

[2025] 175 taxmann.com 781 (Gujarat)[02-05-2025]

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**GST : Where company decided to close its business and went into voluntary liquidation and Liquidator had informed department to submit claims but authority issued notice raising demand in name of said company after it was dissolved, proceedings against dissolved company was not tenable**

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[2025] 175 taxmann.com 781 (Gujarat)

**HIGH COURT OF GUJARAT**

**Pratik Surendrakumar Shah**

**v.**

**State of Gujarat\***

**BHARGAV D. KARIA AND D.N. RAY, JJ.**

**R/SPECIAL CIVIL APPLICATION NOS. 2489 AND 2496 OF 2024**

**MAY 2, 2025**

**Demand - Tax or ITC not involving fraud - Demand against dissolved company - Period 21017-18 and 2018-19 - Company, of which Petitioner was a director, was engaged in business of providing platform for purchase and sale of virtual currencies - Company decided to close its business and went into voluntary liquidation - Liquidator of said company informed department to submit claims as company was under voluntary liquidation - Order was passed cancelling registration - National Company Law Tribunal ordered dissolution of company and intimation of dissolution was given to Registrar of Companies - Respondent authority issued notice under section 73 for raising demand in name of said company which was already dissolved - Petitioner former director of said company submitted online reply in response to show cause notice pointing out that company had already been dissolved and therefore no proceedings in name of dissolved company could be initiated - Respondent-GST authority passed order raising demand in name of said company which was already dissolved - HELD : Respondent authority had initiated proceedings against a dissolved company which was not tenable as company had already been dissolved - Respondent authority had taken cognizance of fact that company in which petitioner was a director was already dissolved and had then raised demand as per show cause notice by observing that current status of company stood as liquidated/dissolved but confirmed demand only on ground that no relevant supporting documents were provided by petitioner in response to show cause notice - Impugned orders passed by respondent authority were without application of mind and contrary to record being passed against dissolved company which could not be sustained - Impugned orders were to be quashed and set aside [Section 73, read with section 29, of Central Goods and Services Tax Act, 2017/ Gujarat Goods and Services Tax Act, 2017] [Paras 17 to 20] [In favour of assessee]**

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#### **CASE REVIEW**

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*Pr. CIT v. Maruti Suzuki (India) Ltd.* (2020) 18 SCC 331 (para 22), followed

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#### **CASES REFERRED TO**

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*Pr. CIT v. Maruti Suzuki (India) Ltd.* (2020) 18 SCC 331 (para 21).

**Uchit N Sheth** for the Petitioner. **Ms Shrunjal Shah**, AGP for the Respondent.

## **ORDER**

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**Bhargav D. Karia, J.-** Heard learned advocate Mr. Uchit N. Sheth for the petitioner and learned AGP Ms. Shrunjal Shah for the respondents.

2. These petitions are filed for setting aside the impugned order dated 28/12/2023 and impugned notice dated 28/09/2023, both passed under Section 73 of the Central/State Goods and Services Tax Act, 2017 (for short 'the GST Act') for the year 2017-2018 in Special Civil Application No.2489 of 2024 and impugned notice dated 29/12/2023 for the year 2018-2019 as well as impugned order dated 16/04/2024 for the year 2018-2019 and the intimation dated 28/10/2024 to initiate recovery proceedings in Special Civil Application No.2496 of 2024.

3. Both these petitions are preferred with a common issue and the prayers made therein are similar in nature. Therefore, both these petitions were heard analogously and are being disposed of by this common order.

4. Having regard to the controversy involved in these petitions, which is in narrow compass, with consent of learned advocates for the respective parties, both the petitions are taken up for final hearing.

5. The brief facts of the case are that the petitioner is a former director of one M/s. Zeb IT Service Limited (herein after referred to as 'the Company') which was engaged in business of providing platform for purchase and sale of virtual currencies. The said company was registered under the provisions of the GST Act. The said company decided to close its business and went into voluntary liquidation.

6. Before filing application for voluntary liquidation before the National Company Law Tribunal, Ahmedabad, the said company duly intimated the respondent regarding the fact that it was going for voluntary liquidation by letter dated 01/10/2020.

7. By another letter dated 27/10/2020, the liquidator of the said company informed the respondents to submit the claims as the company was under voluntary liquidation. However, no further claim was received and therefore a request was made for cancellation of registration of company under the GST Act.

8. It appears that thereafter an online application was made for cancellation of registration on the ground of closure of business of the said company and order dated 09/02/2021 was passed cancelling the registration with effect from 13/11/2020.

9. The National Company Law Tribunal, Ahmedabad by order dated 30/09/2022 ordered dissolution of the company with effect from 30/09/2022 and intimation of dissolution was given to the Registrar of Companies by letter dated 07/10/2022. Respondent no.2 issued the notice dated 28/09/2023 under Section 73 of the GST Act for the year 2017-2018 and year 2018-2019 and intimation regarding show cause notice in name of said company was received by the petitioner who is a former Director of the Company.

10. The petitioner therefore submitted an online reply dated 28/10/2023 in response to the show cause notice pointing out that the company has already been dissolved and therefore no proceedings in name of the dissolved company can be initiated and requested for dropping of the proceedings.

11. Respondent no.2, however, passed the order dated 28/12/2023 for the year 2017-2018 raising a demand in name of said company which was already dissolved with effect from 30/09/2022 rejecting the submission of the petitioner on the ground that no documentary evidence was produced by the petitioner.

12. Being aggrieved, the petitioner preferred Special Civil Application No.2489 of 2024 for the period 2017-2018 along with Special Civil Application No.2496 of 2024 for the period 2018-2019. Meanwhile, respondent no.2 passed the order dated 16/04/2024 during the pendency of Special Civil Application No.2496 of 2024. The petitioner has therefore amended the petition by challenging the Order-in-Original dated 16/04/2024 for the year 2018-2019.

13. Respondent no.2 also issued the notice for recovery for the period 2017-2018 on 28/10/2024. The petitioner has therefore also amended Special Civil Application No.2489 of 2024 for setting aside the recovery notice.

14. Learned advocate Mr. Uchit Sheth for the petitioner submitted that the said company in which the petitioner was a director had informed the respondent department regarding dissolution of the Company prior to filing an application for voluntary winding up and thereafter the registration of the said company was also cancelled. It was submitted that in spite of such facts being disclosed, the show cause notice was issued under

Section 73 of the GST Act. It was pointed out that in response to the show cause notice, the petitioner has submitted the order of the NCLT for dissolution of the company. It was submitted that instead of considering the reply and the position, respondent no.2 passed impugned orders under Section 73 of the GST Act by recording the submission of the petitioner that the company has already been dissolved and the current status of the company stands as liquidated/Dissolved with effect from 30/09/2022 but confirmed the demand only on the ground that no relevant supporting documents were provided by the petitioner in response to the show cause notice.

15. On the other hand, learned AGP Ms. Shrunjal Shah appearing for the respondent State Authority has submitted that the respondent authority has already taken cognizance of the fact of dissolution of the company, however, the petitioner has not provided any document in support of the issues raised in the show cause notice and in view of the provision of Section 29(3) of the GST Act cancellation of registration under the Act would not affect the liability of the person to pay the tax and other dues or to discharge any obligation under the Act and accordingly the impugned orders are just and proper. In support of her submissions, reliance was placed on the following averments made in the affidavit-in-reply filed on behalf of the respondent no.2 which reads as under:

"12. I respectfully say and submit that interestingly the application for cancellation of registration was submitted online on the GST portal to State GST authorities and it is only the voluntary cancellation application which was received by the State GST and through the portal and accordingly the State GST authority cancelled the registration of the petitioner company. However, the contention of the petition that as there was nil order of any demand during cancellation of registration number by the department, the petitioner is not liable to pay any tax interest and penalty, to the said contentions I respectfully say that the said contention is also a misconceived contention because the provision of cancellation of registration number clearly specifies that the cancellation of registration shall not affect any liability of the person to pay tax or other dues under these Act. More specifically section 29 (3) provides thus:-

(3) the cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder 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.

Therefore, on reading of the above mentioned provision it specifically establishes that the said order will not affect any liability occurred upon the petitioner.

13. I respectfully say and submit that the present order passed under section 73 is for the financial year 20172018 and the said order is passed on 28.12.2023 which was very well within the time limit prescribed under the act and the said order is also not time barred order therefore the answering respondent have all the jurisdiction to issue such order under section 73 of the act.

14. I respectfully say and submit that even the reply to the show-cause notice given by the petitioner only gives the order of NCLT but the show-cause notice is issued for mainly 5 reasons i.e. [1] difference between GSTR 1 and GSTR 9 for the excess supplies declared, [2] issue is of scrutiny of ITC which is availed by the petitioner company, [3] Issue is related to the ITC to be recovered on non-business transaction and exempt supplies and [4] related to ineligible ITC, admittedly on the said four issues no relevant supporting documents were given by the petitioner and therefore impugned demand order under section 73 is issued.

15. I respectfully say and submit that, it emergence from the records placed by the petitioner before this Hon'ble Court that it was intentionally an attempt done by the petitioner to communicate relevant information only with the Central GST authorities inspite of knowing the fact that the administrative jurisdiction is with the State authorities. Therefore, it emerges that the petitioner intentionally did not provided the letters attached at page- 27 and page-28 of the petition that is informing about voluntary liquidation and giving a chance to raise claim before the liquidator to the State authorities. Headed being the case that the petitioner would have informed by way of said letters to the State Tax authorities then naturally the State Tax authorities would have a chance to carry out the assessment proceedings raise the demand and claim the same before the liquidator, but the petitioner intentionally choose not to do the same inspite of the knowing of the fact that the administrative jurisdiction is with the State authorities. Therefore, the present orders are justified and passed by the answering respondent as it is passed specifically on the issues mentioned in the show-cause notice which evidently the petitioner has no answer to the same. Therefore, the liability is raised upon the petitioner."

16. Referring to the above averments, it was submitted that no interference is required to be made in the impugned orders by this Court while exercising jurisdiction under Article 227 of the Constitution of India.

17. Considering the submissions made by the learned advocates appearing for the respective parties and on perusal of the documents on record, it appears that respondent no.2 has initiated proceedings against a dissolved company which is not tenable as M/s. Zeb IT Service Limited has already been dissolved with effect from 30/09/2022 which is duly recorded in the Orders-in-Original passed by respondent no.2.

18. It is also pertinent to note that respondent no.2 has taken cognizance of the fact that the company in which the petitioner was a director was already dissolved and has then raised the demand as per the show cause notice by observing as under:

"Specific reasons entered

The Show Cause Notice in form DRC-1 for FY 2017-18 has been issued to the tax payer for the paras mentioned therein. In this regard, the tax payer has filed his reply on dated 14/10/2023 and asked for adjournment. So, this office has issued reminder-1 with reference No- ZD2410230136514. After then, the tax payer has filed replied on dated 28/10/2023, which is verified by this office in which the tax payer had stated that, the said dealer has gone into voluntary Liquidation and the Hon'ble National Company Law Tribunal Ahmedabad has passed the order of Liquidation on dated 30.09.2022 and accordingly the current status of the company stands as liquidated/Dissolved with effect from 30.09.2022. In other words the company currently is not into existence (stands dissolved). Also the tax payer has given answer of the said notice, but does not provide any relevant supporting documents for the said para to be clarified. So the said amount of tax has to be paid along with due interest and penalty thereon."

19. Similar reasons are assigned for all additions by reiterating the same.

20. Thus, the impugned orders passed by the respondents are without application of mind and contrary to the record being passed against the dissolved company which cannot be sustained.

21. The Hon'ble Apex Court in case of *Pr. CIT v. Maruti Suzuki (India) Ltd.* (2020) 18 SCC 331, has observed as under:

"35. 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*<sup>38</sup> ("*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* 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* ("*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 were 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.

36. 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 Entertainment on 2 November 2017. The decision in Spice Entertainment 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 Entertainment.

37. 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."

22. In view of above settled legal position, impugned orders are hereby quashed and set aside. Consequent recovery proceedings also therefore do not survive.

23. Both these petitions are accordingly disposed of. Notice is discharged.

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\*In favour of assessee.