**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 17.04.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. Nos.23194 and 23200 of 2021**
**and**
**W.M.P.No.24499 of 2021**

M/s.Larsen and Toubro Limited,
(Represented by its JGM, Corporate Indirect
Taxation, Mr.Raju V Iyer)
TC 1 Building, Ground Floor,
L&T Construction Campus,
Mount Poonamallee Road,
Manapakkam, Chennai 600 089. .. Petitioner(s)
in both W.P.'s

Vs.

Commissioner of CGST & Central Excise,
South Commissionerate,
MHU Complex, 692 Anna Salai,
Nandanam, Chennai 600 035. .. Respondent(s)
in both W.P.'s

**PRAYER in W.P.No.23194 of 2021:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent leading to the issue of the Show Cause Notice bearing No.6/2020 (C) Dt. 24.09.2020 and quash the same as the said notice has been issued on a non-existent entity, as M/s.L&T Shipbuilding Ltd., has ceased to exist with effect from 18.05.2020

consequent to its amalgamation with the petitioner.

**PRAYER in W.P.No.23200 of 2021:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent leading to the passage of the Order in Original No.17/2021 (C) dated 29.06.2021 and quash the same, as the same is void, arbitrary, illegal, in violation of the principles of natural justice and also in contravention of Rule 6 of the Cenvat Credit Rules, 2004, Section 26(1) of the SEZ Act, 2005, Section 3 of the Central Excise Act and also in violation of Articles 14, 19(1)(g), 246 and 265 of the Constitution.

For Petitioner(s) in both W.P.'s : Mr.G.Natarajan

For Respondents(s) in both W.P.'s : Mr.Sai Srujan Tayi
Senior Panel Counsel

**COMMON ORDER**

The short question that arises for consideration is whether it is permissible for the respondent authority to issue a show cause notice in the name of a company which stood amalgamated and proceed to complete the adjudication, in the name of the amalgamated/non-existent company.

2. It is submitted by the learned counsel for the petitioner that L&T

Shipbuilding Limited has merged with L&T Limited. Factum of above amalgamation was within the knowledge of the respondent authority even before the show cause notice dated 24.09.2020 came to be passed, as would be evident from a reading of show cause notice which records, factum of amalgamation, while extracting the statement of the senior DGM of the petitioner. The relevant portion is extracted here under:

> *"SHOW CAUSE NOTICE No. 06/2020 (C)*
>
> .....
>
> *5. Shri Shantanu Majumder, Senior DGM (Finance and Accounts) of M/s.L&T Ship building Limited, in his statement dated 02/09/2020, interalia stated the following:*
>
> *M/s.L&T Shipbuilding Limited is an SEX unit in the SEZ notified area. Their operations are monitored by the Customs authorities under SEZ Act. It was a 100% subsidiary of L&T Limited, now as on date it has been merged with L&T Limited.."*

3. It is further submitted by the learned counsel for the petitioner that the issue stands covered by this Court in the case of M/s.Pharmazell (India) Private Limited in W.P.No.22468 of 2021 dated 27.02.2024, wherein reference was made to the judgment of the Supreme Court in Maruti Suzuki and Spice Entertainment amongst others. The relevant portion of the order of this Court is extracted hereunder:

> "*4. It was submitted that pursuant to the order of amalgamation any order that is made in the name of Pharmazell*

*Vizag which is not in existence would be void, reliance was placed on the judgment of the Hon-ble Supreme Court in case of Maruti Suzuki and the Delhi High Court in the case of Spice Entertainment, which I shall refer to in the course of this judgment.*

*5. To the contrary, it was submitted by the learned counsel for the respondent that the petitioner had participated in the proceedings and thus estopped in raising this procedural / technical defect of the assessment having been made in the name of Pharmazell Vizag Pvt. Ltd.*

*6. I find that the objection now raised by the learned counsel for the respondent stands rejected by the Division Bench of the Delhi High Court in the case of Spice Entertainment Ltd. vs. Commissioner of Income Tax, reported in 247 CTR 500 which has been affirmed by the Supreme Court in the case of Principal Commissioner of Income Tax vs. Maruti Suzuki India Ltd., reported in 416 ITR 613, the relevant portion is extracted hereunder :*

> *12 In Spice Entertainment, (supra) a Division Bench of the Delhi High Court dealt with the question as to whether an assessment in the name of a company which has been amalgamated and has been dissolved is null and void or, whether the framing of an assessment in the name of such company is merely a procedural defect which can be cured. The High Court held that upon a notice under Section 143 (2) being addressed, the amalgamated company had brought the fact of the amalgamation to the notice of the assessing officer. Despite*

*this, the assessing officer did not substitute the name of the amalgamated company and proceeded to make an assessment in the name of a non~existent company which renders it void. This, in the view of the High Court, was not merely a procedural defect. Moreover, the participation by the amalgamated company would have no effect since there could be no estoppel against law:*

*"11. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exit w.e.f. 1st July, 2003. Even if Spice had filed the returns, it became incumbent upon the Income tax authorities to substitute the successor in place of the said -dead person-. When notice under Section 143 (2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s Spice which was non existing entity on that day. In such proceedings an assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law.*

*12. Once it is found that assessment is framed in the name of non~existing entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 2928 of the Act."*

*Following the decision in Spice Entertainment, (supra) the Delhi High Court quashed assessment orders which were framed in the name of the amalgamating company in:*

*(i) Dimension Apparels (supra);*

*(ii) Micron Steels; and (supra)*

*(ii) Micra India (supra).*

*21. .....*

*24. A batch of Civil Appeals was filed before this Court against the decisions of the Delhi High Court, the lead appeal being Spice Enfotainment (supra). On 2 November 2017, a Bench of this Court consisting of Hon-ble Mr Justice Rohinton Fali Nariman and Hon-ble Mr Justice Sanjay Court Rasil dismissed the Civil Appeals and tagged Special Leave Petitions in terms of the following order:*

*"Delay condoned.*

*Heard the learned Senior Counsel appearing for the parties.*

*We do not find any reason to interfere with the impugned judgment(s) passed by the High Court.*

*In view of this, we find no merit in the appeals and special leave petitions.*

*Accordingly, the appeals and special leave petitions are dismissed."*

*25. The doctrine of merger results in the settled legal position that the judgment of the Delhi High Court stands affirmed by the above decision in the Civil Appeals.*

*7. Thereafter while dealing with the contention that a contrary view has been taken by the Delhi High Court in Sky Light Hospitality LLT which is affirmed by a 2 Judge bench of the Apex Court, it was found that it does not in any manner dilute or water down the law laid down in Spice Entertainment and it was clarified that the law laid down in Spice Entertainment governs*

*the field as would be evident from the following portions of the judgment :*

> *72 The submission however which has been urged on behalf of the Revenue is that a contrary position emerges from the decision of the Delhi High Court in Skylight Hospitality LLP (supra) which was affirmed on 6 April 2018 by a two judge Bench of this Court consisting of Hon-ble Mr Justice A K Sikri and Hon-ble Mr Justice Ashok Bhushan 32 Sky Light Hospitality LLP (supra). In assessing the merits of the above submission, it is necessary to extract the order dated 6 April 2018 of this Court:*
>
> *"In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292B of the Income Tax Act.*
>
> *The special leave petition is dismissed.*
> *Pending applications stand disposed of."*
> *Now, it is evident from the above extract that it was in the peculiar facts of the case that this Court indicated its agreement that the wrong name given in the notice was merely a clerical error, capable of being corrected under Section 29*
> *28. The "peculiar facts" of Skylight Hospitality emerge from the decision of the Delhi High Court Sky Light Hospitality LLP (supray/Skylight Hospitality, an LLP, (supra) had taken over on 13 May 2016 and acquired the rights and liabilities of Skylight Hospitality Pvt. Ltd upon conversion under the Limited Liability Partnership Act 200825, It Instituted writ proceedings for challenging a notice under Sections 147/148 of the Act 1961 dated 30 March 2017 for AY 2010~2011. The "reasons to believe" made a reference to a tax evasion report received from the investigation unit of the income tax department. The facts were ascertained by the investigation unit. The reasons to believe referred to the assessment order for AY 2013~2014 and the findings recorded in it. Though the notice under*

*Sections 147/148 was issued in the name of Skylight Hospitality Pvt. Ltd. (which had ceased to exist upon conversion into an LLP), there was, as the Delhi High Court held "substantial and affirmative material and evidence on record" to show that the issuance of the notice in the name of the dissolved company was a mistake. The tax evasion report adverted to the conversion of the private limited company into an LLP. Moreover, the reasons to believe recorded by the assessing officer adverted to the approval of the Principal Commissioner. The PAN number of the LLP was also mentioned in some of the documents. The notice under Sections 147/148 was not in conformity with the reasons to believe and the approval of the Principal Commissioner. It was in this background that the Delhi High Court held that the case fell within the purview of Section 2928 for the following reasons:*

*"18...There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11.04.2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s. Skylight Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused."*

*29. From a reading of the order of this Court dated 6 April 2018 in the Special Leave Petition filed by Skylight Hospitality LLP (supra) against the judgment of the Delhi High Court rejecting its challenge, it is evident that the peculiar facts of the case weighed with this Court in coming to this conclusion that there was only a clerical mistake within the meaning of Section 2928. The decision in Skylight Hospitality LLP (supra) has been distinguished by*

*the Delhi, Gujarat and Madras High Courts in:*

*(1) Rajender Kumar Sehgal (supra);*

*(ii) Chandreshbhai Jayantibhai Patel; and (supro)*

*(iii) Alamelu Veerappan (supra).*

*30. There is no conflict between the decisions of this Court in Spice Enfotainment (supra) and in Skylight Hospitality LLP (supra)*

*.....*

*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).*

*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.*

*8. It may also be relevant to note that the Supreme Court in the case of Principal Commissioner of Income Tax vs. Mahagun Realtors (P) Ltd., reported in (2022) 443 ITR 194 had considered the decision of the Supreme Court in the case of Maruti Suzuki and it was held as under :*

> *"24 ..... whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of section 481 of the Companies Act, 1956 (and its equivalent in the 2013 Act), but would depend on the terms of the amalgamation and the facts of each case.*
>
> *43. In view of the foregoing discussion and having regard to the facts of this case, this court is of the considered view, that the impugned order of the High Court cannot be sustained; it is set aside."*

*8.1. Importantly, the decision in Maruti Suzuki which was relied upon was distinguished in Mahagun Realtors (P) Ltd., primarily on the premise that in the case of Maruti Suzuki the assesse therein had duly informed the authorities about the merger of the company and yet the assessment order was passed in the name of the amalgamated / non existing company. Whereas, in the case of Mahagun Realtors (P) Ltd., the factum of amalgamation was not brought to the notice of the assessing authority and further the assessment order was made in the name of both the amalgamating company and the resultant company in the case of Mahagun Realtors (P) Ltd. It was thus held the*

*decision in Maruti Suzuki was inapplicable to the facts of the case. The relevant portion of the order of the Supreme Court in Mahagun Realtors (P) Ltd., is extracted below for better appreciation of the above position:*

> *7The Revenue, represented by the Additional Solicitor General, Mr. N. Venkataraman, urged that the names of both the amalgamating and amalgamated companies were mentioned in the assessment order. According to him such mistakes, defects or omissions are curable under section 2928 when the assessment is in substance and effect, in conformity with or according to the intent and purpose of the Act.*
>
> *8. It was contended that the amalgamating or transferor company was duly represented by the amalgamated company and no prejudice was caused to any of the parties by the assessment order. It is further urged by the Revenue that in Maruti Suzuki, this court rejected the Revenue-s appeal on the ground that the final assessment order referred only to the name of the amalgamating company and there was no mention of the resulting company, whereas in this case, in both the draft and the final assessment orders, the names of both the amalgamating and amalgamated company were mentioned.*
>
> *9. It was also urged that the facts of the Maruti Suzuki are distinguishable from the present case, as in that case the Revenue was duly informed about the merger and change in name of the company, and yet the Assessing Officer passed the order in the name of the transferor or amalgamating *(2019) 416 ITR 613 (SC); [2019] SCC Online SC 928. company. However, in the present case, the Assessing Officer or even the Revenue was not informed about the amalgamation.*
>
> *.....*
>
> *33. ..... The respondent has relied upon Spice and Maruti Suzuki (supra) to contend that the notice issued in*

*the name of the amalgamating company is void and illegal. The facts of the present case, however, can be distinguished from the facts in Spice and Maruti Suzuki on the following bases.*

*34. Firstly, in both the relied upon cases, the assessee had duly informed the authorities about the merger of companies and yet the assessment order was passed in the name of the amalgamating/non~ existent company. However, in the present case, for the assessment year 2006~07, there was no intimation by the assessee regarding amalgamation of the company. The return of income for the assessment year 2006~07 first filed by the respondent on June 30, 2006 was in the name of MRPL. MRPL amalgamated with MIPL on May 11, 2007, with effect from April 1, 2006. In the present case, the proceedings against MRPL started in August 27, 2008 when search and seizure was first conducted on the Mahagun group of companies. Notices under section 153A and section 143(2) were issued in the name MRPL and the representative from MRPL corresponded with the Department in the name of MRPL On May 28, 2010, the assessee filed to of cores on the name of MRPL, and in the "business reorganization column of the form mentioned not applicable amalgamation section. Though the respondent contends that they had intimated the authorities by letter dated July 22, 2010, it was for the assessment year 2007 ~08 and not for the assessment year 2006~07 For the assessment years 2007~08 to 2008~09, separate proceedings under section 153A were initiated against MIPL and the proceedings against MRPL for these two assessment years were quashed by the Additional Commissioner of Income~tax by order dated November 30, 2010 as the amalgamation was disclosed. In addition, in the present case the assessment order dated August 11, 2011 mentions the name of both the amalgamating (MRPL) and amalgamated (MIPL) companies.*

*35. Secondly, in the cases relied upon, the amalgamated companies had participated in the proceedings before the Department and the courts held that the participation by the amalgamated company will not be*

*regarded as estoppel. However, in the present case, the participation in proceedings was by MRPL which held out itself as MRPL.*

*.....*

*41. In the light of the facts, what is overwhelmingly evident is that the amalgamation was known to the assessee, even at the stage when the search and seizure operations took place, as well as statements were recorded by the Revenue of the directors and managing director of the group. A return was filed, pursuant to notice, which suppressed the fact of amalgamation on the contrary, the return was of MRPL. Though that entity ceased to be in existence, in law, yet, appeals were filed on its behalf before the Commissioner of Income~tax, and a cross~appeal was filed before the Income~tax Appellate Tribunal. Even the affidavit before this court is on behalf of the director of MRPL. Furthermore, the assessment order painstakingly attributes specific amounts surrendered by MRPL, and after considering the special auditor-s report, brings specific amounts to tax, in the search assessment order. That order is no doubt expressed to be of MRPL (as the assessee) but represented by the transferee, MIPL. All these clearly indicate that the order adopted a particular method of expressing the tax liability. The Assessing Officer, on the other hand, had the option of making a common order, with MIPL as the assessee, but containing separate parts, relating to the different transferor companies (Mahagun Developers Ltd., Mahagun Realtors Pvt. Ltd., Universal Advertising Pvt. Ltd., ADR Home Décor Pvt. Ltd.). The mere choice of the Assessing Officer in issuing a separate order in respect of MRPL, in these circumstances, cannot nullify it. Right from the time it was issued, and at all stages of various proceedings, the parties concerned (i.e., MIPL) treated it to be in respect of the transferee company (MIPL) by virtue of the amalgamation order and section 394(2). Furthermore, it would be anybody-s guess, if any refund were due, as to whether MIPL would then say that it is not entitled to it, because the refund order would be*

*issued in favour of a non~existing company (MRPL). Having regard to all these reasons, this court is of the opinion that in the facts of this case, the conduct of the assessee, commencing from the date the search took place, and before all forums, reflects that it consistently held itself out as the assessee. The approach and order of the Assessing Officer is, in this court-s opinion in consonance with the decision in Marshall and Sons (supra), which had held that*:*

*"an assessment can always be made and is supposed to be made on the transferee company taking into account the income of both the transferor and transferee company."*

*8.2. The above extracts would show as stated supra that two facts which weighed with the Supreme Court in case of Mahagun Realtors (P) Ltd., was that the factum of amalgamation was not brought to the notice of the assessing authority and further the assessment order was made in the name of both the amalgamating company and the resultant company. It was under those circumstances it was held by the Supreme Court in Mahagun Realtors (P)Ltd., that the impugned order of the High Court holding that the assessments in that case was not a nullity. However, as found supra in the present case the petitioner had on atleast 5 occasions intimated the assessing authority as to the factum of amalgamation and requested that the assessment be made in the name of the resultant / amalgamated company and thus the impugned order in the name of the amalgamated / non existent company is non~est in terms of the decision of the Supreme Court in Maruti Suzuki and is thus liable to be set aside.*

*9. Yet another submission made by the learned counsel for the respondent was that the petitioner had not deactivated their PAN to justify the assessments being made in the name of the amalgamating company. However, this again does not justify the passing of an assessment order in the name of a company which has got amalgamated and thus non~existent. In this regard reliance was placed on the judgment of the Bombay High Court in the case of Diversey India Hygiene Private Limited v. Dr.Sunil Moti Lala. The relevant portion is extracted hereunder:*

> *"6.The fact that PAN was not deactivated would not help the Revenue because there could be cases relating to various years when the company was in existence and it is possible those PAN numbers are picked up for scrutiny or for issuance of refund. That in our view, will not be a sanction for Department to issue notices to a non~ existing entity, particularly, when they were aware that the entity was not in existence."*

*10. From the above discussion I am of the view that the case on hand stands covered by the decision of the Supreme Court in the case of Maruti Suzuki and thus the impugned order of assessment in the name of the amalgamating company i.e., Pharmazell Vizag Pvt. Ltd. which was not in existence on the date of passing the impugned order cannot be sustained and thus the impugned order is quashed. ...."*

4. The learned counsel for the respondent initially submitted that the respondent authority was not aware of the amalgamation. When the

show cause notice (extracted supra) was pointed, to state that the officer was informed and aware of the factum of amalgamation, the learned counsel for respondent would request liberty to proceed afresh against the resultant company.

5. Following the above order of this Court in W.P.No.22468 of 2021 dated 27.02.2024, impugned order is set aside. Respondents are at liberty to proceed in accordance with law.

6. Accordingly, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.

**17.04.2025**

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
spp

**MOHAMMED SHAFFIQ, J.**

spp

To:

Commissioner of CGST & Central Excise,
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