2026:BHC-OS:14009-

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2586 OF 2026

Kanakia Spaces Realty Private Limited
a Private Limited Company incorporated under Companies Act, 1956 and having its registered office at Kanakia Future City, Residential Building No.2, CTS No. 101, Off Village Tirandaz, Taluka Kurla, Powai, Mumbai, Maharashtra – 400076. …Petitioner

Versus

1. **The Union of India,**
   through the Revenue Secretary, Ministry of Finance Department of Revenue, New Delhi.

2. **The Commissioner, CGST & CX**
   Mumbai West Commissionerate, Bharat Sanchar Nigam Ltd., Administrative Building, Juhu Tara Road, Santacruz (West), Mumbai – 400954.

3. **Joint Commissioner, CGST & CX**
   Mumbai West Commissionerate, Bharat Sanchar Nigam Ltd., Administrative Building, Juhu Tara Road, Santacruz (West), Mumbai – 400954.

4. **Joint Director, DGGI, Zonal Unil Mumbai**
   Third Floor, N.T.C. House, 15 N. M. Road, Ballard Estate, Mumbai – 400001.

5. **The State of Maharashtra**
   Through the Government Pleader Bombay High Court, Fort, Mumbai – 400001. … Respondents

REKHA PRAKASH PATIL

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Mr. Prakash Shah, Senior Advocate with Mr. Mohit Raval i/b PDS Legal, for the Petitioner.
Mr. S. Chandrashekhar with Mr. Abhishek Mishra, for the Respondent Nos. 1 to 4.
Mr. Amar Mishra, AGP, for the Respondent No.5-State.

CORAM: SUMAN SHYAM &
ADVAIT M. SETHNA, JJ.

RESERVED ON: 12th JUNE, 2026
PRONOUNCED ON: 24rd JUNE, 2026

JUDGMENT : (Per *SUMAN SHYAM, J.*)

1. The Order-in-Original dated 31st December 2025 issued by the Respondent No. 3, i.e., Joint Commissioner, CGST & CX is under challenge in this Writ Petitioner, primarily on the ground that the impugned order has been issued on the basis of show cause notice dated 25th June, 2025, issued by the CGST Authority under Section 74 of the Central Goods and Services Tax Act, 2017 ('CGST Act' for short) against a non-existent entity, viz., M/s. Kanakia Supremo Construction Private Limited ("KSCPL" for short).

2. The facts and circumstances of the case, giving rise to the filing of this Writ Petition, in a nut-shell, as evident from the material on record, are as follows:-

(a) KSCPL was a company registered under the Companies

Act, 1956. Based on the order dated 29th November, 2016, passed by the Bombay High Court approving the scheme of amalgamation of KSCPL and another company, i.e., Kanakia King Style Construction Private Limited, merged with the Writ Petitioner, viz., Kanakia Spaces Realty Private Limited (for short "KSRPL"), which is also a company registered under the Companies Act, 1956. . The appointed dated of the merger under the scheme of amalgamation was 1st April, 2015. Consequently, KSCPL stood dissolved and its name was struck off from the records of Registrar of Companies ("RoC"). As per the projection made in the Writ Petition, KSCPL has discharged its service tax liability on the construction services provided by it to M/s. New Monarch Builders & Contractors, whereby, around 1000 slum dwellers were rehabilitated in the buildings constructed under the Slum Redevelopment Authority("SRA") scheme against total FSI 28,500 sq. mtrs. KSCPL was registered under the provision of the Finance Act, 1994, vide STC No.AAECA2207JSD001 and had filed its last ST-3 return for the period from October 2016 to March 2017 (i.e. upto November 2016). In this manner, KSCPL had paid service tax of Rs.62,78,041/- during April 2016-March 2017 by filing sales tax returns.

3. On 22nd February, 2017, KSCPL had informed the Superintendent of Central Excise, Service Tax Commissionerate-V, Mumbai, about the fact of amalgamation of the company with the Writ Petitioner and the transfer of balance unutilized CENVAT credit, as on 30th November, 2016, in accordance with Rule 10 of the CENVAT Credit Rules, 2004. In the meantime, the GST regime was introduced in the year 2017, as a result of which, the service tax registration of KSCPL was automatically migrated into the GST and GSTIN No.27AAECK2207J1ZO came to be allotted to KSCPL. The automatic migration was apparently in terms of Section 139 of the CGST Act. However, since the migration was automatic and without any intimation to KSCPL, hence, the Petitioner claims that it was unaware of the same.

4. On 20th June, 2019, the Deputy Commissioner, Division-V, Mumbai (East) issued a notice in the name of KSCPL seeking clarification from it due to non filing of monthly returns in the form of GSTR-3B for the previous twelve months. On that date, KSCPL was, however, a non-existent entity due to its merger with the Petitioner company. As such, the Petitioner submitted reply dated 18th July, 2019, informing the Department that KSCPL was

already amalgamated with the Petitioner company and, therefore, it had ceased to exist. However, due to the non-availability of the authorized signatory, surrender application could not be filed.

5. On 17th February, 2020, GST registration of KSCPL was cancelled by the Sale Tax Authorities after determining NIL liability. However, it appears that based on intelligence gathered by DGGI to the effect that KSCPL and its connected entities had not discharged their liability with regard to the GST pertaining to flats/commercial properties allotted to the owners, investigation and search proceedings under Section 67 of CGST Act was initiated.

6. On 28th October, 2022, the Writ Petitioner submitted details including particulars of service tax of Rs.62,78,041/- that has been paid by KSCPL along with the order dated 17th February, 2020, cancelling the GST Registration. Notwithstanding the same, on 21st May, 2025, the DRC-01A form was issued by Respondent No.4 under Section 74 of the CGST Act, in the name of KSCPL demanding payment of GST liability along with interest. On 28th May, 2025, the petitioner submitted reply to the said notice

denying and disputing the tax liability while informing the Department that KSCPL has ceased to exist and therefore, the proceedings ought to be in the name of the Petitioner company. However, by ignoring the same, show cause notice dated 25th June, 2025, was issued in the name of KSCPL under Section 74 of the CGST Act, calling upon it to show cause as to why, GST amount of Rs.44,78,61,113/- along with interest and penalty of appropriate amount, should not be demanded/ recovered from it.

7. Assailing the notice dated 25th June, 2025, the Writ Petitioner had instituted Writ Petition (L) No. 25819 of 2025 before this Court. However, since no interim order was passed in that proceeding, the Petitioner filed reply to the show cause notice denying its liability and once again asserting that the proceedings against KSCPL were null and void since the notice was issued to a non existent entity.

8. After submission of show cause reply by the Petitioner, the Respondent No.3 had issued the impugned Order-in-Original dated 31st December, 2025, confirming the GST demand of Rs.42,65,34,393/-, interest under Section 50 and penalty under

Section 74 of the CGST Act while dropping the demand of Rs.2,13,26,720/- towards the land value. The Order-in-Original dated 31st December, 2025, is assailed by filing the present Writ Petitioner.

9. The facts of the case are not in dispute. The Respondents have filed their Affidavit-in-Reply to the Writ Petition dated 11th June 2026. The Respondents contend that the GST liability of the transferor entity i.e. KSCPL pertains to the GST regime introduced w.e.f. 1st July 2017. Accordingly, the Petitioner is liable to pay the tax dues of the transferor entity i.e. KSCPL. However, there is a specific averment in the Petition (Page no. 30 Ground B2) to the effect that the scheme of amalgamation itself provided that with the sanctioning of the scheme, the erstwhile transferor company i.e. KSCPL shall stand dissolved. To this there is no specific denial, much less, any dispute raised by the Respondents.

10. There is also no controversy about the fact that KSCPL had merged with the Writ Petitioner on the basis of order dated 29th November, 2016, passed by this Court approving the merger scheme, the appointed date being 1st April, 2015. In that view of

the above, the fact that the impugned notice dated 21st May, 2025 as well as subsequent notice dated 25th June, 2025 were evidently issued to a non-existing entity and that too, despite having been informed about merger of the company is well established in this case. Therefore, the core question arising for consideration of this Court in the present proceeding is as to whether, the impugned Order-in-Original dated 31st December, 2025, issued on the basis of show cause notice served on a non existent entity, would be sustainable in the eyes of law?

11. By relying upon the decisions of this Court rendered in the case of **Reliance Industries Limited vs. P. L. Roongta**[1] as well as **Vodafone Idea Ltd. (formerly known as Vodafone Mobile Services Ltd.) vs. Union of India and Ors.**[2]**,** Mr. Prakash Shah, learned Senior Counsel appearing for the Petitioner, has argued that the Petitioner's case is squarely covered by the aforesaid decisions of this Court wherein, it has been categorically held that show cause notice and consequent order issued under the GST law against an amalgamating company after it had ceased to exist, upon merger, would be *void ab initio.* The learned Senior Counsel, therefore,

1 [2025] 479 ITR 770

2 2026(5) TMI 162 Bombay High Court

submits that the show cause notice dated 25th June, 2025 as well as the impugned Order-in-Original dated 31st December, 2025, are NON-EST in the eyes of law and hence, are liable to be set aside and the Writ Petition be allowed on such count alone.

12. Responding to the above submissions, Mr. S. Chandrashekhar, learned Counsel appearing for the Respondents, submits that although the factum of merger of KSCPL with the Writ Petitioner is not in dispute, yet, in view of Section 85 of the CGST Act, the recourse adopted in the present case would be permissible in the eyes of law. According to Mr. Chandrashekhar, since KSCPL had defaulted in discharging its liability, hence, by invoking powers under Sections 74 read with 85 of the GST Act, the Authority would be entitled to recover any such unpaid dues even after the merger of the transferring company.

13. We have considered the rival submissions made at the bar and have also gone through the material available on record. At the very outset, we deem it appropriate to observe herein that the core issue in this proceeding is not as to whether, the dues of KSCPL was recoverable under the law or not but whether, any

proceeding for recovery of outstanding tax/GST dues, based on show-cause notice served on a non-existing entity would be maintainable in law.

14. In the case of **Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Ltd.**[3], the Hon'ble Supreme Court has held that if, despite being informed about the fact that the amalgamating company has ceased to exist as a result of the scheme of amalgamation, proceedings are initiated against such non existing company, then such proceedings would be *void ab initio.* By taking note of the decision of the Supreme Court in the Case of **Maruti Suzuki India Ltd. (supra),** a Co-ordinate Bench of this Court, in the case of **Reliance Industries Limited vs. P. L. Roongta (supra)** has categorically held that if the proceedings are initiated against a non-existent amalgamating company after it had ceased to exist pursuant to the scheme of amalgamation despite the fact that the Assessing Officer had knowledge about such amalgamation, then such proceeding would be *void ab initio.*

15. Since one of the contentious issue involved in this proceeding is pertaining to the applicability of Section 87 of the

3 [2019] 416 ITR 613



CGST Act, 2017 to the facts of the case, the said provision is reproduced herein-blow for ready reference:-

> " **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."

16. Taking note of the aforementioned decisions and Section 87, another Co-ordinate Bench of this Court, in the case of **Vodafone Idea Ltd. (supra),** had interfered with similar order based on show notice issued to a non-existent amalgamating company, by observing that the provision of Section 87 of the CGST Act are only in respect of the intervening period from the date on which the order takes effect, till the date of the order and the same in no way, affects or give the Department the authority to issue show cause notice on a non-existent entity post merger/ amalgamation. It was

further held that the show cause notice issued to a non-existent entity itself would be without jurisdiction and, therefore, the proceedings would stand vitiated and rendered *void ab initio* as has been held in the case of **Reliance Industries Limited vs. P. L. Roongta (supra).** The observations made in **Vodafone Idea Ltd. (supra)** on the question of applicability of Section 87, made in paragraphs 12 and 13, are reproduced herein below for ready reference:-

> "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 vs. P. L. Roongta (supra).***"

17. In the above context, it would be pertinent to note herein that the contention advanced on behalf of the Department to the

effect that the decision in the case of **Maruti Suzuki India Ltd. (supra),** having been rendered in the context of Income Tax Act, 1961, would not be applicable in a case where Section 87 of the CGST Act was attracted, was not accepted by this Court in **Vodafone Idea Ltd. (supra).**

18. Having regard to the facts and circumstances of the case, we are of the unhesitant opinion that the law laid down by the Hon'ble Supreme Court in the case of **Maruti Suzuki India Ltd. (supra)** as well as by the Bombay High Court in the cases of **Reliance Industries Limited vs. P. L. Roongta (supra)** and **Vodafone Idea Ltd. (supra)**, would be squarely applicable to the facts of the present case.

19. Consequently, we hold that any show cause notice issued to a amalgamating company after the same had ceased to exist pursuant to its merger, based on the scheme of the amalgamation, would be without jurisdiction. Therefore, any proceeding initiated thereunder, would also be null and void.

20. In the result, this Writ Petition succeeds and the same is accordingly allowed. The impugned Order-in-Original dated 31st December, 2025, is hereby set aside.

21. Before parting with the record, we deem it appropriate to clarify herein that in this Writ Petition, relief has been granted to the Writ Petitioner solely on the ground that the proceedings were initiated based on a show cause notice issued to a non-existent company. We have not expressed any opinion on the merit of the claims and counter claims of the parties. Therefore, this order would not come in the way of the Respondents-Authorities from initiating any proceeding, in accordance with law, for recovery of any unpaid GST dues, along with interest and penalty from the Writ Petitioner, if the same is otherwise permissible under the law.

22. The Writ Petition stands disposed of accordingly.

23. There would be no order as to costs.

(ADVAIT M. SETHNA, J.) **(SUMAN SHYAM, J.)**