



## Tax alert: **Bombay High Court quashes GST proceedings initiated against non-existent amalgamating entity**

7 May 2026

The Bombay High Court has quashed the GST show cause notice (SCN) and adjudication order issued against a merged entity that had ceased to exist pursuant to amalgamation, holding such proceedings to be without jurisdiction and void ab-initio.

### In a nutshell



The Bombay High Court has held that post-merger, the merged entity has no status in eyes of law, and any proceedings initiated or continued against it are void-ab- initio. The Court held that the said principle laid down by Supreme Court, applies equally to GST proceedings.



Issuance of a show-cause notice against a non-existent entity is without jurisdiction. Thus, the proceedings stand vitiated and rendered void-ab-initio.



Section 87 of the CGST Act does not permit initiation of proceedings against a non-existent entity; it only governs tax treatment of transactions during an intervening period from the date on which the order takes effect till the date of the order.



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## Background:

- The Petitioner<sup>1</sup> is an entity formed pursuant to merger of VM Co and VI Co with IC Co with approval by the National Company Law Tribunal (NCLT) in August 2018.
- Prior to the merger, VM Co had two distinct businesses:
  - Mobile Telecommunication Services and
  - Renting of Tower Business.
- In November 2017, VM Co had entered into a Business Transfer Agreement with ATC Telecom Infrastructure, selling its entire tower business with all rights and liabilities as a going concern on a slump sale basis. VM Co did not declare the transaction in GST returns treating it as not a 'supply' in the course or furtherance of business.
- Between March 2022 and July 2022, the Directorate General of GST Intelligence (DGGI) sought documents from the Petitioner which were duly furnished. In February 2024, the DGGI commenced investigation by issuing summons to the Petitioner.
- In August 2024, the SCN along with penalty was issued, alleging that the slump sale was an exempt supply, and VM Co was not entitled to take Input Tax Credit (ITC) as per CGST Act. Despite detailed submissions by the petitioner, an order was passed in January 2025.
- The Petitioner filed a writ petition before the Bombay High Court challenging the order and contended as follows:
  - The order was null as it was issued against a non-existent entity (VM Co), which ceased to exist post-merger and also was without jurisdiction.
  - The order violated principles of natural justice as the petitioner's submissions regarding legal effect of merger were not considered.
  - The proceedings were contrary to the Supreme Court's decision<sup>2</sup> and Bombay High Court judgement<sup>3</sup>, which held that the proceedings against a non-existent entity are void-ab-initio.
- The Revenue contended as follows –
  - Section 87 of the CGST Act allowed fixing liabilities on amalgamating companies for periods before the date of order of merger.
  - The GST registration of VM Co was not cancelled until November 2024. Further, cancellation of the registration shall not affect the liability of the person for any period prior to the date of cancellation.

## High Court judgement

- The court noted that it was undisputed that the amalgamating entities ceased to exist upon the merger, and this fact was duly intimated to the GST authorities during the amendment of the GST registration of IC Co.
- Relying on the SC case<sup>4</sup> and Bombay HC case<sup>5</sup>, it held that the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio.
- It was observed that Section 87 applies only to transactions during the interim period between the effective date of the merger and the date of the merger order. It held that post amalgamation, the merged entity has no status in the eyes of law and hence proceedings cannot be initiated against it. It cited the Delhi High Court's decision<sup>6</sup>, wherein Section 87 of the CGST Act was interpreted on the same lines.

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<sup>1</sup> Vodafone Idea Ltd. Vs. UOI & Ors., WP No. 6637/2025 [Bombay High Court]

<sup>2</sup> Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd [2019] 416 ITR 613

<sup>3</sup> Reliance Industries Limited v. P. L. Roongta, [2025] 479 ITR 770

<sup>4</sup> Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd [2019] 416 ITR 613

<sup>5</sup> Reliance Industries Limited v. P. L. Roongta, [2025] 479 ITR 770

<sup>6</sup> HCL Infosystems Ltd. v. Commissioner of State Tax and Another 2024 SCC OnLine Del 8287

- It was thus held that the SCN was issued without jurisdiction and the proceedings were void-ab-initio.

**Comments:**

This is a significant ruling under GST law, reiterating the settled principle that proceedings against an amalgamating company which is non-existent post-merger, are without jurisdiction and void ab initio. It has also clarified that Section 87 of the CGST Act does not permit proceedings against such non-existent entities.

The said principle is also relevant from an income-tax perspective. It may be pertinent to note that the earlier SC ruling relied upon by the HC is in the context of income-tax and the SC in that case had held that 'initiation of assessment proceedings against an entity which had ceased to exist was void ab initio'.



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