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The Institute of Chartered Accountants of India

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ICAI 75 YEARS OF TRUST | ७५ साल विश्वास के

PANIPAT BRANCH OF NIRC OF ICAI

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THE ICAI MOTTO

The Institute of Chartered Accountants of India

Ya esa suptesu jagarti kamam kamam Puruso nirmimanah | Tadeva sukram tad brahma tadevamrtamucyate | Tasminlokah sritah sarve tadu natyeti Kascan | etad vai tat | |	य एष सुप्तेषु जागर्ति कामं कामं पुरूषो निर्मिमाण :। तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते । तस्मिंल्लोका: श्रिता: सर्वे तदु नात्येति कश्चन । एतद् वै तत् ।।

That Person who is awake in those that sleep, shaping desire after desire, that, indeed is pure.

That is Brahman, that, indeed, is called the immortal. In it, all the worlds rest and no one ever goes beyond it.

This, verily, is that, kamam kamam: desire after desire, really objects of desire. Even dream objects like objects of waking consciousness are due to the Supreme Person.

Even dream consciousness is proof of the existence of the self.

No one ever goes beyond it: of Eckhart: 'On reaching God all progress ends.'

Source: Kathopanishad

PANIPAT BRANCH OF NIRC OF ICAI

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EVENTS

(APRIL-2025)

HELD IN

PANIPAT BRANCH OF NIRC OF ICAI

Felicitation Function of
CA Charanjot Singh Nanda Hon'ble President, ICAI (Chief Guest), CA Prasanna Kumar D. Hon'ble Vice-President, ICAI (Guest of Honour) & Team

April 1st, 2025


PANIPAT BRANCH OF NI
Welcomes You at Semi
MBERS MEET
AT ICAI BHAWAN


PANIPAT BRANCH OF NIRC OF ICAI
Welcomes You at Seminar of
ACCOUNTING STANDARDS FOR NON CORPORATE ENTITIES
& MEMBERS MEET
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April 1st, 2025

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CA Deepak Garg & CA Sangam Aggarwal & CA (Dr) Amarjit C
(Accounting & Assurance Standards Board)

April 2nd, 2025

Career Counselling Program @
Government Senior Secondary School - SEWAH

April 17th, 2025

Career Counselling Program @
Government Girls Senior Secondary School - SEWAH

April 26th, 2025

GST CASE LAW COMPENDIUM – APRIL 2025 EDITION

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1. Whether a refund rejection order is valid when no deficiency memo in Form GST RFD-03 was issued?

No, the Hon'ble Bombay High Court in ***Raiden Infotech India (P.) Ltd. v. State of Maharashtra*** [Writ Petition (L) No. 22309 of 2024, dated December 14, 2024] held that the rejection of a refund application without issuing a deficiency memo in Form GST RFD-03 is procedurally invalid. Accordingly, the Court set aside the refund rejection order dated April 30, 2024, and restored the refund application, subject to the petitioner paying costs of ₹2,00,000 to the department.

The petitioner had challenged the rejection of its refund claim on the ground that the mandatory deficiency memo in Form GST RFD-03 was never issued, thereby denying it an

opportunity to rectify and refile the application. The Court agreed, relying on its earlier decision in ***M/s Knowledge Capital Services Pvt. Ltd. v. Union of India***, which clarified

that in the event of any procedural deficiency in a refund application, Form RFD-03 must be issued, enabling the applicant to withdraw and refile a corrected application.

However, the Court also took note of the fact that a show-cause notice had been issued to the petitioner, highlighting the grounds on which the refund was proposed to be rejected. Despite this, the petitioner neither filed a response in Form RFD-09 nor appeared for the personal hearing, merely seeking adjournments.

Balancing both procedural lapses and the conduct of the petitioner, the Court held that while the department's failure to issue Form RFD-03 invalidated the rejection order, the petitioner was equally responsible for not utilizing the opportunity provided under the SCN. Thus, as a matter of equity, the Court directed that:

- The impugned refund rejection order is set aside;
- The original refund application (Form RFD-01) is restored to the file;
- The petitioner must pay ₹2,00,000 as costs to the department within 4 weeks;
- Post-payment, the refund application is to be reprocessed within 3 months, and any deficiency, if found, must be properly communicated via Form RFD-03.

The Court clarified that it had not adjudicated on the merits of the refund claim, and all rights and contentions of both parties remain open.

Citation
2024 (12) TMI 929 - BOMBAY HIGH COURT

Author's Comments

It is important to distinguish between deficiencies in a refund application and disputes regarding eligibility for refund under the GST regime. Form GST RFD-03 is issued only in cases where the refund application is found to be incomplete, inconsistent, or prima facie deficient. These are issues of procedural irregularity—not matters requiring evaluation of legal entitlement or factual justification. In contrast, where the department has doubts about the substantive eligibility of the claim, the appropriate mechanism is issuance of Form GST RFD-08, followed by adjudication through RFD-06.

A critical nuance often overlooked is that RFD-03 is not a show cause notice. There is no statutory right to "reply" to an RFD-03 under the CGST Rules. Once an RFD-03 is issued, the original application is treated as if it was never filed at all. Rule 90(3) of the CGST Rules codifies this legal fiction, providing that a fresh refund application must be filed after rectifying the deficiencies noted. The procedural legitimacy of this approach has been reinforced through paras 9 to 12 of CBIC Circular No. 125/44/2019-GST, which clearly demarcate the scope and consequences of deficiency memos. This codification serves as a safeguard against unfettered administrative discretion, ensuring that only clearly deficient applications are summarily closed, while those involving legal or factual contest must proceed through adjudication.

From a taxpayer's standpoint, this distinction is crucial. A refund application rejected via RFD-03 cannot be challenged or appealed, as it does not culminate in any adverse order.

However, once an RFD-08 is issued, the matter enters into the realm of quasi-judicial determination, triggering the taxpayer's right to be heard and to appeal if required.

Link to download judgment

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2. Whether a taxpayer who fails to obtain GST registration and pays tax only after departmental inspection can claim cum-tax benefit and avoid penalty under Section 74 of the CGST Act, 2017?

No, the Hon'ble Madras High Court in ***Annai Angammal Arakkattalai (Pre Mahal) v. Joint Commissioner of GST*** [W.P.(MD) No. 28502 of 2022, dated January 28, 2025] dismissed the writ petition filed by the assessee, holding that failure to obtain GST registration and delayed tax payment post-inspection amounts to deliberate tax evasion, attracting penal consequences under Section 74 of the CGST Act.In this case, the petitioner, a charitable trust operating a marriage hall, was found to have been providing taxable services from July 2017 to January 2020 without obtaining GST registration. It was only after an inspection by the CGST Preventive Unit on January 23, 2020, that the petitioner applied for registration and made partial payments towards tax and penalty. The petitioner claimed that the payments made post-inspection were voluntary and sought the benefit of cum-tax calculation under Rule 35 of the CGST Rules. However, the department rejected this claim, issued a show cause notice under Section 74, and passed an order confirming the full tax liability along with interest and penalty equal to the tax amount.

The petitioner challenged the demand before the appellate authority and subsequently through a writ petition, contending that there was no willful suppression or fraud to justify the invocation of Section 74, and that the payments were made in good faith. The High Court, however, dismissed these arguments, observing that the petitioner's failure to register and its issuance of donation receipts in place of proper tax invoices clearly indicated an attempt to evade tax. The Court held that the subsequent registration and payment, made only after departmental intervention, could not be considered as voluntary compliance. It concluded that the conduct amounted to suppression and misstatement, attracting the rigours of Section 74. Therefore, the benefit of cum-tax valuation was rightly denied, and the imposition of full penalty was legally justified. Accordingly, the Court upheld the orders passed by the adjudicating and appellate authorities and dismissed the writ petition.

Citation
2025 (1) TMI 1429 - MADRAS HIGH COURT

Author's Comments

The invocation of Section 74 of the CGST Act, 2017 is a serious matter and must be grounded in clearly established circumstances. It is not sufficient for the department to merely allege non-compliance; rather, it must prove: (i) non-payment of tax, (ii) knowledge of liability, (iii) active concealment or suppression designed to thwart detection, and (iv) a resultant benefit or gain to the taxpayer. Absent these cumulative elements, the jurisdictional foundation for invoking Section 74 collapses.

Importantly, entries recorded in the regular books of accounts or disclosed in contemporaneous records cannot be construed as suppression. These disclosures may reflect an alternative understanding or interpretation of law, but they do not indicate intent to conceal. Suppression requires a deliberate act to hide information—not a bona fide disagreement on taxability or classification.

The expression "failure" under provisions like Section 25(8) must also be interpreted carefully. Failure in this context implies intentional or willful neglect of a statutory obligation, not a mere lapse or oversight. For a charge of tax evasion to be sustained, there must be a demonstrable unjust gain to the taxpayer—without such gain, the allegation of evasion loses legal force.

Additionally, any tax demand must satisfy the four essential elements as laid down by the Hon'ble Supreme Court in ***Govind Saran Ganga Saran v. CST*** [AIR 1985 SC 1041], namely: (i) the nature of the supply, (ii) its taxability, (iii) the correct HSN classification, and (iv) the time and place of supply. A demand lacking in any of these aspects is vague and legally unsustainable.

Moreover, caution must be exercised when dealing with voluntary payments made during inspections or preliminary stages of proceedings. Payments made under duress, when not qualified or made under protest, are often construed as admissions of guilt. This can severely prejudice the taxpayer's case and may foreclose the opportunity for further rebuttal or legal remedy.

Link to download judgment

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3. Whether a demand order passed without considering the taxpayer's reply and without recording a reasoned finding qualifies as a non-speaking order liable to be set aside?

Yes, the Honorable High Court of Kerala in case of *Masany Construction Equipment Pvt. Ltd. vs. State Tax Officer & Others* (WP(C) No. 33646 of 2024 dated: 11.03.2025) **set aside the demand order** and directed the respondent officer to **reconsider the matter**

afresh, granting the petitioner a reasonable opportunity of hearing and permitting submission of supporting documents. The Honorable Court noted that the petitioner is challenging an order passed under Section 73(9) of the CGST Act, imposing tax, interest, and penalty aggregating ₹22.42 lakhs for the financial year 2019–20. The demand stemmed from a mismatch between GSTR-1 and GSTR-3B filings, particularly involving an invoice dated 02.10.2019.

The petitioner clarified that the error occurred due to an unintentional data entry mistake in GSTR-1, which they later attempted to correct. It was explained that the correction had already been made while filing GSTR-3B, and thus, there was no tax liability, as sufficient Input Tax Credit was available to offset any dues. This explanation was communicated through a reply dated 10.03.2021 and further supported by tabulated reconciliations. Although an opportunity for a personal hearing was granted, the petitioner could not attend. Nonetheless, the department proceeded to issue the final order, merely stating that the reply was "not convincing and non-explanatory," without analyzing the explanation or supporting documents provided.

The Hon'ble Court observed that the impugned order was non-speaking in nature, as it summarily dismissed the reply without assigning any reasons. The Court noted that discarding a taxpayer's reply by a single line, particularly when it involves factual disputes and reconciliation statements, does not satisfy the standards of quasi-judicial decision-making. The officer was expected to evaluate whether the mistake was bona fide and could have sought verification of records before concluding. Emphasizing that a speaking order is a prerequisite for fair adjudication, especially under Section 73 where the consequences are penal in nature, the Court held that the order could not stand in law. Accordingly, the High Court set aside the demand order and directed the respondent officer to reconsider the matter afresh, granting the petitioner a reasonable opportunity of hearing and permitting submission of supporting documents. Further, instructed to pass a fresh, reasoned order within three months of receipt of the judgment.

Citation -
2025 (4) TMI 303 - KERALA HIGH COURT

Authors comments

Approaching a writ court under Article 226 or Article 32 of the Constitution of India must be a strategic and well-considered decision. If the Hon'ble Court remands the case for a second round of adjudication without vacating the notice, the exercise may prove fruitless, failing to secure the desired relief.

In the present case, output tax has been demanded solely based on data differences (GSTR-1 vs GSTR-3B), without specifying essential details such as: (i) Nature of supply (ii) Taxability (iii) HSN code (iv) Time of supply (v) Place of supply Without these fundamental elements, any demand for output tax is arbitrary and legally unsustainable. This principle was reaffirmed by the Honorable Supreme Court in ***Govind Saran Ganga Saran v. CST &Ors.*** (AIR 1985 SC 1041), wherein it was held that tax proceedings must satisfy four essential ingredients before any tax demand can be upheld.

Furthermore, when a **specific statutory mechanism** is prescribed to deal with GSTR-1 vs GSTR-3B mismatches—namely, **Section 75(12) read with Rule 88C** and the issuance of notice in form **DRC-01B**—the invocation of **Section 73** bypasses the intended legislative process. Such misapplication of law is not merely technical but strikes at the **root of procedural legitimacy**.

Link to download judgment

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4. **Whether the issuance of a show-cause notice under Section 73 of the CGST Act, 2017 for alleged irregularities in transitional credit is without jurisdiction?**

Yes, the Honorable High Court of Calcutta in the case of ***Kunjal Synergies Private Limited & Anr. vs. The Assistant Commissioner of CGST & CX& ORS.*** **(**MAT 2333 of 2023 dated: 11.03.2025) set aside the order of the Single Judge, and allowed the writ petition, thereby reaffirming the principle that disputes of transitional credit originating from the pre-GST era must be dealt with under the appropriate legacy laws and not through proceedings under the CGST Act. The Hon'ble Court noted that the petitioners had transitioned from the pre-GST regime into GST and duly filed FORM TRAN-1 on 9th November 2017, claiming transitional CENVAT credit amounting to ₹41.55 lakhs. Prior to this, by letter dated 31st October 2016, they had already intimated the Service Tax Department about this credit and sought its allowance as opening balance for 2016–17.

Following this, the departmental authorities initiated a prolonged process of verification from 2018 onward, seeking several documents and replies, all of which were furnished promptly by the petitioners. However, no adjudication or demand was issued for over five years. Surprisingly, on 2nd March 2023, a notice in GST DRC-01A was issued to the petitioners, to which they responded on 9th March 2023. Despite earlier detailed responses, a formal show-cause notice dated 18th September 2023 was issued under Section 73 of the CGST Act, alleging ineligible availment of transitional credit under GST.

The petitioners approached the Writ Court challenging the issuance of the show-cause notice on the ground that the entire verification process pertained to a period prior to GST and, therefore, the jurisdiction lay under the pre-GST legislation. The Single Judge, however, directed them to respond to the notice and participate in adjudication. Aggrieved, the petitioners preferred an intra-court appeal.

The Hon'ble Court placed strong reliance on the decision of the Jharkhand High Court in ***Usha Martin Limited vs. Additional Commissioner, CGST & CX*** [(2024) 124 GSTR 396 (Jhar)], which had conclusively held that where the dispute regarding transitional credit stems from the pre-GST regime, the proceedings must be initiated under the provisions of the erstwhile laws and not under the CGST Act. The Calcutta High Court observed that Section 140 of the CGST Act merely facilitates transitional arrangements for input tax credit and does not itself confer jurisdiction to adjudicate disputes originating from the past regime under new provisions. Further reference was made to Section 174 of the CGST Act and the repeal and savings clause, which preserves the right of the Department to act under the old laws for past violations, but not to initiate parallel proceedings under GST.

The Court also invoked the constitutional principle that where jurisdiction is absent, the bar of alternate remedy does not apply. Accordingly, it held that the impugned show-cause notice dated 18.09.2023 was without jurisdiction and quashed the same. The Court clarified that the Department may, if it deems fit, initiate proceedings under the Central Excise Act or the Finance Act read with the CENVAT Credit Rules for the relevant period, provided such action is strictly in accordance with law.

Citation -
2025 (3) TMI 820 - CALCUTTA HIGH COURT

Authors Comments

This decision is a significant reaffirmation of the jurisdictional limitations that govern transitional credit disputes under the GST regime. The Calcutta High Court has, with clarity and precision, emphasized that disputes relating to CENVAT credit transitioned from the erstwhile tax regime cannot be adjudicated under Sections 73 or 74 of the CGST Act, which are confined to recovery of wrongly availed or utilized input tax credit under the GST framework.

It is important to underscore that **TRAN credit** neither falls within the definition of **'input tax' under Section 2(62)** nor is it covered under **'output tax' as defined in Section 2(82)** of the CGST Act. Accordingly, the demand &recovery provisions contemplated under **Chapter XV**, including **Sections 73 and 74**, are inapplicable to such transitional credits. These provisions are intended to address wrongful availment or utilization of ITC arising **within the framework of GST**, not credits carried forward from the erstwhile regime. Once transitional credit has been validly claimed and utilized in accordance with Section 140, it stands outside the statutory machinery of recovery under the CGST Act. Furthermore, **Rule 121 of the CGST Rules, 2017**, which provides for the examination of transitional credit claims, does not create any substantive power for recovery or adjudication. Being a delegated legislation, it **cannot override or substitute the absence of explicit statutory authority** in the parent Act. Therefore, any attempt by the department to invoke Sections 73 or 74 for recovery of ineligible TRAN credit amounts to **jurisdictional overreach** and lacks legal backing.

Link to download judgment

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5. Whether the detention of goods and imposition of penalty under Section 129 of the SGST Act is justified when the e-way bill was generated after interception and the goods were allegedly misclassified?

Yes, the Honorable High Court of Allahabad in case of ***Gurunanak Arecanut Traders vs. Commercial Tax Officer & Another*** *(*Writ Tax No. 1177 of 2022 dated 05.03.2025) upheld the penalty proceedings under Section 129(3) and dismissed the writ petition. The Hon'ble Court noted that the petitioner, a registered dealer, had sold 400 bags of Arecanut to a registered buyer in Nagpur, Maharashtra. The goods were being transported through a third-party transporter and were intercepted in Mathura at 4:28 a.m. on 10.06.2022. At the time

of interception, no e-way bill accompanied the consignment. The e-way bill was only generated subsequently at 7:36 a.m. the same day.

A physical inspection revealed that the goods were not raw arecanuts as declared but rather "Chikni Bhuni Supari" (processed betel nut), which attracted GST at 18% rather than the 5% declared. A detention order under Section 129(1) was issued on 16.06.2022, and a show-cause notice was also served. When no response was received, the authorities passed a penalty order under Section 129(3), raising a demand of ₹90.62 lakhs in tax and penalty. The petitioner's appeal before the First Appellate Authority was rejected on 18.08.2022, leading to the present writ petition.

The petitioner contended that the vehicle driver acted without their knowledge and that the e-way bill was generated promptly upon realizing the error. They also argued that misclassification should not result in detention under Section 129 and cited precedents from ***Modern Traders, Axpress Logistics,*** and ***Falguni Steels*** to support their case. It was also alleged that no effective opportunity of hearing was granted before passing the penalty order.

On the other hand, the department highlighted serious discrepancies. The vehicle was found carrying goods without a valid e-way bill at the time of interception, and investigations revealed inconsistencies in the petitioner's registered business address, with the business premises found non-existent. Further, the tax invoice showed a different signature than that on the rent agreement, and the PIN codes of the dispatch locations didn't match. The driver admitted the goods had been transhipped from another vehicle in Bakauli, Delhi—an unregistered place for the petitioner. A verification report from Delhi authorities noted that the petitioner's firm was not traceable, and suo moto cancellation proceedings had been initiated against it.

The Court referred to earlier judgments, particularly ***Akhilesh Traders*** and ***Jhansi Enterprises***, to reiterate that after the 14th Amendment to the UP GST Rules, effective from 01.04.2018, carrying an e-way bill during movement of goods is mandatory. In such cases, a presumption of tax evasion arises which may be rebutted by the assessee through credible material. Mere subsequent production of the e-way bill does not negate the intent to evade.

The Court held that the petitioner failed to rebut this presumption. The firm was non-operational at its declared place of business, goods were misclassified, and no convincing explanation was given for the delay in e-way bill generation or the mismatched documentation. The fact that the e-way bill was generated after interception was deemed critical. The Court also found no merit in the argument that notice was not served, as it had been given to the driver and sent via email to both buyer and seller.

Consequently, the High Court upheld the penalty proceedings under Section 129(3) and dismissed the writ petition. It emphasized that once goods are in movement without an e-way bill post-April 2018, and misclassification is evident, the legal presumption of evasion arises, and unless rebutted convincingly, the departmental action under Section 129 stands on firm legal ground.

Citation -(2025) 28 Centax 213 (All.) [05-03-2025]

Authors Comments

It is increasingly observed that field-level officers, drawing from their pre-GST enforcement experience, tend to exceed their limited statutory mandate under GST. In the present case, though the non-availability of the e-way bill at the time of interception was evident, the

further allegations of misclassification of goods and tax rate discrepancies indicate a substantive inquiry into classification, which falls outside the scope of authority granted to an officer exercising powers under Section 68 read with Section 129.

The legal position is well settled—the power of detention under Section 129 is procedural and limited, primarily intended to verify whether the documents prescribed under Rule 138A (invoice, e-way bill, etc.) accompany the goods. Once compliance under Rule 138A is established or subsequently cured, the officer cannot continue to detain goods or impose penalty on grounds of undervaluation or misclassification. These issues are to be adjudicated by the Proper Officer through proceedings under Section 73 or 74, not by the mobile squad or enforcement officer exercising summary detention powers.

This principle has been judicially affirmed in multiple decisions:

- The Kerala High Court in ***Hindustan Coca-Cola Pvt. Ltd. v. Assistant State Tax Officer*** (2020) held that misclassification cannot be a standalone ground for detention under Section 129.
- The U.P. Commercial Taxes Department, via *Circular No. 1819010 dated 09.05.2018*, clearly instructs intercepting officers not to detain vehicles based on undervaluation or classification disputes, but instead escalate such matters to the Joint Commissioner for appropriate legal action.

The scope of proceedings under Section 129 is fundamentally distinct from the proceedings contemplated under Sections 73, 74, or 130. In fact, if the authorities had concrete evidence suggesting fraudulent transportation or non-existent movement of goods—such as between Assam, West Bengal, and Delhi—the appropriate route would have been to invoke Section 130 (confiscation), which provides a more fitting legal framework for deliberate tax evasion. However, the officer exercising Section 129 powers cannot assume jurisdiction under Sections 73/74.

Link to download judgment

https://drive.google.com/file/d/1NHcpqM4lS3Z70HwpzdmQF1jZb44xR9iv/view?usp=sharing

6. Whether the collection of cess under the Assam Agricultural Produce Market Act, 1972 post-GST implementation is valid, and can refund of such cess be claimed by the assessee?

No, the Hon'ble Gauhati High Court in case of ***M/s. Bajrang Bali Roller Flour Mills and Anr. vs. State of Assam and Ors.*** (WP(C) No. 4657 of 2018 dated 12.03.2025) held that the levy and collection of cess under the Assam Agricultural Produce Market Act, 1972, after the introduction of GST is unconstitutional and ultra vires the CGST Act, 2017 and AGST Act, 2017. However, the Court declined to grant a refund due to the absence of specific pleadings about the burden of cess not being passed on to customers and considering the financial position of the Respondent Board. The Hon'ble Court noted that the petitioner brings goods into the State from outside for further processing but neither buys nor sells in any market area, but was still subjected to cess under the Assam Agricultural Produce Market Act, 1972, by the Assam State Agricultural Marketing Board and various Market Committees. The petitioner contended that such levy was unlawful post-GST, as tax on supply of goods and services is now governed exclusively by the CGST and AGST Acts.

The Hon'ble Court referred to the decisions in M/s. ***Bhatter Traders vs. State of Assam and Eastern Roller Flour Mills (P) Ltd. vs. State of Assam*** ((2023) 118 GSTR 470), where it was held that with effect from 01.07.2017, following issuance of Central Notification No. 12/2017-Central Tax (Rate) and State Notification No. FTX.56/2017/25, any levy of cess by the marketing boards was without legislative authority. It was further noted that services provided by Agricultural Produce Market Committees or Boards were specifically exempt under the GST regime, thus confirming that the cess under the earlier state law stood effectively subsumed and could no longer be levied. The Court agreed with the submissions and held that the issues involved in the present petition were identical to the ones decided earlier. It therefore declared the cess levied on the petitioner to be unconstitutional and ultra vires the CGST Act and AGST Act. However, following the principle laid down in ***Bhatter Traders*** and considering the doctrine of unjust enrichment, the Court refused to order refund. It observed that the petitioners did not allege or prove that they had borne the cess themselves and not passed it on to consumers. Also, considering the financially constrained status of the Respondent Board, the Court found it inappropriate to direct restitution. Accordingly, the writ petition was disposed of by declaring the collection of cess to be illegal under GST law, but without issuing any direction for refund of the amount already collected.

Citation
2025 (3) TMI 890 - GAUHATI HIGH COURT

Author's Comments

Despite the constitutional mandate for a unified tax regime post-GST, several state-level boards and local bodies continued to levy legacy charges under pre-GST enactments, either due to administrative inertia or a misunderstanding of the impact of GST on such levies.

This case reiterates the core legal position that all indirect taxes relating to supply of goods or services, including cesses collected in relation to transactions or market entry, must find their authority under the GST laws from 01.07.2017 onwards. The Court rightly held that once the CGST and SGST Acts came into force and cesses were specifically exempted under relevant notifications, the continued levy under the Assam Agricultural Produce Market Act, 1972 became ultra vires. This view is consistent with the principle of ***doctrine of repugnancy*** and aligns with similar decisions in ***Bhatter Traders (supra)*** and ***Eastern Roller Flour Mills*** *(W.P(C) No.4727/2018 dated 09.02.2024).*

However, the judgment also reflects the complex interplay between legal principles and equitable considerations. While the Court held the cess collection to be unconstitutional, it refused to grant refund due to two key factors – absence of specific pleadings to show that the cess burden was not passed on to customers, and the precarious financial state of the Respondent Board. This reflects judicial reluctance to grant relief where the petitioner may have indirectly recovered the amount from end consumers, invoking the doctrine of unjust enrichment.

This case thus offers a valuable insight for practitioners – that refund under writ jurisdiction, even in the face of clear illegality, is not automatic. Petitioners must plead and prove that they bore the burden of the tax and did not transfer it to others. This is consistent with the jurisprudence laid down by the Supreme Court in ***Mafatlal Industries*** and ***Swanstone Multiplex***, both of which emphasize the importance of restitution being grounded in equity, not just legality.

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7. **Whether a show cause notice or order issued without the physical or digital signature of the proper officer is valid and enforceable in law?**

No, the Hon'ble Telangana High Court in case of ***M/s. Bigleap Technologies and Solutions Pvt. Ltd. and others vs. The State of Telangana and others*** **(**WP No. 21101 of 2024 and connected batch petitions dated 28.02.2025) held that a show cause notice or final order issued under the GST Act without the physical or digital signature of the proper officer is invalid. The Hon'ble Court noted that the petitioners challenged the validity of show cause notices and final orders issued under the GST Act on the ground that they did not bear the physical or digital signatures of the proper officer. The notices and orders were issued through the GST portal but were unsigned, raising concerns about their authenticity and enforceability. The petitioners relied on the earlier decision of this Court in ***M/s. Silver Oak Villas LLP v. Assistant Commissioner*** (ST), and also cited multiple precedents from the Bombay, Kerala, Delhi, and Gauhati High Courts. It was argued that the absence of signature violates the mandatory requirements under the GST Rules, particularly Rule 142 and the format prescribed under Forms DRC-01 and DRC-07, which specifically provide for the signature of the officer.

The State, admitted that the notices and orders lacked signatures but contended that such deficiency was cured by the fact that they were generated from the officer's secure login using the GST portal, which itself was authenticated by digital access. The respondents further argued that under Section 160 of the CGST Act, minor defects should not invalidate proceedings and that the rules could not override substantive provisions of the Act.

The Court, however, rejected the defence and held that once the statutory forms require the officer's signature, whether physical or digital, such a requirement is not a mere formality but a legal necessity. Rule 142 of the GST Rules and the prescribed forms under the Act are binding, and where the forms explicitly mandate the presence of signature, failure to comply renders the documents invalid. The Court also held that Section 160 of the Act cannot be invoked to validate a fundamentally defective order or notice that lacks legal authentication. Furthermore, the advisory issued by GSTN dated 25.09.2024, stating that digital login suffices for authentication, was found to lack statutory backing and was considered an internal communication with no overriding effect.

In view of the consistent judicial position taken by multiple High Courts and in the interest of judicial comity, the Hon'ble High Court quashed all impugned unsigned show cause notices and orders. However, liberty was granted to the authorities to issue fresh proceedings in accordance with law, and it was clarified that the limitation period shall not be a bar for initiating fresh action.

Citation
2025 (3) TMI 111 - TELANGANA HIGH COURT

Author's Comments

The Court rightly held that statutory forms such as DRC-01 and DRC-07 mandate the inclusion of such signature, and its absence renders the notices and orders legally unsustainable.

Notably, the Hon'ble Kerala High Court in ***M/s. Fortune Service & Ors v. Union of India & Ors.*** [WP (C) Nos. 20656/2024 and batch, decided on November 29, 2024], adopted a consistent view and held that orders issued under Section 73 of the CGST/SGST Act, 2017 must carry either digital or manual signature to be treated as valid. These decisions collectively reiterate that when a law prescribes a particular mode of execution, it must be strictly followed, especially in fiscal matters governed by technical statutes like GST.

At the same time, it is critical to appreciate that **not every mistake or omission by the department can be pleaded as a ground for seeking desired relief**. In the author's considered opinion, the mere **uploading of an unsigned order on the GSTN portal, although a defect, cannot be equated with lack of jurisdiction**. Yes, it is a procedural error, but not one so grave that it automatically renders the entire proceedings void ab initio. This distinction is important. The true test of validity should be whether the order has been passed by a legally competent officer (a 'proper officer' under the Act). If the officer lacked authority, the challenge would be one of jurisdiction. But where the proper officer passed the order and the only defect is non-signing, it is more appropriately treated as a **technical irregularity**, albeit a serious one.

The Hon'ble Court in the present case took what may be termed a **balanced approach**. It acknowledged the defect and quashed the unsigned orders, but it did not strike at the jurisdictional root of the proceedings. **Instead, it permitted the Revenue to re-initiate the proceedings**, treating the lack of signature as a correctable error and not a fatal illegality. However, from a taxpayer's standpoint**, another round of adjudication before the same officer, that too at additional cost, is no real relief**.

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8. Whether refund claims for unutilised ITC on exports filed initially within the limitation period, but later refiled after a deficiency memo, can be rejected as time-barred on the basis of Circular No.125/44/2019-GST dated 18.11.2019?

No, the Hon'ble Madras High Court in case of ***M/s. Gillette Diversified Operations Private Limited vs. Union of India & Others*** (WP Nos. 6524, 6527, 6531, 6537, and 6541 of 2022 dated 05.02.2025) allowed the petition and held that refund claims originally filed within the statutory time limit cannot be treated as time-barred merely because they were refiled after the issuance of a deficiency memo. The Hon'ble Court noted that the petitioner engaged in zero-rated supplies (exports) without payment of tax, filed refund claims for unutilised ITC for the months of July to September 2017. These claims were initially filed between September and October 2018—well within two years from the date of export as required under section 54(1) of the CGST Act. Due to certain deficiencies, the applications were refiled on 18.10.2019 and acknowledged by the department on 01.11.2019. The department rejected the refund claims on the ground that the refiled applications were submitted beyond the two-year limitation period calculated from the date of export, relying

on para 12 of CBIC Circular No.125/44/2019-GST dated 18.11.2019. This view was upheld by the Appellate Authority.

The petitioner challenged these orders before the Court, also assailing the validity of para 12 of the aforementioned circular. The Hon'ble Court examined the statutory framework under section 54 of the CGST Act and the unamended section 16(3) of the IGST Act as applicable during the period in dispute. It held that since the refund claims were filed initially within the prescribed time and later refiled due to deficiencies, the claims could not be rejected as time-barred. The reasoning in para 12 of the circular was not applicable in such cases, especially when the original claims were in substantial compliance with the statutory requirements.

Further, the Court observed that Rule 90(3) of the CGST Rules, 2017 (as amended by Notification No.15/2021-CT dated 18.05.2021) which allows exclusion of the period between original filing and communication of deficiency memo, though not retrospectively applicable, reinforced the legislative intent that procedural delays should not defeat substantive claims. The Court concluded that the refund claims related to export of goods without payment of tax under section 16(3)(a) of the IGST Act were filed within time and ought to have been processed on merits. The impugned orders rejecting the claims on grounds of limitation were quashed, and the writ petitions (WP Nos. 6524, 6527, and 6537 of 2022) were allowed. WP Nos. 6531 and 6541, which dealt with challenging the validity of the circular and seeking specific directions, were closed as the main relief had already been granted.

Citation

2025 (3) TMI 835 - MADRAS HIGH COURT

Author's Comments

This decision brings much-needed clarity and fairness to the interpretation of limitation in refund claims under GST, especially in the transitional phase when electronic modules were either unavailable or partially functional. It reinforces the principle that substantive claims should not be defeated due to procedural formalities, particularly when the initial filing was within the prescribed statutory period.

The Hon'ble Court correctly identified that the refund claims were for unutilized Input Tax Credit on zero-rated supplies under section 16(3)(a) of the IGST Act, not for inverted duty structure cases under section 54(3)(ii). Therefore, Explanation 2(e) to section 54 as amended with effect from 01.02.2019 was not applicable to the petitioner's claims for the relevant tax periods in 2017. The Court's interpretation that the claims related back to the original filing and were thus within limitation is both legally sound and equitably just.

What makes this ruling particularly significant is its refusal to permit a hyper-technical reading of procedural rules to defeat legitimate refund entitlements. In the author's considered view, when a refund application is filed within the statutory period, any re-submission upon rectification of deficiencies should relate back to the original filing date, especially when no change in the nature or substance of the claim is made. The alternative interpretation—that deficiency rectification creates a fresh application—is inconsistent with the constitutional guarantee of fair taxation and efficient refund mechanisms.

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9. Whether an assessment order passed without issuance of pre-notice consultation under Rule 142(1A) is valid?

No, the Hon'ble Andhra Pradesh High Court in ***M/s. Satyanarayana Medical Distributors vs. Assistant Commissioner of State Tax Intelligence and Others*** (Writ Petition No. 35710 of 2022, decided on 12.02.2025) held that an assessment order passed without issuance of a Tax Intimation Notice under Rule 142(1A) is in violation of principles of natural justice. The Hon'ble Court noted that the petitioner challenged an assessment order dated 05.03.2022 which covered the tax period from July 2017 to February 2021. However, the show cause notice based on which the order was issued only pertained to the period from July 2017 to March 2018. The petitioner contended that the impugned order was passed in violation of the principles of natural justice, as no opportunity was given to respond to the allegations for the extended period. Additionally, it was argued that the order was passed without issuance of a prior intimation under Rule 142(1A) of the CGST Rules, which is mandatory, at least for the pre-amendment period. The department defended the assessment by citing the amendment to Rule 142(1A) in October 2020, where the language was altered from "shall" to "may," thereby making the issuance of such intimation directory and not mandatory. The Hon'ble Court, however, referred to its earlier decision in ***W.P. No. 12850 of 2022 dated 13.10.2023***, where it had dealt with similar facts involving both pre-amendment and post-amendment periods. The Court reaffirmed that for periods prior to the amendment in October 2020, the issuance of a Tax Intimation Notice under Rule 142(1A) was mandatory, and that a composite assessment order covering periods both before and after the amendment without such notice is not sustainable in law. The Hon'ble Court observed that since the entire adjudication was initiated without compliance with Rule 142(1A) for the relevant part of the period, the order was liable to be set aside. Accordingly, the assessment order was quashed, with liberty to the authorities to proceed afresh in accordance with law and after following proper procedure.

Author's Comments

This case exemplifies a classic instance of taxpayer strategy gone wrong. This case reflects a missed opportunity to press the most fundamental and potent legal objections at the right time. Before replying to any notice, litigation strategy must be meticulously designed and the choice of forum, timing, and framing of objections often determine whether relief will be real or merely illusory.

One of the core lapses in this case was the failure to argue that the assessment order travelled beyond the scope of the show cause notice. The notice was issued for the period July 2017 to March 2018, yet the final order covered transactions up to February 2021. This is a clear breach of Section 75(7) of the CGST Act, which mandates that the final order must strictly confine itself to the grounds raised in the notice. The Supreme Court has consistently held in ***CCE v. Brindavan Beverages (P) Ltd. [(2013) ELT 487 (SC)]*** and ***Commissioner of Customs, Mumbai v. Toyo Engineering Ltd. [(2006) 7 SCC 592]*** that the adjudicating authority cannot travel beyond the terms of the lis defined in the show cause notice.

Further, while the department sought to rely on the October 2020 amendment to Rule 142(1A)—substituting "shall" with "may"—the author remains of the view that this amendment cannot override the parent statute, especially Sections 73(5) and 74(5), which continue to provide for a pre-notice opportunity to pay tax and avoid penalties. Particularly

under Section 74, where higher penalties are involved and where the opportunity to settle the matter at a 15% penalty stage is statutorily conferred, denial of pre-notice consultation takes away a vested right. Rules cannot dilute such safeguards embedded in the Act. Even post-amendment, pre-notice consultation under Rule 142(1A) remains integral to ensuring procedural fairness and voluntary compliance.

In the author's considered opinion, the relief granted in this case is not substantial. The Court has set aside the impugned order but left the defective show cause notice untouched, allowing the department to initiate the same proceeding afresh. A notice that deserved to be quashed for breaching natural justice and statutory limits has now been granted a second lease of life.

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10. Whether an appeal filed with a delay beyond the prescribed statutory limitation under Section 107 of the CGST/WBGST Act can be condoned in appropriate circumstances where sufficient cause and bona fide are demonstrated?

Yes, the Hon'ble Calcutta High Court in ***M/s. Phonex Traders Private Limited vs. Joint Commissioner of State Tax & Others*** (WPA 30663 of 2024, decided on 12.02.2025) held that where the appeal was filed beyond the additional one-month period contemplated under Section 107(4) of the CGST/WBGST Act, the appellate authority must consider the request for condonation of delay in light of sufficient cause shown and cannot reject the appeal merely on technical grounds, particularly where there is no lack of bona fide. The Hon'ble Court noted that the petitioner had filed an appeal under Section 107 of the CGST/WBGST Act challenging an order passed under Section 73(9) dated 11.12.2021. While filing the appeal, the petitioner also deposited the mandatory pre-deposit of ₹5,85,290 as required under Section 107(6). However, the appeal was filed after a delay of 117 days. The petitioner submitted an application for condonation of delay citing genuine reasons including organizational disruptions and health issues of the responsible personnel. Despite these explanations, the appellate authority rejected the appeal as time-barred, stating that it lacked power to condone the delay beyond the additional one-month period permitted under Section 107(4). The Hon'ble Court observed that the petitioner had acted bona fide and had supported the delay with sufficient justification—namely, the departure of a key employee and prolonged illness in the family of the new handling officer. The Court emphasized that the petitioner had not benefited from the delay, and the pre-deposit made at the time of appeal demonstrated intention to comply with the statutory process. The Court found that the appellate authority's refusal to consider the delay on merits amounted to a failure to exercise jurisdiction vested in it. It relied on the earlier Division Bench ruling in ***S.K. Chakraborty & Sons v. Union of India***, 2023 SCC OnLine Cal 4759, where a similar rigid approach on limitation was disapproved. It held that procedural timelines must not defeat substantive rights when sufficient cause is shown. Accordingly, the Court condoned the delay and quashed the order dated 19.09.2024 passed by the appellate authority. It directed the authority to hear and dispose of the appeal on merits within twelve weeks from the date of communication of the order, after granting an opportunity of hearing to the petitioner.

Author's Comments

The concept of *moulding relief* refers to the authority held by a Court of Equity, such as the Supreme Court or High Court, to go beyond the statute and craft a solution that addresses grievances appropriately.

When an appeal is filed after the time limit for condonation specified in Section 107(4) (i.e., 3+1 months), the Appellate Authority lacks the statutory authority to condone the delay, regardless of whether the reasons for the delay are substantial or deserving of consideration. In such cases, the appeal must be dismissed as it is considered fatally belated, as the Legislature has provided the Appellate Authority with a specific time frame and no more.

In the case of ***Singh Enterprises v. CCE 2008 (221) ELT 163***, the Honorable Supreme Court ruled that when a statute specifies a limitation period, allowing appeals based on "sufficient cause" would undermine the purpose of the statutory provision. Therefore, the Appellate Authority, having no authority to condone delays once the maximum time limit has lapsed, is barred from considering or excusing the delay, even if the reasons for it are valid or "good and sufficient."

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11. Whether the delay in submitting a certified copy of the impugned order renders an appeal invalid under Rule 108 of the CGST Rules?

No, the Allahabad High Court in ***M/s. Pawan Hans Helicopters Ltd. vs. State of U.P. and Others*** (Writ Tax No. 2400 of 2024, decided on 11.03.2025) held that the requirement of submitting a certified copy of the impugned order under Rule 108 of the CGST Rules is procedural and not mandatory in nature. The Hon'ble Court noted that the petitioner filed an appeal electronically on 15.11.2022, but the same was dismissed by the appellate authority on 30.08.2024, citing delay in submitting the certified copy of the impugned order, as per Rule 108(3) of the CGST Rules. The petitioner argued that the appeal was filed within limitation and supported by all necessary documents. It relied on the Delhi High Court's judgment in ***Chegg India Pvt. Ltd. vs. Union of India***, which held that submission of a certified copy is procedural and not a mandatory condition for treating the appeal as valid. The petitioner also relied on decisions of the Orissa High Court (***M/s. Atlas PVC Pipes Ltd***.), Karnataka High Court (***Hitachi Energy India Ltd***.), and the Allahabad High Court itself (***Deepu & Others***) to support that procedural rules cannot override the right to appeal, and that the 26.12.2022 amendment to Rule 108 is retrospective and clarificatory in nature. The Court noted that the fact of appeal being filed electronically on 15.11.2022 was undisputed. It observed that under the unamended Rule 108(3), the certified copy was to be submitted within seven days of filing. However, after the amendment, the rule clarified that if the order appealed against was not uploaded on the GST portal, then only a self-certified copy was required within seven days. The Court found that both versions of Rule 108 focused on procedural facilitation, not substantive bar. Relying on the principles laid down in *Chegg India Pvt. Ltd.*, the Court held that procedural lapses should not defeat the right of hearing, especially when no allegation of malafide or suppression existed. It ruled that the rejection of the appeal for want of timely submission of a certified copy, despite electronic filing within limitation, was unjustified. Accordingly, the impugned appellate order dated 30.08.2024 was quashed. The matter was remanded to the Additional Commissioner (Appeals), State Tax, Noida, with a direction to adjudicate the appeal on merits after granting due opportunity to the petitioner.

Citation
2025 (3) TMI 1092 - ALLAHABAD HIGH COURT

Author's Comments

The controversy stemmed from the amendment made to Rule 108(3) by **Notification No. 26/2022-Central Tax, dated 26.12.2022**, which clarified that in cases where the impugned order is **not uploaded on the common portal**, the appellant must submit a **self-certified copy** of the order within 7 days of filing the appeal in FORM GST APL-01. If this self-certified copy is not submitted within the 7-day period, then the **actual filing date of the appeal is reckoned from the date of submission of the order**, and not from the date of the provisional acknowledgment. However, in cases where online filing is complete, and the delay is only in submitting the certified copy—especially in the absence of any upload on the portal—the requirement is **procedural and directory**, not mandatory.

In similar spirit, the ***Madras High Court in Kasturi & Sons (P.) Ltd. v. Additional Commissioner of GST & Central Excise (Appeals-1), Chennai [W.P. No. 18642 of 2024, dated 10.07.2024]*** had clarified that **the date of online filing of appeal must be considered as the date of appeal** for computing limitation, especially where the order appealed against is not digitally available on the portal.

Moreover, Rule 108 does not create any express bar to condone such delay, nor does it impose a penal consequence for non-compliance. To interpret it otherwise would be to allow **form to triumph over substance**, which would be at odds with the constitutional guarantee under Article 14 and the principles of natural justice.

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12. Whether refund under the inverted duty structure for a period prior to 18.07.2022 can be denied merely because the refund application was filed after Notification No. 09/2022-Central Tax dated 13.07.2022, in view of Circular No. 181/13/2022-GST dated 10.11.2022?

No, the Hon'ble Gujarat High Court in the case of ***Patanjali Foods Ltd. vs. Union of India & Others*** (R/Special Civil Application No. 17298 of 2024, decided on 12.02.2025) held that refund under the inverted duty structure for periods prior to the effective date of Notification No. 09/2022-Central Tax dated 13.07.2022 cannot be denied merely because the refund application was filed after 18.07.2022. The Court struck down para 2(2) of CBIC Circular No. 181/13/2022-GST dated 10.11.2022 as arbitrary, discriminatory, and ultra vires to Section 54 of the CGST Act and Article 14 of the Constitution of India. The Hon'ble Court noted that the petitioner, engaged in the manufacture and sale of edible oils, had filed a refund application dated 05.12.2023 under Section 54(3) of the CGST/GGST Act for the period February 2021 to March 2021, claiming refund under the inverted duty structure. Initially, a SCN was issued citing an existing demand on the GST portal, but this was resolved and refund of ₹1,70,07,091/- was sanctioned by order dated 12.01.2024. Subsequently, a SCN under Section 73 was issued on 25.04.2024, seeking to recover the

same refund amount along with interest and penalty, solely on the basis of para 2(2) of Circular No. 181/13/2022-GST. The adjudicating authority passed an Order-in-Original on 10.09.2024 confirming the demand and penalty of ₹17,00,709/-. The petitioner contended that the refund was granted through a quasi-judicial order which had attained finality, as no appeal or revision had been filed under Sections 107 or 108. Further, it was argued that the restriction introduced by Notification No. 09/2022 dated 13.07.2022 was prospective and could not affect refund claims for prior periods, especially when filed within the statutory limitation under Section 54(1), which had been extended through Notification No. 13/2022-Central Tax dated 05.07.2022. The Court referred to its earlier judgment in ***Ascent Meditech Ltd. vs. Union of India*** and reaffirmed that para 2(1) of the same circular had already been struck down for creating an artificial class of assessees based on the date of filing the refund application. Applying the same logic, the Court held that para 2(2) of the circular was equally discriminatory and violative of Article 14 of the Constitution.

The Court observed that once the refund sanction order dated 12.01.2024 had become final, the department could not reopen the matter through a fresh show cause notice. It held that Circular No. 181/13/2022-GST could not override the statute and that administrative instructions cannot defeat vested statutory rights. The Court quashed the show cause notice, the Order-in-Original dated 10.09.2024, and para 2(2) of the circular. Accordingly, the petition was allowed, and the impugned demand and penalty were set aside.

Citation
2025 (3) TMI 367 - GUJARAT HIGH COURT

Author's Comments

In the author's view, the core issue was not merely one of procedural limitation but of constitutional validity and legislative supremacy. Section 54(1) of the CGST Act confers a vested statutory right to claim refund within two years from the relevant date. This right, especially under the inverted duty structure, is not a concession but a substantive entitlement. Once the legislature has fixed the eligibility and time frame for refund claims, the executive cannot, through a circular, frustrate such claims by retrospectively modifying the refund landscape.

Para 2(2) of the impugned circular attempted to create an artificial classification—denying refund claims filed after 18.07.2022 even if they pertained to tax periods prior to that date. Such classification is not only arbitrary but squarely hits the vice of discrimination under Article 14 of the Constitution. The Court rightly concluded that such a classification has no rational nexus with the object sought to be achieved and therefore must fall.

Another critical aspect of this case pertains to lack of jurisdiction. The refund in this case had already been sanctioned by a speaking order dated 12.01.2024. That order had neither been reviewed nor appealed against under Sections 107 or 108. Once such an order attains finality, it is binding on the department. The subsequent issuance of a show cause notice under Section 73, without possession of any new information or material to re-consider the adjudication already concluded vide RFD-06, solely on the basis of the circular, is without jurisdiction and legally unsustainable.

Furthermore, the department's approach is contrary to law inasmuch as **any grievance regarding the admissibility of input tax credit pursuant to a refund application is required to be addressed through a composite notice of demand**, invoking the provisions

of Section 73 or 74 of the CGST Act, as the case may be. This requirement is clearly laid down in **para 15 of Circular No. 125/44/2019-GST**, which mandates that such disputes be handled through the standard adjudication mechanism rather than by way of a separate recovery notice after refund sanction. The omission to issue a composite notice is not a mere procedural lapse or inadvertence—it is a **deliberate departure from the prescribed process**. To treat this as an oversight would be to render the earlier issuance of RFD-08 and the subsequent adjudication culminating in RFD-06 as entirely redundant, which is a proposition **unknown to the structure of the law**.

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13. Whether a provisional attachment order under Section 83 can continue beyond one year, especially when the adjudication proceedings under Section 74 have concluded and an appeal under Section 107 has been filed?

No, the Calcutta High Court in case of ***J L Enterprises vs. Assistant Commissioner, State Tax, Ballygunge Charge*** (WPA 30968 of 2024 dated 03.03.2025) held that a provisional attachment order under Section 83(1) of the CGST/WBGST Act automatically ceases to have effect after one year from the date of the order. The Hon'ble Court noted that the petitioner challenged the validity of a provisional attachment order dated 13.04.2023 passed under Section 83(1) of the CGST/WBGST Act, which had attached the bank accounts of the petitioner. The petitioner contended that such an order cannot subsist beyond the statutory period of one year, especially when the underlying proceedings under Section 74 had concluded with the issuance of a final order and corresponding demand in Form DRC-07 dated 06.06.2023. Furthermore, the petitioner had also filed an appeal under Section 107 of the Act and complied with the mandatory pre-deposit requirement. The petitioner argued that under Section 83(2) of the Act, a provisional attachment automatically ceases to operate after one year, and in any case, once the appeal is filed with a valid pre-deposit, the enforcement of the demand is stayed as per Section 107(7). As such, there was no legal justification for continuing the attachment. The respondent department contended that since the appeal had been dismissed, the protection under Section 107(7) was no longer available to the petitioner, and hence the attachment should continue. The Hon'ble Court, however, refrained from adjudicating the enforceability of the demand post-appeal dismissal and confined itself to the core issue of whether the provisional attachment could still operate. It held that under the scheme of Section 83, any attachment order automatically ceases to have effect after one year from its issuance. As the order in question was dated 13.04.2023, it had lapsed by the efflux of time and could not be continued any further. The Court accordingly disposed of the writ petition with the direction that the impugned attachment order is no longer enforceable. However, it granted liberty to the department to initiate recovery under any independent cause of action or in accordance with the applicable legal provisions.

Citation
2025 (3) TMI 322 - CALCUTTA HIGH COURT

Author's Comments

This ruling is a reaffirmation of the statutory limits on the provisional attachment powers vested under Section 83 of the CGST Act. It clearly articulates that such attachment cannot continue indefinitely and is strictly time-bound by virtue of Section 83(2), which provides

that **the attachment shall cease to have effect after the expiry of one year** from the date of the order issued under Section 83(1).

In the author's considered opinion, once the adjudication process concludes and a final order is issued—whether or not it is followed by an appeal—the very foundation of provisional attachment vanishes. Retaining the attachment thereafter, particularly in respect of a bank account, serves no legal or administrative purpose. Rather, it assumes the character of coercive overreach. In effect, such misuse of statutory provisions can be termed as institutionalised theft of property cloaked with authority of law, wherein a citizen's right to use their own property is curtailed without lawful justification or procedural safeguards.

It is imperative to distinguish provisional attachment from recovery proceedings under Section 79 and confiscation proceedings. Section 83 merely creates a temporary lien—a preventive measure to safeguard government revenue during pending adjudication. It is neither punitive nor declaratory in nature. Unlike confiscation, it does not result in transfer of title to the State. Nor does it substitute the due process required for recovery under Section 79. Hence, the attachment must end once the circumstances necessitating it—i.e., pending investigation or adjudication—cease to exist.

Similar decision was given in case of ***Seema Gupta v. Principal Commissioner of GST [W.P. (C) NO. 7387 of 2024 dated May 24, 2024]*** by the Honorable Delhi High Court.

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14. Whether Input Tax Credit can be denied to a purchasing dealer solely on the ground that the selling dealer's registration was subsequently cancelled?

No, the Allahabad High Court in the case of ***M/s. Solvi Enterprises vs. Additional Commissioner Grade 2 and Others*** (Writ Tax Nos. 1282, 1285, 1287, 1288, and 1289 of 2024, dated 24.03.2025) held that Input Tax Credit cannot be denied to the purchaser merely on the ground that the selling dealer's registration was cancelled at a later stage, particularly when the transaction was backed by valid tax invoice, e-way bill, and return filings, and when the selling dealer was registered at the time of transaction. The petitioner had purchased goods from a registered supplier on 06.12.2018. The seller's registration was cancelled prospectively with effect from 29.01.2020. The department alleged fraudulent availment of ITC under Section 74 of the GST Act and denied credit on the ground that the seller was found non-existent subsequently and no conclusive proof of actual movement of goods or tax payment by the seller was furnished.

The petitioner contended that the transaction was genuine, supported by valid documents, and reflected in the auto-populated GSTR-2A. It was further argued that GSTR-1 and GSTR-3B were duly filed by the selling dealer, and once such compliance is reflected on the GST portal, denial of credit on the basis of mere suspicion or subsequent cancellation of registration is untenable in law. The authorities, however, denied credit and passed orders without verifying GSTR records or acknowledging the existence of valid registration at the time of the transaction. The Hon'ble Court noted that at the time of the transaction, both the purchaser and the seller were registered under GST, and the seller had duly filed its GSTR returns. Once GSTR-1 is filed and GSTR-3B is submitted, GSTR-2A becomes auto-populated for the purchaser, which establishes a prima facie case of genuineness. The Court observed that the authorities had failed to examine whether tax was paid by the supplier and

ignored the documentary trail including e-way bills and GST returns. It distinguished the judgments relied upon by the department by noting that those cases involved cancellation of registration from the inception, which was not the case here.

The Court set aside the impugned orders and remanded the matter to the adjudicating authority for reconsideration in accordance with law. It directed the authority to pass a fresh, reasoned, and speaking order within two months after providing opportunity of hearing. Any deposit made by the petitioner in compliance with the impugned orders was directed to be subject to the outcome of the re-adjudication.

Citation
2025 (3) TMI 1313 - ALLAHABAD HIGH COURT

Authors Comments

This judgment rightly sets aside the growing trend of denying ITC to bonafide purchasers solely on the ground of subsequent cancellation of the supplier's registration, especially when such cancellation is not retrospective. In the author's considered view, retrospective cancellation of registration from a later date is a clear affirmation by the Revenue that all transactions undertaken by the supplier prior to the effective date of cancellation are accepted to be genuine, based on the investigation carried out by the department. If so, then the allegation in the show cause notice that the inward supply was fictitious becomes self-defeating, rendering the entire demand unfair, unjust, and presumptive in nature.

Further, Revenue cannot approbate and then reprobate on the same issue to demand reversal of ITC. Petitioner is admitted in Impugned order to be a Trader, that is, if outward supplies of a trader are genuine then inward supplies are also genuine. But if inward supplies are (allegedly) non-genuine then Revenue ought to have demand and appropriated output tax under section 76 of CGST Act, 2017. In absence of any objections to genuineness of outward supplies of the petitioner, no aspersions can be lawfully cast on genuine inward supplies from the said supplier.

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15. Whether penalty under Section 129 of the GST Act can be imposed when goods sent for job work are accompanied by an incomplete delivery challan?

Yes, the Honorable High Court of Allahabad in case of ***M/s Famus India vs. State of U.P. & Others*** (Writ Tax No. 57 of 2021,dated 10.03.2025) **dismissed the writ petition** holding that there was **no arbitrariness in the impugned orders**, and the **penalty proceedings under Section 129 were in accordance with law**due to the admitted procedural contravention.TheHonorable Court noted that the petitioner, a registered taxpayer, had placed an order for 16.7 tons of iron and steel from M/s R.G. Steels, Ghaziabad. The goods were intercepted by the mobile squad en route to Meerut on 28.06.2019. Though accompanied by an invoice, the place of unloading was found to be different from that mentioned in the accompanying documents. The petitioner explained that the goods were being directly sent to a job worker's premises, rather than their registered place of business, and all documents were present at the time of interception. However, the revenue authorities

initiated proceedings under Section 129 and issued Form MOV-07, demanding ₹1,14,804 towards tax and penalty, followed by the MOV-09 order dated 29.06.2019. The petitioner challenged the said order before the First Appellate Authority, which upheld the department's action. Aggrieved, the petitioner filed this writ petition, contending that sending goods to a job worker is a legitimate business activity, and that there was no intent to evade tax, particularly when documents were furnished. The Respondent-State opposed the petition, relying on Rule 45 and Rule 55 of the CGST Rules, which lay down strict requirements for goods sent for job work. It was argued that a properly filled delivery challan is mandatory, and the challan produced by the petitioner was incomplete, lacking critical details mandated under Rule 55 (such as HSN code, tax rate, place of supply, etc.). This non-compliance constituted a contravention of the GST rules, justifying action under Section 129.

The Hon'ble Court held that the petitioner had indeed failed to issue a proper and complete challan as per Rule 55. It emphasized that Rule 45 requires goods sent for job work to be covered by a duly completed challan, and failure to do so undermines the validity of the transportation. The incomplete challan submitted by the petitioner did not satisfy the statutory requirements, and thus, the interception and imposition of tax and penalty were held to be legally justified anddismissed the writ petition.

Citation

2025 (3) TMI 555 - ALLAHABAD HIGH COURT

Authors Comments

While the Hon'ble High Court upheld the penalty on the grounds of non-compliance with Rule 55 of the CGST Rules, the case brings to light a larger debate around the **requirement of mens rea** in penalty proceedings. Under Section 129 of the CGST Act, detention and penalties are intended to address contraventions linked to evasion or intent to evade tax. It is a well-recognized legal principle that penalties, being punitive in nature, require the establishment of mens rea. A mere procedural irregularity—such as an incomplete challan in the present case—does not by itself imply fraudulent intent or misrepresentation. In the absence of evidence pointing to willful misconduct, the invocation of Section 129, particularly for the purpose of imposing penalties, becomes legally vulnerable.

What also emerges from this and similar cases is the tendency of intercepting officers to operate based on instincts inherited from earlier tax regimes. Their inclination to "sense" evasion often leads to an overreach in statutory interpretation, expanding the scope of their powers beyond the specific mandates of the GST law. However, it is a settled principle of administrative law that a delegate (such as a field officer) cannot exceed or modify the authority delegated by the Legislature. To act beyond conferred power is not just illegal—it borders on legislating, a function exclusively reserved for the Legislature.

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16. Whether Input Tax Credit can be denied solely on the basis of an incorrect GSTIN of the recipient mentioned on the invoice?

No, the Hon'ble Delhi High Court in the case of ***B Braun Medical India (P.) Ltd. v. Union of India [W.P.(C) 114 of 2025 dated March 12, 2025]*** set aside the order wherein a demand order was passed for claiming excess Input Tax Credit, where invoices were raised by the supplier inadvertently on a different address and GSTIN. The Petitioner had purchased a large quantum of products on the basis of various purchase orders. The invoices for the said products were raised on the Petitioner, however, the said invoices inadvertently reflected the Bombay address and Bombay GSTN of the Petitioner, instead of the Delhi GSTN number. This has led to the impugned demand. The Petitioner relied upon the purchase orders and invoices, to submit that, the Petitioner is clearly a Delhi based company and incorrect reflection of Petitioner's Bombay GSTN on the invoices was merely an error by the supplier. However, the Department had taken a stand that the Petitioner is not entitled to the ITC and has accordingly, passed the Order dated June 28, 2024. The Hon'ble Courtobserved that the Petitioner's name is correctly mentioned in the invoices, however, the wrong GST number, i.e., of the Bombay office has been mentioned. On this issue, there is no stand taken by the Department in the counter affidavit. On a direct query being put to the ld. Standing Counsel for the Respondent, he fairly admitted that no other entity has also claimed at ITC on these purchases. The only basis for rejecting the ITC is the mention of the Bombay office GSTN instead of the Delhi office GSTN. Substantial loss would be caused to the Petitioner if the credit is not granted for such a small error on behalf of the supplier. Further noted that, if the correction in the invoices is permitted and the Petitioner is provided the ITC, the challenge to the constitutional validity of Section 16(2)(aa) of CGST Act 2017 shall not be pressed by the Petitioner. Hence, the Impugned Order rejecting ITC was set aside and the petition was disposed of.

Citation
2025 (3) TMI 774 - DELHI HIGH COURT

Author's Comments

The present case serves as a classic illustration of the doctrine of moulding relief, wherein Courts of Equity—such as the High Courts and the Supreme Court—exercise their discretionary jurisdiction to grant equitable relief, even when strict statutory limitations may not permit it. This principle empowers constitutional courts to look beyond procedural technicalities and deliver substantive justice when compelling circumstances warrant intervention.

However, a growing concern in GST litigation is the recurring failure of departmental representatives to advance arguments rooted in the GST framework itself. Given that GST is a relatively new and evolving legislation, it is imperative that departmental counsel engage with the statutory text, scheme, and objectives of the law rather than relying solely on legacy approaches or procedural defenses.

In this case, the petitioner conceded that an incorrect ITC claim was made, amounting to a violation of Section 16(2)(aa) of the CGST Act, 2017. Once such an admission is made, the legal consequences follow as a matter of course. The Proper Officer is bound by statute and cannot entertain pleas for relief based on equitable or mitigating considerations—no matter how compelling they may seem. Such relief can only be granted by constitutional courts under Article 226 or 136, not by quasi-judicial authorities functioning within the bounds of delegated legislation.

This case highlights a fundamental distinction: while tax officers are bound by the letter of the law, constitutional courts can look to its spirit, especially where denial of relief would result in disproportionate hardship despite genuine compliance intent.

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17. Whether the assignment of long-term leasehold rights amounts to a taxable 'supply' under GST?

No, the Hon'ble Gujarat High Court in case of ***Alfa Tools Private Limited vs Union of India & Anr.*** (R/Special Civil Application No. 12047 of 2024 dated 06.03.2025) held that the assignment of leasehold rights does not constitute a 'supply' under section 7(1)(a) of the CGST Act read with Schedule II and Schedule III, and therefore, is not liable to GST. The Hon'ble Court noted that the petitioner was allotted an industrial plot by Gujarat Industrial Development Corporation (GIDC) under a 99-year lease deed dated 27.09.1978. After holding the lease for more than 39 years, the petitioner assigned its leasehold rights in the said plot to Beta Poly Plast Private Limited through a deed of assignment dated 28.03.2018, for a consideration of Rs. 75,00,000/-. This transaction was confirmed by GIDC via a final transfer order dated 30.03.2018. Subsequently, the petitioner applied for and obtained suo motu cancellation of its GST registration on 18.01.2021. More than three years later, on 27.06.2024, the department issued a communication calling upon the petitioner to deposit GST on the consideration received from the assignment of leasehold rights. This was followed by a show cause notice dated 11.07.2024, invoking demand along with interest and penalty. The petitioner challenged the validity of the said notice before the Gujarat High Court under Article 226 of the Constitution of India. The Court observed that the transaction of assignment of leasehold rights was essentially a transfer of interest in immovable property. Relying on its earlier judgment in ***Gujarat Chamber of Commerce and Industry v. Union of India*** [2025 SCC Online Guj 537], the Court reiterated that such a transaction does not amount to 'supply' under section 7(1)(a) of the CGST Act, and thus does not attract GST. Accordingly, the Hon'ble Court quashed the impugned show cause notice dated 11.07.2024 for being ex-facie illegal and without jurisdiction. The petition was allowed, and the rule was made absolute with no order as to costs.

Citation

2025 (3) TMI 887 - GUJARAT HIGH COURT

Author's Comments

This judgment reinforces a critical distinction in GST law – the nature of *what* is being transferred when it comes to immovable property. While land and building readily conjure up a tangible image of immovable property, this case compels us to reflect on the equally significant, albeit less visible, category of *intangible immovable property* – the rights, titles, and interests in such property.

In GST, this distinction becomes paramount. A titleholder to immovable property, for instance, is understood to have the full bouquet of rights – possession, use, enjoyment, and transfer. However, the reverse is not always true. A person may hold certain rights in land without being a titleholder. A lessee, for instance, has rights of possession and use, but not

title. Similarly, someone may have an *interest* in the property (say, under a development agreement or a financial arrangement) that does not translate into ownership or identifiable rights.

The judgment draws upon this layered understanding of immovable property, recognizing that the ***assignment of leasehold rights*** – though contractually created – represents a transfer of benefits arising out of land, which is immovable property. This falls outside the scope of 'supply' under section 7(1)(a) of the CGST Act read with clause 5 of Schedule III. The key reasoning is aligned with the earlier decision in ***Gujarat Chamber of Commerce***, which clarified that such assignments are not taxable under GST.

However, a note of caution is warranted. All transfers of rights in immovable property do not automatically qualify for exclusion from GST. For instance, where the rights are created contractually without transferring possession or control – such as easement rights, mining rights, forest leases, water drawing rights, or development rights – the transaction may still be taxable as a supply of service. These rights are often considered inferior to *absolute sale* and are not always saved by the Schedule III exclusion.

Therefore, while this decision strengthens the jurisprudence that outright assignment of leasehold interest in land is not a 'supply', it does not offer a blanket exemption to all transactions involving intangible rights in immovable property. A deeper understanding of the nature and extent of such rights, the transfer mechanism, and the factual matrix of control, possession, and benefit becomes essential in determining taxability.

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18. Whether an adjudication order invoking Section 74 of the CGST Act, 2017 without any finding of fraud, willful misstatement, or suppression of facts can be sustained in law?

No, the Allahabad High Court in ***M/s. Singh Electrical Store vs. Superintendent CGST and Central Excise, Range Azamgarh, Division*** (Writ Tax No. 1016 of 2025, decided on 17.03.2025) held that an adjudication order under Section 74 of the CGST Act, 2017 must contain a clear finding of fraud, willful misstatement, or suppression of material facts. The absence of such reasoning amounts to a non-application of mind, rendering the order unsustainable in law. The petitioner challenged the order dated 21.02.2025 passed under Section 74 of the CGST Act, on the ground that it was passed without proper justification for invoking the said provision. The petitioner had explained that the excess ITC claim was a result of a clerical error and contended that the case fell under Section 73 of the Act, not Section 74, as there was no element of fraud or suppression. However, the adjudicating authority, while acknowledging the petitioner's argument, declined to deal with the issue, stating that the determination of whether the case falls under Section 73 or 74 lies within the appellate forum. This approach was challenged as contrary to law, particularly since invocation of Section 74 requires a specific finding of mens rea, i.e., fraud, willful misstatement, or suppression of facts. The Hon'ble Court found the reasoning of the adjudicating authority entirely lacking. It noted that the authority had essentially abdicated its responsibility to determine whether the case involved fraudulent conduct or not. Since fraud or suppression is a foundational requirement under Section 74, the officer was duty-

bound to apply his mind and record a clear finding on this aspect. The failure to do so amounted to a complete non-application of mind, necessitating judicial intervention.

The Court quashed the impugned order and directed the concerned authority to conduct a fresh hearing and pass a reasoned order in accordance with law within twelve weeks. The Court also directed the Registrar (Compliance) to communicate this order to the Commissioner, CGST, Varanasi, so that appropriate instructions may be issued to ensure that adjudicating officers provide proper reasoning when invoking penal provisions like Section 74.

Citation
2025 (4) TMI 620 - ALLAHABAD HIGH COURT

Author's Comments

This judgment highlights a systemic issue in GST adjudication—the mechanical invocation of Section 74 of the CGST Act, 2017 without foundational facts or reasoning. The Allahabad High Court was correct in its finding that fraud, willful misstatement, or suppression of material facts are not merely incidental elements under Section 74—they are essential jurisdictional facts that must be consciously established and not assumed.

In the author's view, the invocation of Section 74 requires a high threshold. It implies four distinct ingredients:
(i) non-payment or short payment of tax,
(ii) knowledge of liability or conscious disregard of the law,
(iii) active concealment of facts designed to evade detection, and
(iv) some form of benefit or advantage derived from such concealment.
Absent these elements, there is no jurisdiction to invoke section 74.

Interestingly, Section 75(2) read with CBIC Circular No. 185/17/2022-GST dated 27.12.2022 provides a formal mechanism to downgrade a show cause notice issued under Section 74 to one under Section 73, where the ingredients of fraud or suppression are not establi shed. However, this power is not with the adjudicating authority, but with the First Appellate Authority (FAA). The inability of the adjudicating authority to rectify this error during the adjudication stage adds to procedural inefficiency and results in avoidable litigation.

This structural gap is a legislative concern that needs addressing. The adjudicating authority, being the one directly dealing with facts and evidence, should be empowered to assess and determine the appropriateness of the section invoked. Delegating such essential jurisdictional rectification only to the appellate stage introduces delays, adds to the caseload of appellate forums, and deprives the taxpayer of a timely and proportionate remedy.

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19. Whether a demand is valid when the alleged turnover difference arises from duplication across two GSTINs under the same PAN, with the turnover already reported under one registration?

No, the Honorable High Court of Allahabad in case of ***M/s Jindal Communication vs. State of Uttar Pradesh & Others*** (Writ Tax No. 901 of 2025 dated: 10.03.2025) **quashed both the show cause notice and the final order**, terming them unsustainable in light of an erroneous and duplicative demand arising purely due to the **structural flaw of common PAN mapping** across distinct GST registrations. The Hon'ble Court noted that the demand was confirmed based on an alleged discrepancy in turnover between the GST returns and the PAN-linked financials for the period April 2019 to March 2020.The petitioner, a registered dealer engaged in the business of mobile phones and SIM cards, was operating alongside another firm—which was migrated from the VAT regime and dealt in FMCG goods. Both entities were linked to the same PAN. The SCN was triggered due to a mismatch of ₹3.84 crores in turnover, which had already been declared under the returns of Jindal Marketing Company. However, the department erroneously attributed this turnover also to Jindal Communication, treating it as unreported and taxable, leading to a duplicate tax demand. Upon discovering the error, the petitioner filed a rectification application under Section 161, clarifying the overlap due to common PAN usage, but the application was rejected as time-barred. Subsequently, the petitioner filed the writ petition, arguing that the demand was based on a clear factual and legal error, as the turnover had already been declared and discharged by the related entity under GST.The respondent authorities, upon examining the documents, were unable to refute that the turnover in question had already been disclosed in the GST returns of Jindal Marketing Company, and that both GSTINs were linked to the same PAN. The Court held that the issuance of notice and creation of demand on the same turnover twice amounted to duplication and could not be sustained in law. Accordingly, the Hon'ble Court quashed both the show cause notice and the final order, terming them unsustainable in light of the undisputed factual matrix.

Citation -(2025) 28 Centax 330 (All.) [10-03-2025]

Author's Comments

This ruling underscores a fundamental principle of tax jurisprudence—that mere numerical discrepancies or automated data mismatches cannot form the sole basis of a sustainable tax demand. The GST framework, though reliant on digital reporting and data reconciliation, does not dilute the legal necessity of specificity and clarity in tax liability determination.

In the present case, the demand arose from a superficial comparison of aggregate turnover across two GSTINs linked to a common PAN, without examining the actual nature of supplies or transaction trail. This approach, though common in data analytics-driven enforcement, fails the test of substantive adjudication.

It is well established that any demand for output taxmust clearly establish five foundational elements:
(i) the nature of the supply,
(ii) its taxability under GST,
(iii) the relevant HSN classification,
(iv) the time of supply, and
(v) the place of supply.

In the absence of these, any tax liability becomes illusory and arbitrary, lacking the legal architecture required to impose fiscal obligations.

This doctrine traces its origin to the landmark judgment of the Hon'ble Supreme Court in ***Govind Saran Ganga Saran v. CST &Ors.*** *[AIR 1985 SC 1041]*, where it was held that no tax can be levied or collected unless four essential components—charging section, taxable event, rate of tax, and measure of tax—are clearly and cumulatively established. This principle applies with equal, if not greater, force under the GST regime, where automation must serve adjudication—not replace it.

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20. Whether a writ petition challenging an intimation issued under Section 73(5) of the CGST/KGST Act, 2017 is maintainable before issuance of a show cause notice under Section 73(1)?

No, the Hon'ble Karnataka High Court in the case of ***M/s. Sri Nanjudappa Constructions v. Union of India [Writ Petition No. 34742 of 2024 (T-RES) dated January 15, 2024]*** dismissed the writ petition being premature since tax intimation issued to Assessee under Section 73(5) of the CGST Act, 2017 was not a final demand, and Assessee had an opportunity to contest it before any further proceedings. The Hon'ble court noted that the petitioner challenged anintimation of tax liability under Section 73(5) of the KGST/CGST Act, 2017 issued by the Commercial Tax Officer (Audit). The said intimation indicated an ascertained tax liability pertaining to GST on royalty and provided an opportunity to pay the same with applicable interest. The petitioner contended that it was not liable to pay GST on royalty and sought to quash the intimation through a writ petition. The respondents contended that the writ petition was premature, as no show cause notice under Section 73(1) had yet been issued. They clarified that the intimation under Section 73(5) merely provides an option to pay or file objections, failing which the department would initiate proceedings under Section 73(1) and subsequently pass an adjudication order under Section 73(9). The department also submitted that the petitioner was at liberty to respond to the intimation with objections, instead of directly invoking writ jurisdiction. The Hon'ble Court observed that the **intimation under Section 73(5)** is **not a final determination** of liability but a preliminary opportunity for the taxpayer to either pay the ascertained amount or contest it. Since the petitioner had not been issued a **show cause notice under Section 73(1)**, nor had any **order under Section 73(9)** been passed, there was no cause of action for judicial interference. Held that the writ petition was **premature** and not maintainable at this stage. The Court further noted that the intimation itself invites submissions from the taxpayer, and hence the petitioner had adequate opportunity to contest the liability within the statutory framework before approaching the Court. As such, the writ petition was dismissed as premature, with liberty to the petitioner to respond to the intimation or contest any subsequent notice issued under the Act.

Citation
2025 (3) TMI 768 - KARNATAKA HIGH COURT

Author's Comments

To approach the High Court, it must be demonstrated that the notice:

(a) warrants the Court's intervention to prevent injustice;
(b) involves a situation where the available remedies through adjudication or appeal are insufficient to provide relief.

Taxpayers should note that High Courts, as Courts of Equity, have the discretion to admit a petition if it addresses an injustice that cannot be rectified through the regular legal channels of adjudication or appeals. The Court will consider whether the available remedies under the law are not "efficacious" enough to prevent injustice.

The central issue in the petition should not require extensive, intricate, or prolonged investigation. The injustice should be evident and apparent from the document itself, making the petition's maintainability clear. The High Court must be convinced that no other forum has the power to grant the relief needed to address the injustice raised in the petition.

The petition cannot be used to request the High Court to conduct adjudication. Instead, it should seek the Court's intervention based on the grounds presented, with the goal of issuing orders that prevent a miscarriage of justice arising from the misapplication, misinterpretation, or misuse of the law.

An **intimation issued under Section 73(5)** of the Act—in **Form DRC-01A—**is**not a show cause notice**. It merely reflects the tax officer's prima facie view of liability and gives the taxpayer an option: either to make payment or submit a reply before formal proceedings begin. It neither imposes liability nor initiates recovery; hence, **it cannot form the basis for invoking writ jurisdiction** at that preliminary stage. Taxpayers must recognize that **writ jurisdiction is not a substitute for the statutory process**—it is an exception, not the rule.
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21. Whether Writ petition is maintainable when an alternate remedy of appeal is not exercised and jurisdiction is challenged?

No, the Honorable High Court of Madras in case of **D. *Justin Kumar Vs. Assistant Commissioner of CGST and Central Excise*** (W.P.(MD)No. 5559 of 2025 and W.M.P.(MD)Nos. 4051 and 4052 of 2025, dated03-03-2025) disposed of the writ petition by granting liberty to the petitioner to **file an appeal within two weeks**from the date of receipt of the order.The Honorable Court noted that the core grievance of the petitioner was that State GST authorities had already adjudicated the same issue for the same tax periods—2018-19, 2019-20, and 2020-21—and had issued tax demand orders. Hence, the subsequent adjudication by the Central authorities on identical facts, grounds, and periods amounted to double taxation, in contravention of Section 6(2)(b) of the CGST Act, 2017.

Section 6(2)(b) of the CGST Act mandates that once either the State or Central tax authority initiates proceedings on a matter, the other authority must not proceed with the same subject matter. Relying on this statutory provision, the petitioner sought to quash the impugned

order as being illegal, arbitrary, and beyond jurisdiction, also asserting a violation of constitutional principles by exposing the assessee to double jeopardy in taxation.

The respondent argued that the petitioner had an effective statutory remedy available by way of appeal under Section 107 of the CGST Act before the Joint Commissioner (Appeals), CGST, Madurai. The petitioner, however, had bypassed this route and directly invoked the writ jurisdiction of the High Court.

Taking a balanced view, the Hon'ble Court observed that the petitioner must first exhaust the appellate remedy under Section 107 before approaching the High Court. Accordingly, the Court did not adjudicate the merits of the matter and disposed of the writ petition by granting liberty to the petitioner to file an appeal within two weeks from the date of receipt of the order. The Court further directed the appellate authority to entertain the appeal without insisting on limitation and dispose of the same within two months, in accordance with law.

Citation -(2025) 28 Centax 178 (Mad.) [03-03-2025]

Author's Comments

This decision serves as a nuanced reflection on the judicial restraint exercised by High Courts when alternate statutory remedies are available, while also recognizing the limited yet critical space for judicial intervention under Article 226. From a legal perspective, the maintainability of a writ petition, despite alternate appellate channels, hinges on specific conditions that indicate a misuse, abuse, or lack of jurisdiction. A writ can be invoked where the petitioner demonstrates:

- Exercise of jurisdiction by an unauthorized or unvested authority,
- Exceeding of statutory limits, or
- Violation of statutory preconditions or principles of natural justice.

Such was the claim in the present case—where State GST authorities had already adjudicated the same issue, and the Central GST officer proceeded to pass a fresh order for the same tax periods, potentially violating Section 6(2)(b) of the CGST Act.

As Courts of Equity, High Courts retain the discretionary power to intervene where a notice or order:

- Perpetuates injustice,
- Is facially ultra vires,
- Reflects predetermined conclusions, or
- Fails to follow due process or natural justice.

The jurisprudence suggests that mere existence of an appellate remedy does not preclude judicial review, especially when the central issue is self-evident and does not require a complex factual inquiry. However, in this case, the Court found the matter not yet ripe for writ relief, as it could be effectively addressed through the appellate route provided under the statute.

Practitioners must note that to successfully sustain a writ petition in similar contexts, the petitioner must not merely allege procedural irregularity, but **clearly establish that the authority acted without or beyond jurisdiction**, or in a manner **contrary to legal safeguards and statutory intent**. A writ should not become a substitute for appeal but a

shield against palpable miscarriage of justice where statutory remedies are either **illusory or incapable of addressing the root grievance**.

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