

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Writ Petition No.6868 of 2025

Between:

- 1.TATA CAPITAL LIMITED, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 2013 AND HAVING ITS OFFICE AT 3, 59-6-17, PUNNAIAH AND VAJRAMMA COMPLEX, KANCHUKOTA VARI STREET, RAMACHANDRANAGARAM, VIJAYAWADA, NTR, ANDHRA PRADESH, 520008 (THROUGH ITS AUTHORISED REPRESENTATIVE, MR. AMIT ASHOK AGASHE, SON OF ASHOK KRISHNAJI AGASHE, AGED ABOUT 54 YEARS)

...PETITIONER

AND

- 1.THE UNION OF INDIA, THROUGH ITS SECRETARY. MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NO. 137, NORTH BLOCK, NEW DELHI-110 001.
- 2.THE COMMISSIONER OF COST, VISAKHAPATNAM COMMISSIONERATE GST BHAVAN, PORT AREA, VISAKHAPATNAM 530035.
- 3.THE ADDITIONAL COMMISSIONER OF COST, VISAKHAPATNAM COMMISSIONERATE GST BHAVAN, PORT AREA, VISAKHAPATNAM 530035.
- 4.THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, REVENUE (CT) DEPARTMENT, SEERETARIAT, ANDHRA PRADES

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari under Article 226 of the Constitution of India, calling for the records pertaining to the Order-in-Original No. VSP-CGST-ADC-040-2024-25 dated 06.12.2024 (DIN

20241255YJ000000CDC9)passed by the Respondent No. 3 (Adjudicating Authority) and after examining the validity and legality thereof be pleased to quash and set aside the same and pass such

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to dispense with filing of the original copy of the impugned Order dated 06.12.2024 issued by the Respondent no. 3, and to pass such

IA NO: 2 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to dispense with filing of the original copy of the impugned Order dated 06.12.2024 issued by the Respondent no. 3, and to pass such

Counsel for the Petitioner:

- 1.VIVEK CHANDRA SEKHAR S

Counsel for the Respondent(S):

- 1.P S P SURESH KUMAR
- 2.GP FOR COMMERCIAL TAX
- 3.

Date of Judgment pronounced on: 03-03-2026

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

AND

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No
of the Judgment?

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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Counsel for the Respondent(S):

1.P S P SURESH KUMAR

2.GP FOR COMMERCIAL TAX

3.

<GIST :

>HEAD NOTE:

Cases referred:

1. 2017 (12) TMI 754 – SC ORDER
2. 2019 (7) TMI 1449 – SUPREME COURT



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3529]

TUESDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 6868/2025

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Counsel for the Respondent(S):

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The Court made the following Order: *(per Hon'ble Sri Justice R. Raghunandan Rao)*

The petitioner is in the business of providing services like lease financing, commercial finance, consumer loans and wealth services etc. The petitioner also had a subsidiary called Tata Capital & Financial Services Limited (*herein referred to as 'the Dissolved Company'*). The dissolved company was registered, under the Goods and Services Tax Act, 2017 (*herein referred to as 'the G.S.T. Act'*). Certain turnovers disclosed by the dissolved company in the returns filed for the month of December, 2018, came to the notice of the G.S.T. Department and a notice for audit, under Section 65 of the C.G.S.T. Act, 2017, was issued to the dissolved company, for the financial year, 2019-2020, on 02.03.2022. Thereafter, audit proceedings, were taken up and a further audit notice, dated 07.03.2024, came to be issued in the name of the dissolved company.

2. During the period between 02.03.2022, when the initial notice was issued and 07.03.2024, when the second audit notice was issued, a scheme of arrangement between the petitioner company and the dissolved company, came to be approved by the National Company Law Tribunal, Mumbai Bench, (*hereinafter referred to as 'N.C.L.T., Mumbai Bench'*), on 24.11.2023. By virtue of this amalgamation, the business of the dissolved company was transferred to the petitioner company and the dissolved company was dissolved without going through the process of winding up. The petitioner, upon receiving the notice, issued in the name of the dissolved company, had responded to the said notice, and informed the G.S.T. Authorities, by a reply, dated 29.03.2024,

informing the Authorities that the dissolved company was not in existence, by virtue of the orders of the N.C.L.T., Mumbai Bench, dated 24.11.2023, with effect from 01.04.2023. Despite the said intimation, the G.S.T. Authorities continued to proceed with the matter and issued notices of hearing etc., in the name of the dissolved company only. The petitioner participated in the proceedings, despite being aware that the proceedings were being taken up against a dissolved company. These proceedings, finally, resulted in an order of assessment, dated 06.12.2024.

3. Aggrieved by the said order, the petitioner has approached this Court, by way of the present Writ Petition. The petitioner has raised various grounds of challenge on merits as well as on the ground of jurisdiction. As the ground of jurisdiction would be the preliminary ground that would have to be considered by this Court, the merits of the case are not being taken up in the present order and the same is left open.

4. Heard Sri Prakash Shah, the learned Senior Counsel appearing on behalf of Sri Vivek Chandra Sekhar .S, the learned counsel appearing for the petitioner and Sri P. S. P. Suresh Kumar, the learned Standing Counsel appearing for the respondents.

5. The contention of Sri Prakash Shah, the learned Senior Counsel appearing for the petitioner, on the question of jurisdiction is that the dissolved company, against which proceedings were continued, had been dissolved, by virtue of the orders of the N.C.L.T., Mumbai Bench, on 24.11.2023, with effect

from 01.04.2023. The Authorities were pursuing proceedings against a non-existent company and the same is wholly without jurisdiction and the order itself is an invalid order, which has to be set aside. The learned Senior Counsel, for the aforesaid proposition, relies upon judgments of the Hon'ble Supreme Court in the cases of ***Commissioner of Income Tax, New Delhi Vs. M/s. Spice Entertainment Ltd.***¹, ***Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited***² and ***Smt. Kamala Muthiah Vs. The Assitant Commissioner of Income Tax***, dated 19.11.2024, in S.L.P. (C) Nos.16314-16316 of 2022.

6. Sri P. S. P. Suresh Kumar, the learned Standing Counsel appearing for the respondents, on the other hand, would contend that, the anomaly in the order is at best, a procedural defect. The scheme of amalgamation itself, provides for transfer of the liabilities, of the dissolved company, to the petitioner company and consequently, the petitioner company cannot be absolved of its liability for payment of taxes under the impugned orders. The learned Standing Counsel would also rely upon Section 87 of the G.S.T. Act to contend that the impugned orders are valid even where amalgamation process is undertaken and the said process does not affect the orders passed by the G.S.T. Authorities. The learned Standing Counsel would also contend that the petitioner has an alternative remedy of an Appeal and there is no necessity for a Writ Petition to be filed before this Court.

¹ 2017 (12) TMI 754 – SC ORDER

² 2019 (7) TMI 1449 – SUPREME COURT

7. Under the provisions of the Companies Act, 2013, a merger or demerger or scheme between two or more companies or between its shareholders, creditors, etc. can be placed before the N.C.L.T., Mumbai Bench, which can pass orders approving such schemes. One of the schemes, which are normally placed before the N.C.L.T., is a scheme of amalgamation, wherein the business of one company in its entirety, including the assets and liabilities are transferred to another company in lieu of compensation given in the form of shares to the shareholders of the first company or otherwise. Simultaneously, for such transfer, a provision is also made, in the scheme of arrangement for the first company, normally called the transferor company to be dissolved without going through the process of winding up, under the Companies Act, 2013. Another feature of such schemes is the fixation of a date of transfer, which is normally called the appointed date. This date can be a date prior to the order of approval.

8. In the present case, a scheme of arrangement, was drawn up and placed, before the N.C.L.T., Mumbai Bench. Under this scheme, the entire business of the dissolved company was to be transferred to the petitioner company and thereafter, the dissolved company was stand dissolved without going through the process of winding up. The appointed date of such a scheme coming into force, was fixed as 01.04.2023. The N.C.L.T., Mumbai Bench, by an order, dated 24.11.2023, had approved the scheme, including the appointed date. By virtue of this approval, by the N.C.L.T., Mumbai Bench, on 24.11.2023, the dissolved company ceased to exist and the entire

business, including the assets and liabilities of the dissolved company came to be transferred to the petitioner company.

9. The proceedings, which had been initiated, against the dissolved company, before the appointed date, would now have to be taken up against the petitioner company and not the dissolved company. Clause 7 of the scheme of amalgamation, which is approved by the N.C.L.T., Mumbai Bench, reads as follows:

“7 LEGAL, TAXATION AND OTHER PROCEEDINGS

7.1 Upon the coming into effect of this Scheme, all legal, taxation or other proceedings, whether civil or criminal (including before any statutory or quasi-judicial authority or tribunal or courts), by or against the Transferor Companies, under any statute, pending on the Appointed Date, shall be continued and enforced by or against the Transferee Company as effectually and in the same manner and to the same extent as if the same had been instituted by or against, as the case may be, the Transferee Company.

7.2 The Transferee Company shall have all legal, taxation or other proceedings initiated by or against the Transferor Companies referred to in Clause 7.1 above transferred to its name as soon as is reasonably possible after the Effective Date and to have the same continued, prosecuted and enforced by or against the Transferee Company, as a successor of the Transferor Companies.”

10. A similar question had come up before the Hon'ble Supreme Court in the case of **Commissioner of Income Tax, New Delhi Vs. M/s. Spice Entertainment Ltd.** This case had come up before the Hon'ble Supreme Court, on an Appeal against a decision of the Hon'ble High Court of Delhi. The question before the Hon'ble High Court of Delhi was whether the taxation proceedings can be continued against a dissolved company, in the case of an amalgamation, where the business of the dissolved company had been

transferred to the transferee company. The High Court of Delhi, after considering this issue and the law on this aspect, had held that, the framing of an assessment against a non-existing entity of a person is not permissible and goes to the root of the matter as it is not a procedural irregularity but a jurisdictional defect. The Special Leave Petition filed against this order was taken up as Civil Appeals by the Hon'ble Supreme Court and the said Appeals were dismissed.

11. The same issue again came up before the Hon'ble Supreme Court in the case of **Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited**. The Hon'ble Supreme Court, following the earlier judgment of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax, New Delhi Vs. M/s. Spice Entertainment Ltd.**, had held that, continuation of assessment proceedings, even after the Assessing Officer, had been informed the amalgamation of the companies, was without jurisdiction and would have to be set aside.

12. The same issue again came up before the Hon'ble Supreme Court in the case of **Smt. Kamala Muthiah Vs. The Assitant Commissioner of Income Tax** mentioned above. In this case, the erstwhile Director of the dissolved company was sought to be saddled with the liability of the dissolved company. Challenging the same, a Writ Petition was filed, before the Hon'ble High Court of Madras. A learned Single Judge of the Hon'ble High Court of Madras, holding that, since the transferee company had participated, in the assessment proceedings, had dismissed the Writ Petition. This Order of the

learned Single Judge was affirmed by a Division Bench of the Hon'ble High Court of Madras. Aggrieved by these Orders, the erstwhile Director, approached the Hon'ble Supreme Court. The Hon'ble Supreme Court, after considering the question of whether such proceedings would be regularized, on account of participation of the transferee company and on the question of whether such proceedings were maintainable at all, had held, following the judgment of the Hon'ble Supreme Court in the case of **Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited** that such proceedings are without jurisdiction and would have to be set aside. The Hon'ble Supreme Court had also considered the question of whether a Writ would be maintainable when an Appeal was provided under the Act. The Hon'ble Supreme Court had negated this contention and had held that, a Writ Petition would be maintainable.

13. It must be also noted that the aforesaid judgments arise out of the Income Tax Act. However, the principles set out in the aforesaid judgments, would apply in the case of the G.S.T. Act also.

14. The learned Standing Counsel had contended that, Section 87 of the G.S.T. Act, would protect the impugned proceedings. Section 87 of the C.G.S.T. Act, reads as follows:

“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.

15. A reading of the said provision makes it clear that the said provision is only ensuring that the right of the Authorities to recover tax, is protected and the liability of such tax would continue and would have to be discharged. This provision does not in any manner deal with the question of whether pending proceedings, against a dissolved company, in a scheme of amalgamation, can be continued or not. In any event, that issue has already been decided by the Hon'ble Supreme Court and in the view of this Court, Section 87 of the C.G.S.T. Act, is not relevant for this issue.

16. In view of the aforesaid, this Court deems it appropriate to allow this Writ Petition, setting aside the impugned order, dated 06.12.2024 and leaving it open to the respondent authorities to undertake such action as may be permissible under Law.

17. Accordingly, this Writ Petition is allowed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

Date:03.03.2026
KPV

THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

AND

THE HON'BLE SRI JUSTICE T.C.D.SEKHAR

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(per Hon'ble Sri Justice R. Raghunandan Rao)

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