# Overview of Different Types of Adjudication Orders under GST

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# Agenda

- ***Adjudication under Sections 73, 74 & 74A* -** Limitation, extended period, SCN bunching, parallel proceedings, evidentiary requirements and DGGI adjudication.
- ***Penalty Proceedings under Section 122*** - Nature of offences, independent penalty liability, director/employee liability and the "proper officer" controversy.
- **Detention & Confiscation under Sections 129 & 130** - Transit proceedings, documentary compliance, intent to evade tax, valuation disputes and procedural safeguards.
- ***Amnesty under Section 128A*** - Eligibility, procedural framework, waiver of interest and penalty, and the self-assessed tax controversy.
- ***Adjudicatory Safeguards under Section 75*** - Personal hearing, conversion between Sections 73/74, scope of SCN, reasoned orders, adjournments and double penalty.
- ***After the Adjudication Order*** — The Way Forward - Appeal limitation, communication of orders, pre-deposit on penalty-only orders and condonation of delay
- ***Appellate Adjudication under Sections 107 & 112*** - Powers of the First Appellate Authority and GSTAT, remand, enhancement, merger and appellate safeguards

SECTION 01

# Adjudication under Sections 73, 74 & 74A

# Section 73 — Scope, Procedure and Timelines

## SECTION 73(1) – SUMMARY AT A GLANCE

**POWER UNDER SECTION 73(1)**

Empowers the proper officer to determine tax not paid, short paid, erroneously refunded, or ITC wrongly availed/utilised, in cases **NOT** involving fraud, wilful misstatement or suppression of facts to evade tax.

**APPLICABILITY**

Confined, by amendment, to periods up to **FY 2023-24**.

### TIMELINES UNDER SECTION 73

**SCN TIMELINE**

At least 3 months before the outer limit for passing the order.

(i.e. by approx. **2 years 9 months** from the due date of the annual return).

**ORDER TIMELINE**

Within 3 years from the due date of furnishing the annual return for the relevant financial year.

**OUTER LIMIT FOR ORDER**

3 years from the due date of annual return.

2 years 9 months from due date of annual return (approx.)

3 years from due date of annual return

**TIMELINE EXTENSION**

Owing to the COVID – 19 restrictions, the Board vide

- **Notification Nos. 9 of 2023 - CT dated March 31, 2023**
- **Notification 56 of 2023 – CT dated December 28, 2023**

had extended the time limit for passing an order under Section 73 for period starting from 2017-18 up to 2019-20.

However, the extension vide Notification has been under challenge before various jurisdictional High Courts *(covered in the later part)*.

### PENALTY STRUCTURE UNDER SECTION 73(1)

| Payment of Tax + Interest | Payment after 30 days of SCN but before order | Payment after order |
|---|---|---|
| Before SCN or within 30 days of SCN<br>**NIL PENALTY** | Penalty = Higher of **10% of tax** or **₹10,000** | Penalty = Higher of **10% of tax** or **₹10,000** |

**Note**: SCN – Show Cause Notice | ITC – Input Tax Credit | FY – Financial Year | Annual Return – GSTR-9

# Challenge to Notification extending period of limitations for Section 73

**The notification**

Owing to COVID-19 restrictions, the Board extended the time limit for passing an order under Section 73 for FY 2017-18 to FY 2019-20 via Notification No. 56/2023-CT, dated 28 December 2023.

↓

**Section 168A — the legal requirement**

Inserted w.e.f. 31 Mar 2020. Lets the Government extend statutory time limits during force majeure (war, epidemic, natural calamity, etc.) — but only on the GST Council's recommendation.

**Council recommendation is a precondition, not a formality.**

↓

**The gap**

Notification No. 56/2023-CT was issued without any recommendation from the GST Council —

**failing to meet the Section 168A criterion.**

# Gauhati HC : Barkataki Print and Media Services & Ors. v. UOI & Ors.— 2024

| | |
|---|---|
| **Subject** | A **notification** under Section 168A of the CGST Act **extending the limitation period** cannot be issued without a **prior recommendation of the GST Council**; **ex-post ratification cannot cure the defect** |
| **Facts** | • Batch petitions challenged orders-in-original passed under Section 73(9) for FY 2018-19 and FY 2019-20, founded on Notification Nos. 9/2023-CT and 56/2023-CT (issued under Section 168A).<br>• Petitioners contended Notification No. 56/2023-CT was issued without any prior GST Council recommendation and without a genuine force majeure |
| **Decision of the court** | • **Held that a GST Council recommendation is a sine qua non for Section 168A — a "recommendation" (proactive) is distinct from a "ratification" (retrospective), and the latter cannot substitute for the former.**<br>• **No such recommendation preceded Notification No. 56/2023-CT**, and subsequent Council meetings did not ratify it; the notification was held ultra vires and the consequential orders quashed as time-barred |

# Madras HC : Tata Play Ltd. v. UOI & Ors.— 2025

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|---|---|
| **Subject** | **Notification Nos. 9/2023-CT and 56/2023-CT under Section 168A held illegal** for diminishing the larger limitation already available to authorities under the Supreme Court's Article 142 exclusion order; Notification No. 56/2023-CT additionally held void as issued before any GST Council recommendation |
| **Facts** | • Batch petitions challenged demand orders for FY 2017-18 to FY 2019-20 passed relying on Notification Nos. 9/2023-CT and 56/2023-CT. Petitioners argued the notifications (delegated, not conditional, legislation) failed to consider relevant material — government memoranda and CAG audit reports showing that normalcy had returned by February-March 2022 and that delays in scrutiny/audit were due to systemic staffing and IT deficiencies, not COVID<br>• Petitioners argued No. 56/2023-CT rested on a decision of the GST Implementation Committee (not the Council itself), that no proximate force majeure existed by December 2023, and<br>• The notifications effectively shrank the exclusion period the Supreme Court had already granted.<br>• Separately, petitioners contended the Supreme Court's suo motu order of 10.01.2022 (Cognizance for Extension of Limitation) excluding 15.03.2020–28.02.2022 for computing limitation in all judicial/quasi-judicial proceedings had ceased to apply once Section 168A notifications were issued. |
| **Decision of the court** | • **Held that "period of limitation" (extension, under Section 168A) and "computation of limitation" (exclusion, under the Supreme Court's Article 142 order) are distinct concepts; the Article 142 exclusion continues to apply independently and is not displaced by Section 168A.**<br>• On comparing the two, found that the **Article 142 exclusion actually gives authorities a longer limitation window than the impugned notifications granted** — so the notifications, instead of extending time, curtailed a vested right of action, rendering them arbitrary and violative of Article 14, and outside the very object of Section 168A (which empowers only extension, not diminution, of time) |

# Madras HC : Tata Play Ltd. v. UOI & Ors.— 2025

| | |
|---|---|
| **Decision of the court** | • **Notification No. 56/2023-CT separately held illegal for want of a prior GST Council recommendation** — a recommendation by GIC, even if later ratified by the Council, cannot substitute for the Council's own prior recommendation (delegatus non potest delegare; ratification is alien to the exercise of statutory power).<br>• Also found the GST Council's recommendation itself vitiated for failing to consider relevant material (CAG reports and government memoranda) showing the actual cause of delay was systemic, not COVID-driven.<br>• Despite striking down both notifications, the Court did not quash the assessment orders outright — since the authorities in any event retain the benefit of the (longer) Article 142 exclusion, it remanded the entire batch to the assessing authorities, treating impugned orders/notices as show cause notices, with 8 weeks for objections and fresh orders after a hearing. **The reported outcome is accordingly "in favour of revenue."** |

| | Pre - Barakatki - Gau HC | | Post - Barakatki - Gau HC | |
|---|---|---|---|---|
| Period | Last Date to Issue Notice under Section 73 | Last Date to Issue Order under Section 73 | Last Date to Issue Notice under Section 73 | Last Date to Issue Order under Section 73 |
| 2017-18 | September 30, 2023 | December 31, 2023 | September 30, 2023 | December 31, 2023 |
| 2018-19 | January 31, 2024 | April 30, 2024 | December 31, 2023 | March 31, 2024 |
| 2019-20 | May 30, 2024 | August 31, 2024 | March 31, 2024 | June 30, 2024 |

# Allahabad HC: Graziano Trasmission v. Goods and Services Tax & Ors— 2024

| | |
|---|---|
| **Subject** | The power to extend limitation under Section 168A is a legislative function; its exercise, including a successive extension, is not open to challenge in writ jurisdiction as a mere policy matter absent manifest arbitrariness. |
| **Facts** | • A batch of 18 writ petitions challenged CBIC Notification Nos. 9/2023-CT and 13/2022-CT extending timelines under Section 168A for passing orders under Section 73.<br>• Petitioners argued the successive extensions were arbitrary and unsupported by any live force majeure by the time of issuance |
| **Decision of the court** | • **Held that the exercise of power under Section 168A is legislative, not administrative, and that the notifications were issued pursuant to due consideration by the GST Council/Implementation Committee.**<br>• **Dismissed the challenge and upheld the validity of both notifications — a contrary outcome to the Gauhati High Court's view in Barkataki** |

# Patna HC: Barhonia Engicon Pvt. Ltd. v. State of Bihar 2024

| | |
|---|---|
| **Subject** | **Notifications extending limitation under Section 168A were validly issued** within the GST Council's consultative process; separately, assessment orders passed without a personal hearing violate natural justice. |
| **Facts** | • Batch petitions challenged GST assessment orders for FY 2017-18 to FY 2019-20, contending Notification Nos. 9/2023-CT and 56/2023-CT were invalid as the pandemic-related force majeure had ended by the time of issuance, relying on the Gauhati High Court's Barkataki ruling |
| **Decision of the court** | • **Declined to follow the Gauhati High Court's reasoning in Barkataki and** upheld the notifications as a valid exercise of legislative discretion founded on GST Council consultation.<br>• However, several assessment orders were set aside for failure to grant a personal hearing under Section 75(4) and remanded to the assessing officers |

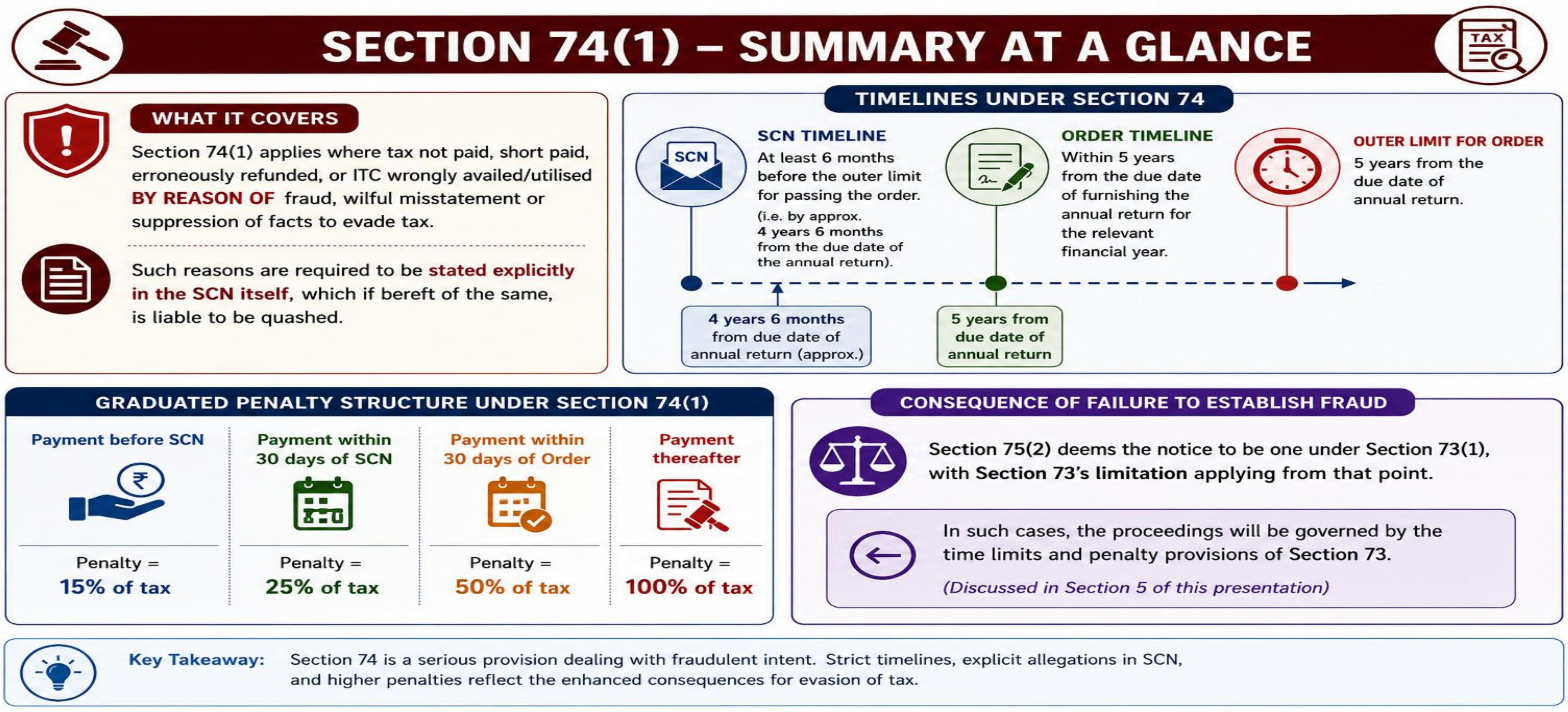
# Bom HC :Ashadeep Multitrade Pvt. Ltd. & Ors. v. Union of India & Ors - Interim Order

| | |
|---|---|
| **Subject** | Challenge to the same Section 168A notifications and a consequential order for FY 2019-20 was admitted as arguable, with interim protection granted — noting that Gauhati has already struck the notifications down, while Telangana upheld them (a conflict pending before the Supreme Court). |
| **Facts** | • ***In one of the matters where we represent the Client,*** Petitioner challenged Notification No. 56/2023-Central Tax and Notification No. 56/2023-State Tax issued under Section 168A, along with Recovery Notices, Attachment Notices and an order dated 16.08.2024 passed for FY 2019-20 |
| **Decision of the court** | • Held that arguable questions were raised and noted that the same issue was already pending in Writ Petition Nos. 5146 of 2024 and 5471 of 2024 (Precaution Properties).<br>• **Recorded that the Gauhati High Court has already struck down these notifications, while the Telangana High Court upheld them (relying on the Supreme Court's suo motu limitation-extension order), and that the Telangana ruling is under challenge before the Supreme Court.**<br>• Issued Rule and granted interim relief restraining coercive action based on the impugned recovery notices and order, following the same approach as in earlier matters including one before the Nagpur Bench; tagged the petition with Writ Petition Nos. 5146 of 2024 and 5471 of 2024, with liberty to apply once the Supreme Court decides the connected matter |

# Challenge to Notification extending period of limitations for Section 73

- The issue is now pending before the Hon'ble Supreme Court in ***HCC-SEW-Meil-AAG JV vs. Assistant Commissioner of State Tax (2025) 30 Centax 452 (S.C.) [21-02-2025]*** wherein the Hon'ble Apex Court noting the cleavage of judicial opinion on the issue has admitted the matter and issued notice.
- The subject matter of challenge before the High Court was to the legality, validity and propriety of the ***Notification Nos.9 and 56 of 2023*** dated 31-3-2023 & 28-12-2023 respectively.
- The challenge in the matter is against the ruling of the Hon'ble Telangana High Court in ***Brunda Infra Pvt. Ltd. vs. Additional Commissioner of Central Tax, Hyderabad (2025) 26 Centax 94 (Telangana)*** whereby relying upon the ruling of the Hon'ble Allahabad HC in the case of ***Graziano Transmissions*** holding that the impugned Notification was in fact legally valid.
- ***Ruling from the Supreme Court on the said issue is anticipated for the settlement of the issue.***

# Section 74 — Scope, Procedure and Timelines



# Invoking the Extended Period — The Legal Test

### 1 Burden on revenue

Fraud, wilful misstatement or suppression with intent to evade tax must be affirmatively proved by the department — it cannot be presumed from mere non-payment or short payment.

### 2 A positive, deliberate act is required

Settled Central Excise jurisprudence holds suppression means deliberately withholding information the assessee was legally bound to disclose. A bona fide interpretational dispute does not qualify.

Anand Nishikawa v. CCE | Continental Foundation v. CCE (2007) 10 SCC 337 | Uniworth Textiles v. CCE (2013) 9 SCC 753

### 3 'Found in audit' is no longer enough

Explanation 2 to Section 74's definition of suppression (non-declaration of required facts, or failure to furnish info when asked in writing) was omitted w.e.f. 1 Nov 2024. So a transaction merely unreported and later found via audit/enquiry can't by itself sustain a Section 74 case.

# Invoking the Extended Period — The Legal Test

### 4 Foundational facts must be in the SCN itself

The officer's satisfaction on fraud/suppression must be evident on the face of the notice — it cannot be reconstructed later via a counter-affidavit or at the hearing stage.

### 5 Practical defence

An SCN that merely recites the words 'fraud/suppression/wilful misstatement' without particularising the underlying facts leaves the invocation of Section 74 itself open to challenge.

# EXPLANATION 2 TO SECTION 74 — OMITTED W.E.F. 1 NOVEMBER 2024

STATUTORY DEFINITION REMOVED WITHOUT AN EXPRESS SAVING CLAUSE

## 1 WHAT DID EXPLANATION 2 DO?

Explanation 2 statutorily defined 'suppression' as:

(i) non-declaration of facts/information required to be declared in a return, statement, report or other document;

OR

(ii) failure to furnish information when asked for, in writing, by the proper officer.

**STATUTORY DEFINITION**

## 2 THE AMENDMENT

**FINANCE (NO. 2) ACT, 2024** → Explanation 2 to Section 74 **omitted** → EFFECTIVE FROM **1 NOVEMBER 2024**

**NO EXPRESS SAVING CLAUSE**

The Finance (No. 2) Act, 2024 also introduced Section 74A for FY 2024-25 onwards; Section 74 remains for periods up to FY 2023-24.

## 3 WHY DOES THE OMISSION MATTER?

1. The statutory definition of 'suppression' is no longer available from 1.11.2024.
2. A pending Section 74 proceeding cannot mechanically rely on the omitted Explanation merely because the alleged conduct predates 1.11.2024.
3. Where the SCN/order's allegation of suppression is founded on Explanation 2, the proceeding becomes vulnerable; the Revenue must independently satisfy the surviving statutory requirement of fraud / wilful misstatement / suppression of facts to evade tax.

**OMISSION ≠ AUTOMATIC INVALIDITY OF EVERY SECTION 74 CASE — BUT THE OMITTED EXPLANATION CANNOT BE KEPT ALIVE WITHOUT A SAVING BASIS.**

## PARALLEL: RULE 96(10) — SAME 'OMISSION WITHOUT SAVING CLAUSE' QUESTION

**RULE 96(10)** omitted w.e.f. **8 OCTOBER 2024** → **NO SAVING CLAUSE** →

**GUJARAT HC: ADDWRAP PACKAGING (13 JUNE 2025)**

Notification No. 20/2024 would apply to pending proceedings/cases; Rule 96(10) could not be carried forward; SCNs/orders founded on it were quashed.

*M/s Addwrap Packaging Pvt. Ltd. v. Union of India,* R/SCA No. 22519 of 2019 & allied matters (Guj. HC, 13.06.2025).

→ **PENDING PROCEEDINGS WHERE FINAL ADJUDICATION HAD NOT TAKEN PLACE: OMISSION APPLIES**

### PARALLEL ARGUMENT FOR SECTION 74

Where the legislature omits a statutory provision without a saving clause, the Rule 96(10) jurisprudence supports examining whether pending proceedings founded upon the omitted provision can continue. The stronger the proceeding's dependence on Explanation 2, the stronger the challenge.

*Apply with care: Section 6 of the General Clauses Act, finality of proceedings, and the surviving text of Section 74 must be separately examined.*

# Hon’ble SC: Tata Steel Limited v. Union of India — SLP (C) No. 16859 of 2026 – SC

| | |
|---|---|
| **Subject** | Section 74 cannot be invoked through a mechanical recital of “fraud” or “suppression”; the foundational facts must be evident from the SCN itself |
| **Facts** | • SCN under Section 74 covered FY 2018-19 to FY 2020-21, issued after the ordinary Section 73 limitation for those years had expired.<br>• The sole basis was an ITC mismatch found in audit, with no further narration of fraud or suppression |
| **Decision of the court** | • The Court held that **mere use of the expressions “fraud”, “wilful misstatement” or “suppression” cannot, by itself, justify invocation of the extended limitation under Section 74**. The SCN must disclose the foundational facts demonstrating how such conduct resulted in short-payment of tax or wrongful availment of ITC. Such allegations cannot added later in the proceedings<br>• Since the SCN contained only bland allegations without such foundational facts, both the SCN and consequential order were set aside, with liberty to initiate fresh Section 74 proceedings supported by proper factual particulars.<br>• Liberty granted to the Department to issue fresh notices for periods still within the ordinary Section 73 limitation. |

# Hon'ble SC: M/s G.R. Infra Projects Limited, Ratlam v. State of MP & Ors. – SC

| | |
|---|---|
| **Subject** | Vague, figure-only allegations cannot sustain Section 74; absent a disclosed factual basis for fraud/suppression, the demand must fall back on Section 73 |
| **Facts** | • SCN dated 13 June 2025 alleged GSTR-3B mismatches, ineligible ITC and vendor-cancellation issues for FY 2018-19, listing only figures with no narrative of fraud or suppression.<br>• Petitioner argued the period was time-barred under Section 73 and that Section 74 was invoked only to keep the demand alive |
| **Decision of the court** | • SCN set aside — authorities cannot invoke Section 74 by merely using the words "fraud, wilful misstatement or suppression" without setting out the aspects that led to that conclusion.<br>• Internal investigation material cannot substitute for particulars that ought to appear in the SCN itself |

# Timelines for issuance of Orders — Section 73 to Section 74

| Period | Last date for issuance of SCN u/s 73 | Last date for issuance of Order u/s 73* | Last date for issuance of SCN u/s 74 | Last date for issuance of Order u/s 74 |
|---|---|---|---|---|
| 2017-18 | September 30, 2023 | December 31, 2023 | Aug 5, 2024 | Feb 5, 2025 |
| 2018-19 | January 31, 2024 | April 30, 2024 | June 30, 2025 | December 31, 2025 |
| 2019-20 | May 31, 2024 | August 31, 2024 | September 30, 2025 | March 31, 2026 |
| 2020-21 | November 30, 2024 | February 28, 2025 | August 31, 2026 | February 28, 2027 |
| 2021-22 | September 30, 2025 | December 31, 2025 | June 30, 2027 | December 31, 2027 |
| 2022-23 | September 30, 2026 | December 31, 2026 | June 30, 2028 | December 31, 2028 |
| 2023-24 | September 30, 2027 | December 31, 2027 | June 30, 2029 | December 31, 2029 |

**Note:** **Kindly note the aforementioned timelines for 2017-18, 2018-19, 2019-20 has been mentioned considering the extension granted* ***Notification Nos. 9 of 2023 - CT dated March 31, 2023*** *and* ***Notification 56 of 2023 – CT dated December 28, 2023***

SECTION 01

# Bunching of SCN

# Single SCN for Multiple Financial Years — The Controversy

## THE QUESTION

Can a single, composite SCN (and consequent order) validly cover more than one financial year under Section 73 or Section 74, or must each FY be the subject of a separate, period-specific notice?

## WHY IT MATTERS

Sections 73(10)/74(10) impose FY-specific limitation; a consolidated notice risks conflating periods where limitation has already expired for some years with periods where it has not, and complicates the taxpayer's ability to respond period-wise.

## CURRENT STATE

A genuine, live split across High Courts, now referred to a larger Bench of the Bombay High Court. No binding, pan-India Supreme Court ruling exists yet.

## WHY BUNCHING OF SCNs MAY NOT BE PERMISSIBLE UNDER GST LAW?

The Hon'ble Madras High Court in **Titan Company Ltd. vs. Joint Commissioner of GST and Central Excise** ***[W.P. No. 7136 of 2022, order dated 12.07.2023]*** held that bunching of SCNs covering multiple financial years is not in consonance with the scheme of the GST law.

- Sections 73(10) and 74(10) prescribe limitation with reference to each financial year separately. A composite SCN covering several years overlooks the FY-specific limitation and renders the notice vulnerable to being time-barred for some years.
- Each FY involves distinct facts, transactions, returns, tax liability, ITC availment and payments. Clubbing them together prevents the taxpayer from giving an effective, period-wise reply and defence.
- It results in prejudice and violates principles of natural justice, particularly the right to a fair opportunity of being heard.
- The Court quashed the composite SCN and held that separate, period-wise notices must be issued for each financial year.

# Judicial View I — Bunching Held Impermissible

- ***Bombay High Court (Goa Bench)*** - ***Milroc Good Earth Developers vs. Union of India*** — (2025) 36 Centax 97 (Bom.) / 2025 (104) G.S.T.L. 45 (Bom.), decided 9 October 2025.

| | |
|---|---|
| **Subject** | A consolidated GST show-cause notice covering multiple financial years cannot override the year-wise statutory scheme of assessment and limitation |
| **Facts** | • The petitioner challenged the clubbing of several financial years in one SCN, contending that Sections 73/74 and the limitation provisions contemplate year-wise assessment and adjudication.<br>• **It was argued that permitting consolidation would defeat the separate limitation periods applicable to different financial years and permit the Revenue to indirectly extend statutory limitation** |
| **Decision of the court** | • The Court held that held that the **GST statutory scheme requires assessment to be connected with the relevant tax period/financial year**.<br>• **The consolidated SCNs were held to be without jurisdiction,** with the Court characterizing such consolidation as impermissible **judicial/administrative overreach.**<br>• The Court accordingly quashed the impugned consolidated proceedings, leaving the Revenue at liberty to proceed in accordance with the statutory framework |

# Judicial View II — Bunching Held Permissible

- *Karnataka HC -The Commissioner of Central Tax & Ors. v. M/s. Chimney Hills Education Society* — 2026 (5) TMI 125

| | |
|---|---|
| **Subject** | Sections 73/74 of the CGST **Act do not prohibit a consolidated SCN covering multiple financial years**; however, limitation must still be examined separately for each component period |
| **Facts** | • **The Revenue challenged orders of the Single Judge** which had declared common/consolidated SCNs issued under Sections 73/74 covering **more than one tax period/financial year as invalid.**<br>• In the principal matter concerning Chimney Hills Education Society, the proceedings involved allegations concerning fraudulent/ineligible ITC and transactions spread across several years<br>• The Revenue relied, inter alia, upon the language of Sections 73(3), 73(4), 74(3) and 74(4), and the need to examine connected fraudulent ITC transactions across multiple years. |
| **Decision of the court** | • The Division Bench allowed the Revenue's appeals and held that there is **no statutory prohibition against a common/consolidated SCN covering multiple financial years** or tax periods.<br>• **In cases involving fraudulent ITC, transactions may extend across years, and a consolidated notice may be necessary to establish the overall modus operandi.**<br>• **However, limitation remains independently applicable to each relevant financial year; a time-barred component can be severed without necessarily invalidating the entire SCN.**<br>• The Court expressly declined to follow the contrary line of decisions represented by Milroc Good Earth Developers, Tharayil Medicals and Titan Company |

# State Wise Judicial Divergence on the Issue

| State | Status (Permissible/Impermissible) | Relevant Ruling |
|---|---|---|
| Delhi | Permissible | Ambika Traders v. Additional Commissioner, 2025 SCC OnLine Del 6913; Mathur Polymers v. Union of India, 2025 SCC OnLine Del 6892 / (2025) 35 Centax 150 |
| Uttar Pradesh | Permissible | S.A. Aromatics Pvt. Ltd. v. Union of India, 2026 SCC OnLine All 191. |
| Jammu and Kashmir | Permissible, subject to limitation safeguards | R.J.M. Brothers v. Union of India / R.J. Trading v. Union of India, J&K & Ladakh High Court, 27 Nov. 2025 |
| Karnataka | Permissible | Chimney Hills Education Society (Discussed above) |
| Tamil Nadu | Not Permissible | Titan Company Ltd. v. Joint Commissioner of GST, 18 Dec. 2023; |
| Maharashtra | Unsettled – Referred to larger Bench | Rollmet LLP v. Union of India, W.P. No. 16848/2025 & batch |
| Kerala | Not Permissible | Tharayil Medicals v. Deputy Commissioner, 2025-VIL-356-KER |
| West Bengal | Not Permissible | State Bank of India v. Commissioner, CGST & Central Excise, 2026 SCC OnLine Cal 7539 |
| Himachal Pradesh | Not Permissible | Ekta Enterprises v. State of Himachal Pradesh, (2026) 38 Centax 303 (H.P.) |

# CBIC's Administrative Position on Consolidated SCNs

Internal Instruction: F. No. CBIC-20010/67/2025-GST | Dated: 15 September 2025

*"The statute does not restrict an SCN to a single financial year."*

*Simpler Procedures Stronger Compliance*

## THE INSTRUCTION

| | |
|---|---|
| **Reference No.** | F. No. CBIC-20010/67/2025-GST |
| **Date** | 15 September 2025 |
| **Issued by** | Central Board of Indirect Taxes & Customs (CBIC) |
| **Nature** | Internal administrative instruction / guidance to field formations |

## KEY POSITION TAKEN

- The GST statute (Sections 73/74) contains no restriction confining a Show Cause Notice (SCN) to a single financial year.
- A consolidated SCN covering multiple financial years / tax periods is permissible in law.
- Field formations are advised to continue issuing consolidated SCNs wherever appropriate, keeping in mind the statutory provisions and judicial precedents.

## Rationale for Consolidation

**Reduces duplicate proceedings**
Avoids multiple SCNs, replies and adjudications for connected issues.

**Lowers compliance burden**
Taxpayers are not required to respond to multiple notices for linked transactions.

**Enables holistic examination**
Facilitates proper analysis of transaction patterns, especially in cases involving fraudulent ITC or multi-year arrangements.

**More efficient use of resources**
Helps both the Department and taxpayers by avoiding repetitive litigation and administrative effort.

## Likely Impact

- **Field formations likely to rely on this position**, particularly in cases involving fraudulent ITC, connected transactions or continuing arrangements across years.
- **Consolidated SCNs and orders are** expected to continue to be issued pending the outcome of the Larger Bench decision (e.g., Bombay High Court).
- **Taxpayers should, however, continue to examine limitation** on a year-wise basis and rely on favourable High Court precedents available in their jurisdiction.

*"In the absence of any statutory restriction, issuance of a consolidated SCN for multiple financial years is a valid and pragmatic approach which reduces duplicate proceedings and the compliance burden on taxpayers."*

— **CBIC** (F. No. CBIC-20010/67/2025-GST, dated 15 September 2025)

**Position to continue to be followed by field formations pending the Larger Bench ruling.**

SECTION 01

# Parallel Proceedings

# GST: Bar on Parallel Proceedings

One Subject Matter | One Set of Proceedings | No Duplication

*"Ensuring certainty, avoiding multiple proceedings and strengthening cooperative federalism."*

## THE STATUTORY PROVISION

> Where a proper officer of the State/Central tax authority has initiated **proceedings on a subject matter, no proceedings shall** be initiated by the proper officer of the Central/State tax authority, as the case may be, on the same subject matter.

**— Section 6(2) of the CGST Act, 2017**
(and pari materia provision in the SGST Act)

## WHAT IT MEANS

1. Once proceedings are initiated by the proper officer of either the Central or State tax authority on a particular subject matter, the other authority **cannot initiate proceedings on the same subject matter.**
2. The bar applies from the stage of **initiation** (e.g., issue of SCN, order of audit, inspection notice, etc.).
3. It applies irrespective of the stage or outcome of the first set of proceedings (pending, adjudicated or appealed).

## OBJECTIVE AND RATIONALE

**Prevent harassment**
Avoids multiple proceedings on the same issue by different wings/authorities.

**Ensure certainty and consistency**
Taxpayers face only one set of proceedings on the same subject matter.

**Avoid duplication of effort**
Prevents conflicting orders and unnecessary compliance burden.

**Promote cooperative federalism**
Respects the unified GST architecture between Centre and States.

## SCOPE AND KEY CONSIDERATIONS

**Same subject matter**
The bar applies only when proceedings relate to the same subject matter (e.g., same transaction, same issue, same period).

**Stage of initiation**
Applies from the stage of initiation (e.g., SCN, audit order, inspection notice, etc.).

**Does not cover different subject matters**
Independent proceedings on distinct issues (e.g., different transactions, different tax periods, or different legal provisions) are not barred.

**Substance over form**
Authorities will examine the real nature of the proceedings, not merely the form or nomenclature, to determine whether the subject matter is the same.

## ILLUSTRATIVE SCENARIOS

**Not Permissible (Parallel Proceedings)**

State GST officer issues SCN (on ITC for FY 2021-22)
↓
Central GST officer issues SCN (on the same ITC issue for FY 2021-22)

**Bar applies – second SCN not valid**

**Permissible (Different Subject Matter)**

State GST officer issues SCN (on ITC for FY 2021-22)
↓
Central GST officer issues SCN (on suppression of outward supplies for FY 2020-21)

**No bar – issues are distinct**

> *"The scheme of GST does not contemplate multiple proceedings by different authorities on the same subject matter. Once proceedings are initiated by one authority, the other authority is statutorily barred from initiating proceedings on the same subject matter."*

**Single Issue.
Single Proceedings.
Greater Taxpayer Confidence.**

# Hon'ble SC: Armour Security (India) Ltd. vs. Commissioner, CGST, Delhi East — (2025) 33 Centax 222

| | |
|---|---|
| **Subject** | Mere issuance of summon/ search seizure does not amount to proceedings for the purpose of Section 6(2)(b) |
| **Facts** | • The SGST Department issued SCN alleging: Excess availment of ITC and Under-reporting of tax liability in GST returns.<br>• During the pendency of the proceedings, the CGST Department issued summons under Section 70 and conducted search and seizure proceedings at the Petitioner's business premises.<br>• The Petitioner challenged the parallel investigation initiated by the CGST authorities while proceedings on the same issues were already pending before the State GST authorities. |
| **Decision of the court** | • **Inquiries, evidence-gathering or issuing summons/search/seizure do not amount to ‘proceedings’ under Section 6(2)(b) of the CGST Act.**<br>• **‘Initiation of proceedings’ refers only to the formal commencement of adjudication through a SCN**<br>• ‘Subject matter’ refers to any tax liability, deficiency or obligation arising from a particular contravention which the GST Department seeks to assess or recover.<br>• Two-fold test helps determine whether the ‘subject matter’ is same or not.<br>• Section 6(2)(b) bars parallel proceedings only when they overlap on the same tax liability or contravention; if the infractions are distinct, the bar does not apply even if the tax liability appears similar. |

# Armour Security — The Supreme Court's Operating Protocol

1. Summons/search/seizure by a second authority is not, by itself, a ground to refuse cooperation — the assessee must comply.

2. If the assessee becomes aware of an overlapping proceeding, it must intimate the second authority in writing.

3. On such intimation, the two tax authorities must communicate with each other to verify whether the subject matter genuinely overlaps.

4. If the authorities find the subject matters distinct, that finding is communicated to the assessee in writing with reasons — both proceedings continue.

# Armour Security — The Supreme Court's Operating Protocol

**5.** If the liability is found to be the same, the subsequent/duplicate SCN must be quashed.

**6.** Where necessary, the authorities decide inter se which of them will continue; the other transfers all material to the continuing authority.

**7.** Default rule where the authorities cannot agree: the authority that first initiated the inquiry/investigation continues.

**8.** The assessee retains recourse to writ jurisdiction under Article 226 if an authority fails to follow this protocol.

SECTION 01

# Introduction of new Recovery Mechanism under Section 74A

# Section 74A — Why a New, Unified Provision?

### The old problem

Every case first had to be labelled fraud (S.74) or non-fraud (S.73) before an SCN could issue — that upfront classification became a recurring source of extended-limitation litigation.

### The 74A fix

One common timeline applies regardless of fraud or no-fraud. Sections 73 and 74 now apply only up to FY 2023-24.

### Unified timeline

| 42 months | 12 months | +6 months |
|---|---|---|
| Notice, from due date of annual return (or date of erroneous refund) | Order, from date of notice | Extension by Commissioner, reasons recorded in writing |

### Fraud vs no-fraud — relevant only to penalty quantum

**No fraud**

**Nil – 10%**

of tax, or ₹10,000, whichever is higher

**Fraud**

**15% – 100%**

of tax, depending on stage of payment

# Interplay Between Sections 73, 74 and 74A

| | Section 73<br>no fraud | Section 74<br>fraud | Section 74A<br>unified |
|---|---|---|---|
| Applicability period | Up to FY 2023-24 | Up to FY 2023-24 | FY 2024-25 onwards |
| Upfront classification needed | Yes, no-fraud | Yes, fraud alleged | No, single provision |
| Notice time limit | At least 3 months before order due date (~2 yrs 9 months from annual return due date) | At least 6 months before order due date (~4 yrs 6 months from annual return due date) | 42 months from due date, or date of erroneous refund |
| Order time limit | 3 years from annual return due date | 5 years from annual return due date | 12 months from notice, +6 months by Commissioner |
| Reduced-penalty window | 30 days | 30 days | 60 days |
| Standard/max penalty | 10% of tax or ₹10,000, higher | 100% of tax | Nil-10% (no-fraud); 15-100% (fraud), same gradation |

# DGGI Investigations & the Common Adjudicating Authority

# Centralised adjudication of DGGI cases

*One investigation, one adjudicating authority*

## ! The issue

Where DGGI investigates a taxpayer with operations spanning multiple Central Tax Commissionerates, or issues related SCNs to multiple entities or GSTINs under common control, a mechanism is needed to avoid multiplicity of adjudicating authorities over what is really one investigation.

## § The statutory answer

### Notification No. 02/2022-Central Tax

*dated 11 March 2022*

Confers all-India jurisdiction on specified Additional or Joint Commissioners of Central Tax at ten designated Commissionerates to adjudicate SCNs issued by DGGI officers, including under Sections 73, 74, 122, 129 and 130.

### Circular No. 169/01/2022-GST

*dated 12 March 2022*

Establishes the mechanism for routing a DGGI-originated case to the specific notified Commissionerate, based on the location of the noticee's principal place of business carrying the highest tax demand, where noticees span multiple Commissionerates or multiple related SCNs are issued.

# Certain Ideal Adjudication pointers to bear in Mind

# Points to Bear in Mind While Adjudicating an SCN

- With so many litigious issues around GST Law, it is essential that the Taxpayers at least come with clean hands, and meet all the due requirements under to shield itself from any sort of prejudicial action. For such certain procedural best practices are discussed hereinbelow
- ***Place all evidence on record at the lower stage*** — **additional evidence sought to be introduced for the first time before the appellate authority or in writ proceedings may not be entertained**; the adjudicating authority's record is ordinarily the foundation on which the case will be tested in appeal.
- ***Relied-upon documents (RUDs) must be furnished*** — it is incumbent on the adjudicating authority to supply all documents relied upon during investigation along with, or before, adjudication; failure to do so denies a meaningful opportunity to respond.
- ***Consequence of non-supply*** — **non-supply of RUDs vitiates the adjudication order as a violation of natural justice**; several 2025-26 High Court rulings have quashed orders on this ground alone, remanding for fresh adjudication after the RUDs are furnished. [See: ***Sai Automobiles vs. Commmissioner CGST & C.Ex. [2026] 187 taxmann.com 74 (Allahabad)***]
- ***Practice point*** — **a specific, written demand for RUDs** (and, where relevant, cross-examination of persons whose statements are relied upon) should be made and recorded at the earliest stage of the proceeding, so that any subsequent denial is squarely on record for appeal or writ.

# Section 1 — Key Takeaways

- ***Threshold classification is everything*** — for legacy-period cases (up to FY 2023-24), whether a case proceeds under Section 73 or Section 74 drives limitation, penalty and the entire litigation strategy; **the SCN must disclose foundational facts, not merely recite statutory language.**
- ***Bunching of SCNs remains unsettled*** — preserve the objection at the earliest stage regardless of the prevailing view in your jurisdiction; the question is now before a larger Bench of the Bombay High Court.
- ***Build the record early*** — all evidence, and a demand for RUDs, must go on record at the adjudication stage itself.
- ***Parallel proceedings are not automatically barred*** — Armour Security supplies a concrete protocol to test whether Section 6(2)(b) is actually triggered.
- ***Two regimes now coexist*** — correctly identify whether Section 73/74 (up to FY 2023-24) or Section 74A (FY 2024-25 onwards) governs before advising a client.

SECTION 02

# Orders under Section 122 of the CGST Act

# Section 122(1) — Offences Attracting Penalty

Structure — Section 122(1) lists 21 specified offences (clauses (i) to (xxi)) committed by a taxable person, each attracting a penalty of
**₹10,000 or the amount of tax evaded/ITC wrongly availed or passed on/refund wrongly taken, whichever is higher.**

## 1. INVOICING OFFENCES

- Supply without issuing an invoice or issuing a false invoice (i)
- Issuing an invoice without actual supply (ii)
- Using another registered person's GSTIN on an invoice (xix)

## 2. TAX AND CREDIT OFFENCES

- Collecting tax but failing to remit it beyond 3 months (iii)/(iv)
- Availing or utilising ITC without actual receipt of goods/services (vii)
- Fraudulently obtaining a refund (viii)
- Wrongful ITC distribution under Section 20 (ix)

## 3. COMPLIANCE AND EVIDENTIARY OFFENCES

- Failure to register (xi)
- False registration particulars (xii)
- Falsifying records or furnishing false information with intent to evade tax (x)
- Failure to maintain books (xvi)
- Tampering with evidence (xx)
- Obstructing officers (xiii)

**Key Takeaway:** Section 122(1) covers 21 specified offences across invoicing, tax & credit, and compliance areas, ensuring deterrence through a penalty of ₹10,000 or the amount of tax evaded/ITC wrongly availed or passed on/refund wrongly taken, whichever is higher.

# Circular No. 171/03/2022-GST — Penalty Independent of Demand

- ***Dated 6 July 2022*** — clarifies the interplay between Section 122 and Sections 73/74 through three illustrative fact patterns involving a chain of fake-invoicing (A issues a fake invoice to B; B may further pass credit to C).
- ***Where there is no "supply"*** — a person who issues a fake invoice without any actual supply attracts no demand under Section 73/74 (since there is no taxable supply to assess) but is independently liable to penalty under Section 122(1)(i)/(ii).
- ***Where credit is actually utilised*** — a person who avails and utilises fraudulently availed ITC to discharge output tax is liable to demand and recovery under Section 74, in addition to penalty.
- ***Where credit is merely passed on***— no Section 73/74 demand lies (nothing was utilised to discharge liability), but Section 122(1)(ii) and (vii) penalty applies.
- ***Key takeaway*** — Section 122 penalty proceedings are independent of, and do not require, a prior or parallel demand under Sections 73/74; the two operate on separate legal footings even on the same facts.

# Section 122(1A), (2) and (3) — Who Else Can Be Penalised

## 1. SECTION 122(1A) *(Inserted by the Finance Act, 2020, effective 1 January 2021)*

"Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of *an amount equivalent to the tax evaded or input tax credit availed of or passed on.*"

**Section 122(1A) uses the deliberately open phrase "any person" — as opposed to "taxable person" — which is the textual hook for director/KMP liability.**

### Key Points

- Two conjunctive conditions:
  1. The person must retain the benefit of the transaction, AND
  2. The transaction must be conducted at that person's instance.

## 2. SECTION 122(2) — GENERAL PENALTY *(Mirrors Section 73/74)*

### Non-Fraud Cases

Penalty shall be **10% of the tax due** or **₹10,000**, whichever is higher.

### Fraud Cases

Penalty shall be the **tax due itself** or **₹10,000**, whichever is higher.

## 3. SECTION 122(3) — SPECIFIC PENALTIES

**Penalty up to ₹25,000** may be imposed for:

- Abetment or facilitation of any of the offences specified in sub-section (1).
- Dealing in goods liable to confiscation under the Act.
- Failure to appear in pursuance of a summons issued under the Act.
- Failure to account for an invoice issued duly or otherwise properly.

These provisions ensure deterrence against tax evasion, wrongful availment/utilisation of ITC, and non-compliance, and extend accountability beyond the immediate taxable person where applicable.

# Penalising Directors and Employees — The Statutory Basis

## Interplay of Section 122(1A) and Section 137 under the GST Law

Different scopes. A common question.

### Section 122(1A)
Who can be penalised?

**Targets "any person"**

Section 122(1A) provides for a penalty on any person who:

1. retains the benefit of, and
2. at whose instance, specified transactions are conducted (e.g., supply without receipt of consideration, use of fake invoices, etc.).

**Not restricted to a "taxable person"**

The provision is not, on its face, limited to a registered or taxable person. It can therefore extend to other persons (including those outside the GST registration net) if they meet the conditions above.

### Section 137
Offences by companies

**Deems multiple persons guilty**

Where an offence under the GST law is committed by a company, Section 137 deems the following to be guilty of the offence:

1. the company itself;
2. every person in charge of and responsible to the company for the conduct of its business; and
3. any director, manager, secretary or other officer who has consented to, connived in or is negligent in relation to the offence.

**Due-diligence defence**

A person can avoid liability if they prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent its commission (Section 137(4)).

### Nature and context
Different chapters, different purposes

**Section 137 is part of the prosecution architecture**

Section 137 sits in Chapter XIX of the CGST Act, which deals with offences, prosecutions, compounding and related matters. It embodies a principle of vicarious liability for criminal offences committed by companies, subject to the due-diligence defence under Section 137(4).

**Section 122 is a civil penalty provision**

Section 122, including sub-section (1A), provides for monetary penalties for specified contraventions. These proceedings are civil in nature and are distinct from criminal prosecution.

**The central tension**

Can the vicarious-liability logic of **Section 137** (offences by companies) be imported into a **Section 122** civil penalty proceeding?

?

In other words, can directors, managers or other persons be held vicariously liable under **Section 122** on the same basis as under **Section 137**, even though Section 122 is a civil provision and not a criminal one?

# BOM HC: Shantanu Sanjay Hundekari v. Union of India – Bom HC (2024) 17 Centax 18

| | |
|---|---|
| **Subject** | Sections 122(1A) and 137 of the CGST Act do not fasten vicarious/penal liability on an employee for the company's alleged tax evasion, absent the necessary jurisdictional ingredients being made out against them personally. |
| **Facts** | • The petitioner was a **Taxation Manager** at Maersk Line India Pvt. Ltd., holding a power of attorney to represent the company before tax authorities.<br>• An SCN under Sections 122(1A) and 137 personally demanded a **penalty of ₹3,731 crore** — the tax allegedly evaded by Maersk through wrongful ITC across 11 GST registrations.<br>• He had no operational control of the company and had cooperated fully with the investigation |
| **Decision of the court** | • Section 122(1A) requires personal retention of benefit; a salaried employee acting in a purely representational/compliance capacity, with no personal enrichment alleged even in the SCN itself, does not satisfy the ingredient.<br>• It is not permissible to read a principle of vicarious liability into Sections 122 and 137 so as to fasten an employee with the company's tax liability. **SCN quashed**.<br>• The **Union of India's SLP against this order was dismissed by the Supreme Court** on 24 January 2025, the Court observing the petitioner "**were merely an employee of the Company and he could not have been fastened with the liability.** |

# Post-Hundekari — A Genuine Split Across High Courts – Restrictive View

## Bombay HC: Amit Manilal Haria & Ors. v. Joint Commissioner, CGST & Central Excise 2026 SCC OnLine Bom 1510

| | |
|---|---|
| **Subject** | Section 122(1A) cannot be retrospectively used to impose penalty on corporate officers for past transactions without satisfying the statutory requirements; employees/officers cannot automatically be treated as personally liable for the company's GST violation. |
| **Facts** | • The petitioners were the CFO, CEO and Joint Managing Director of Shemaroo Entertainment Ltd.<br>• An Order-in-Original dated 1 February 2025 imposed a penalty of approximately ₹133.60 crore on each petitioner under Section 122(1A), arising from alleged wrongful availment/passing of ITC.<br>• The petitioners challenged the jurisdiction to impose personal penalties and contended that Section 122(1A), which came into force from 1 January 2021, could not be retrospectively applied to earlier transactions |
| **Decision of the court** | • The Court emphasised that **personal penalty under Section 122(1A) requires the requisite connection of the individual with the transaction, including retention of the benefit** and the transaction being conducted at that person's instance.<br>• **The retrospective application of Section 122(1A) to transactions preceding 1 January 2021 was also held unsustainable.**<br>• The impugned proceedings/penalties against the petitioners were consequently set aside |

# Post-Hundekari — A Genuine Split Across High Courts – Expansive View

## Gauhati High Court: Mayank Bansal v. Union of India & Ors. WP(C) 24/2026;

| | |
|---|---|
| **Subject** | Partners can potentially be subjected to Section 122(1A) penalties where the statutory requirements of retaining the benefit and acting at the instance of the individual are established; Section 122(1A) may also apply to earlier transactions in the circumstances considered by the Court. |
| **Facts** | • The petitioners were partners of, a construction firm. SCN dated 3 August 2024 alleged GST evasion in respect of construction services to landowners.<br>• Penalties equivalent to the tax allegedly evaded were imposed personally on the partners under Section 122(1A).<br>• The partners relied upon ***Shantanu Sanjay Hundekari*** and ***Amit Manilal Haria***, arguing that they were not the taxable person and that Section 122(1A) could not operate retrospectively.. |
| **Decision of the court** | • **The Gauhati High Court took a different view from the Bombay High Court and held that Section 122(1A) refers to "any person" who satisfies its two cumulative conditions — retention of the benefit and the transaction having been conducted at that person's instance.**<br>• **The Court held that the provision can therefore apply to natural persons such as partners where the factual findings establish the statutory conditions**.<br>• It further held that Section 122(1A) does not create a new substantive offence but operates in relation to violations already contained in Section 122(1); **consequently, its application to earlier transactions was not treated as impermissible retrospectivity.** |

# Post-Hundekari — A Genuine Split Across High Courts – Expansive View

## Delhi HC - Gurudas Mallik Thakur v. Commissioner of Central Goods & Services Tax & Anr.W.P.(C) 5083/2025

| | |
|---|---|
| **Subject** | Individuals who are found to have retained the benefit of specified GST violations may attract Section 122(1A) penalties; the mere status of being a director, however, is not by itself determinative. |
| **Facts** | • The petitioners were directors of M/s Planman HR Pvt. Ltd., a manpower-recruitment business against which the Department alleged substantial GST short-payment and inadmissible ITC.<br>• The Order-in-Original confirmed GST demand of approximately ₹40.61 crore, along with ITC demand and interest, and imposed personal penalties on the directors and other persons.<br>• The petitioners argued that they were not the persons responsible for the company's GST compliance and that they were not "taxable persons" upon whom the statutory liability could be fastened. |
| **Decision of the court** | • The Delhi High Court did not accept the petition as a basis for completely eliminating the statutory proceedings against the individuals.<br>• The Court recognised that Section 122(1A) is concerned with the person who retains the benefit of the specified transaction and at whose instance it was conducted.<br>• The petitioners were relegated to the statutory appellate remedy, while the Department was required to facilitate the appeal process |

# Supreme Court Seized — Mukesh Kumar Garg v. Union of India

- ***Mukesh Kumar Garg v. Union of India & Ors.*** — SLP(C) No. 18178/2025, Supreme Court, order dated 4 August 2025 (Pankaj Mithal & Prasanna B. Varale, JJ.), arising from a Delhi High Court decision declining relief against the petitioner (alleged to have set up 28 firms to fraudulently avail approx. ₹115.73 crore of fake ITC).
- ***Leave granted on two questions*** — **(1) whether Section 122(1) applies to a non-taxable person; and (2) whether Section 122(1A), in force only from 1 January 2021, can be applied retrospectively to Assessment Years 2017-2020.**
- ***Interim relief*** — recovery of the demanded amount stayed, conditional on the appellant depositing 25% of the demand.
- ***Status*** — as of this presentation, the **SLP remains PENDING**. This is the vehicle in which the Supreme Court is expected to authoritatively resolve the Bombay-vs-Delhi/Gauhati split on both the scope and retrospectivity questions — practitioners should watch this matter closely.

SECTION 02

# No *Proper Officer* under Section 122

# The “No Proper Officer” Issue under Section 122

## 1. THE PATTERN OF PROPER-OFFICER CIRCULARS

CBDT/CBIC has, through specific circulars, assigned ‘proper officers’ for certain provisions:

| | |
|---|---|
| Circular No. 1/1/2017-GST (26.06.2017) → | Assigned proper officers for **registration and composition levy** |
| Circular No. 3/3/2017-GST (05.07.2017) → | Assigned proper officers for **Sections 73 and 74** |
| Circular No. 31/05/2018-GST (09.02.2018, as amended) → | Assigned proper officers for **Sections 73 and 74** |

## 2. THE GAP

**None** of the above circulars, nor the later Circulars—

- Circular No. 169/01/2022-GST →
- Circular No. 239/33/2024-GST →

(both confined to Section 73/74 DGGI–adjudication mechanics) ever assigned a proper officer competent to invoke and adjudicate **Section 122 penalty proceedings**.

## 3. PRACTICAL CONSEQUENCE

Officers issuing Section 122 penalty notices over eight years of GST’s operation appear to have done so **without any express delegation** for that specific provision, typically riding on their **Section 73/74 jurisdiction** rather than a **distinct authorisation for Section 122 itself.**

# Circular No. 254/11/2025-GST — CBIC's Own Admission

- ***Dated 27 October 2025*** — CBIC expressly records: **"It is observed that no proper officer has been assigned in respect of the following provisions" — listing Section 74A, Section 75(2), Section 122 ("the penalties in respect of certain offences"), and Rule 142(1A).**
- ***New assignment*** — **the circular for the first time formally assigns proper officers for Section 122** on a monetary-limit basis: Superintendent up to ₹10 lakh (CGST); Deputy/Assistant Commissioner ₹10 lakh to ₹1 crore; Additional/Joint Commissioner above ₹1 crore (with corresponding, higher IGST thresholds).
- ***Significance*** — this is, on its own terms, the first-ever formal proper-officer assignment for Section 122 — roughly eight years after Section 122 came into force in 2017.

# Andhra Pradesh HC: Ganapati Ispat v. Union of India W.P. No. 31263/2025

| | |
|---|---|
| **Subject** | **Pre 27 Oct 2025 Section 122 penalty notice set aside for lack of proper-officer designation**, but declines to hold that officers notified under Notification No. 02/2017-CT categorically lack power under Section 122, and grants the department liberty to issue a fresh notice. |
| **Facts** | • An SCN was issued to the petitioner under Section 122 alleging circular trading, warranting penalty.<br>• The petitioner challenged the SCN's validity on the ground that no proper officer had ever been assigned for Section 122<br>• The Department argued that the Officer were already assigned for the purposes of the CGST Act as per Notification No. 2/2017-Central Tax |
| **Decision of the court** | • Notification No. 2/2017-Central Tax, dated 19.06.2017, which fixes only the TERRITORIAL jurisdiction of Central Tax officers, cannot be read as also conferring the SUBSTANTIVE power to initiate Section 122 penalty proceedings;<br>• Territorial jurisdiction and subject-matter authorization are analytically distinct.<br>• The SCN was quashed for want of jurisdiction, with liberty granted to issue a fresh, properly authorised notice — a narrower, case-specific outcome rather than a sweeping declaration that all pre-Circular-254 Section 122 proceedings nationwide are void ab initio. |

# Section 2 — Key Takeaways

- ***Section 122 stands on its own footing*** — penalty proceedings under Section 122 do not require, and are not barred by the absence of, a sustainable Section 73/74 demand.
- ***Director/employee liability is genuinely unsettled*** — both the scope of "any person" and the retrospectivity of Section 122(1A) are pending before the Supreme Court in Mukesh Kumar Garg; do not advise on the basis of any single High Court line as though it were settled.
- ***The jurisdictional gap is a live, fact-specific defence*** — worth raising in any pending or past Section 122 proceeding, particularly one predating Circular No. 254/11/2025-GST, though the relief available (fresh notice with liberty, not a blanket nullity) should be candidly explained to clients.

SECTION 04

# The Amnesty Scheme under Section 128A

# Section 128A — Objects and Reasons

## 1. INTRODUCTION

- Inserted by the Finance (No. 2) Act, 2024 on the recommendation of the **53rd GST Council meeting**.
- Effective **1 November 2024** (Notification No. 17/2024-Central Tax).
- Operationalised through **Rule 164** of the CGST Rules.

## 2. RATIONALE

GST's formative years (FY 2017-18 to FY 2019-20) saw widespread genuine compliance difficulty as businesses adapted to a new, complex law. **Section 128A** gives conditional relief from interest and penalty for non-fraud (Section 73) demands of that period, provided the full tax is paid by the notified date – reducing the litigation backlog from GST's early years rather than penalising taxpayers for teething problems.

## 3. SCOPE

- Confined to Section 73 demands for the period **1 July 2017 to 31 March 2020**.
- A Section 74 notice subsequently redetermined as a Section 73 demand (via Section 75(2), following an appellate/Tribunal finding that fraud is not established) **also qualifies.**

## 4. EXCLUSIONS

- Section 74 (fraud) demands not subject to redetermination.
- Erroneous refunds.
- Cases involving ongoing prosecution.
- And – per Circular No. 238/32/2024-GST, discussed shortly – **self-assessed liability recoverable under Section 75(12).**

**KEY TAKEAWAY** | Section 128A is a targeted, one-time relief measure for the initial years of GST to encourage voluntary compliance by granting waiver of interest and penalty in genuine non-fraud cases, upon payment of full tax.

# Requirements for Availing Section 128A — At a Glance

**1.** Is the demand a Section 73 (non-fraud) demand for the period 1 July 2017 to 31 March 2020 — or a Section 74 demand subsequently redetermined as Section 73 under Section 75(2)? If not, Section 128A does not apply.

**2.** Identify the procedural category under Rule 164: (1) notice/statement issued, no order yet — Form SPL-01; (2) order passed, first appeal available/pending — Form SPL-02; (3) first appellate order passed, second appeal pending — Form SPL-02; (4) case redetermined from Section 74 to Section 73 — Form SPL-02.

**3.** Pay the full tax demanded by the prescribed deadline (March 31, 2025). Interest and penalty already paid before commencement of the scheme are not refundable.

**4.** Withdraw any pending appeal or writ petition against the demand, in whole or in the relevant part, as a condition of closure.

**5.** File the application in the applicable form (SPL-01/SPL-02) within the time prescribed under Rule 164.

**6.** The proper officer processes the application and issues Form SPL-05 (order of full waiver/closure) or Form SPL-07 (rejection), subject to Rule 164(15)-(17) on erroneous grant.

# Circular No. 238/32/2024-GST — The Self-Assessed Tax Exclusion

- ***Dated 15 October 2024*** — clarifies that the Section 128A waiver of interest and penalty is NOT available where the interest arises from **delayed filing of returns or delayed reporting of a supply in the return**, on the reasoning that such interest relates to "self-assessed liability" directly recoverable under Section 75(12) — i.e., the department's position that such liability was never a "Section 73 demand" to begin with.
- ***Why this is contentious*** — Section 128A's own text does not itself carve out Section 75(12)/self-assessed liabilities; the exclusion is entirely a product of the circular's interpretive gloss, not of any express statutory or Rule 164 provision.
- ***A further definitional wrinkle*** — the Section 75(12) Explanation, extending "self-assessed tax" to amounts shown in GSTR-1 but not carried into GSTR-3B, took effect only from 1 January 2022 — applying that later, expanded definition to earlier FY 2017-20 periods is itself argued to be an unauthorised, retrospective reading.

# On What Grounds Can the Circular Be Challenged?

- ***A circular cannot override the parent statute*** — ***CCE, Bolpur v. Ratan Melting & Wire Industries*** (Constitution Bench): "A circular which is contrary to the statutory provisions has really no existence in law.". A subordinate circular cannot curtail or add conditions to a statutory amnesty expressly granted under Section 128A, particularly where the assessee satisfies all conditions prescribed by the provision; what the statute does not prohibit cannot be prohibited through a circular.
- The principle that circulars may supplement/clarify but cannot supplant or override the statute was recognised in ***Pitambra Books Pvt. Ltd. v. Union of India, 2020-TIOL-206-HC-DEL-GST***, while ***Mauri Yeast India Pvt. Ltd. v. CCE, 2008 (225) E.L.T. 321 (S.C.)***
- ***Delegated clarification cannot add a condition Parliament did not enact*** — Section 128A's eligibility is tied to the existence of a Section 73 notice/order; nothing in the section, or in Rule 164, excludes Section 75(12)/self-assessed liability. The exclusion is purely a product of the circular.
- ***Beneficial, remedial legislation should be liberally construed*** — Section 128A, being a beneficial/amnesty provision intended to encourage compliance and reduce legacy GST litigation, must receive a purposive and liberal interpretation rather than a hyper-technical construction that defeats its object.
- The Bombay High Court's decisions in ***Nabeel Construction Pvt. Ltd. v. Union of India, 2023 (68) G.S.T.L. 260 (Bom.)*** and ***UCN Cable Networks (P) Ltd. v. Designated Committee under SVLDRS, 2022 (58) G.S.T.L. 407 (Bom.)*** further support liberal construction of amnesty schemes

# Incompressible Fluid Control System vs. Assistant Commissioner – Mad HC

| | |
|---|---|
| **Subject** | Madras HC allows Section 128A GST amnesty waiver even for self-assessed tax cases, holding that a CBIC circular excluding such cases cannot curtail or override the wider scope granted by the statute itself.. |
| **Facts** | • A batch of taxpayers challenged rejection of their Section 128A applications, the department having denied the waiver on the ground that the liability was self-assessed tax arising from belated GSTR-3B filings, relying on Circular No. 238/32/2024-GST.<br>• Some petitioners had initially received approval orders under the scheme which the department later purported to declare void. |
| **Decision of the Court** | • There is no express or implied exclusion of self-assessed tax liabilities from the scope of Section 128A in the statute itself; a CBIC circular cannot curtail the scope and ambit of a statutory provision.<br>• The only statutory precondition for relief is that the demand arise under Section 73 proceedings.<br>• Orders purporting to void previously-granted waivers were held unauthorized except strictly within the circumstances contemplated by Rule 164(16)/(17). |

# Maas Infra Logistics India Private Limited — Pending, Bombay High Court

- ***Maas Infra Logistics India Private Limited, WP No. 3328 of 2026*** — a similar challenge to Circular No. 238/32/2024-GST's restriction on Section 128A relief for self-assessed liability is currently pending before the Bombay High Court.
- ***Practical note*** — this matter directly parallels the reasoning in Incompressible Fluid Control System (Madras High Court, discussed on the previous slide); the outcome will be of direct interest to taxpayers within the Bombay High Court's jurisdiction facing the same circular-based rejection.

# Section 4 — Key Takeaways

- ***Section 128A is a time-bound, conditional relief*** — for non-fraud Section 73 demands of FY 2017-18 to FY 2019-20; the eligibility conditions under Rule 164 must be followed precisely, including timely full payment and withdrawal of pending appeals.
- ***The self-assessed-tax exclusion is vulnerable*** — Circular No. 238/32/2024-GST's restriction is not rooted in the statute, and the weight of current judicial opinion (Incompressible Fluid Control System) favors the taxpayer; the same question is pending before the Bombay High Court in Maas Infra Logistics.
- ***Taxpayers wrongly denied the waiver on this ground*** — have a credible basis to challenge the rejection, though the outcome of the pending Bombay High Court matter should be tracked before finalizing litigation strategy in that jurisdiction.

SECTION 05

# Critical Provisions of Adjudication under Section 75

# Section 75 — General Provisions Relating to Determination of Tax

**ROLE**

Section 75 supplies the common procedural safeguards that govern adjudication under **Sections 73, 74 and (with parallel** provisions) **74A**; it is best understood as the **"rules of adjudication"** that sit alongside the charging/machinery provisions.

## SUB-CLAUSES AT A GLANCE

**75(1)**
Excludes any period during which the operation of any law was stayed by a court from the period of limitation.

**75(2) / (2A)**
Govern conversion of proceedings/notice where fraud is not established.

**75(3)**
Fixes a 2-year outer limit for passing orders pursuant to directions of an appellate authority or Tribunal.

**75(4)**
Mandatory personal hearing before passing an order.

**75(5)**
Caps the number of adjournments that may be granted to a maximum of three.

**75(6)**
Mandates that the order passed shall be in writing and shall be reasoned.

**75(7)**
The demand in the order cannot go beyond the grounds of the SCN.

**75(8) – (11)**
Govern consequential adjustments of tax, ITC, refund, input and interest.

**75(12)**
Allows direct recovery of self-assessed tax without issuance of an SCN.

**75(13)**
Bars levy of penalty more than once in respect of the same act or omission.

## FOCUS OF THIS SECTION

**Section 75(2)**
Conversion between Sections 73 and 74 (where fraud is not established).

**Section 75(4)**
Mandatory personal hearing before passing an order.

**Section 75(5)**
Adjournments limited to a maximum of three.

**Section 75(7)**
Demand in the order cannot travel beyond the SCN.

**Section 75(12) / (13)**
Direct recovery of self-assessed tax and bar on double penalty.

# Conversion Between Sections 73 and 74

- ***The mechanism*** — where an **appellate authority, Appellate Tribunal or court (No Adjudicating Authority)** concludes that the charges of fraud, wilful misstatement or suppression are not established, the proper officer must determine tax as if the notice had been issued under Section 73(1), with Section 73's limitation period applying from that point. This is a one-way deeming fiction — the statute contains no corresponding express mechanism to convert a Section 73 notice into a Section 74 notice.

- ***Sterling & Wilson Pvt. Ltd. v. Commissioner, Odisha Commissionerate*** — GSTAT, Principal Bench, decided 13 February 2026 (the Tribunal's first substantive order).

| | |
|---|---|
| **Subject** | GSTR-1/GSTR-3B mismatch alone can't sustain a Section 74 fraud demand — remanded to the proper officer for re-determination under Section 73. |
| **Facts** | • A Section 74 SCN alleging fraud, based on a GSTR-1/GSTR-3B mismatch, was found by the First Appellate Authority itself to lack fraud — but the FAA then itself converted the case to Section 73 and confirmed a reduced penalty |
| **Decision of the Court** | • The Section 75(2) redetermination power vests only in the proper officer who issued the original notice, not in the appellate authority; **the FAA's own conversion was set aside and the matter remanded to the proper officer.**<br>• Section 75(2) is best understood as a jurisdictional allocation, not a power the appellate forum may exercise on its own account — a distinction that is easy to overlook and has real consequences for who must pass the redetermined order |

# The Mandatory Requirement of Personal Hearing

- ***The safeguard*** — Section 75(4) mandates a personal hearing where a written request is made by the person chargeable with tax or penalty, OR wherever any adverse decision is contemplated against that person — even in the absence of any request.
- ***Shri Keshav Cements and Infra Ltd v. Deputy Commissioner of Commercial Taxes (Audit)*** — Karnataka High Court, decided 21 January 2026.

| | |
|---|---|
| **Subject** | An adverse GST order passed without the personal hearing mandated by Section 75(4) is unsustainable. |
| **Facts** | • During audit, the Department questioned ITC relating to the solar plant, insurance/financial services, works contracts, construction and vehicle repairs and subsequently issued a SCN.<br>• An Order-in-Original dated 12 November 2025 disallowed ITC and raised a liability of approximately ₹7.23 crore, without granting the petitioner a personal hearing despite the adverse decision contemplated by Section 75(4). |
| **Decision of the Court** | • The Karnataka High Court held that Section 75(4) mandates an opportunity of personal hearing where an adverse decision is contemplated.<br>• The Court also found that the ordinary appellate remedy was not sufficiently efficacious in the circumstances, particularly given the relationship between the Advance Ruling authority and the appellate hierarchy.<br>• The impugned order was **set aside and the matter remanded** for fresh consideration after granting the petitioner a personal hearing. |

# Shree Gurukrupa Tradelink Pvt. Ltd. v. State of Gujarat – Guj HC 18 March 2026

| | |
|---|---|
| **Subject** | **A taxpayer's portal selection of "No" for personal hearing** does not override the statutory mandate of Section 75(4) where an adverse order is contemplated. |
| **Facts** | • A SCN in Form GST DRC-01 was issued on 16 October 2023, with a hearing fixed for 6 November 2023.<br>• The petitioner filed a reply in Form GST DRC-06 and selected "No" against the portal option for personal hearing.<br>• The authority nevertheless proceeded on the basis of a single hearing opportunity and passed an adverse order without granting the further hearing contemplated under Section 75(4).<br>• Before the High Court, the State accepted that the petitioner had **not been given the requisite three hearing opportunities** |
| **Decision of the Court** | • **The Court held that the taxpayer's selection of "No" could not override the statutory obligation under Section 75(4).**<br>• Where the reply is not accepted and an adverse decision is contemplated, a meaningful opportunity of hearing must be provided before final adjudication.<br>• The impugned order was quashed and set aside, and the matter was remanded for fresh adjudication within 12 weeks. |

# All HC - M/s Jai Durga Readymade Collection v. State of UP Writ Tax No. 838/2026

| | |
|---|---|
| **Subject** | Fixing the date for filing the reply and the date of personal hearing on the same day does not constitute a meaningful opportunity of hearing under Section 75(4). |
| **Facts** | • The petitioner challenged an assessment/demand order passed under the GST Act.<br>• **The Department's notice fixed the deadline for filing the reply and the date of personal hearing effectively on the same date.**<br>• The petitioner contended that this deprived it of a reasonable opportunity to prepare its defence and participate meaningfully in adjudication.<br>• The issue arose in the context of the statutory requirement of personal hearing before an adverse GST order |
| **Decision of the Court** | • The Allahabad High Court held that personal hearing is not an empty procedural formality and must be a real and meaningful opportunity.<br>• **Fixing the reply deadline and hearing date together effectively deprives the assessee of adequate time to respond and present its case**.<br>• The impugned order was quashed and the matter remanded for fresh adjudication after granting proper opportunity of hearing. |

# Bar on Demand and Actions Travelling Beyond the SCN

- ***Section 75(7)*** — the amount of tax, interest and penalty confirmed by the order shall not exceed the amount specified in the notice, and no demand shall be confirmed on grounds other than the grounds specified in the notice.
- **Delhi HC - Ujjwal Garg vs. Commissioner, Department of Trade and Taxes (2024) 24 Centax 49 (Del.)**

| | |
|---|---|
| **Subject** | GST registration suspended for violation of Rule 86B cannot continue after deposit of required amount, as suspension has wide adverse ramifications for business and requires due consideration. |
| **Facts** | • The Petitioner, carrying on business under the trade name "Shri Salasar Balaji Steel", was issued a Show Cause Notice proposing cancellation of GST registration solely on the ground of violation of Rule 86B.<br>• Pursuant to the notice, the Petitioner's GST registration was suspended.<br>• The Petitioner deposited the amount required to satisfy the 1% cash payment requirement under Rule 86B and sought restoration of registration.<br>• **The Department sought to justify continuation of suspension by contending that the Petitioner's name appeared in a list of fake firms, though no such allegation formed part of the Show Cause Notice.** |
| **Decision of the Court** | • **The only allegation contained in the SCN pertained to violation of Rule 86B and the same stood remedied upon deposit of the requisite amount by the taxpayer.**<br>• **Allegations relating to the taxpayer being a "fake firm" could not be relied upon as the same did not form part of the SCN.**<br>• The Court directed restoration of registration and held that allegations not forming part of the show cause notice could not be relied upon.<br>• Suspension of registration has serious business consequences and requires due consideration. Writ Petition Allowed; GST registration restored. |

# Bar on Demand and Actions Travelling Beyond the SCN

- **M/s Raksha Enterprises v. State of U.P. & Anr.Writ Tax No. 1864/2025; Allahabad High Court**

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|---|---|
| **Subject** | A GST demand cannot exceed the amount or grounds specified in the SCN; an adjudication order must also contain the relevant facts and basis of the decision. |
| **Facts** | • The petitioner challenged orders dated 30 May 2024 and 8 August 2024 under Sections 61, 73 and 161 of the GST legislation.<br>• The SCN indicated a particular tax/interest/penalty amount, whereas the final order raised a substantially higher demand of approximately ₹48.57 lakh.<br>• The petitioner also contended that it had not been aware of the notices because they had been uploaded on the portal.<br>• The Court considered the statutory restrictions under Sections 75(6) and 75(7). |
| **Decision of the Court** | • The Court held that Section 75(7) expressly prohibits an order from demanding tax, interest or penalty in excess of the amount specified in the notice or confirming a demand on grounds different from those specified in the notice.<br>• The Court also emphasized that an adjudication order must contain relevant facts and the basis for the decision under Section 75(6).<br>• The impugned orders were quashed and the matter remanded, with opportunity to file a reply and thereafter obtain a fresh adjudication.. |

# Requirement of a Speaking Order and Communication thereof

- **Duttcon Consultant and Engineers Pvt. Ltd. v. Assistant Commissioner of State Tax, Shyambazar ChargeWPA No. 24188/2025; Calcutta High Court**

| | |
|---|---|
| Subject | **A summary DRC-01/DRC-07 without relevant particulars and reasons, coupled with denial of hearing, cannot sustain a GST adjudication order; portal upload under the "Additional Notices and Orders" tab may not constitute proper service in the circumstances.** |
| Facts | • The petitioner challenged a summary SCN in Form DRC-01 dated 13 June 2024 and an adjudication order in Form DRC-07 dated 15 July 2024 under Section 73.<br>• The petitioner contended that the documents uploaded under the GST portal's "Additional Notices and Orders" tab did not provide sufficient factual details to enable an effective response. The order was passed ex-parte and the petitioner claimed to have become aware of the proceedings only when a garnishee notice was issued to its bank.<br>• The petitioner also complained of violation of Sections 75(4) and 75(6) and the principles of natural justice. |
| Decision of the Court | • The Calcutta High Court held that the adjudication order was bereft of relevant facts and reasons and therefore failed the requirements of Section 75(6).<br>• The Court also found that no proper opportunity of hearing had been granted under Section 75(4).<br>• **Relying on earlier Calcutta High Court authority, the Court held that service merely through the "Additional Notices and Orders" tab was improper in the circumstances.**<br>• The order was set aside; a detailed SCN was directed to be issued, the petitioner was given time to reply, and the bank attachment founded on the quashed order was lifted. |

# Section 5 — Key Takeaways

- ***Section 75 is the common rulebook*** — for adjudication across Sections 73, 74 and 74A; a violation of any of its sub-clauses is an independently viable ground of challenge, distinct from the merits of the underlying tax demand.
- ***Personal hearing cannot be waived by the noticee*** — once an adverse decision is in contemplation, Section 75(4) applies regardless of what was ticked on the reply form.
- ***The SCN sets the outer boundary*** — of both quantum and grounds; Section 75(7) is currently one of the most successfully litigated safeguards.
- ***Section 75(13) remains an open frontier*** — the interaction between Section 122 penalties and dropped Section 73/74 demands deserves closer scrutiny than it has so far received.

# Way Forward After Issuance of Adjudication Orders

# Sections 107, 112 and 169 — The Framework

**Section 107(1) & (4)**

- **Section 107(1)** — Appeal to the First Appellate Authority lies within **3 months** from the date on which the decision or order is **COMMUNICATED** to the person.
- **Section 107(4)** — Permits condonation of a further 1 month only, on sufficient cause.

**3 + 1**
**ceiling**
(3 months + condonation of 1 month only)

**Section 112(1)**

- Appeal to the GSTAT lies within **3 months** of communication of the order, or from a Government-notified date (whichever is later).
  - **For orders** communicated/served upto **April 1, 2026** last date after extension was **July 31, 2026**.
  - For orders communicated/served after **April 1, 2026**, 3 months from the date of service.

The notified-date mechanism has been used to create the extended backlog-appeal window discussed in **Section 7**.

**Section 169** — **Prescribes six modes of service:**

1. Tendering / giving directly or by messenger / courier
2. Registered post / speed post / courier with acknowledgement due
3. E-mail to the registered e-mail address
4. The common portal
5. Newspaper publication
6. Affixture where other modes are impracticable

Service is **deemed complete** on the date of tendering / publication / affixture, or, for postal service, on **expiry of the normal transit period** unless the contrary is proved.

**THE LIVE QUESTION**

Where an order is merely uploaded to the GST portal, **does limitation run from the date of upload,** or only from the date the assessee actually becomes aware of the order?

# “Served” Is Not Always “Communicated” — The Taxpayer-Favourable Line

***Elanco India Pvt. Ltd. v. Excise and Taxation Officer, Ambala*** — Punjab & Haryana High Court.

| | |
|---|---|
| **Subject** | Validity of Service of Adjudication Order under Section 169 of the CGST Act – Mere Uploading on GST Portal without Effective Communication. |
| **Facts** | • The Petitioner, engaged in the business of animal health products and medicaments, challenged an adjudication order.<br>• The Petitioner contended that the order was never served through any of the modes prescribed under Section 169 of the CGST Act. **According to the Petitioner, the order was merely uploaded on the GST portal without any separate communication.**<br>• The Petitioner had **already applied for cancellation of GST registration in 2020**, and therefore remained unaware of the order.<br>• The grievance of the Petitioner was that absence of proper service deprived it of the opportunity to challenge the order through the statutory appellate mechanism. |
| **Decision of the Court** | • **The Court accepted that the Petitioner became aware of the order only in April 2024 despite having been passed on 30.12.2023 and was therefore unable to avail the appellate remedy earlier.**<br>• The Court recognized that the Petitioner was prevented from availing the statutory appellate remedy due to lack of effective communication of the order.<br>• **Writ Petition disposed of with liberty to file appeal.** |

# “Served” Is Not Always “Communicated” — The Taxpayer-Favourable Line

## *Sharp Tanks and Structurals (P.) Ltd. v. Deputy Commissioner (GST) Appeals Madras High Court, Madurai Bench*

| | |
|---|---|
| **Subject** | Where a GST order is merely uploaded on the portal and is not otherwise communicated, the statutory appeal limitation does not necessarily begin to run; the taxpayer must be given proper communication of the order.. |
| **Facts** | • The petitioner faced GST demands for FY 2020-21 and FY 2021-22 following inspection and proceedings under Section 74.<br>• The petitioner had responded to the SCNs and participated in a personal hearing on 3 October 2023.<br>• The final orders dated 28 February 2024 were, according to the petitioner, only uploaded on the GST portal and were not otherwise communicated.<br>• Consequently, the petitioner missed the statutory appeal period and approached the High Court seeking relief. |
| **Decision of the Court** | • The Madras High Court held that mere downloading of an order from the portal for the purpose of filing a writ petition does not by itself establish prior communication of the order.<br>• **Since the orders had only been uploaded and had not been communicated in the circumstances of the case, limitation for appeal had not commenced.**<br>• The Department was directed to communicate the orders properly, after which the petitioner could file an appeal under Section 107.<br>• Until such communication, the orders could not be enforced against the petitioner.. |

# “Served” Is Not Always “Communicated” — The Taxpayer-Favourable Line

## *Saraswati Printers v. Sales Tax Officer Class-II/AVATO & Ors. Delhi High Court*

| | |
|---|---|
| **Subject** | Portal upload of an SCN is not automatically sufficient service where it is neither acknowledged nor acted upon; however, where the taxpayer actually responds to the SCN, subsequent challenge to SCN service may fail, while portal-only service of the final order may preserve the right of appeal. |
| **Facts** | • The petitioner challenged the validity of notifications designating the GST Common Portal and also challenged a demand order for FY 2020-21.<br>• The petitioner relied upon the Punjab & Haryana High Court's decision in Luxmi Traders, concerning portal-only service.<br>• In the Saraswati Printers matter, **the petitioner had actually filed a reply to the SCN dated 27 November 2024, thereby acknowledging and participating in the proceedings.**<br>• The final demand order dated 27 February 2025, however, had been served only through the Common Portal.. |
| **Decision of the Court** | • **The Delhi High Court held that because the petitioner had responded to the SCN, the proceedings could not be restored merely on the ground of portal-only service of the SCN.**<br>• However, since the demand order was served only through portal upload, the limitation period for statutory appeal was not treated as having been triggered in the ordinary manner.<br>• Saraswati Printers was given four weeks to file an appeal, which was to be entertained without a limitation objection, subject to other statutory requirements. |

# The Split Continues — And Is Now Before the Supreme Court

- ***A live split, even within the same High Court — M/s. Harish Constructions v. Assistant Commissioner (ST)***, Madras High Court (Madurai Bench), decided 4 August 2026, expressly took the opposite view from Sharp Tanks and Structurals: “the statute itself considers portal upload as one of the legally valid modes of service” under Section 169(1).
- ***State of Uttar Pradesh & Anr. v. M/s Bambino Agro Industries Ltd. & Anr.*** — the Allahabad High Court had earlier held that portal-upload alone does not amount to valid “communication.” On the **department's Special Leave Petition**, the Supreme Court (SLP (Civil) Diary No. 11683/2026, order dated 29 May 2026) **STAYED** that ruling and issued notice — meaning the correctness of the taxpayer-favourable line is now sub judice before the Supreme Court.
- ***Bottom line for practitioners*** — the weight of recent High Court authority favours requiring actual/effective communication, but the law is genuinely not settled, and the Supreme Court's eventual ruling on the Bambino Agro stay will be decisive. Advise clients not to rely on “I never received an email” as a stand-alone defence — build a complete factual record (no acknowledgment, no alternate mode of service actually attempted, genuine lack of access) rather than a bare assertion.

# Where This Leaves Practitioners

- ***No bright-line rule currently exists*** — on whether portal upload alone starts the limitation clock; the outcome is fact-sensitive and jurisdiction-sensitive, and now awaits Supreme Court resolution.
- ***Build the record at the earliest opportunity*** — document the date of actual knowledge, the absence of any acknowledgment or alternate-mode service, and, where relevant, the circumstances that genuinely prevented earlier portal access.
- ***File protectively*** — where there is any doubt, file the appeal computing limitation from the portal-upload date while separately and expressly reserving the communication objection, rather than allowing the nominal limitation period to lapse while the point is argued.

SECTION 06

# Pre-Deposit for Penalty Only Orders

# The New Proviso — 10% Pre-Deposit on Penalty Alone

- ***Proviso to Section 107(6)*** — “in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to **10%** of the said penalty has been paid by the appellant.”
- ***Proviso to Section 112(8)*** — an ADDITIONAL **10%** of the penalty is required at the GSTAT stage, cumulative with (i.e., on top of) the amount already paid under the Section 107(6) proviso.
- ***Effective date*** — introduced by Sections 129 and 130 of the Finance Act, 2025, **effective 1 October 2025** (CBIC Notification No. 16/2025-Central Tax, dated 17 September 2025).
- ***Why this matters*** — many penalty-only orders (for example, under Section 122 or Section 129) arise from SCNs issued well before this amendment; the question is whether the new pre-deposit condition can be applied to proceedings that commenced before 1 October 2025.

# Hoosein Kasam Dada — The Vested Right of Appeal – Supreme Court

- ***Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh*** — 1953 SCC OnLine SC 33 (also AIR 1953 SC 221). A subsequent amendment sought to impose, as a new condition precedent to entertaining an appeal, payment of the assessed tax — where the original provision under which proceedings commenced had no such condition.
- ***Held*** — **a right of appeal is a SUBSTANTIVE right, not merely procedural; it vests in the litigant from the date the proceedings (the lis) first commence, not from the date of the final adverse order**, which merely makes the already-vested right exercisable. Such a vested right cannot be taken away, impaired, or subjected to a more onerous condition by a later amendment, unless the amending legislature expressly so provides, or such intention is shown by necessary intendment.
- ***Why this is the governing precedent today*** — this 1953 principle is the doctrinal foundation on which every subsequent ruling on the 2025 pre-deposit amendment has been decided, as the following cases show.

# Delhi HC - Gaurav Jain & Anr. v. Joint Commissioner (Appeals-II),

| | |
|---|---|
| **Subject** | A statutory pre-deposit requirement introduced from 1 October 2025 for penalty-only GST appeals cannot be retrospectively imposed on proceedings initiated before that date. |
| **Facts** | • The petitioners faced penalty proceedings under Section 122(1A), with an Order-in-Original dated 16 December 2025 imposing penalties of approximately ₹346.55 crore on each petitioner, without an individual tax demand.<br>• The SCN initiating the proceedings had been issued on 25 June 2025, before the amended Section 107(6) proviso came into force.<br>• The substituted proviso, effective from 1 October 2025, required a 10% pre-deposit of the penalty for appeals against penalty-only orders.<br>• The petitioners challenged the demand for this additional pre-deposit, particularly as it would require a deposit of approximately ₹34.66 crore each |
| **Decision of the Court** | • **The Delhi High Court held that the amended pre-deposit requirement could not be retrospectively applied merely because the Order-in-Original was passed after 1 October 2025.**<br>• **The Court focused on the date on which the adjudicatory proceedings were initiated and the substantive appellate right existing at that time.**<br>• The petition was allowed, thereby protecting the petitioners from the retrospective burden of the enhanced penalty pre-deposit requirement. |

# GSTAT Hyderabad : Reddy Veeranna Constructions Pvt. Ltd. v. Appeal-I Commissioner & Ors.

| | |
|---|---|
| **Subject** | The additional 10% pre-deposit requirement for penalty-only appeals under Section 112(8), introduced with effect from 1 October 2025, cannot be retrospectively imposed on proceedings completed before that date.. |
| **Facts** | • The appellant challenged penalties imposed under Sections 122 and 125 read with Section 20 of the IGST Act, arising from alleged issuance of fake invoices without actual supply.<br>• The SCN, Order-in-Original and Order-in-Appeal had all been issued before 1 October 2025.<br>• **The Registry questioned admission of the appeal for want of the additional pre-deposit introduced by the Finance Act, 2025**.<br>• The dispute therefore concerned the temporal applicability of the amended Section 112(8). |
| **Decision of the Court** | • The Hyderabad GSTAT held that the amended proviso to Section 112(8) became effective only from 1 October 2025 and contained no indication of retrospective operation.<br>• A later procedural amendment could not burden an appeal arising out of proceedings already completed before the amendment.<br>• Accordingly, the Tribunal held that no additional 10% pre-deposit was presently required for admission of the appeal. |

# Further Interim Relief Along the Same Lines

- ***Anukul Bindal v. Union of India*** — Writ Tax No. 2096 of 2026, Allahabad High Court. The petitioner contended his right of appeal vested from the date of the SCN, predating the 10% pre-deposit requirement;
- Relying on Hoosein Kasam Dada, the Court directed, as an interim measure, that the appeal be entertained without insisting on the pre-deposit where filed within the stipulated period.
- ***M.M. Traders v. State of U.P.*** — SLP (Civil) Diary No. 28833 of 2026. The Supreme Court, by order dated 25 May 2026, directed that the appeal be entertained without pre-deposit, subject to the outcome of the SLP.
- Where the does this leave the Practitioners?:
  - ***The weight of current authority favours taxpayers*** — the 10% pre-deposit requirement on penalty-only orders, effective 1 October 2025, should not be treated as mandatory for proceedings where the SCN was issued before that date.
  - ***Anchor every submission in Hoosein Kasam Dada*** — the vested-right doctrine is doing all of the real work in this line of cases and should be the lead authority in any pre-deposit challenge.
  - ***Where in doubt, seek interim relief*** — rather than allowing an appeal to be rejected for non-payment, given the consistent willingness of both High Courts and the GSTAT to grant interim protection on this point.

SECTION 06

# Condonation of Delay in Appeal Filing beyond 3+1 Months

# Can Delay Be Condoned Beyond the Statutory 3+1 Months?

- ***The statutory ceiling*** — **Section 107(4) permits the First Appellate Authority to condone delay of only one further month beyond the three-month limitation period;** there is no express statutory power to condone delay beyond that "3+1 month" ceiling, and **Section 5 of the Limitation Act has been held not to override this special-statute limit.**
- ***The resulting gap*** — where genuine, bona fide delay exceeds four months — for reasons entirely outside the taxpayer's control — the Appellate Authority has no jurisdiction to condone it, no matter how compelling the explanation.
- ***The recognised escape valve*** — High Courts have consistently held that while the STATUTORY appellate authority cannot condone delay beyond 3+1 months, the High Court itself, exercising extraordinary writ jurisdiction under Article 226, may do so in appropriate cases.

# M/s. Nagson and Co. v. Jt. Commr of Central Tax (Appeals-II), Bengaluru — Karnataka High Court

| | |
|---|---|
| **Subject** | The High Court can exercise Article 226 jurisdiction to condone delay in a GST appeal even though the statutory appellate authority itself lacks power to condone delay beyond the period prescribed under Section 107. |
| **Facts** | • The petitioner's GST registration had been cancelled and the petitioner subsequently preferred an appeal under Section 107.<br>• **The appeal was filed beyond the prescribed period because of financial constraints, non-filing of returns and the COVID-19 pandemic.**<br>• The appellate authority dismissed the appeal on the ground that Section 107 did not permit it to condone delay beyond the statutory outer limit.<br>• The petitioner approached the High Court under Article 226, relying upon earlier Karnataka High Court decisions including ***Simplex Infrastructure and Himalaya Drug Company***. |
| **Decision of the Court** | • **The Karnataka High Court held that although the appellate authority has no jurisdiction to condone delay beyond the statutory limit, the constitutional writ jurisdiction of the High Court remains available in appropriate cases.**<br>• Considering the bona fide explanation and surrounding circumstances, the Court interfered with the orders rejecting the appeal.<br>• The petitioner was permitted to file GST returns and the matter was restored subject to payment of outstanding dues within the stipulated period. |

# M/s Vasudeva Engineering v. Union of India & Ors. - P&H High Court

| | |
|---|---|
| **Subject** | The High Court may exercise writ jurisdiction to condone delay in filing a GST appeal where the statutory appellate authority has exhausted its limited power of condonation, so that a genuine taxpayer is not rendered remediless. |
| **Facts** | • The petitioner challenged rejection of its GST appeal as time-barred under Section 107.<br>• The appeal had been filed beyond the prescribed period, including beyond the additional 30-day period which the appellate authority could statutorily condone.<br>• The petitioner had nevertheless made the required pre-deposit and sought consideration of the appeal on merits.<br>• The High Court considered the consequence of an assessee being deprived of an effective remedy solely because of delay. |
| **Decision of the Court** | • The Punjab & Haryana High Court held that Section 107 does not eliminate the High Court's constitutional power under Article 226 to intervene in an appropriate case.<br>• The Court condoned the delay and restored the appeals for adjudication on merits.<br>• The appellate authorities were directed to hear and decide the appeals within the stipulated period. |

# Now Before the GSTAT Principal Bench

- ***Pattinam Chettiar Kalamkandavengai v. DSTO I, Thuraiyur Assessment Circle, D. Gunasekaran & Ors.*** — the lead matter in a batch of consolidated appeals before a **three-member Special Bench of the GSTAT Principal Bench**, constituted specifically to decide whether the GSTAT itself possesses jurisdiction to condone delay beyond the maximum condonable period under Section 107(4).
- ***Scale of the issue*** — the GSTAT Registry has reportedly identified several hundred similar appeals pending across multiple State Benches raising the identical question — underscoring that this is not an isolated dispute but a systemic gap in the appellate architecture.
- ***Status*** — pending as of this presentation, with no final ruling yet reported. A Principal Bench ruling here would resolve, system-wide, whether the Article-226-only route remains the sole escape valve, or whether the GSTAT itself may exercise a broader condonation power under Section 112.

# Where This Leaves Practitioners

- ***The 3+1 month ceiling remains hard law*** — at the Appellate Authority stage; do not advise a client that a departmental officer can condone delay beyond that window.
- ***Article 226 remains the tested route*** — for genuine, bona fide delay beyond that ceiling, but relief is discretionary and fact-dependent — document the reason for delay meticulously.
- ***Track the Pattinam Chettiar reference closely*** — it may materially change the calculus on whether the GSTAT itself can grant this relief going forward, for the very large number of matters presently caught by this gap.

SECTION 07

# Appellate Orders under Sections 107 & 112

# Powers of the First Appellate Authority — No Power to Remand

- ***Section 107(11)*** — the Appellate Authority may pass an order ***confirming, modifying or annulling*** the decision or order appealed against — these are the only three dispositive options; there is ***NO*** statutory power to remand the matter to the original adjudicating authority,
- ***Kronos Solutions India Pvt. Ltd. v. Union of India & Others*** — Allahabad High Court, Division Bench, decided 9 February 2024.

| | |
|---|---|
| **Subject** | An appellate authority exercising power under Section 107(11) of the CGST Act cannot remand the matter to the original adjudicating authority; it may only confirm, modify or annul the order under appeal. |
| **Facts** | • The petitioner challenged an appellate order passed by the Joint Director (CGST), Appeals, Noida.<br>• **The appellate authority had purported to set aside the original order and remand the matter for de novo adjudication.**<br>• The petitioner contended that Section 107(11) expressly limits the appellate authority to confirming, modifying or annulling the order and specifically prohibits remand to the adjudicating authority. |
| **Decision of the Court** | • **The Allahabad High Court held that Section 107(11) provides only three permissible courses: confirm, modify or annul.**<br>• The express statutory prohibition against referring the case back to the adjudicating authority leaves no residual/inherent power of remand with the appellate authority.<br>• The impugned appellate order was therefore set aside, and the matter was remanded to the appellate authority itself for a fresh decision after hearing the parties |

# Powers of the GST Appellate Tribunal — Confirm, Modify, Annul or Remand

- ***Section 113(1)*** — **unlike the First Appellate Authority, the GSTAT may, after hearing the parties, pass an order confirming, modifying or annulling the decision — OR may refer the case back (remand) to the First Appellate Authority, the Revisional Authority, or the original adjudicating authority,** with directions for fresh adjudication or further evidence. This express remand power is the key structural distinction between the FAA and the GSTAT.
- ***Section 113(2)*** — no adjournment shall be granted more than three times to a party during the hearing of an appeal, with reasons recorded in writing.
- ***Section 113(3)*** — the Tribunal may rectify a mistake apparent on the record within three months, but any rectification that increases a party's liability requires a prior opportunity of hearing.
- ***Section 112(8)*** — pre-deposit of the balance disputed tax at 10% (subject to a cap), in addition to what was paid at the first-appeal stage — with automatic deemed stay of recovery of the balance amount on such payment, under Section 112(9).

# Doctrine of Merger and the Enhancement Safeguard

- ***Doctrine of merger*** — once the First Appellate Authority or the GSTAT disposes of an appeal on merits, the original adjudication order merges into the appellate order (***Kunhayammed & Ors. v. State of Kerala & Anr. – Supreme Court***); any further challenge lies against the appellate order, not the original order. The doctrine's continued vitality was reaffirmed by the Supreme Court as recently as February 2025.
- ***GST-specific application*** — M/s SPK and Co. v. The State Tax Officer, Madras High Court, decided 22 November 2024: limitation for a further appeal runs from the date of a rectification order (or its rejection), not from the original assessment date, since a granted rectification merges into and effectively supersedes the original order for limitation purposes.
- ***The enhancement safeguard, Section 107(11) proviso*** — the FAA cannot enhance a fee, penalty or fine, or reduce a refund/ITC amount, without first giving the appellant a reasonable opportunity to show cause.

# Section 7 — Key Takeaways

- ***The FAA cannot remand*** — genuine remand-warranting defects must be pursued through Article 226 writ jurisdiction, not expected of the statutory appeal itself.
- ***The GSTAT can remand*** — a materially wider dispositive power than the FAA, now backed by an operational Tribunal with a substantial, time-bound backlog window closing 31 July 2026 for pre-1 April 2026 orders.
- ***Enhancement and merger safeguards protect the taxpayer*** — at both appellate stages — no enhancement without a hearing, and the appellate order (once passed) becomes the sole operative order for any further challenge.

SECTION 03

# Orders under Sections 129 & 130 of the CGST Act

# SECTION 129 vs SECTION 130 – DETENTION, SEIZURE & CONFISCATION UNDER GST

## SECTION 129 – DETENTION & SEIZURE

**Scope –** Section 129 empowers detention and seizure of goods and the conveyance transporting them where there is contravention of GST provisions relating to movement of goods, with release on payment of applicable tax and penalty (or furnishing security).

### Procedural Forms

- **GST MOV-06** – Detention Order
- **GST MOV-07** – SCN proposing tax, penalty and/or confiscation
- **GST MOV-09** – Final Order after considering reply to MOV-07

### Documents required in transit *(Section 68 read with Rule 138A)*

1. Tax invoice / Bill of Supply / Delivery Challan
2. A valid e-way bill
3. RFID device, where notified
4. Bill of entry for imported goods
5. QR code with embedded IRN where an e-invoice has been issued

### Nature of the Power

Section 129 is aimed at verifying that goods in transit are accompanied by the prescribed documents – it is **not a general-purpose assessment or valuation mechanism.**

## SECTION 130 – CONFISCATION & PENALTY

**Scope –** Section 130 provides for confiscation of goods and/or the conveyance, and imposition of penalty, where specified acts indicating an **intent to evade tax** are established.

**Examples of such acts include:**

- Supply or receipt of goods in contravention of the Act with intent to evade tax
- Use of a conveyance to carry goods in contravention of the Act

### Relationship with Section 129

Confiscation under Section 130 is **NOT an automatic consequence** of detention under Section 129.

The ingredients of Section 130(1), including intent to evade tax, **must be independently established** and cannot be presumed merely because goods were intercepted in transit.

### Where Section 129 concludes without confiscation

If the proposed penalty is not paid within the prescribed period following detention, **proceedings for confiscation under Section 130 may separately be initiated.**

**Key Takeaway**

Section 129 ensures compliance of documentation during movement of goods, while Section 130 deals with penal consequences for evasion-oriented contraventions.

# Valuation Disputes Cannot Be Tested in Section 129 Proceedings

## Andhra Pradesh HC - Golden Traders vs. Dy. Asst. Commr of State Tax (2026) 42 Centax 24 (A.P.)

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|---|---|
| **Subject** | Confiscation under Section 130 cannot be invoked for mere valuation disputes or minor mismatches during transit. |
| **Facts** | • Multiple consignments in inter-State transit were intercepted on allegations of undervaluation, quantity/description mismatches, and other document discrepancies.<br>• Despite being accompanied by valid invoices and e-way bills, proceedings under Sections 129 and 130 of the CGST/APGST Acts were initiated. |
| **Decision of the court** | • **Valuation disputes, quantity variations, or minor document discrepancies do not, by themselves, justify detention or confiscation under Sections 129 or 130.**<br>• Confiscation under Section 130 can be invoked only where there is clear evidence of intent to evade tax, such as fake invoices, forged e-way bills, or diversion/misdeclaration of goods.<br>• **Proper officers cannot undertake valuation or assessment exercises during interception of goods in transit**.<br>• Confiscation proceedings were quashed, with liberty granted to the authorities to refer the matter to the jurisdictional officer for appropriate action under GST law. |

# Valuation Disputes Cannot Be Tested in Section 129 Proceedings

## Gujarat HC - Panchhi Traders vs. State of Gujarat (2025) 37 Centax 260 (Guj.)

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| **Subject** | Post-2022, Section 129 is a self-contained code for transit. Section 130 requires concrete evidence of intent to evade; suspicion alone is insufficient. Confiscation is a last resort. |
| **Facts** | • Goods and conveyances in transit, i.e. the goods being transported in the conveyance (trucks/vehicles) were intercepted for alleged discrepancies in e-way bills and accompanying documents.<br>• The authorities initiated detention proceedings under Section 129 and simultaneously issued Form GST MOV-10 proposing confiscation under Section 130, alleging intent to evade tax. |
| **Decision of the court** | • **Sections 129 and 130 operate independently, and confiscation proceedings under Section 130 may be initiated even at the stage of detention.**<br>• **The key distinction is that Section 130 requires a prima facie finding of an intent to evade tax, whereas Section 129 addresses contraventions during transit.**<br>• Confiscation cannot be invoked mechanically or based on mere suspicion; authorities must record strong and cogent reasons demonstrating deliberate tax evasion before proceeding under Section 130.<br>• The High Court remanded the matter back to the Tax Authorities with the direction adjudicate the matter de novo considering the observations of the Hon’ble High Court |

# Intent to Evade Tax — The Indispensable Ingredient

***Allahabad High Court - M/s Balaji Traders v. State of U.P.*** — Writ Tax No. 784 of 2023,

| | |
|---|---|
| **Subject** | Proceedings under Section 129 cannot be sustained merely because goods are intercepted without an E-Way Bill if the surrounding circumstances show a bona fide transaction and there is no intention to evade tax. Intention to evade tax is a necessary prerequisite for invoking Section 129. |
| **Facts** | • The petitioner was transporting goods by rail and was in the process of obtaining the Railway Receipt (RR) number required for generating the E-Way Bill.<br>• While the proprietor was inside the railway station completing the booking formalities, the goods kept outside were intercepted and detained.<br>• Despite the petitioner explaining the circumstances and producing supporting documents, penalty proceedings under Section 129 were confirmed.. |
| **Decision of the court** | • The Court found no evidence or finding of any intent to evade tax in either the detention order or the appellate order.<br>• The petitioner’s explanation regarding the pending generation of the E-Way Bill upon receipt of the RR number remained uncontroverted.<br>• As the transaction was genuine and no material suggested tax evasion, invocation of Section 129 was held to be unjustified.<br>• The penalty orders were quashed, and the amount deposited by the petitioner was directed to be refunded. |

# Mandatory Issuance of MOV-07 and MOV-09 — the Supreme Court

## Supreme Court - M/s ASP Traders v. State of Uttar Pradesh — 2025 (7) TMI 1525 (S.C.).

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|---|---|
| **Subject** | Mandatory issuance of MOV-07 and MOV-09 under Section 129. |
| **Facts** | • The appellant transported arecanut from Karnataka to Delhi with an E-Way Bill; during transit, the goods were transhipped and 7 bags were found missing from the original consignment.<br>• The Mobile Squad intercepted the vehicle, recorded statement in MOV-01, issued physical verification report in MOV-04, detention order in MOV-06, and thereafter issued MOV-07 notice under Section 129(3) alleging discrepancy in quantity and other defects.<br>• The appellant filed a detailed reply denying the allegations, but due to business exigencies paid the proposed tax/penalty through DRC-03, after which the goods were released through MOV-05.<br>• Despite payment and release, no final order in MOV-09 was passed; the department contended that proceedings stood concluded under Section 129(5), and the High Court accepted this view. |
| **Decision of the court** | • The Supreme Court held that once MOV-07 notice under Section 129(3) is issued and objections are filed, the proper officer is mandatorily required to pass a reasoned final order in MOV-09.<br>• Section 129(5), which deems proceedings concluded on payment, does not dispense with the duty to adjudicate; it only prevents further proceedings but does not eliminate the requirement of a formal order.<br>• The Court further held that MOV-09 and summary in DRC-07 are essential to preserve the taxpayer's statutory right of appeal under Section 107; absence of such order makes the appeal remedy illusory.<br>• Accordingly, the High Court order was set aside and the proper officer was directed to pass a reasoned final order under Section 129(3) in MOV-09, after granting hearing under Section 129(4), and upload summary in DRC-07. |

# Section 3 — Key Takeaways

- ***Section 129 is a documentary-compliance mechanism*** — not a forum for valuation, classification or tax-liability disputes, which belong in Section 73/74 assessment.
- ***Confiscation under Section 130 requires independent proof*** — of intent to evade tax; it is not an automatic sequel to detention, and mere suspicion will not suffice.
- ***Genuine, technical discrepancies should not attract penalty*** — absence of intent to evade, and absence of revenue loss, remain the most effective grounds to resist a Section 129 penalty founded on a paperwork lapse.
- ***Insist on the statutory forms*** — MOV-06, MOV-07 and MOV-09 (and DRC-07) are not mere formalities; their absence can itself be a ground for relief, and a final order should be pursued even after payment for release of goods.


# Thank You