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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

(MARCH-2025)

HELD IN

PANIPAT BRANCH
OF
NIRC OF ICAI

SUPPLIER CHAIN VERIFICATION GIVEN TO SH. PUNEET SHARMA, DETC (SGST)

MARCH 7TH 2025

SUCCESS STORIES OF DISTINGUISHED INDIVIDUAL UNDER THE THEME: - ASPIRE ADAPT ACHIEVE – PIONEERING CHANGE SETTING TRENDS

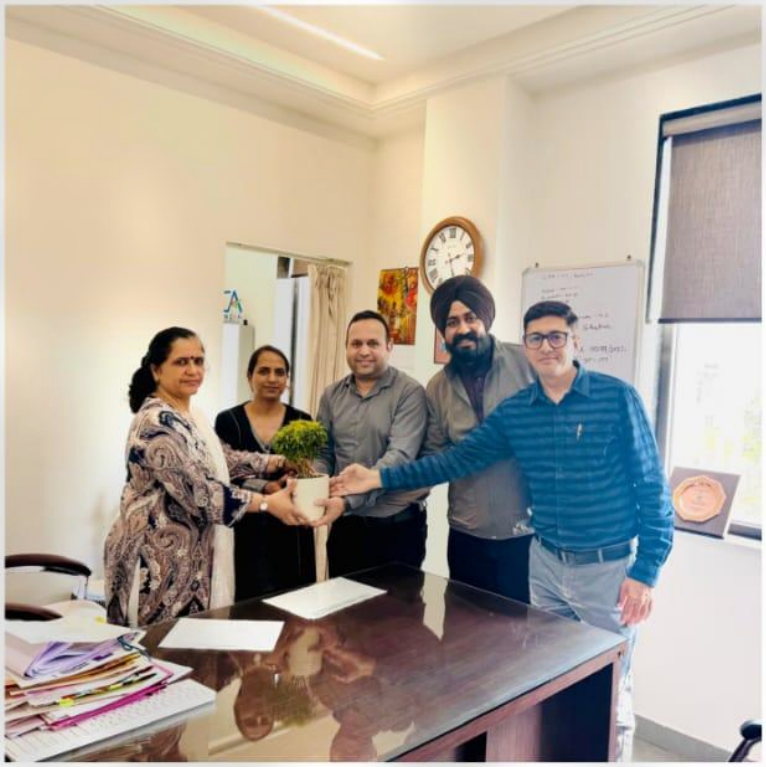
By CA SHWETA PATHAK &
CA PRATIBHA NATANI &
MS RITU CHOUDHARY

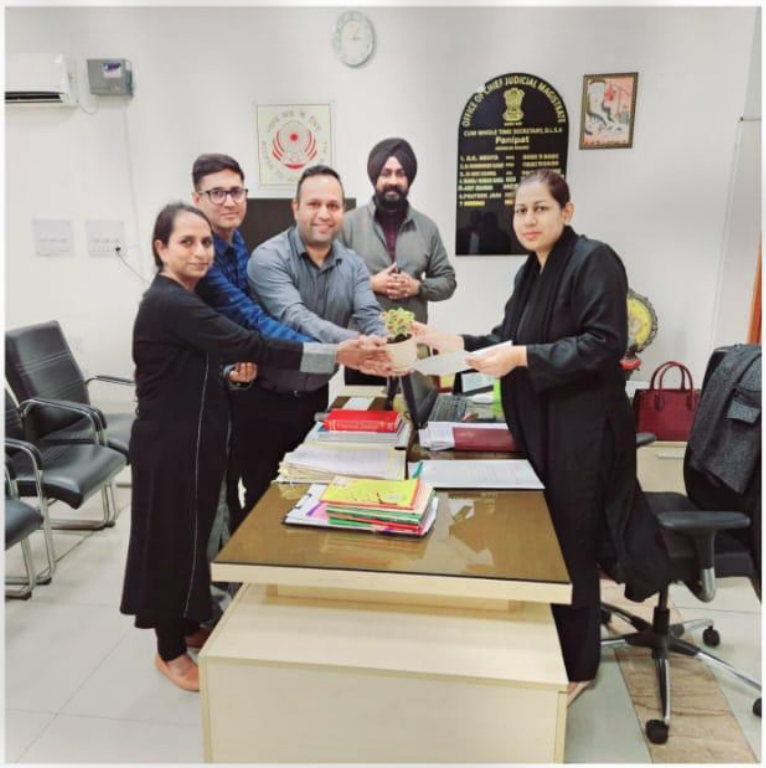
March 8th 2025

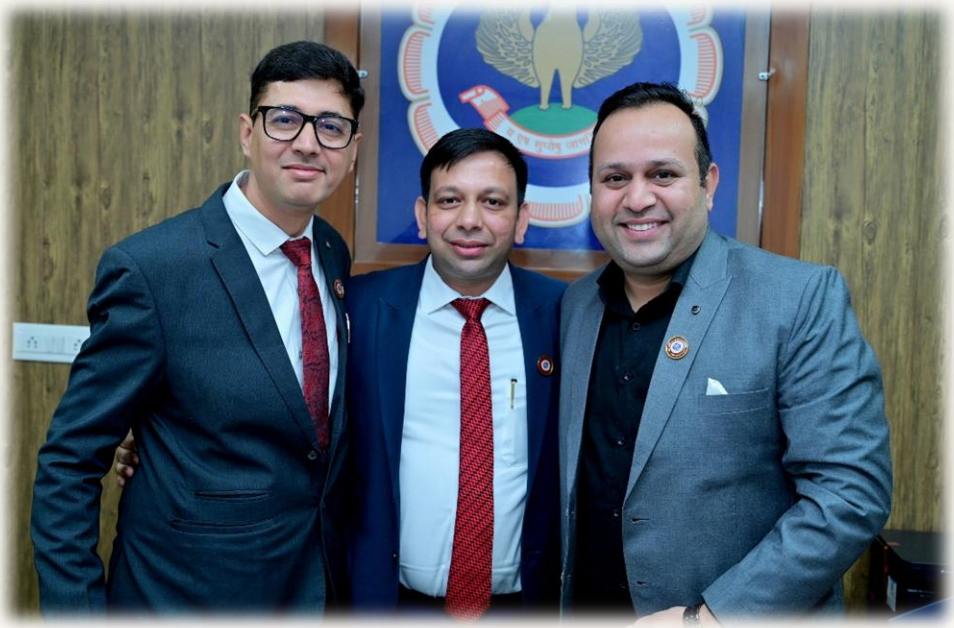
Ms. Ritu Choudhary
Asst. Commissioner CGST
Panipat Division
Chief Guest

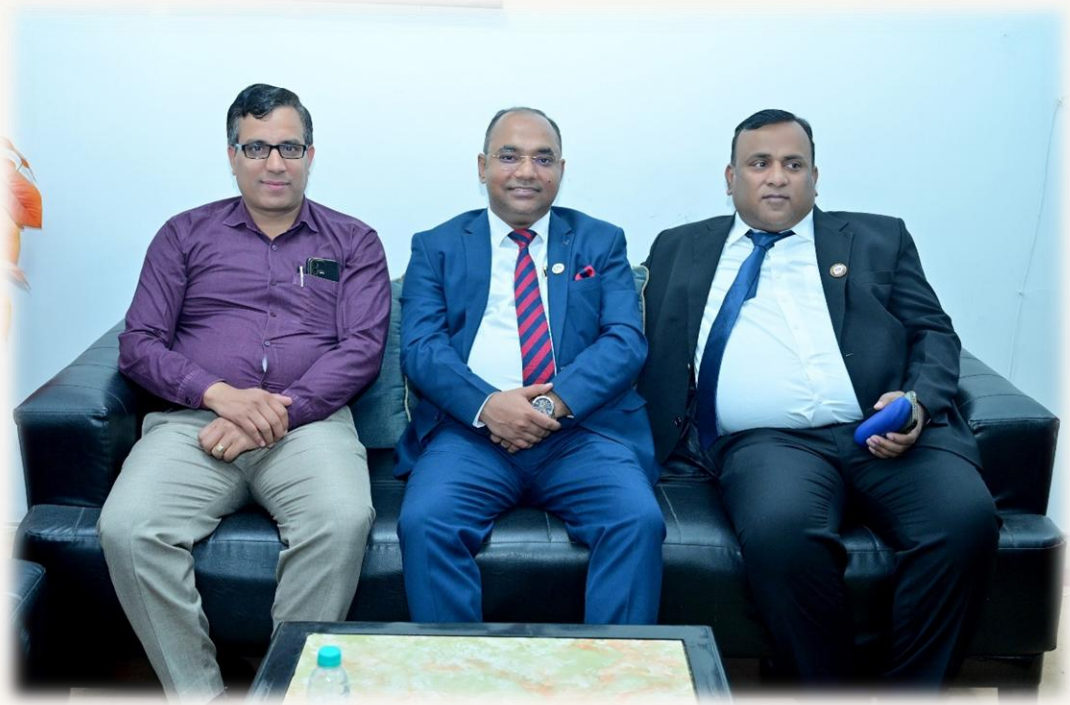
Ms. Meenu Singh
Chief Judicial Magistrate
Secretary Distt.
Legal Service Authority Pnp
Special Guest

Ms. Ashima Kaushik
Vice President
Distt Bar Association
Panipat
Guest of Honour




OFFICE OF CHIEF JUDICIAL MAGISTRATE
Panipat

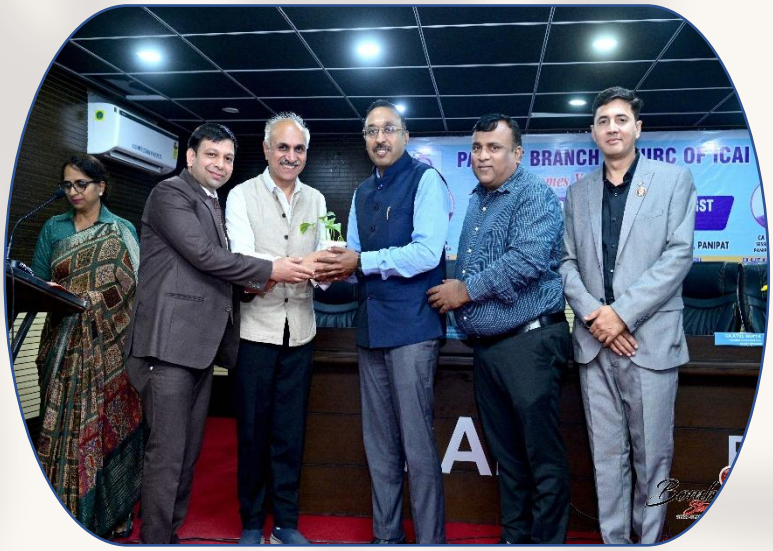


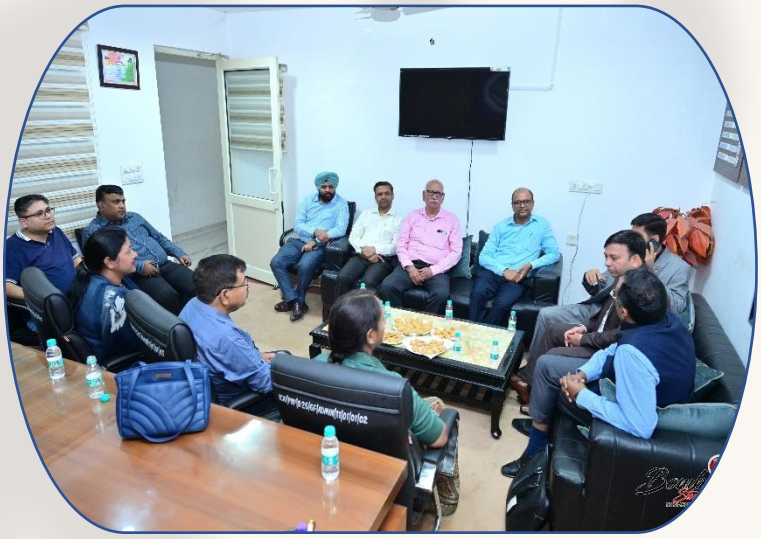


HOW TO HANDLE LITIGATION UNDER GST WITH LATEST AMENDMENTS

CA ATUL GUPTA

March 12th 2025

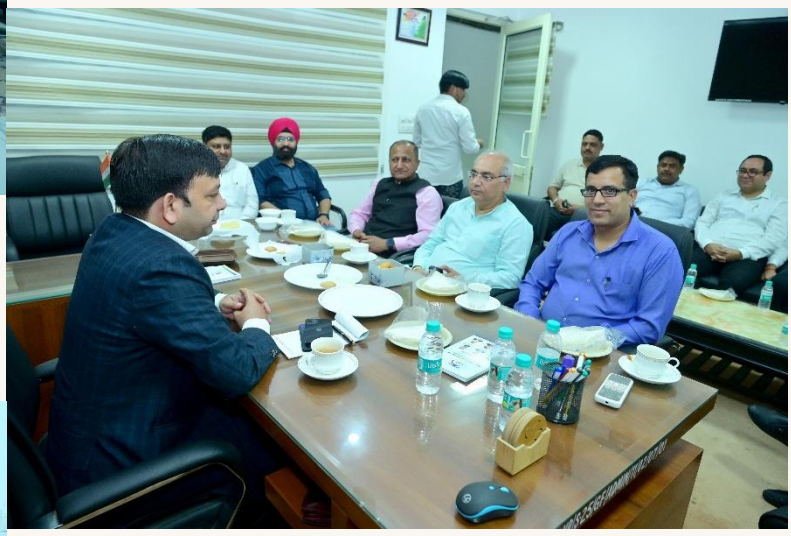


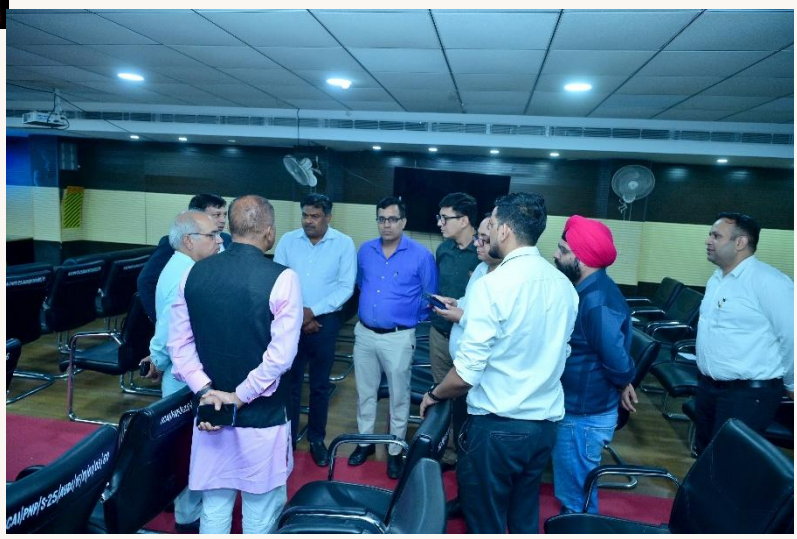


CHOOSING INVESTMENTS & ITS VARIOUS STRATAGIES

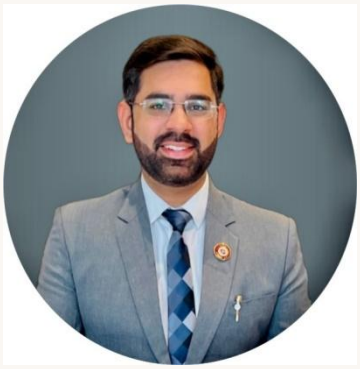
BY CA MANOJ LAMBA

26th March 2025





GST CASE LAW COMPENDIUM – MARCH 2025 EDITION



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CA. Ritesh Arora
Partner, Ritesh Arora & Associates
Author

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2.	**Whether prior authorization is required under Section 63 of the CGST Act for an assessment based on inspection?**
3.	**Whether a SCN issued beyond the prescribed time limit under Section 73(2) of the GST Act is valid?**
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5.	**Whether a show-cause notice under Section 73 of the CGST Act is valid if it does not explicitly state the adjudicating authority's prima facie reasoning for rejecting the assessee's reply to the final audit report?**
6.	**Whether proceedings under Section 73 of the CGST Act for availing Credit under the wrong head is valid?**
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8.	**Can an appeal be dismissed as time-barred if it is filed within 90 days from the date of communication of the order being appealed against?**
9.	**Whether writ petition is maintainable when an alternate remedy of appeal is not exercised?**
10.	**Whether goods in transit can be seized under Section 129(3) of the GST Act on the ground of undervaluation?**

11.	**Whether a penalty under Section 125 of the TNGST Act can be levied alongside late fee under Section 47 for the same default of delayed filing of returns?**
12.	**Whether the Order is valid if the reply furnished by the taxpayer is not considered?**
13.	**Is the CBIC required to issue clarifications on GST applicability in response to specific queries from taxpayers?**
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15.	**Whether the petitioner is entitled to refund of GST paid on notice pay recovery from employees after issuance of circular by the CBIC?**

1. **Whether recovery proceedings can be initiated where an appeal has been filed after expiry of 3 months from the date of demand order?**

No, the Honorable Madras High Court in ***Tvl. R. Selvarathinam v. Deputy State Tax Officer-II, Chennai [Writ Petition No. 26893 of 2024 dated September 11, 2024],*** disposed of the writ petition directing the Department to defer the recovery proceedings till the time of disposal of the appeal. The Honorable Court noted that the Petitioner had been issued a show cause notice in Form GST DRC-01 dated August 21, 2023 for which the Petitioner had filed replies on April 12, 2024, April 26, 2024, and April 29, 2024. The Respondent passed the Impugned order on April 30, 2024, and in pursuance of the said Impugned Order, also initiated recovery proceedings dated August 02, 2024 from the Petitioner's bank account, thus aggrieved by the recovery proceedings, the Petitioner has filed the said petition. The Honorable Madras High Court noted that the Petitioner has preferred an Appeal on August 28, 2024, which is yet to be disposed of, however, the Respondent irrespective of the said fact, proceeded with the recovery proceedings. Therefore, the writ petition is disposed with the direction to the Respondent to defer the recovery proceedings till the disposal of the Appeal.

Author's Comments

A significant and growing concern for the Revenue in litigation before courts of equity is the persistent failure of Departmental counsel to present arguments based on the newly enacted GST legislation.

Section 107(7) of the CGST Act explicitly states that if the appellant has paid the pre-deposit amount while filing an appeal under Section 107(6), the recovery proceedings for the disputed amount under appeal shall be deemed to be stayed. However, Section 78 of the CGST Act allows for the initiation of recovery proceedings after three months from the date of service of an order. In this case, since no appeal was filed within the statutory time limit prescribed under Section 107(1), the Revenue was justified in proceeding with recovery. Furthermore, the appeal filed belatedly on August 28, 2024, may or may not be condoned under Section 107(4) of the CGST Act. Condonation of delay is not a matter of right; rather, the First Appellate Authority must grant condonation only upon the existence of good and sufficient reasons, which remain open to challenge by the opposing party.

Link to download judgment

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2. **Whether prior authorization is required under Section 63 of the CGST Act for an assessment based on inspection?**

No, the Honorable Andhra Pradesh High Court in the case of ***Sri Srinivasa Lorry Transport vs. Assistant Commissioner ST [W.P. Nos. 5385 & 5456 of 2021 dated September 11, 2024]*** held that prior authorization is not required for assessment under Section 63 of the CGST Act, 2017. However, the Honorable Court set aside the assessment and penalty orders on the ground that an opportunity of personal hearing must be granted before an adverse decision is taken, even if not explicitly requested and it is also clarified that Section 75(5) of the CGST Act does not mandate a minimum of three adjournments before an order is passed. The Honorable High Court noted that Section 67 of the CGST Act requires previous authorization from the competent authority before any officer of the tax department can inspect the premises of the dealer or conduct an audit of the accounts of a dealer. In the present case, such previous authorization had already been given on November 5, 2019. Further, observed that Section 63 of the CGST Act authorizes the appropriate officer to assess the tax liability of any taxable person who has not obtained registration even though he is liable to obtain such registration. The language in Section 63 of the CGST Act does not provide for any prior authorization being necessary where the assessment has been done by the proper officer. The term "proper officer" is defined, in Section-2(91) of the CGST Act, to mean an officer to whom any function to be performed under the CGST Act is assigned by the Commissioner. The territorial limit of each assessing officer is assigned by the Commissioner. It is stated that the Adanki circle was the territorial circle for the area in which the Petitioner was carrying on business and it was subsequently disbanded and merged into Ongole-1 circle by way of G.O.Ms.No.502, Revenue (CT-1) Department, dated July 1, 2022, which was published in Andhra Pradesh Gazette on July 5, 2022. The Honorable Court held that the Respondent was the appropriate assessing authority and the territorial assessing authority did not require any authorization under Section 63 of the CGST Act. Further, Section 75 of the CGST Act only places an outer limit on the number of adjournments that can be granted and does not lend itself to an interpretation that a minimum of three adjournments have to be given before any order can be passed. Thereby, setting aside the Impugned Orders, while leaving it open to the Respondent to undertake a fresh assessment proceeding and consequential proceeding, if any, after giving an opportunity of personal hearing to the Petitioner.

Author's Comments

Proceedings under Section 63 fall within Chapter XII, while those under Section 67 are governed by Chapter XV of the CGST Act. These provisions serve distinct purposes and operate independently, with no legislative error presumed. Section 63 functions without prejudice to Section 67 and these two provisions do not compete with each other.

When the reason-to-believe justifying the invocation of exceptional powers under Section 67 exist, resorting to the best judgment assessment under Section 63—relying on estimates and guesswork—constitutes gross misapplication of law. In the present case, initially jurisdiction was sought under Section 67 from the Proper officer in Form INS-01 based on "reasons to believe." However, without any stated justification, the proceedings under Section 67 were abandoned, and Section 63 was invoked instead, to rely on guesswork and estimation to determine tax liability. Such an approach is legally flawed.

In this case, the taxpayer must have contended that the abandonment of Section 67 proceedings to press Section 63 into action is an improper application of law. The legislature has permitted use of estimation under Section 63 only in exceptional cases where precise determination is not feasible. When a more accurate mechanism—such as an inspection under Section 67—has already been initiated, reverting to best judgment assessment is neither justified nor consistent with legislative intent.

Link to download judgment

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3. **Whether a SCN issued beyond the prescribed time limit under Section 73(2) of the GST Act is valid?**

No, the Honorable Andhra Pradesh High Court in case of ***M/s Cotton Corporation of India v. Assistant Commissioner (ST) (Audit) & Others (W.P. No. 1463 of 2025, Dated: 05-02-2025)*** held that the time permit set out under 73(2) of the CGST Act is mandatory and any violation of that time period cannot be condoned, and would render the SCN otiose. The Honorable Court noted that the petitioner, was issued a SCN dated 30.11.2024 for the assessment year 2020-2021, under Section 73(1) read with Rule 142 of the APGST Rules, alleging short payment of tax. The petitioner challenged the notice on the ground that it was issued beyond

the time limit prescribed under Section 73(2) of the APGST Act. As per Section 73(10), the final assessment order must be issued within three years from the due date for filing the

annual return, and as per Section 73(2), the notice initiating the assessment must be issued at least three months before this deadline. Since the due date for filing the annual return for FY 2020-21 was 28.02.2022, the last date for issuing a SCN was 28.11.2024. The notice was, however, issued on 30.11.2024, leading the petitioner to argue that it was time-barred and invalid. The Honorable Court noted that the primary contention of the respondents was that a "month" should be construed as a calendar month, allowing flexibility in computing the last date for issuing notices. The petitioner argued that the word "shall" in Section 73(2) made the requirement mandatory, not directory. The Court relied on Supreme Court judgments, including ***Himachal Pradesh v. Himachal Techno Engineers (2010) 12 SCC 210*** *and* ***Dodds v. Walker (1981) 2 WLR 609 (HL)***, which established that when a period is prescribed in months, it must be computed based on the corresponding date in the final month. The Court held that the deadline for issuing a notice was 28.11.2024, and issuing it on 30.11.2024 rendered it invalid and unenforceable. The Court emphasized that time limits under GST law are meant to protect taxpayers and cannot be diluted, as it would defeat the purpose of statutory safeguards. Accordingly, the Writ petition is allowed quashing the SCN.

Author's Comments

The time limit prescribed under Section 73(2) of the CGST Act mandates that notices under Section 73(1) must be issued at least three months before the deadline under Section 73(10). The Revenue's contention—that the term "months" should be interpreted as calendar months, thereby permitting the issuance of notices even beyond the exact three-month period—is flawed and inconsistent. Such an interpretation would introduce ambiguity and contradictions in the computation of limitation periods, not only for issuing notices but also for filing appeals and refund claims.

The ruling rightly reinforces the principle of strict adherence to statutory timelines, preventing arbitrary extensions that could erode taxpayer protections.

It remains to be seen how the Revenue will address this issue moving forward, especially considering that numerous SCNs were issued between 28.11.2024 and 30.11.2024. Additionally, it will be interesting to observe the Revenue's stance when this issue comes up before different High Courts across the country.

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4. **Whether a demand order issued without a valid DIN is non-est and invalid?**

Yes, the Honorable Andhra Pradesh High Court in the case of **Raam Autobahn India (P.) Ltd. v. Assistant Commissioner [Writ Petition No. 10549 of 2023 dated December 18, 2024]** set aside the demand order for non-compliance with the mandatory requirement of a

Document Identification Number and held that as per the CBIC Circular No. 128/47/2019-GST dated December 23, 2019, any GST order issued without a DIN is non-est and invalid.

The Honorable Court noted that the Impugned Order is challenged by the Petitioner on the ground that the Impugned Order did not contain DIN number which is a mandatory as per the Circular. The Honorable Court relied on the case of ***Pradeep Goyal v. Union of India & Ors [Writ Petition (Civil) No. 320 of 2022 dated July 18, 2022]*** wherein the Honorable Supreme Court after noticing the provisions of the CGST Act and the Circular issued by the CBIC, had held that an order, which does not contain a DIN number would be non-est and invalid. Further relied on the case of ***M/s. Cluster Enterprises v. The Deputy Assistant Commissioner (ST)-2, Kadapa [Writ Petition Nos. 13375 & 140450 of 2024 dated July 24, 2024]*** wherein the Honorable Andhra Pradesh High Court on the basis of the Circular had held that non-mention of a DIN number would mitigate against the validity of such proceedings. Another Division Bench of the Honorable Andhra Pradesh High Court in the case of ***Sai Manikanta Electrical Contractors v. The Deputy Commissioner, Special Circle, Visakhapatnam, [Writ Petition No. 12201 of 2024 dated June 6, 2024]*** had also held that non-mention of a DIN number would require the order to be set aside. The Honorable Court held that the Impugned Order which was uploaded on the portal requires to be set aside. The Respondent was asked to conduct a fresh assessment after issuing a valid order with a DIN, ensuring due notice to the Petitioner. The period from the date of filing of the Writ Petition to the date of disposal of the Writ Petition shall be excluded for the purpose of calculating the limitation available for passing the assessment order.

Authors Comments

Not every mistake or omission by the department can serve as a valid ground for seeking the desired relief. While taxpayers may feel disappointed or aggrieved by adverse departmental proceedings, rushing to file a writ petition merely because it is statutorily permissible is not always a prudent course of action.

Every order must be carefully examined for its ‘grounds of maintainability’ in appeal and the nature of relief sought. Whether to welcome an order that remands the case back to the Proper Officer for re-adjudication is ultimately a matter of choice and strategy. However, in the Author’s considered opinion, such orders often fall short of delivering meaningful relief, as they do not vacate the Show Cause Notice. Instead, they provide only a temporary reprieve—often at a cost—without conclusively resolving the issue at hand.

Link to download judgment

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5. **Whether a show-cause notice under Section 73 of the CGST Act is valid if it does not explicitly state the adjudicating authority's prima facie reasoning for rejecting the assessee’s reply to the final audit report?**

No, the Honorable High Court of Calcutta in the case of ***M/s Eastland Switchgears Pvt. Ltd. Vs. The Assistant Commissioner of Revenue, Colootola and Ezra Street Charge, WBGST &Ors.M.A.T. 110 of 2025 dated 11.02.2025*** set aside the Impugned SCN and held that a proper SCN must explicitly indicate the adjudicating authority's reasoning regarding the assessee's submissions. The Honorable Court noted that a discrepancy memo was issued on September 20, 2024, covering the period from April 1, 2020, to March 31, 2021 and petitioner submitted a reply on September 30, 2024. The final audit report was issued on October 4, 2024, under Section 65(6) of the CGST Act and reply to it was filed on October 21, 2024. Thereafter, a show-cause notice under Section 73 of the CGST Act was issued on November 19, 2024, highlighting a mismatch between GSTR-9 and GSTR-1. The petitioner contended that notice merely referenced their reply but failed to provide substantive reasoning as to why their response was unsatisfactory. Earlier, the Single Bench directed the petitioner to submit their response and participate in adjudication. The Honorable High Court held that a proper SCN must explicitly indicate the adjudicating authority's reasoning regarding the petitioner's submissions. In this case, the notice was vague and lacked specificity. The Court set aside the impugned SCN and directed the adjudicating authority to issue a fresh notice, explicitly recording reasons for its prima facie conclusions. The Honorable Court ordered that after issuing the revised SCN, the petitioner should be given reasonable time to submit a fresh reply, and adjudication should proceed thereafter. The appeal and connected applications were disposed of without costs.

Author's Comments

While it is common to argue that a demand raised in a notice is vague, it is equally important to assess whether the allegations supporting such a demand contain the necessary elements. In cases where essential ingredients are missing, the Revenue may attempt to invoke Section 160(1) of the CGST Act during adjudication to counter this argument.

However, this decision only provides temporary relief to the petitioner—albeit at the cost of being subjected to another round of adjudication. In this case, any demand for output tax—most likely arising from discrepancies between GSTR-9 and GSTR-1—must explicitly specify: (i) the nature of supply, (ii) its taxability, (iii) the applicable HSN code, (iv) the time of supply, and (v) the place of supply. Without these fundamental elements, any demand for output tax is arbitrary and legally unsustainable.

This principle was firmly established by the ***Honorable Supreme Court in Govind Saran Ganga Saran v. CST & Ors. [AIR 1985 SC 1041]***, where it was held that the presence of *four essential ingredients* is mandatory in any tax demand proceedings.

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6. **Whether proceedings under Section 73 of the CGST Act for availing Credit under the wrong head is valid?**

No, the Honorable Kerala High Court in ***Maruthengal Moideen & Ors. v. State Tax Officer & Ors. [W.P.(C) No. 20837 of 2024 dated January 13, 2025]*** quashed the order passed under Section 73 of the CGST Act, 2017, along with interest and penalty imposed for alleged violation of Section 16(2)(c) of the CGST Act, in the case where the ITC was availed under wrong head i.e. availment of credit under the head of CGST and SGST instead of IGST. The Honorable High Court observed that in the case of ***Rejimon Padickapparambil Alex v. Union of India & Ors. [WA No. 54 of 2024 dated November 26, 2024],*** the Division Bench of the Honorable Kerala High Court had observed that there can be no wrong availing of input tax credit when such credit, available in IGST, was availed under the heads CGST and SGST. The Honorable Court noted that the Electronic Credit Ledger has to be treated as a pool of funds, designated for different types of taxes such as IGST, CGST, and SGST, it represents a wallet with different compartments of funds. The Honorable Court opined that, since the petitioner had availed credit under the CGST and SGST instead of IGST and utilized the same for payment of GST, the benefit of the decision in the aforesaid cited case is applicable to the Petitioner. Held that the Impugned Order and Rectification Order is liable to be set aside and remanded back the matter for reconsideration taking into consideration the aforesaid case.

Author's Comments

The doctrine of *moulding relief* grants Courts of Equity, such as the Supreme Court and High Courts, the authority to go beyond statutory limitations and devise equitable solutions to address grievances. The present case exemplifies the exercise of such discretionary power.

A significant and growing concern for the Revenue in litigation before courts of equity is the persistent failure of Departmental counsel to present arguments based on the newly enacted GST legislation. As GST is a relatively recent statute, legislation must not be overlooked. However, departmental representatives often rely on precedents from the pre-GST era rather than engaging with the nuances of the current statutory framework.

In this case, the petitioner advanced the argument of *Revenue Neutrality*—a concept that briefly emerged under GST but lost relevance over time. If such an argument were to be accepted, it would render the law ineffective, as virtually every legal dispute could then be framed as revenue-neutral. This would undermine the very foundation of new legislation.
Furthermore, the petitioner admitted to making an incorrect ITC claim, regardless of the underlying reasons. Such an admission is conclusive and leaves no room for further debate. The Proper Officer lacks the authority to entertain pleas seeking relief based on such arguments, irrespective of their persuasiveness. The statutory framework must be upheld,

ensuring that legal interpretations align with the legislative intent and do not dilute the effectiveness of GST enforcement.

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7. Whether a writ petition is maintainable if the remedy of appeal is not availed?

No, the Honorable Jharkhand High Court in the case of ***Sursarita Vanijya (P.) Ltd. v. Principal Commissioner of Central Goods and Services Tax [Writ Petition (T) No. 1598 of 2024 dated September 02, 2024]*** disposed of the writ petition directing the petitioner to avail the statutory remedy of appeal under Section 107 of the CGST Act. The Honorable Court noted that the petitioner has filed writ challenging the GST demand issued in Form GST DRC-07 dated December 6, 2023 on the ground that Input Tax Credit has been availed in contravention of Section 16(2)(c) of the CGST Act, 2017. The Impugned order confirmed tax liability of Rs.42,58,557 under Section 73 of the CGST Act along with 18% interest under Section 50 and penalty of Rs. 4,25,856 under Section 122(2)(a) of the CGST Act and Rs.42,58,557 under Section 122(1) of the CGST Act. The petitioner contended as the supplier has undergone liquidation under the IBC, its liabilities, including GST dues has been extinguished through the liquidation process. The Honorable High Court noted that as per Section 107 of the CGST Act, the Petitioner had an alternative remedy of appeal before the Appellate Authority and held that since merit-based and procedural issues were involved, the matter should be adjudicated at the appellate level rather than directly in a writ petition. The Honorable Court directed the Petitioner to file an appeal within two weeks and the Appellate Authority must decide the matter within four weeks from the date of receipt of copy of order of this Court.

Author's Comments

To approach the High Court, it must be demonstrated that the notice:
(a) warrants the court's intervention to prevent the march of injustice, and
(b) involves a remedy that cannot be effectively pursued through adjudication or appeal.

Taxpayers must recognize that High Courts, as Courts of Equity, have the discretion to admit petitions seeking relief from injustices evident in the notice, particularly when the statutory remedies of adjudication and appeal are not sufficiently efficacious to prevent such injustice.

The core issue in the petition must be one that is immediately apparent—an injustice that leaps off the pages—establishing the maintainability of the petition. It must be evident that no other forum is empowered to grant the relief necessary to redress the exposed injustice. The petition

should not require the High Court to engage in adjudication. Instead, it must urge the court's intervention on specific grounds, seeking appropriate orders to prevent miscarriage of justice arising from the misapplication, misinterpretation, or misuse of legal provisions.

A similar stance was taken by the Hon'ble High Court of Allahabad in ***M/S Bushrah Export House v. Union of India*** **(Writ Tax No. 200 of 2024, dated 31.07.2024).**

In this case, the petitioner could have argued that the imposition of a penalty under Section 122(1) of the CGST Act is inconsistent with proceedings initiated under Section 73 of the CGST Act.

Section 122(1) prescribes penalties across 21 different clauses, each with its own ingredients, applicable in cases involving fraud, willful misstatement, or suppression of facts to evade tax. However, by the *Doctrine of Election*, the Proper Officer, by resorting to Section 122(1), has implicitly acknowledged the presence of fraud, willful misstatement, or suppression of facts. Conversely, the issuance of a notice under Section 73 signifies an affirmation that no such fraud exists. As a result, the Proper Officer, having opted for Section 122(1), lacked the jurisdiction to invoke Section 73, thereby rendering the proceedings legally unsustainable.

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8. **Can an appeal be dismissed as time-barred if it is filed within 90 days from the date of communication of the order being appealed against?**

No, the Honorable High Court of Karnataka in case of ***M/S S.K. TAKAPPA COIR ROPES DEALER vs. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (APPEALS), DAVANGERE-577004 (W.P. No.3841 of 2025 dated 11.02.2025)*** held that the Impugned Order rejecting appeal for being time-barred is set aside as the appeal was presented within the condonable period. The Honorable Court noted that the appeal dated 22.03.2024 was preferred against the order under section 73(9) & 73(10) dated 20.12.2023 which was communicated to the petitioner on 22.10.2023 through an email. The appeal was dismissed without examining as to whether the appeal filed was within the time and without providing an opportunity of hearing, solely on the ground of delay of two days in filing the appeal. Subsequently, petitioner filed rectification application and along with rectification application, petitioner had also filed affidavit praying to condone the delay if any, in preferring the appeal. The Honorable Court noted in terms of Section 169 of 2017 Act, one of the mode of communication is by e-mail. From the date of communication, appeal is filed on 90th day. Section 107 of KGST Act, 2017 provides three months' time to file appeal from the date of order or from the date of communication. The Honorable Court held that the respondent ought to have exercised its power under Section 107 (1) and (2) of 2017 Act judiciously and ought to have entertained the appeal and passed order on merits. If the Appellate Authority was of the view that the appeal filed was beyond the period prescribed under Section 107(1) of 2017

Act, second Respondent-Appellate Authority ought to have heard petitioner before passing the order rejecting the appeal. Hence, Impugned Order set aside and directed to hear the appeal filed by the petitioner on merits.

Author's Comments

Section 107(1) of the CGST Act expressly provides that an appeal to the First Appellate Authority (FAA) must be filed within "three months" from the date of communication of the decision or order. The legislature's choice of the term "three months" cannot be equated with 30 days. As per Halsbury's Laws of England, 4th Edition, para 211, a "month" refers to a full calendar month rather than a fixed period of 30 days. This principle was affirmed by the Hon'ble Supreme Court in ***Bibi Salma Khatoon v. State of Bihar*** **[(2001) 7 SCC 197].**

Additionally, in ***Saketh India Ltd. v. India Securities Ltd.*** **[(1999) 3 SCC 1]**, the Apex Court held that the date of receipt of communication must be excluded while computing the limitation period, relying on Section 12(1) and (2) of the Limitation Act, 1963, and Section 9 of the General Clauses Act, 1897. Furthermore, the date of communication is distinct from the date of the order. Accordingly, the limitation period begins on the day following the date of communication and must be calculated in terms of calendar months, not days.

In ***Brand Protection Services Private Limited v. State of Bihar*** **[C.W.P. No. 14957 of 2024, dated 04.02.2025]**, the Hon'ble Patna High Court reaffirmed that Section 107(1) prescribes a filing period of "three months" for appeals, while Section 107(4) allows for a condonable period of "one month."

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9. **Whether writ petition is maintainable when an alternate remedy of appeal is not exercised?**

No, the Honorable Madras High Court in case of ***Tvl. Nirman Enconprojects Private Limited vs. The State Tax Officer, Nanguneri, Tirunelveli District W.P.(MD)No.5382 of 2025 dated 28.02.2025*** disposed of the writ petition with the direction to approach the appellate authority against the orders impugned. The Court observed that the petitioner had assailed the order on the grounds of violation of the principles of natural justice, alleging that it was passed without providing a sufficient opportunity to be heard. It was noted that the petitioner had an alternative appellate remedy before the Appellate Deputy Commissioner (GST Appeals) (State Tax), Madurai and Tirunelveli, under Section 107 of the CGST Act, 2017. However, instead of availing the appeal mechanism, the petitioner directly approached the Court through a writ petition.

The Honorable Court, while disposing of the writ petition, granted liberty to the petitioner to file an appeal before the appellate authority, raising all the grounds mentioned in the writ

petition. It was further held that if the appeal was filed within two weeks from the date of receipt of the Court's order, the appellate authority should entertain it without insisting on the limitation period and decide the matter in accordance with the law.

Author's Comment

To approach the High Court, it must be demonstrated that the notice:
(a) warrants the court's intervention to prevent the progression of injustice, and
(b) involves a remedy that cannot be effectively pursued through adjudication or appeal.

Taxpayers should recognize that High Courts, as Courts of Equity, have the discretion to entertain petitions seeking relief from injustice caused by the notice, provided that the statutory remedies of adjudication and appeal are not sufficiently 'efficacious' to prevent such injustice.

The core issue in the petition must be self-evident and not require extensive investigation. The injustice must be apparent on the face of the record to establish the petition's 'maintainability,' demonstrating that no other forum has the authority to grant the relief necessary to rectify the injustice highlighted.

A petition before the High Court cannot call for adjudication. Instead, it must seek the Court's intervention on the 'grounds urged' to issue appropriate orders preventing a miscarriage of justice resulting from the misapplication, misinterpretation, or misuse of legal processes.

A similar stance was taken by the Hon'ble Allahabad High Court in ***M/S Bushrah Export House v. Union of India*** **(Writ Tax No. 200 of 2024, dated 31.07.2024),** where a writ petition challenging an Assessment Order was dismissed on the grounds that the statutory remedy of appeal had not been exhausted.

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10. Whether goods in transit can be seized under Section 129(3) of the GST Act on the ground of undervaluation?

Yes, the Honorable High Court of Allahabad in case of **M/S Jaya Traders v. Additional Commissioner Grade-2 & Others (Writ Tax No. 1022 of 2021, Allahabad High Court, Judgment Date: 03-03-2025)** held that the seizure can be made even on the ground of under valuation, if under valuation is deliberate for the purpose of avoiding payment of tax or to defeat the provisions of the Act. The Honorable Court noted that the petitioner engaged in the trade of pan masala and scented tobacco, challenged the order dated 25.10.2021 under Section 129(3) of the IGST/CGST Act, imposing a penalty on seized goods. The goods were transported from West Bengal/Assam to Delhi, accompanied by tax invoices but without an e-way bill, as their value was below ₹50,000. During transit, the truck was intercepted at Kanpur, and the driver stated that the goods were loaded from Kanpur, contradicting the accompanying documents. Authorities seized the goods, alleging undervaluation and irregular documentation, while the petitioner argued that seizure on undervaluation grounds is not

permitted under Section 129. The appellate authority upheld the seizure, leading the petitioner to file the writ petition. The Honorable Court observed that the petitioner failed to provide substantial proof of the actual transportation of goods from West Bengal/Assam to Delhi. The petitioner did not submit (i) Vehicle details, (ii) Toll receipts and (iii) Any transport chain

evidence. The Court emphasized that burden of proof lies on the assessee in the original proceedings. The truck driver's statement was given more weight, as per precedents, stating that first-instance statements have more sanctity than later explanations. The Court ruled that undervaluation, if deliberate and used to avoid tax, justifies seizure under GST laws, citing past judgments like ***Radha Fragrance v. Union of India and Shiv Shakti Trading Co. v. State of U.P.*** Seizure was upheld, and the petition was dismissed.

Author's Comments

The intercepting officers, drawing from their experience in the previous tax regime, often tend to overstep their jurisdiction by expanding the scope of their limited powers under GST. However, it is a settled legal principle that an authority to whom power is delegated cannot exceed the scope of that authority.

When MOV-07 (Show Cause Notice) acknowledges compliance with Rule 138A but still alleges undervaluation or misclassification, it amounts to an extra legislative inquiry beyond the jurisdiction of the intercepting officer under Section 68 read with Section 129. The officer has no authority to go beyond Rule 138A—such matters should instead be addressed through notices under Section 73 or 74 by the concerned Proper Officer.

This principle has been upheld in various judicial precedents:

- The Kerala High Court in *Hindustan Coca-Cola Pvt. Ltd. v. Assistant State Tax Officer* (March 19, 2020) held that misclassification alone is not a valid ground for detention.
- The Uttar Pradesh Commercial Taxes Department (Circular No. 1819010, dated May 9, 2018) clarifies that intercepting officers should not detain consignments on undervaluation or misclassification grounds but instead report the matter to the Joint Commissioner for further action.
- The Allahabad High Court in *Shamhu Saran Agarwal & Co. v. Additional Commissioner Grade-2* (WP No. 33 of 2022, January 31, 2024) ruled that goods cannot be detained, nor penalty imposed under Section 129, on mere allegations of undervaluation.
- The Karnataka High Court in *Rajeev Traders* [2022 (66) GSTL 15 (Kar.)] observed that detention proceedings cannot be converted into confiscatory proceedings. If the proper officer suspects tax evasion through undervaluation, the correct recourse is to initiate proceedings under Section 73 or 74, rather than invoking Section 129 for detention.

Additionally, if the petitioner failed to provide substantial proof of the actual transportation of goods from West Bengal/Assam to Delhi, the Revenue ought to have invoked Section 130, which deals with confiscation of goods. However, an officer exercising powers under Section 129 does not have jurisdiction under Section 130.

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11. **Whether a penalty under Section 125 of the TNGST Act can be levied alongside late fee under Section 47 for the same default of delayed filing of returns?**

No, the Honorable High Court of Madras in case of ***TVL Jainsons Castors & Industrial Products vs. Assistant Commissioner (ST) (W.P. No. 36614 of 2024, dated: 04-02-2025)*** held imposing both a late fee and a general penalty amounts to double jeopardy, which is legally unsustainable. The Honorable Court noted that the petitioner delayed filing its annual return as required under Section 44 of the TNGST Act, 2017. The Revenue issued a notice under Section 47 read with Section 73 and imposed a late fee under Section 47(2) for delayed filing and a general penalty of ₹50,000 (₹25,000 CGST + ₹25,000 SGST) under Section 125. The petitioner challenged the penalty imposed under Section 125, arguing that Section 47 already provides for a late fee, so additional penalties cannot be imposed. Further, Section 73 is not applicable for non-filing of returns, as it deals with determination of tax and no notice under Section 46 was issued before initiating penalty proceedings. The Honorable Court observed that Section 47(2) clearly states that a taxpayer who fails to furnish returns under Section 44 (Annual Returns) is liable to a late fee of ₹100 per day, subject to a maximum of 0.25% of turnover and Since the petitioner filed the return late, the late fee was correctly imposed. Section 125 imposes a general penalty where no specific penalty is provided. However, Section 47 already provides a specific late fee for delayed return filing. Imposing both a late fee and a general penalty amounts to double jeopardy, which is legally unsustainable. The Honorable Court set aside the ₹50,000 penalty under Section 125 and allowed the petition partially.

Author's Comments

The principle of *double jeopardy* has deep legal foundations and warrants a nuanced understanding. As held by the Hon'ble Supreme Court in ***Gujarat Travancore Agency [1989 (3) SCC 52] and Chairman, SEBI vs. Shriram Mutual Fund [2006-TIOL-72-SC-SEBI],*** there can be no challenge to the imposition of penalties under Sections 76 and 77 of the Finance Act, 1994. This is because the penalty under Section 77 applies specifically to the delay or failure in filing ST-3 returns, while Section 76 is automatically triggered in cases of default or delay in the payment of Service Tax. Under the CGST Act, late fees under Section 47 is imposed for the belated filing of returns, whereas a penalty under Section 125 may be levied for the delayed deposit of tax collected. There is a lot to unfold on this issue in coming times.

Alternatively, the petitioner could have challenged the jurisdiction of the authority to demand a late fee for the belated filing of the annual return, contending that Section 73 of the CGST Act applies only to demands related to tax, erroneous refunds, and inadmissible credit. While Section 47 provides for the imposition of late fees, it does not confer jurisdiction to demand and recover such fees. Therefore, invoking Section 73 for the recovery of late fees constitutes a gross misapplication of law.

Furthermore, the failure to issue a notice under Section 46 of the CGST Act, read with Rule 68 of the CGST Rules, in Form GSTR-3A—which is a mandatory prerequisite for non-filers—represents a significant breach of due process. This procedural lapse further undermines the legality of the demand, highlighting the necessity for strict adherence to statutory provisions before imposing any levy.

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12. Whether the Order is valid if the reply furnished by the taxpayer is not considered?

No. The Honorable Bombay High Court, in ***Panacea Biotec Limited Vs Union of India & Ors*** **[Writ Petition No.13587 of 2024, dated January 21, 2025]**, set aside the SCN and the order passed due to the non-consideration of the taxpayer's reply. The Court observed that the Department's claim—that the petitioner had not filed a reply or made submissions—was factually incorrect, as the reply was filed and received on the same day. Based on this fact, the Court held that the impugned order was liable to be set aside and remanded the matter for fresh adjudication on the SCN.

Although no decision was rendered on merits, the Court directed the Department to consider the judgment of the Honorable Gujarat High Court in ***Gujarat Chamber of Commerce and Industry & Ors. Vs UOI & Ors. [R/Special Civil Application No. 11345 of 2023, dated January 03, 2025]***, which held that the transfer/assignment of leasehold rights in industrial land is not taxable. The Department has been directed to adjudicate the show cause notice afresh, and the petitioner is at liberty to file a detailed reply within two weeks.

Author's Comments

This is a welcome decision by the Honorable High Court, reaffirming the supremacy of the rule of law against an overzealous administration. The Revenue Department must recognize that such an approach renders the "due process" prescribed under the statute *superfluous, unnecessary, and nugatory*—which is impermissible in law.

An *ex parte* order is one issued without the taxpayer's participation, relying solely on available records and information. However, facing an *ex parte* order does not necessarily result in adverse consequences, nor does it always necessitate an immediate writ petition. In some cases, even without a reply, the records may indicate that the notice itself is unsustainable in law and on facts. Therefore, choosing the appropriate forum for challenge should be a carefully considered strategic decision, aligned with the overall litigation approach.

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13. Is the CBIC required to issue clarifications on GST applicability in response to specific queries from taxpayers?

No, the Honorable Delhi High Court in the case of ***Association of Power Producers v. Solar Energy Corporation of India Ltd. [W.P. (C) No. 12511 of 2024 dated September 10, 2024]*** dismissed the writ petition seeking clarification from CBIC on GST applicability to Battery Energy Storage Systems thereby holding that the CBIC is not required to issue clarifications on taxpayer queries and that taxpayer must determine GST liability by referring to statutory provisions. The Honorable Court noted that the petitioner has filed a writ petition seeking issuance of appropriate writ or order or directions be issued to Solar Energy Corporation of India Limited i.e., Union of India, through the Ministry of Power to decide on the clarifications sought by the Petitioner in terms of its representation dated August 27, 2024, in a time bound manner. The Petitioner also urged that directions be issued to the CBIC for issuance of clarification on the applicability of the GST on Battery Energy Storage Systems. The Honorable Delhi High Court noted that as per Section 168 of the CGST Act, the CBIC, if it considers expedient for the purpose of uniformity in the implementation of the CGST Act, may issue orders, instructions or directions to the Central Officers as it may deem fit. However, there is no provision where CBIC is required to issue clarifications on separate queries raised by taxpayers directly. The Honorable Court opined that the Petitioner have to ascertain whether GST is payable in a certain scenario in line with the provisions of the GST. The CBIC cannot issue any binding clarification as to the chargeability of the BESS service to tax. Thereby dismissed the writ petition.

Author's Comments

The law does not mandate the CBIC to issue binding clarifications on specific queries received from taxpayers. However, under Section 168 of the CGST Act, the CBIC may issue orders, instructions, or directions to Central Officers if deemed necessary for ensuring uniform implementation of the Act. Additionally, Section 97 of the CGST Act provides a mechanism for obtaining clarity through an Advance Ruling. Taxpayers with queries related to matters specified under Section 97(2) can file an application before the Advance Ruling Authority.

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14. Supreme Court upholds Arrest Powers under Customs and GST Acts

The Honorable Supreme Court of India in case of **Radhika Agarwal v. Union of India and Others (Writ Petition (Criminal) No. 336 of 2018,** along with multiple connected criminal appeals dated February 27, 2025 addressed a batch of petitions (279) challenging the powers of arrest under the Customs Act, 1962 and the CGST Act, 2017, alongside the constitutional validity of certain provisions, particularly Sections 69 and 70 of the CGST Act. The Honorable Court upheld the amended provisions of the *Customs Act* (Post-2012, 2013, and 2019 amendments) and the CGST Act and rejected challenges to the legislative competence of Parliament under Article 246A of the Constitution of India to enact criminal provisions under the GST regime. The judgment emphasized procedural safeguards, including the need for "reasons to believe" based on credible material, informing arrestees of grounds of arrest, and compliance with guidelines such as those in *D.K. Basu v. State of West Bengal*. It also addressed allegations of coercion to extract tax payments, clarifying that voluntary payments are permissible but coercive recovery before adjudication is not. The Honorable Court noted that the controversy stemmed from the Supreme Court's 2011 decision in *Om Prakash v. Union of India (2011) 14 SCC 1*, which held offences under the Customs Act and Central Excise Act, 1944 as non-cognizable and bailable, requiring a warrant for arrest. Post this ruling, the legislature amended the Customs Act in 2012, 2013, and 2019 and incorporated similar classifications in the CGST Act, making certain offences cognizable and non-bailable. The Honorable Court held;

- **Arrest Powers Upheld:** The Court ruled that post-amendment, certain offences (evasion exceeding INR 50 lakh under Customs, INR 5 crore under GST) are cognizable and non-bailable, justifying arrest without a warrant if "reasons to believe" exist.
- **Legislative Competence Confirmed:** Sections 69 and 70 of the CGST Act were held valid under Article 246A, as Parliament has the authority to enact criminal provisions for GST enforcement.
- **Strict Procedural Safeguards Mandated:** Officers must record "reasons to believe," inform arrestees of grounds of arrest, and adhere to the D.K. Basu guidelines. Arbitrary arrests and coercive recoveries are prohibited.
- **Limited Scope of Judicial Review:** Courts can intervene only in cases of manifest arbitrariness or statutory violations but not to assess the sufficiency of evidence.
- **Anticipatory Bail Allowed:** The Court ruled that anticipatory bail applies even without an FIR, overriding contrary GST-specific decisions.
- **Coercion for Tax Recovery Unlawful:** Tax recovery must follow adjudication; coercion during investigation is impermissible, and officers found violating this will face action.

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15. **Whether the petitioner is entitled to refund of GST paid on notice pay recovery from employees after issuance of circular by the CBIC?**

Yes, the Honorable High Court of Gujarat in case of ***Aculife Health Care Private Ltd vs. UOI & Ors R/SPECIAL CIVIL APPLICATION NO. 17800 of 2023 dated 06/02/2025*** allowed the petition and directed the authorities to refund the amount collected as tax along with interest. The Honorable Court noted that between July 2017 and July 2022, petitioner has deposited Rs. 45,14,300/- as GST on notice pay recovery from employees who left before completing their tenure, without recovering it from them. On 03.08.2022, the Government clarified via Circular No. 178/10/2022-GST that such recoveries were not taxable under GST. The company then filed a refund claim, but the GST department rejected it as time-barred under Section 54 of the CGST Act (two-year limitation), and the Appellate Authority upheld the rejection. The petitioner argued that the limitation period should begin from the date of the government's clarification, as the tax was collected without authority of law. The Honorable Court held that Since the aforesaid Circular came out on 03.08.2022, it has to be said that the petitioners could not have had the opportunity of filing of the refund claims in respect of the GST deposited by the Petitioner-Company, till such date. Therefore, the period of two years, for filing a claim, within the meaning of Section 54 of the CGST Act has to be computed from the date of the Circular i.e. from 03.08.2022. The Honorable Court relying on the decision of ***Joshi Technologies International – 2016 (339) E.L.T. 21 (Guj.) and Gujarat State Police Housing Corporation Ltd. – SCA No. 11221 of 2022*** held just as citizens have to diligently pay tax which are legally due to the State, equally, as a corollary of the aforesaid statement, the State is not entitled to unjustly enrich itself with amounts collected from citizens which are not sanctioned as "Tax" within the meaning of Article 265 of the Constitution of India. Therefore, writ petition allowed.

Author's Comments

The judgment is a significant relief for taxpayers who had paid GST on notice pay recoveries before the issuance of Circular No. 178/10/2022-GST. The decision reinforces the fundamental principle that no tax can be levied or retained without the authority of law, as enshrined in Article 265 of the Constitution of India. The Honorable Court rightly observed that since the clarification on the non-taxability of notice pay recovery was issued only on 03.08.2022, the two-year period for seeking a refund should commence from this date.

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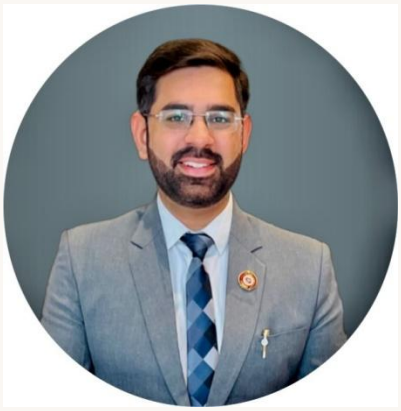

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