s. M. Ct. M. Corporation Private Limited, which was no longer in existence. The dissolution of a company without winding up would entail distinct consequence from a company which is struck off from the Register of Companies in Maruti Suzuki (India) Limited. It has been observed that when there is a non-existing company, which would be pursuant to dissolution or on amalgamation, the Assessing Officer cannot seek to proceed against such a company.*

*16. In the circumstances, we find that the judgment of this Court in Maruti Suzuki (India) Limited referred to above squarely applies to the present case and the judgment of this Court in the case of Gopal Shri Scrips Private Limited would not apply, having regard to the fact that that was a case where the company had been struck off and there was an express proviso to Section 560 (1) of the Companies Act, 1956 which continues the liability of the directors of the company despite the striking off of the company from the Register of Companies.*

*17. Having regard to the facts of this case, we find that High Court ought to have exercised its powers and jurisdiction under Article 226 of the Constitution of India. Therefore, the impugned orders are set aside and impugned notice dated 28.03.2007 is quashed. Consequently, the Assessment Order dated 29.09.2021 also stands quashed."*

**11.** Learned counsel appearing for the CGST Authorities vehemently opposes the submissions made by the petitioner and raises a preliminary objection as to the maintainability of the present writ petition on the ground that an efficacious alternative statutory remedy by way of appeal is available

under the provision of Finance Act 1994 read with CGST Act is available to the petitioner.

**12.** It is submitted that though by virtue of a Scheme of Amalgamation the ISS Integrated Facility Services India Private Ltd being the transferor company has merged with the petitioner, and vested with the petitioner company, but still the common portal status of the transferor company remains to be active.

**13.** It is further submitted that the transferor company has already obtained a registration from the jurisdictional authority of Kolkata and subsequently has not surrendered the registration and also did not inform about the Scheme of Amalgamation.

**14.** Learned counsel places on record certain documents pertaining to the registration of the transferor company from which it appears that the service tax registration remains active as per the migrated tax payer registration list. The said documents are kept on record.

**15.** It is further submitted that during the financial year 2016-2017 the transferor company, being the taxpayer, has provided taxable services and had received monitory considerations in respect of such taxable services.

**16.** The said monitory consideration is duly reflected by the taxpayer in the Income Tax Return but the entire consideration had been suppressed by them by not filing the ST3 return for the said period and did not give any plausible explanation for the lapse of non filing ST3 return.

**17.** Despite repeated requests being made for furnishing relevant documents to demonstrate with regard to the non-filing of the ST3 return, no documents were furnished. Thus the transferor company being the tax payer, is liable to pay service tax including cess of Rs. 4,04,39,695/-.

**18.** Prior to the issuance of the show cause notice, the tax payer did not bring to the knowledge of the authority concerned with regard to the amalgamation. Only after filing of the reply to the show cause notice, it has come to the knowledge of the authority concerned with regard to the Scheme of Amalgamation.

**19.** The taxpayer continues to maintain the registration with the Kolkata jurisdiction as a result of which the taxpayer has been foisted with the liability to the pay the service tax.

**20.** It is further submitted by the CGST Authority that despite granting liberty of personal hearing, the taxpayer has chosen not to appear before the concerned authority.

**21.** It is mandatory upon the registered person to surrender the registration certificate in cases where a registered assessee transfers his business to another person.

**22.** From the documents annexed to the reply it was not evident that the Scheme of Amalgamation also covers the additional place of business at Kolkata and that service tax registration of the Kolkata has been merged with the registered business place at Bombay.

**23.** In this context learned counsel for the CGST Authorities places reliance upon the paragraph nos. 4 to 8 of the HCL

Infosystems Ltd. –Versus- Commissioner of State Tax reported in (2024) 25 Centax 72 (Del.) which are reproduced below:

> *"4. On 12 October 2022, the Amalgamating Company moved an application for cancellation of its existing registration citing the reason for the filing of that application as being "transfer of business on account of amalgamation, merger, demerger, sale". It was during the pendency of consideration of the aforesaid application that the respondents issued an acknowledgement of the same and suspended the Goods and Services Tax registration of the Amalgamating Company with effect from 12 October 2022. This becomes apparent from the communication which stands placed on our record as Annexure P/8.*
> *5. Of equal significance is the filing made by the petitioner on the same date in Form GST ITC-02 together with a certificate of a Chartered Accountant seeking transfer of the Input Tax Credit standing in the account of the Amalgamating Company to the petitioner. Although and according to writ petitioner, the respondents were duly apprised of the Scheme having been approved and the Amalgamating Company thus having ceased to exist, a SCN in the name of the Amalgamating Company came to be issued by the respondents on 29 September 2023 for Financial Year 2017-2018.*
> *6. On receipt thereof, the petitioner submitted a reply dated 16 November 2023, again apprising the second respondent of the Scheme which had come to be approved by the NCLT as well as the fact that the Amalgamating Company could no longer be viewed as existing in law. This fact was again brought to the attention of the respondents by way of a further detailed reply which was submitted on 16 February, 2024.*
> *7. At this juncture, it would be apposite to note that the proceedings for FY 2017-2018 were dropped on the merits of the case. However, and notwithstanding those disclosures having been duly made, the second respondent proceeded to issue yet another SCN in the interregnum, for FY 2018-2019 on 03 December 2023. This notice too was in the name of the Amalgamating Company.*
> *8. Despite the petitioner, thus, having clearly and in unequivocal terms informed and having apprised the respondents that Digilife Distribution and Marketing Services Limited could no longer be viewed as existing in law, the respondents proceeded to frame a final order on 27 April 2024 in the name of the Amalgamating Company."*

**24.** Learned counsel for the CGST Authorities also relies upon Sub Rules 7 and 8 of the Rule 4 of the Service Tax Rules, 1994, which is reproduced below:

> *"7. Every registered assess, who ceased to provide the taxable service for which he is registered, shall surrender his registration certificate immediately.*

> *8. On receipt of the certificate under sub-rule (7), the Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act, and the rules and the notifications issued thereunder, and thereupon cancel the registration certificate."*

**25.** Having heard the parties and upon perusing the materials available on record, this Court finds that the petitioner has been able to make out a prima facie case and warranting an interference at this stage. This Court has taken a judicial notice of all the relevant documents annexed to the writ petition and also the supplementary affidavit including the judgment relied by the respondents authorities and is of the considered view that to balance the equities and for the ends of justice the issue involved herein requires a proper consideration for effective adjudication on the basis of the relevant documents in order to arrive at a logical and conclusive finding.

**26.** It is no longer res integra that any proceedings initiated against a nonexistent entity is a nullity in the eye of law.

**27.** In the present case the respondent authority has issued a show cause notice to the nonexistent entity which is in contravention to the principles laid down in Pr. Commissioner of Income Tax, New Delhi –versus- Maruti Suzuki India Limited (supra).

**28.** In view of the above the writ petition is disposed of on the following direction:

**i.** In light of the Maruti Sujuki India Limited (supra), the impugned order dated 30.1.2024 is hereby quashed and set aside.

**ii.** The petitioner is directed to file a comprehensive and detailed representation within a period of four weeks from the date of communication of this order, annexing all relevant documents including the provisions of relevant statute to substantiate its case before the authority concerned regarding:

**a.** Status of transferor and transferee company for making payment of Service Tax for F.Y. 2016-17 Demand of Rs. 40,4,39,895/-.

**b.** Scheme of Amalgamation of ISS Integrated Facility Services India Pvt. Ltd. (Transferor Company) with the petitioner (Transferee Company) with effect from 1.4.2014 vide order dated 16.8.2013 passed by the Hon'ble High Court Bombay.

**c.** Surrender of Service tax registration of Kolkata being the additional place of business.

**29.** The respondent authority shall consider and dispose of the same within a period of four weeks from the date of receipt, and shall pass a reasoned and speaking order in accordance with law upon affording an opportunity of personal hearing to the petitioner and communicate such decision within a week thereafter.

**30.** However, it is made clear that respondent no. 2 shall take an independent decision without being influenced by the observations made hereinabove.

**31.** With the above observations and directions, the writ petition along with all connected applications are disposed of without going into the merits of the case.

**32.** Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

**( Smita Das De, J.)**