GST ARTICLE

Doctrine of Merger in Tax Litigation: Navigating Finality, Precedent and SLP Jurisprudence under GST

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1. Introduction

In the architecture of tax litigation, where disputes travel across multiple forums-from adjudicating authorities to appellate bodies, tribunals, High Courts and ultimately the Supreme Court-the question that often assumes decisive importance is: which order finally governs the field' The doctrine of merger provides the answer.

Yet, despite its long judicial lineage, the doctrine continues to be misunderstood, particularly in the context of Special Leave Petitions under Article 136 of the Constitution. Orders dismissing SLPs are frequently treated on **LinkedIn** posts as affirmations of lower court judgments, leading to misplaced reliance by the viewers. This confusion is not rare these days; it has real consequences on enforcement, precedent, and litigation strategy.

A related and equally important misconception persists-does everything said (or not said) in a judgment constitute a binding precedent' Further, do we clearly appreciate the distinction between dismissal of an SLP at the admission stage and dismissal after leave has been granted, even where both may be couched in an identical one-line order' These are not mere technicalities; they go to the heart of how precedent operates and how finality is understood in law.

This article seeks to unpack these intricate and often overlooked nuances. It revisits the doctrine of merger through the lens of settled jurisprudence, clarifies

the constitutional position on SLP dismissals, and brings out the subtle yet critical distinctions that frequently escape attention in tax practice-particularly under the GST regime where layered adjudication is the norm. Given that the doctrine is not codified in any statute but has evolved through common law principles and judicial pronouncements, the discussion necessarily draws upon a range of decisions to illuminate its contours and practical application.

2. What is the Doctrine of Merger

The doctrine of merger postulates that when a superior authority or court examines a matter and passes a judicial order, the order of the inferior authority merges into that of the superior court, and it is thereafter the order of the superior forum which alone subsists and is operative in the eyes of law. However, the application of this doctrine is neither automatic nor mechanical; it depends upon the nature of jurisdiction exercised and the scope of adjudication undertaken by the superior forum.

At its core, the doctrine ensures that there are not multiple operative orders governing the same subject matter at the same time. Once a matter is carried before a higher forum and is adjudicated upon-whether by affirming, modifying, or setting aside the original decision-the order of the superior forum replaces the earlier one and alone governs the field.

That said, the doctrine is not of universal application. It operates only where the superior forum has exercised appellate or revisional jurisdiction after due consideration of the matter. If the higher forum has not undertaken a substantive examination-such as where jurisdiction is declined at a threshold stage-the original order continues to subsist and does not merge.

Another important facet is that the nature of the outcome-whether reversal, modification, or mere confirmation-is immaterial. Even an affirming order results in merger, as the lower authority's decision loses its independent existence once

it has been subjected to appellate scrutiny. Closely linked to this is the principle that merger is tied to the extent of adjudication. The doctrine applies only to those issues which have been examined and decided by the superior forum, leaving untouched aspects of the original order unaffected.

Thus, the doctrine of merger is best understood not as a rigid rule, but as a contextual principle that balances finality with fairness-ensuring that only those orders which have undergone proper judicial scrutiny at a higher level attain operative finality.

3. Foundational Judicial Principles on Merger

3.1 Preconditions for Application

In ***Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat (AIR 1970 SC 1)***, the Hon'ble Supreme Court crystallised the essential conditions for the applicability of the doctrine. The Court held that merger would arise where:

(i) the jurisdiction exercised is appellate or revisional;
(ii) such jurisdiction is exercised after issuance of notice; and
(iii) the matter is heard in the presence of both parties.

Only upon satisfaction of these conditions does the order of the superior forum replace that of the subordinate authority.

3.2 Merger upon Appellate Adjudication

The principle was succinctly explained in ***Commissioner of Income-tax, Bombay v. M/s. Amritlal Bhogilal and Co.*** (*1958-VIL-01-SC-DT*), where the Court observed:

> *"There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is*

> *the operative decision in law. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement....."*

This formulation makes it clear that even where the appellate authority merely affirms the lower order, merger still takes place.

3.3 No Distinction Between Affirmation, Modification or Reversal

In ***M/s. Goier Brothers Pvt. Ltd. v. Shri Ratanlal (AIR 1974 SC 1380)***, relying upon ***U.J.S. Chopra v. State of Bombay (AIR 1955 SC 633)***, the Supreme Court clarified that there is no distinction, in principle, between reversal, modification, or confirmation. In all such cases, the order of the lower authority merges into the appellate order, which alone survives thereafter.

3.4 Applicability to Tribunals and Limitation

The scope of the doctrine was further expanded in ***S.S. Rathor v. State of Madhya Pradesh*** (*1989-VIL-88-SC*), where a Seven-Judge Bench held that the doctrine applies equally to decisions of tribunals. It was further held that where a statutory remedy is availed, limitation for challenging the order would run from the date of the appellate order, not the original order-an important practical consequence flowing directly from the doctrine of merger.

4. Doctrine of Merger and Article 136: The SLP Framework

The most authoritative exposition on the doctrine in the context of the Supreme Court's jurisdiction under Article 136 is found in ***Kunhayammed and Others v. State of Kerala*** (*2000-VIL-31-SC*). The Court clarified that the doctrine of merger is a common law doctrine rooted in judicial propriety and not a rule of constitutional compulsion.

The Court observed:

> *"The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. However, the doctrine is not of universal or unlimited application."*

A crucial distinction was drawn between two stages of jurisdiction:

(i) the stage of considering whether to grant special leave; and

(ii) the stage after leave is granted, where appellate jurisdiction is exercised.

4.1 Dismissal of SLP: No Merger

Where a Special Leave Petition is dismissed, whether by a non-speaking or speaking order, the Court is not exercising appellate jurisdiction. Consequently, the doctrine of merger does not apply. This position has been consistently reiterated in multiple judgements from time to time.

The law is thus settled that dismissal of an SLP merely indicates that the case was not considered fit for exercise of discretionary jurisdiction under Article 136. It neither affirms the reasoning of the lower court nor results in merger.

4.2 Speaking Orders and Article 141

Even where reasons are assigned while dismissing an SLP, the doctrine of merger does not apply. However, the legal position stated in such an order may constitute a declaration of law under Article 141 of the Constitution of India and would be binding on all courts and tribunals in terms of the said article.

Thus, while merger does not occur, judicial discipline requires adherence to the legal principles laid down in such orders.

4.3 Grant of Leave and Merger

A decisive shift occurs once leave to appeal is granted under Article 136. The proceedings enter the appellate stage and the Supreme Court exercises its appellate jurisdiction. In such cases, the doctrine of merger applies in full force.

As explained in *Kunhayammed* (supra):

> *"If the judgment of the High Court has come up to this Court by way of a special leave, and special leave is granted and the appeal is disposed of. the judgment of the High Court merges with that of this Court."*

Even dismissal of the appeal by a non-speaking order would result in merger, since the Court is acting in its appellate capacity.

4.4 Merger and Review Jurisdiction of the High Court

The doctrine has important implications for review proceedings. Where an SLP is dismissed, there being no merger, the aggrieved party retains the right to seek review before the High Court. However, once leave is granted, the High Court loses jurisdiction to entertain a review, as the matter stands merged with the order of the Supreme Court.

The Court in *Kunhayammed* clarified that review is maintainable before grant of leave, but not thereafter, as the jurisdiction to examine the correctness of the order shifts entirely to the Supreme Court.

5. Doctrine of Merger in GST Context

In the GST regime, the doctrine of merger assumes particular significance owing to the multi-layered adjudicatory structure and the multiplicity of issues typically involved in a single dispute. Questions of classification, valuation, input tax credit, limitation, and penalty often travel together through different forums,

making it essential to identify which aspects of an order have attained finality and which continue to subsist independently.

The doctrine operates in an issue-specific manner. Where an appellate authority decides only certain aspects of a dispute, merger applies only to those issues, while the remaining portions of the original order continue to operate. This has direct implications for recovery proceedings, invocation of revisionary powers, and the scope of further appeals.

Equally significant is the frequent reliance placed on dismissal of SLPs in GST matters. As clarified in ***Accountants Service Society & Ors. v. Union Of India & Ors.*** (*2026-VIL-170-KER*), applying Kunhayammed principles, dismissal of an SLP does not result in merger nor does it amount to affirmation of the High Court's reasoning. Authorities must therefore exercise caution in treating such dismissals as binding precedent.

A correct appreciation of the doctrine enables taxpayers to effectively navigate remedies-whether by pursuing review, invoking writ jurisdiction, or challenging recovery-and prevents authorities from extending precedential value to orders which, in law, do not possess it.

6. Conclusion

The doctrine of merger, though conceptually simple, operates with nuanced precision. It is not a blanket rule but a principle conditioned by the nature of jurisdiction exercised and the stage at which a matter is adjudicated. The jurisprudence, particularly post-*Kunhayammed*, draws a clear and careful distinction between discretionary refusal to grant leave and exercise of appellate jurisdiction-only the latter attracting merger.

In tax litigation, and especially under GST, where procedural missteps can have significant financial consequences, a clear understanding of this doctrine is

indispensable. Treating dismissal of SLPs as affirmations of law or assuming automatic merger can distort both legal reasoning and litigation strategy.

Ultimately, the doctrine serves a deeper purpose: preserving coherence in judicial hierarchy while ensuring that only those decisions which have undergone proper appellate scrutiny attain finality. When applied with this clarity, it becomes not merely a technical rule, but a safeguard against doctrinal confusion and misplaced reliance in tax jurisprudence.

The next time an SLP dismissal order surfaces-on LinkedIn-pause before drawing conclusions and be better informed.

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(The views expressed in this article are strictly personal.)