KEY GST RULINGS, INSIGHTS & PRACTICAL TAKEAWAYS

GST CASE LAW COMPENDIUM

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LET'S DECODE GST LITIGATION TOGETHER

GST UPSKILLING
by CA RITESH ARORA
LET'S GROW TOGETHER

CARITESHARORA1628@GMAIL.COM
+91 6239 955 119

Curated by:
CA Ritesh Arora

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Whether refund of unutilized ITC can be claimed on account of closure of business despite it not being covered under Section 54(3) of the CGST Act?

Yes, the Hon'ble Sikkim High Court in ***SICPA India Private Limited and Another v. Union of India and Others [W.P.(C) No. 54 of 2023, decided on 10.06.2025 | 2025 (6) TMI 834 – SIKKIM HIGH COURT]*** held that there is no express prohibition in Section 49(6) read with Section 54 of the CGST Act against allowing refund of unutilized ITC upon closure of business, and disallowing the same would amount to unjust retention of tax without authority of law. The Hon'ble Court allowed refund of ₹4.37 crore ITC accumulated on account of business discontinuance. The petitioners had discontinued their security ink manufacturing operations in Sikkim during 2019–20 and claimed refund of unutilized ITC lying in their Electronic Credit Ledger under Section 49(6) read with Section 54. The department rejected the claim, stating that refund on closure of business is not an eligible category under Section 54(3)**,** which permits refund only in cases of (i) zero-rated supplies without payment of tax, and (ii) inverted duty structure. The Appellate Authority also upheld this view. The petitioners contended that while Section 54(3) carves out specific refund scenarios, Section 49(6) read with the main provision of Section 54 allows refund of any balance remaining after payment of dues, and such right cannot be denied merely because closure is not listed in the proviso to Section 54(3). They relied on the Karnataka High Court's decision in ***Slovak India Trading Co. Pvt. Ltd. MANU/KA/0709/2006***, which permitted refund of CENVAT credit upon business closure. The High Court held that there exists no express bar under Section 49(6) or Section 54 against such refund, and the statute does not permit retention of tax amounts without express legal authority. It further held that Section 49(6) acts as an enabling provision, and the limitations under the proviso to Section 54(3) should not be interpreted to curtail legitimate refunds due under Section 49(6). Rejecting the department's objection on alternate remedy, the Court invoked Article 226 to prevent undue hardship and held that the petitioners were entitled to refund of the unutilized ITC. Accordingly, the Court set aside the appellate order dated 22.03.2023 and allowed the writ petition, directing the department to process the refund.

Author's Comments

A closer look at the statutory scheme of the CGST Act raises concerns about this decision's long-term sustainability.

Section 49(6) does provide that the balance in the electronic credit ledger may be refunded in accordance with Section 54. But this phrase—"*in accordance with Section 54*"—is critical. Section 54(3) begins with a negative phrase: *"No refund of unutilised input tax credit shall be allowed except…"*, and then restricts refund to two specific scenarios: (i) zero-rated supplies made without payment of tax, and (ii) accumulation due to an inverted duty structure. Closure of business is not one of them. Further, Section 54(9) reinforces this limitation by mandating that no refund shall be granted otherwise than under sub-section (8), and Section 54(8)(b) again ties refund of unutilised ITC back to the conditions under sub-section (3). So, reading the statute holistically, refund of unutilised ITC on account of business closure—however fair it may seem—does not appear to be legally permitted under the current framework.

The Hon'ble Court's interpretation that Section 54(3) is not a prohibitory clause but only a specific enabler (i.e., "permissive" rather than "restrictive") may not withstand scrutiny, especially in light of the Supreme Court's ruling in ***VKC Footsteps India Pvt. Ltd.(2021(9)TMI 626- SUPREME COURT),*** where a strict construction of refund provisions was upheld. Importantly, the High Court has also not addressed Sections 18(4) and 29(5) read with Rule 44, which require reversal and lapse of ITC upon cancellation of registration. That statutory scheme was designed to prevent refund in such closure situations.Therefore, refund of unutilised ITC on business closure, however justified in fairness—remains legally tenuous.

Whether a "cash credit account" can be provisionally attached under Section 83 of the CGST/MGST Act?

No, the Hon'ble Bombay High Court in ***Skytech Rolling Mill Pvt. Ltd. v. Joint Commissioner of State Tax, Raigad Division [Writ Petition No. 1928 of 2025, decided on 10.06.2025 | 2025 (6) TMI 1253 – BOMBAY HIGH COURT]*** held that a cash credit account cannot be considered as "property" belonging to the taxable person, and hence it cannot be provisionally attached under Section 83 of the GST Act. In this case, the petitioner's cash credit account with ICICI Bank was provisionally attached by the department through a letter dated 08.05.2025, issued under Section 83 of the MGST Act. The petitioner challenged the attachment contending that a cash credit account is a credit facility extended by the bank, representing a liability, not an asset, and therefore it cannot be treated as attachable "property." The petitioner relied on several precedents including ***Manish Scrap Traders (2022 (1) TMI 751 - GUJARAT HIGH COURT*)**, ***JL Enterprises* (*2025 (3) TMI 322 - CALCUTTA HIGH COURT*), and *Sargam Foods Pvt. Ltd.* (2010(7) TMI 1080- Bombay HC)** where courts had held that such provisional attachments of loan accounts are without jurisdiction. The Bombay High Court accepted the petitioner's contention and held that Section 83 permits attachment of property "including bank accounts" belonging to the taxpayer, and the term "bank account" refers to deposit accounts, not loan or cash credit accounts. A cash credit account, being a liability owed by the assessee to the bank, cannot be equated with a property or asset, and hence falls outside the ambit of Section 83. The Hon'ble Court emphasized that such accounts are not "belonging" to the taxpayer in any legal sense, and hence, the impugned attachment order was without jurisdiction. Accordingly, the Court quashed the provisional attachment and directed the department to communicate withdrawal of the attachment to the bank within 24 hours. The Court clarified that this order would not preclude the revenue from recovering dues through other lawful means. Given the jurisdictional infirmity, the writ was entertained despite availability of alternative remedy.

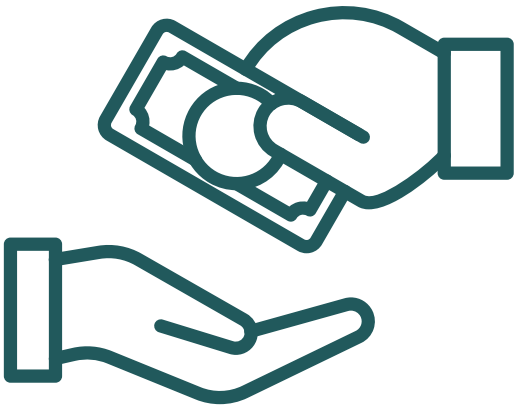
Author's Comments

Power under Section 83 of the CGST Act must be exercised with precision—and not in haste. A *cash credit account* is not money owned by the taxpayer; it's a credit facility extended by the bank, essentially a loan. Attaching such an account amounts to freezing a liability, not a recoverable asset—which defeats the very purpose of provisional attachment under GST.

From a practitioner's lens, this case serves as a timely reminder: *challenge attachment at the earliest*. Section 83(2) allows the taxpayer to file an objection within 7 days—and this should never be treated as a mere formality. Instead, a well-structured objection can make all the difference. When objecting to an attachment, one must highlight:

1. That the asset is *not attachable* under law (as in the case of CC accounts);
2. That the taxpayer is *compliant and solvent*;
3. That the alleged liability is either uncrystallised, disputed, or under adjudication;
4. That the taxpayer has a *clean track record*—return filings, audits, and prior conduct;
5. And, where needed, an *undertaking to furnish security or cooperate in proceedings*.

A structured and substantiated application will make it extremely difficult for authorities to justify a rejection, especially since their decision will be subject to judicial review. Authorities may still be tempted to use provisional attachment as a pressure tactic. Merely pleading for leniency without addressing these factors is unlikely to yield a favourable outcome.



Whether a demand order under Section 73 can be sustained against a company that has already been dissolved under orders of the NCLT?

No, the Hon'ble Gujarat High Court in ***Pratik Surendra kumar Shah v. State of Gujarat & Anr.[SCA Nos. 2489 & 2496 of 2024, decided on 02.05.2025 | 2025 (6) TMI 1238 – GUJARAT HIGH COURT]*** held that proceedings under the GST Act cannot be sustained against a company that has been dissolved under NCLT orders and ceased to exist in the eyes of law. In this case, the petitioner was a former director of M/s Zeb IT Service Ltd., a company engaged in virtual currency trading, which voluntarily went into liquidation and was formally dissolved by the NCLT on 30.09.2022. The GST registration was cancelled with effect from 13.11.2020. Despite this, the department issued show cause notices under Section 73 for FY 2017–18 and 2018–19, followed by adjudication orders dated 28.12.2023 and 16.04.2024, and even recovery notices. The petitioner replied, highlighting that the company was no longer in existence and furnished the NCLT dissolution order. However, the department proceeded to raise demands on the ground that relevant supporting documents to defend the tax issues were not furnished, and cited Section 29(3) of the CGST Act to argue that dissolution or cancellation of registration does not affect the liability for prior periods.

The High Court categorically held that once a company stands dissolved by the NCLT, any proceeding initiated thereafter in its name is without jurisdiction and void ab initio**.** It relied on the Supreme Court's ruling in ***Maruti Suzuki India Ltd.(2020) 18 SCC 331***, to reiterate that dissolved entities lose legal existence, and no demand or recovery can proceed against such a non-existent person. The Court found that the adjudicating authority had taken cognizance of the company's dissolved status but still proceeded to confirm demand mechanically, rendering the orders unsustainable for non-application of mind. Consequently, the Court quashed both adjudication orders and the related recovery proceedings.

Author's Comments

This judgment reaffirms a settled but often overlooked principle in tax jurisprudence—you cannot proceed against a person or entity that does not exist in the eyes of law. Once a company has been formally dissolved by the NCLT, it is civilly and legally dead, and any proceedings, whether adjudication or recovery—initiated thereafter suffer from a fatal jurisdictional defect.

The Revenue's attempt to justify its action by invoking Section 29(3)—that cancellation of registration doesn't absolve prior liability—completely misses the point. Section 29(3) speaks to *survival of liability*, not to the *continued legal existence of the entity against which proceedings are pursued*. There's a vast difference between holding a *living* registered entity liable and issuing notices to a *non-existent* one. The latter is a legal impossibility.

The Gujarat High Court rightly relied on the Supreme Court's decision in ***Maruti Suzuki India Ltd.*** to hold that proceedings against a dissolved company are void ab initio—not curable procedural defects, but jurisdictional nullities. Once the NCLT dissolution order is passed, the company vanishes from the corporate registry and ceases to be a legal person under law. Issuing notices, passing orders, or seeking recovery from such a non-existing entity is a non-starter.

This ruling also underscores the importance of identifying the correct "noticee." Under Section 169 of the CGST Act, notice is not just a procedural formality but it is the very act that sets the law in motion. A notice issued to the wrong person, or to a non-existent person, fails to establish valid lis and vitiates the entire proceeding. The doctrine of natural justice and due process starts with—and stands on—valid service to a legally existing party.

A similar view was recently taken by the Delhi High Court in ***HCL Infosystems Ltd. v. Commissioner of State Tax* [*2024*] *169 taxmann.com 82* (*Delhi*)/[*2025*] *107 GST 692* (*Delhi*)**,** where notices issued in the name of an amalgamated company were quashed. There too, the Court emphasized that proceedings must align with legal identity, and ignoring corporate dissolution or merger is not just sloppy—it is unlawful.

Whether bank attachment based on an Order-in-Original can be quashed on the ground that DRC-07 was not issued before passing the order?

No, the Hon'ble Telangana High Court in ***Sri Bhagavathi Granites Industries v. The Superintendent of Central Tax [W.P. No. 25839 of 2024, decided on 09.04.2025 | 2025 (6) TMI 1148 – TELANGANA HIGH COURT]*** held that even if DRC-07 (summary of order) was not issued prior to the Order-in-Original, the validity of the order must be challenged through appropriate legal remedy and cannot be bypassed to assail consequential actions like bank attachment. In this case, the petitioner did not file any appeal against the Order-in-Original dated 06.01.2022, but approached the High Court two years later in September 2024, challenging the consequential bank attachment. The core argument was that DRC-07, which is required to be issued in summary form under Rule 142(5), had not been issued before the adjudication order and was uploaded only later, on 27.06.2023. The petitioner claimed that this procedural defect rendered the order void, and hence, the bank attachment based on such an order should be set aside. The Court rejected this argument, holding that even if an order is void or flawed, it must be challenged and set aside by a competent court. Until then, the order continues to operate and can be acted upon. The Court relied on several Supreme Court precedents, including ***Robust Hotels (2017) 1 SCC 622, Krishnadevi Malchand Kamathia (2011) 3 SCC 363*, and *Gurdev Singh[(1991) 4 SCC 1]*** , reiterating that even void orders must be formally set aside through appropriate proceedings, and cannot be ignored or treated as non-existent. Furthermore, the Court noted that the writ petition was filed much beyond the limitation period prescribed for appeal, and declined to interfere.

Author's Comments

The petitioner attempted to assail a consequential bank attachment under Section 79 by citing the delayed issuance of Form DRC-07, despite not having filed an appeal against the original adjudication order passed nearly two years earlier. While the department's procedural lapse in uploading DRC-07 belatedly does violate Rule 142(5), such procedural defects do not automatically nullify the adjudication order, unless the order is formally challenged and set aside by a competent authority.

Instruction No. 04/2023-GST dated 23.11.2023 clearly mandates that both Form DRC-01 (summary of SCN) and Form DRC-07 (summary of order) must be uploaded electronically on the common portal. This ensures transparency and traceability in adjudication and recovery proceedings. Rule 142(5) & (6) further clarifies that the process of adjudication under Sections 73/74 is incomplete until DRC-07 is uploaded. In effect, DRC-07 functions as the operative document for initiating recovery and appeal processes. In practice, the GSTN portal allows appeal filing (Form APL-01) only after DRC-07 is issued, and the pre-deposit for appeal is also linked to the DRC-07 summary.

Therefore, the limitation under Section 107 for filing an appeal arguably begins from the date of DRC-07 issuance, not from the date of the physical adjudication order.

Whether availment of ITC under the wrong heads (CGST/SGST instead of IGST) amounts to wrongful availment warranting action under Section 73 of the CGST Act?

No, the Hon'ble Kerala High Court in ***M/s Golden Traders v. Assistant State Tax Officer & Ors. [WP (C) No. 14998 of 2025, decided on 05.06.2025 | 2025 (6) TMI 1069 – KERALA HIGH COURT]*** held that when the discrepancy pertains to availment of input tax credit under incorrect tax heads without any loss to the revenue, the same does not warrant proceedings under Section 73 of the CGST Act, and such cases must be viewed as procedural lapses, not fraudulent availment of credit. The petitioner, a registered partnership firm engaged in trading of plastic moulded chairs and watches, challenged a demand order issued under Section 73 for FY 2017–18, alleging excess availment of ITC amounting to ₹1,29,906. The petitioner contended that the alleged discrepancy stemmed merely from a technical error in crediting CGST and SGST instead of IGST. Despite filing an appeal under Section 107, the same was dismissed. Relying on the Kerala High Court's earlier Division Bench decision in ***Rejimon Padickapparambil Alex v. Union of India [2024 (12) TMI 399 - KERALA HIGH COURT]***, the petitioner argued that such errors, where there is no revenue loss, cannot be penalized under Section 73. The Hon'ble Court concurred, reiterating that the electronic credit ledger functions as a wallet with multiple tax compartments and that such technical misclassification should not attract penal provisions when the ITC is otherwise eligible and used for discharging output liability. Accordingly, the impugned orders were quashed and the matter remanded for reconsideration by the assessing officer, who was directed to decide the matter afresh within three months, in line with the principles laid down in the *Rejimon* case.

Author's Comments

The doctrine of *moulding relief* grants Courts of Equity, such as the Supreme Court and High Courts, the authority to go beyond statutory limitations and devise equitable solutions to address grievances. The present case exemplifies the exercise of such discretionary power. A significant and growing concern for the Revenue in litigation before courts of equity is the persistent failure of Departmental counsel to present arguments based on the newly enacted GST legislation. As GST is a relatively recent statute, legislation must not be overlooked. However, departmental representatives often rely on precedents from the pre-GST era rather than engaging with the nuances of the current statutory framework. In this case, the petitioner advanced the argument of *Revenue Neutrality*—a concept that briefly emerged under GST but lost relevance over time. If such an argument were to be accepted, it would render the law ineffective, as virtually every legal dispute could then be framed as revenue-neutral. This would undermine the very foundation of new legislation.

Furthermore, the petitioner admitted to making an incorrect ITC claim, regardless of the underlying reasons. Such an admission is conclusive and leaves no room for further debate. The Proper Officer lacks the authority to entertain pleas seeking relief based on such arguments, irrespective of their persuasiveness. The statutory framework must be upheld, ensuring that legal interpretations align with the legislative intent and do not dilute the effectiveness of GST enforcement.

Whether parallel proceedings by both Central and State GST authorities for the same cause and period are permissible under the CGST Act?

No, the Hon'ble Himachal Pradesh High Court in ***Shivalik International v. Joint Commissioner of State Tax & Ors. [CWP No. 7606 of 2025, decided on 06.06.2025 | 2025 (6) TMI 746]*** held that once proceedings under Section 67 of the CGST/HPGST Act were already initiated by the Central GST Commissioner, the State GST authorities could not initiate parallel proceedings for the same cause and period. The Court clarified that only the initially empowered authority should proceed, while the other may assist but cannot independently prosecute the case.

In this case, the petitioner challenged the jurisdiction of the State GST authorities to issue summons under Section 70 and initiate action under Section 74(5), when similar proceedings under Section 67 had already been initiated by the Central GST authorities. Despite the prior initiation of action by the Central Commissioner, the State authorities proceeded to conduct raids, sealed the premises, and blocked ITC—effectively duplicating proceedings for the same set of facts and financial year.

The High Court found that such parallel proceedings violate the scheme of the CGST Act, which envisages coordination between Central and State authorities, not simultaneous duplication. It held that once proceedings are initiated by one authority, jurisdiction vests with that authority alone, and the other can only assist, not act independently. Accordingly, the Court directed that only the Central GST Commissioner would continue the proceedings, while the State GST officers may assist but not independently initiate or pursue action. The Court also allowed the petitioner to seek de-sealing of premises before the competent officer and directed the State to hand over charge to the Central authority to enable further lawful action.

Author's Comments

Section 6(2)(b) of the CGST Act aims to prevent duplicative adjudication and protect taxpayers from facing parallel proceedings for the same subject matter. However, the bar is not absolute. Its applicability hinges on whether both proceedings are based on the same cause of action, facts, and period.

In the author's considered view, this decision—though beneficial for the taxpayer—is based on an overbroad reading of Section 6(2)(b). In the present case, Central GST authorities were conducting an investigation under Section 67, while the State GST authorities had already concluded investigation and issued DRC-01A under Section 74, presumably based on independent findings. These are two different stages of enforcement, and unless both proceedings stem from identical allegations or contraventions, they may not necessarily violate the bar under Section 6(2)(b).

Importantly, Section 6(2)(b) bars initiation of fresh proceedings by one authority only when the other has already initiated proceedings on the same subject matter. Therefore:

1. The "Same Subject Matter" Test must be satisfied—i.e., same facts, tax period, and nature of default.
2. Mere overlap in financial years or parties involved does not automatically trigger the bar—the legal grounds and evidentiary basis must also be identical.

In this context, the author believes that the two proceedings—inspection by CGST and issuance of DRC-01A post proceedings u/s 67 by SGST—were not inherently duplicative, and hence Section 6(2)(b) was not strictly violated. The more appropriate application of this provision would have been to bar the CGST authorities from issuing a second SCN on the same cause already addressed by the SGST department—not from continuing an independent investigation under Section 67.

Unfortunately, this defensive nuance appears to have been missed by the Department's counsel, resulting in an adverse ruling due to premature challenge.

Whether penalty proceedings under Section 122 of the CGST Act automatically abate upon conclusion or dropping of proceedings under Section 74 against the main person?

No. The Hon'ble Allahabad High Court in ***M/s Patanjali Ayurved Ltd. v. Union of India & Ors.[Writ-Tax No. 1603 of 2024, decided on 29.05.2025 | 2025 (6) TMI 115 – ALLAHABAD HIGH COURT]*** held that penalty proceedings initiated under Section 122 of the CGST Act, 2017, stand independent of adjudication proceedings under Section 74. The petitioner contended that once the proceedings under Section 74 had been concluded in favour of the main person, the penalty proceedings under Section 122 ought to abate ipso facto. However, the Court rejected this proposition, observing that Sections 74 and 122 are distinct charging provisions, operating within different legislative frameworks and objectives. The Court emphasized that while Section 74 addresses determination of tax liability in cases involving fraud, suppression, or willful misstatement, Section 122 separately deals with imposition of penalty for contraventions such as issuance of fake invoices.

The Hon'ble Court relied on precedents from the Supreme Court, including ***Sukhpal Singh Bal [2005 (9) TMI 633 - SUPREME COURT]***, and ***Sanjeev Coke Mfg. Co [1982 (12) TMI 220 - SUPREME COURT].***, to elaborate that the concept of "offence" and "penalty" under tax laws can include civil and deterrent actions without necessarily implying criminal prosecution. It held that a statute may permit penalties to be imposed without mens rea, and such a construction would be valid as long as it harmonizes with the legislative intent and does not render the statute unworkable. The Hon'ble Court further explained that Explanation 1(ii) to Section 74, which refers to abatement of penalty proceedings, does not apply to penalty proceedings under Section 122 when the offence relates to fake invoicing or similar contraventions. Thus, the Hon'ble High Court concluded that penalty under Section 122 is to be adjudicated independently by the proper officer, and merely because proceedings under Section 74 are concluded or dropped, the penalty proceedings do not abate by default. The writ petition was accordingly dismissed.

Author's Comments:

The term penalty, much like offence, is not defined under the CGST Act, yet it carries significant legal and procedural implications. Penalty under tax law is not merely compensatory; it can also be deterrent in nature—levied for breach of statutory obligations even without mens rea, unless the statute specifically provides otherwise. Section 122 of the CGST Act is one such self-contained provision that empowers proper officers to impose penalties independent of adjudication proceedings under Section 73 or 74.

In the present case, the Hon'ble High Court has rightly held that both the sections 74 and 122 of CGST Act operate in distinct spheres: Section 74 governs determination of tax liability in fraud-related cases, while Section 122 targets contraventions like issuance of fake invoices or aiding such frauds, even if tax evasion is not finally determined under Section 74.

In the author's view, this distinction is critical in understanding the legislative scheme of GST enforcement. Explanation 1(ii) to Section 74 only covers situations where a common SCN is issued invoking both Section 74 and penalty under Section 122(1). In such cases, if proceedings under Section 74 are dropped, the penalty component tagged to that very notice would also abate. However, where independent proceedings under Section 122 are initiated based on a separate cause of action—such as aiding fake invoicing, those do not automatically abate just because Section 74 proceedings are concluded.

Therefore, penalty proceedings under Section 122 must be tested on their own merits, independent of the fate of any adjudication proceedings.

Whether an assessment order passed in the name of a deceased person, without issuing notice to the legal heir, is valid under GST law?

No, the Hon'ble Madras High Court in ***Sahaya Kapil Bosco v. Deputy State Tax Officer (ST), Nagercoil Rural Assessment Circle [W.P.(MD) No. 15393 of 2025, decided on 09.06.2025 | 2025 (6) TMI 1154 – MADRAS HIGH COURT]*** held that an assessment order passed in the name of a deceased assessee is null and void, and liable to be set aside where the legal heir was not given an opportunity to reply to the show cause notice.

In this case, the petitioner was the son and legal heir of Late Shri M. John Bosco, a registered person under GST who passed away on 06.05.2021. Despite the assessee's death, the department proceeded to pass an assessment order dated 20.08.2024 for the tax period April 2019 to March 2020 in the name of the deceased person, without issuing notice to the petitioner or any other legal representative. The petitioner approached the High Court seeking one opportunity to reply to the show cause notice that preceded the impugned order and expressed willingness to cooperate in the proceedings.

The Court found merit in the petitioner's submission and held that since the impugned order had been passed against a dead person, and the petitioner, being the son of the deceased, may have an interest in the business, the assessment could not be sustained. Accordingly, the Hon'ble Court set aside the impugned order and remanded the matter back to the respondent to pass fresh orders after affording an opportunity to the petitioner to reply to the show cause notice. The petitioner was directed to file his reply within 30 days, and the department was instructed to conclude the proceedings within three months.

Author's Comments

This case exemplifies a classic lapse in procedural awareness and strategic pleading before constitutional courts. The petitioner approached the Hon'ble High Court seeking remand for fresh adjudication, rather than challenging the very foundation and jurisdiction of the impugned assessment order. In the author's view, this was a missed opportunity to secure final relief by urging the court to quash the proceedings as non-est, considering that the assessment order was passed in the name of a deceased person without notice to any legal heir.

As a matter of settled law, any proceedings initiated or continued against a dead person are void ab initio. Under Order XXII Rule 1 of the Code of Civil Procedure, 1908, the death of a party renders the proceedings unsustainable if the right to sue does not survive. Similarly, Section 169 of the CGST Act, 2017—which governs service of notice—presumes that communication must be made to a *living* and *legally competent person*. Any notice or order passed in the name of a deceased person is a jurisdictional nullity.

Moreover, Section 93 of the CGST Act, 2017, which provides for recovery of tax dues from the estate of a deceased person, only applies where such liability has been determined while the person was still alive. In this case, no such pre-existing determination existed, and hence Section 93 cannot be invoked to justify posthumous proceedings.

Unlike the Income-tax Act, which under Section 159(2)(b) expressly permits initiation or continuation of proceedings against legal representatives, the CGST Act contains no such enabling provision. Therefore, in the absence of legislative support, initiation of fresh proceedings against legal heirs is wholly illegal.

From a litigation strategy standpoint, the better course would have been to seek quashing of the proceedings entirely, citing lack of jurisdiction, absence of proper notice, and legal non-existence of the assessee. The Hon'ble Supreme Court in ***CIT v. Scindia Steam Navigation Co. Ltd. [1961 AIR SC 1633]*** clarified that mandamus lies only when specific reliefs have been demanded and denied—which again highlights the importance of framing precise and well-thought-out reliefs while invoking writ jurisdiction.

Whether the High Court can direct provisional release of goods and conveyance when confiscation orders are already passed and disputed facts exist regarding document production?

No. The Hon'ble Kerala High Court in ***Shaji George and Peter Santhosh Rodrigues v. State Tax Officer & Another, [WP(C) No. 5158 of 2025, decided on 07.04.2025 | Citation: 2025 (5) TMI 990 - KERALA HIGH COURT]***, held that once orders of confiscation have been passed and there is a dispute regarding whether documents were produced before the proper officer, the High Court cannot order provisional release of goods under Article 226 of the Constitution. The petitioners had transported white kerosene in two tanker lorries without e-way bills or supporting documents, resulting in interception and initiation of confiscation proceedings under Section 130 of the CGST Act. Although the petitioners claimed that tax invoices were produced during the hearing and supported this claim with an affidavit from their advocate, the confiscation orders dated 04.02.2025 made no reference to such documents. The Hon'ble Court declined to grant provisional release of the vehicles, observing that no specific relief to quash the confiscation orders was sought. Further, since Section 130(7) itself provides for release by the proper officer and an appellate remedy under Section 107 exists, the High Court held that the petitioners should pursue these statutory remedies instead of invoking writ jurisdiction, particularly when disputed questions of fact are involved. The Court disposed of the writ petition and clarified that the time spent pursuing the writ from 06.02.2025 would be excluded while computing the limitation period for filing an appeal.

Author's Comments:

The petitioners, in this case, erred by seeking provisional release after the confiscation order was passed, without challenging the confiscation order itself or availing the appellate remedy. Additionally, the alleged production of documents during the hearing could not be established with certainty in the absence of any mention in the adjudication order, giving rise to a factual dispute—a type of issue the High Court rightly declined to adjudicate under Article 226.

In the author's considered view, the remedy of writ petition cannot substitute the appellate process, particularly where:

- The statute provides a remedy (Section 107 appeal).
- There is no patent illegality or violation of natural justice on the face of the order.
- Disputed facts (e.g., whether documents were produced or not) require evidentiary evaluation.

Moreover, Section 67(6) read with Rule 140 offers a well-defined mechanism for provisional release prior to final confiscation by allowing the assessee to execute a bond (INS-04) and furnish a bank guarantee equivalent to the tax, interest, and penalty. Once this window lapses with the passing of a confiscation order, release can only be sought via the appeal process, or on payment of fine in lieu of confiscation.

A similar position was upheld by the Calcutta High Court in ***Kanak Timber House v. ACST [2024] 160 taxmann.com 394***, where the Court clearly held that release of goods cannot be claimed directly through a writ petition but must be routed through the statutory provisions.

Strategic Takeaway:

Litigants must carefully map the procedural path provided in the CGST framework. Missteps such as:

- Invoking writ without exhausting remedies under Section 67(6) or 129(1)(c),
- Failing to challenge final confiscation orders under Section 107,
- Attempting to raise disputed factual issues in writ proceedings,

—can delay relief and result in unnecessary dismissal of cases. A proactive, rule-based approach to provisional release and timely filing of appeals is essential to safeguard goods and operational continuity in GST disputes.

Whether a second provisional attachment under Section 83 of the CGST Act can be sustained solely on the basis of confirmed demand without any fresh material indicating threat to revenue?

No, the Hon'ble Delhi High Court in ***M/s Mansi Overseas vs. Principal Commissioner of Goods and Services Tax, East Delhi & Another, [W.P. (C) 146/2025, decided on 24.01.2025, Citation: 2025 (5) TMI 1342 - DELHI HIGH COURT]***, held that the invocation of Section 83 for the second time, without any new tangible material showing threat to government revenue, is legally unsustainable. In this case, the petitioner's bank account was provisionally attached by an order dated 26.12.2024, despite the fact that an earlier provisional attachment order dated 12.05.2020 had already been quashed by the Hon'ble Court on 28.10.2024. The respondent authority contended that since a final order of demand was now passed on 20.12.2024, the second attachment was justified. However, the Hon'ble Court noted that Section 83 requires the Commissioner to form an opinion, based on objective material, that such attachment is necessary to protect the interest of revenue. The existence of a confirmed demand, in itself, is not sufficient to justify such attachment unless there is credible evidence showing that the assessee is likely to frustrate the recovery. The Court referred to the Supreme Court ruling in ***Radha Krishan Industries v. State of Himachal Pradesh, (2021) 6 SCC 771***, which clarified that provisional attachment is a drastic power that must be exercised with utmost care, and only when there is a live and proximate link between the assessee's conduct and potential revenue loss. The Court observed that no fresh material was placed on record to show any attempt by the petitioner to dissipate assets or evade payment. The order was thus passed mechanically and suffered from non-application of mind. Accordingly, the Hon'ble Court quashed the impugned order dated 26.12.2024 and directed the authorities to defreeze the petitioner's bank account.

Author's Comments:

This judgment serves as a firm reminder that the power under Section 83 of the CGST Act is not an automatic extension of the Department's recovery mechanism. Provisional attachment is meant to be preventive, not punitive, and it must be supported by fresh, cogent, and objective material indicating a real and immediate threat to revenue. Simply reiterating past concerns or citing a confirmed demand order does not justify a second round of provisional attachment—especially when an earlier attachment on the same facts has already been quashed by the Court.

The Hon'ble Delhi High Court has rightly reaffirmed the principle laid down in ***Radha Krishan Industries v. State of Himachal Pradesh, (2021) 6 SCC 771***, where the Hon'ble Supreme Court held that the power to provisionally attach assets is a draconian measure and must be exercised with utmost caution, proportionality, and fairness, ensuring that the taxpayer's right to conduct business is not unduly impaired.

In the present case, the absence of any new material or conduct by the taxpayer suggesting evasion, dissipation of assets, or non-cooperation rendered the second attachment not only unjustified but also a clear case of non-application of mind and mechanical invocation of power. The mere existence of a confirmed demand falls under the domain of recovery proceedings under Section 79, not preventive attachment under Section 83. Hence, continued resort to Section 83 post-adjudication is an overreach.

Furthermore, jurisdictional inconsistencies may arise in such cases. The officer empowered to issue recovery under Section 79 is not necessarily the same as the officer who initiated provisional attachment under Section 83, which can potentially vitiate the attachment order on jurisdictional grounds.

Strategic Note for Taxpayers:

In case of a provisional attachment:

• Immediately file Form GST DRC-22A under Rule 159(5) to seek lifting/modification of attachment.

• Support the application with verifiable facts showing:

1. Intent to pay legitimate dues;
2. Robust compliance track record;
3. Financial capability to pay without coercion;
4. Lack of mala fide intent, flight risk, or asset diversion;
5. Any pending appeals, demonstrating legal contestation of liability.

When these elements are present, any continued attachment becomes highly vulnerable to judicial challenge, especially if reasons for rejection are vague, arbitrary, or unsupported by material evidence.

Whether proceedings at the stage of show cause notice can be challenged in writ jurisdiction merely on the ground that GST DRC-01 and DRC-02 do not separately quantify tax dues for each noticee?

No, the Hon'ble Delhi High Court in ***Sulender Shah and Anr. v. Additional Commissioner/Joint Commissioner CGST Delhi and Anr., [W.P. (C) 6481/2025, decided on 15.05.2025, Citation: 2025 (5) TMI 1437 - DELHI HIGH COURT]*** dismissed the writ petition and refused to interfere with the adjudication proceedings at the stage of show cause notice. The petitioners—a Chartered Accountant and a trader—assailed the show cause notice dated 02.08.2023 and corresponding GST DRC-01 and DRC-02, contending that the documents were non-compliant with law as they failed to compute individual liability separately for each noticee. It was submitted that these proceedings had serious consequences as the Institute of Chartered Accountants of India had initiated disciplinary action against one of the petitioners based on the said notice. The allegations in the show cause notice involved floating of fake firms by third parties with whom the petitioners had business links, as partially admitted by them in recorded statements. The Court observed that both GST DRC-01 and DRC-02 referred to the show cause notice and clearly stated that tax/penalty had been imposed vide notice dated 02.08.2023, with the annexure to the notice containing detailed computation. The Court held that in cases involving multiple parties and a web of transactions, reference to annexures in the SCN is sufficient at the notice stage to inform the noticee of the tax implications. It was further held that the writ jurisdiction under Article 226 could not be invoked to challenge the show cause notice or to assess the truthfulness of petitioners' statements recorded by the department. Since the adjudication was still in progress, the Court found no reason to interfere and disposed of the petition, directing that the proceedings be continued in accordance with law.

Author's Comments:

This ruling reaffirms the well-established principle that writ jurisdiction under Article 226 is not ordinarily exercisable at the stage of show cause notice, unless there exists a clear case of lack of jurisdiction, breach of natural justice, or patent illegality. The Delhi High Court has rightly declined to entertain a challenge at the pre-adjudication stage, emphasizing that mere procedural or formatting grievances in DRC-01/DRC-02—when detailed computation and reference to the annexure is available—do not merit judicial interference.

However, in the author's considered opinion, the case raises serious concerns about procedural regularity and fairness in multi-party SCNs, particularly when liability is sought to be imposed on multiple distinct entities/persons through a single show cause notice. When a joint SCN is issued without clear bifurcation of tax liability and individual allegations, it creates practical impediments in the exercise of statutory remedies, such as filing of separate replies, seeking rectification, or pursuing appeal by each noticee. The GST common portal currently does not allow individual responses, filings, or appeals by separately named persons against a single SCN, effectively curtailing the independent legal strategy available to each party.

Further, a single adjudication proceeding based on joint notice may inadvertently result in one noticee's defence influencing or prejudicing the outcome for another, especially when the nature of involvement, documentary evidence, and legal grounds differ. In such cases, each noticee must be allowed to rebut independently and avail legal remedies on their own merits. If such opportunity is denied merely because the DRC-01 was issued jointly, it offends the principles of natural justice and undermines the right to fair hearing.

Whether an order u/s 74 of the CGST Act can be sustained if it demands an amount in excess of the amount specified in the SCN?

No, the Hon'ble Allahabad High Court in ***M/s Vrinda Automation v. State of Uttar Pradesh and Another [Writ Tax No. 2006 of 2025, decided on 14.05.2025, Citation: 2025 (5) TMI 1435 - ALLAHABAD HIGH COURT]*** quashed the impugned order dated 30.12.2024 passed under Section 74 of the CGST Act as it violated Section 75(7) by raising a demand beyond the scope of the show-cause notice. The petitioner had challenged the demand order, which raised a liability of ₹1.34 crore, though the show-cause notice issued in Form GST DRC-01 had proposed a demand of only ₹66.13 lakh. It was further contended that the notice was uploaded merely under the 'Additional Notice and Order' tab on the GST portal and was never otherwise communicated to the petitioner, rendering them unaware of the proceedings and unable to file a reply. The petitioner submitted that the final order not only lacked consideration of any response but also exceeded the monetary demand originally specified in the SCN—particularly with respect to interest and penalty. The Court, after examining the facts and hearing both sides, held that Section 75(7) of the CGST Act prohibits confirmation of demand on grounds not mentioned in the show-cause notice and bars any demand in excess of what is proposed. Since the impugned order levied amounts in clear violation of these provisions, it was declared unsustainable. Accordingly, the order was quashed, and the matter was remanded to the Deputy Commissioner, State Tax, Ghaziabad, with directions to allow the petitioner to respond to the SCN and to pass a fresh order after granting personal hearing.

Author's Comments:

This decision is a reaffirmation of the fundamental adjudicatory discipline that the GST law demands—the adjudication must strictly mirror the allegations and quantifications proposed in the SCN. Section 75(7) of the CGST Act is unequivocal in its mandate: no order of demand shall travel beyond the contours of the SCN, whether in terms of grounds or quantum. Any departure vitiates the entire adjudication process.

In the author's opinion, this case also underscores a recurring procedural lapse that deserves broader attention: the conflation of Form GST DRC-01 (summary of SCN) with the SCN itself. The GST Rules, specifically Rule 142(1)(a), prescribe that a proper SCN under Section 74(1) must first be issued. Only after such SCN is issued can DRC-01 be generated as a summary, not vice versa. Relying solely on DRC-01 as a substitute for the statutory SCN is a fatal defect in jurisdiction, as held in ***Udit Tibrewal v. State of Assam [2024 (11) TMI 108 – Gauhati HC]***. It was rightly observed there that "Summary in DRC-01 is not a substitute for a show cause notice".

Strategically, the petitioner in the present case could have gained even stronger ground had they challenged the absence of a valid SCN altogether, which would have rendered the entire proceedings non est in law. Another technical nuance clarified by this case is the differential treatment of interest and penalty:

• Interest, being a statutory consequence of tax default, is recoverable even if not specifically quantified in the SCN, as per Section 75(9).

• Penalty, however, requires explicit proposal in the SCN, since it is discretionary and not automatic. Its imposition demands justification, proportionality, and reasoning, failing which it becomes arbitrary.

Thus, if the SCN does not propose a penalty or detail the basis for invoking Section 122, the imposition of penalty in the final order is a procedural overreach and violation of natural justice.

Whether refund sanctioned by appellate authority can be withheld by the department under Section 54(11) of the CGST Act without any pending appeal or legal proceedings?

No, the Hon'ble Delhi High Court in the case of ***M/s K-Nxt Logisticx Private Limited v. Union of India and Anr., [W.P. (C) 3713/2025, decided on 15.05.2025, Citation: 2025 (5) TMI 1436 - DELHI HIGH COURT]*** held that the department cannot withhold refund solely based on its internal opinion under Section 54(11) of the CGST Act, in the absence of any appeal or pending legal proceeding against the order of the Appellate Authority. In this case, the petitioner, engaged in freight forwarding services, had filed a refund claim for unutilized ITC for January 2023, which was initially rejected by the adjudicating authority. However, the Appellate Authority allowed the refund vide order dated 16.01.2024. Despite this, the department withheld the refund by invoking Section 54(11), citing possible revenue impact. The petitioner approached the High Court seeking release of refund with interest. The Court observed that Section 54(11) can only be invoked where there is an ongoing appeal or legal proceeding and where the Commissioner forms an opinion, after hearing the assessee, that the refund may adversely impact revenue due to malfeasance. The Court emphasized that such an opinion cannot exist in a vacuum and must be supported by a pending challenge to the refund-sanctioning order. Citing earlier precedents, including *Shalender Kumar v. CGST Delhi West*, the Court ruled that without any filed appeal or stay on the appellate order, the department is bound to grant the refund and cannot withhold it merely by asserting its intent to file an appeal. Accordingly, the Court directed the department to release the refund along with statutory interest under Section 56 within two months, clarifying that any future appeal, if filed, would not affect this direction unless stayed by a competent authority.

Author's Comments:

This judgment reiterates a vital legal safeguard in refund jurisprudence under GST: Section 54(11) cannot be invoked arbitrarily or based on departmental apprehensions alone. The statutory mechanism under Section 54(11) is not a carte blanche to the department to withhold a refund indefinitely. It mandates strict preconditions:

1. There must be an appeal or other proceeding pending;
2. The Commissioner must form an opinion that granting refund may adversely impact revenue, and that too due to malfeasance or fraud; and
3. Opportunity of hearing must be afforded to the assessee.

In the present case, the absence of any pending appeal or stay against the Appellate Authority's refund-allowing order renders the invocation of Section 54(11) wholly without jurisdiction. The Delhi High Court rightly held that departmental opinion cannot exist in a vacuum—it must be predicated on an actual contest to the refund order, such as an appeal or legal proceeding.

Furthermore, once an appellate authority passes a reasoned and final order granting refund, and the same is not stayed or reversed by a higher forum, it attains finality for the department. Intention to file an appeal or internal noting cannot override such finality.

Whether non-signing of notices and orders under Section 73 of the CGST/JGST Act vitiates the proceedings and renders the demand order invalid?

Yes, the Hon'ble Jharkhand High Court in ***Sandip Kumar Singh v. State of Jharkhand & Ors., [W.P. (T) No. 2129 of 2025, decided on 06.05.2025; Citation: 2025 (5) TMI 1512 - JHARKHAND HIGH COURT]*** quashed the impugned demand order passed under Section 73 of the JGST Act, holding that non-compliance with Rule 26(3) of the JGST Rules, which mandates digital signature on notices and orders, vitiates the entire proceedings. In this case, the petitioner challenged the issuance of Form GST DRC-01A dated 06.12.2022 and the show cause notice dated 29.04.2023 under Section 73 on the ground that neither bore the digital signature of the issuing authority, as required by Rule 26(3). The final order dated 31.07.2023, passed for FY 2021–22, was also challenged as being consequentially invalid. The department attempted to defend the order by asserting that the final order (Annexure-7) contained the required signature; however, the Court rejected this contention, holding that unsigned DRC-01A and show cause notices fundamentally vitiated the proceedings. The Court relied on its earlier decision in ***Rajendra Modi v. State of Jharkhand*** **(W.P. (T) No. 1354 of 2025, decided on 21.03.2025,** ***2025 (3) TMI 1488 - JHARKHAND HIGH COURT***), reaffirming that statutory documents like notices and orders must be digitally signed by the proper officer. As a result, the High Court allowed the writ petition, quashed both the final order and consequential communications, and granted liberty to the authorities to issue fresh notices in accordance with law and after giving the petitioner an opportunity to respond.

Author's Comments:

This judgment reinforces an essential procedural safeguard in GST adjudication—that statutory notices and orders must be signed (digitally or manually) to attain legal sanctity. The Court has rightly upheld Rule 26(3) of the CGST/JGST Rules, which mandates the use of a digital signature or electronic verification code (EVC) for validating any notice or order issued electronically.

It is important to note that the Hon'ble Kerala High Court in ***M/s. Fortune Service & Ors v. Union of India & Ors. [WP (C) Nos. 20656/2024 and batch, decided on November 29, 2024, 2024 (12) TMI 1512 - KERALA HIGH COURT****]* adopted a similar reasoning—no signature, no validity—irrespective of whether the order was generated on a digital platform. The *"trust"* in the digital process cannot substitute for "due process", and authentication by signature remains the linchpin of lawful proceedings.

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

Whether seizure of goods in transit without issuance of notice under Section 129(3) and without recording clear reasons in the seizure memo violates the CGST Act and principles of natural justice?

Yes, the Hon'ble Andhra Pradesh High Court in ***M/s Srinivas Traders v. The Assistant Commissioner of State Tax & Others, [W.P. Nos. 10881, 10883, 10885, 10961 & 10964 of 2025, decided on 07.05.2025, Citation: 2025 (5) TMI 1675 - ANDHRA PRADESH HIGH COURT]*** held that seizure of goods without issuing a notice under Section 129(3) of the CGST Act and without providing legible reasons in the seizure memo is contrary to law and directed the authorities to follow the due process before taking action under Section 130. In this case, goods of the petitioner were intercepted and seized during transit, and the seizure memos were mere printed formats with a checkbox marked, devoid of specific or legible reasons for the seizure. The petitioner contended that such seizure without meaningful reasons and without issuance of notice under Section 129(3) rendered it impossible to submit a proper explanation. Furthermore, instead of initiating proceedings under Section 129, the department had directly invoked Section 130 without completing the valuation and determination process mandated within seven days. The Government Pleader failed to produce any Section 129 notice, and the notices on record were only under Section 130. The Hon'ble Court found this approach violative of statutory safeguards under the CGST Act and relied on the Supreme Court's ruling in ***Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405*** to assert that reasons cannot be supplemented after the action is taken. The Court directed the authorities to immediately issue Section 129(3) notice, fix liability within three days thereafter after granting hearing, and release the goods under Section 129(1). Proceedings under Section 130 were held impermissible until due process under Section 129 was completed. The Court also emphasized the need for training tax officers in lawful seizure procedures and directed a copy of the judgment be sent to the Commissioner of Commercial Taxes for appropriate action.

Author's Comments:

This decision reinforces the foundational legal principle that no tax, interest, or penalty can be levied without issuance of a proper show cause notice. Under the GST law, issuance of SCN in Form MOV-07 under Section 129(3) is a mandatory statutory prerequisite before any demand can be imposed for goods detained in transit. This SCN must be self-explanatory, intelligible, and disclose specific reasons—mere ticking of boxes or use of printed formats does not meet the test of legality. A vague or non-speaking notice robs the taxpayer of their right to respond meaningfully, thus violating principles of natural justice.

Moreover, the substitution of the opening words of Section 130 vide the Finance Act, 2021, now makes it contingent upon initiation of proceedings under another provision, such as Section 67 (inspection/search/seizure) or Section 129 (detention/seizure during transit). Section 130 cannot operate in isolation. Therefore, where there is no valid initiation or conclusion of proceedings under Section 129, the seizure itself becomes unlawful, and any confiscation proceedings under Section 130 built upon such seizure are also legally tainted. In GST jurisprudence, seizure is a necessary precondition for lawful confiscation—without lawful seizure, confiscation has no legal legs to stand on.

Critically, while the Court rightly held the proceedings to be procedurally defective, it still granted liberty to the department to issue a fresh SCN, thereby curing a fatal lapse and allowing the revenue to correct its illegal action. In the author's considered opinion, this undermines the sanctity of due process. A proceeding that fails at the threshold of legality—such as one without SCN or lawful seizure—ought to be given finality (quietus), not a chance of resurrection. Such reliefs only prolong litigation and place the burden of departmental lapses unfairly on the taxpayer.

Whether physical availability of goods is necessary for demanding redemption fine u/s130, and whether a writ petition is maintainable when payment is made voluntarily without disputing the confiscation notice?

No. The Hon'ble Orissa High Court in ***M/s Viraj Steel & Energy Pvt. Ltd. vs. Joint Commissioner of State Tax (Appeal), Sambalpur & Ors.*, W.P.(C) No.*9367 of 2025, decided on 15.05.2025, (5) TMI 1607 - ORISSA HIGH COURT***, held that hat when the confiscation order under Section 130 of the CGST/OGST Act is not challenged and the amount is paid voluntarily without protest, a writ petition is not maintainable. The Court further clarified that redemption fine under Section 130(2) can be levied even if the goods are not physically available for confiscation, provided the assessee has not disputed the levy or the basis of confiscation in a timely manner. The Hon'ble Court noted that the petitioner challenged a show cause notice dated 27.03.2023 and a subsequent demand order dated 29.03.2023 issued under Section 130 read with Section 122 of the OGST Act, which imposed penalty and redemption fine on account of alleged stock discrepancy detected during a search. Although the petitioner had initially admitted the shortage and paid the penalty and fine to secure release of seized documents, it later filed an appeal under Section 107 of the Act after nearly two years. The appellate authority dismissed the appeal as time-barred. The petitioner thereafter approached the High Court in writ jurisdiction, contending that once the goods were not available, no confiscation or redemption fine could be levied, rendering the show cause notice and demand order inherently void. The High Court examined the scope of Section 130 and the precedents cited, and held that while statutory authorities may exercise power under Section 67 to seize documents or unaccounted stock, but the physical availability of goods is not a pre-condition for imposition of redemption fine under Section 130, particularly where the taxpayer has not disputed the proceedings at the appropriate stage. The petitioner neither responded to the notice nor contested the confiscation order. Instead, they voluntarily deposited the demanded amount, which included the redemption fine and tax. Since the confiscation was not challenged, and payment was made without protest, the demand of redemption fine attained finality. A writ remedy under Article 226 cannot be invoked as a substitute for appeal in such circumstances. Accordingly, the petition was dismissed with liberty to approach the appellate authority, if permissible in law, and without interfering in the finalized confiscation proceedings.

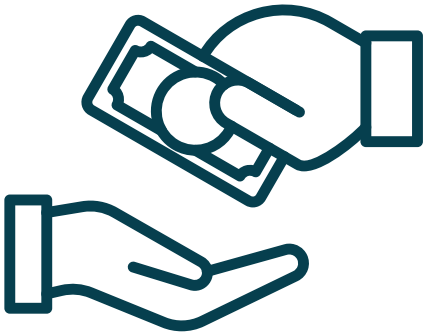
Author's Comments:

This decision underscores two pivotal lessons for GST litigation: procedural awareness and timely legal response. The first and most critical procedural flaw in the instant case was the absence of a valid seizure—a statutory prerequisite for initiating confiscation proceedings under Section 130. Confiscation, by its very nature, contemplates compulsory transfer of property in the offending goods to the Government. Without physical custody or seizure of the goods, such transfer is neither possible nor lawful. This is not merely a technicality—it is a jurisdictional requirement. The GST framework, unlike the NDPS or Customs laws, grants the power of confiscation with greater statutory restraint, and only in defined circumstances.

In the case at hand, the alleged contravention was a stock discrepancy noticed during search—typically governed by Section 35(6), which authorizes demand of tax, interest, and penalty. However, invoking Section 130 was a gross misapplication of law. This strategic misstep by the Department could have been effectively challenged had the taxpayer responded promptly.

Instead, the taxpayer's inaction—first by making voluntary payment without protest, and later by failing to file appeal within limitation—resulted in acquiescence. Once the confiscation order attained finality, it closed the door on writ jurisdiction. Courts have consistently held that Article 226 cannot be used to reopen issues which the taxpayer consciously chose not to contest at the statutory stage.

This case illustrates that only vigilant taxpayers who actively challenge overreach at the earliest stage can safeguard their rights. First responders—whether tax consultants or in-house officers—play a vital role in shaping the trajectory of such cases.



Whether rejection of appeal merely for manual filing, despite demerger and technical impediments, is valid under GST law?

No, the Hon'ble Calcutta High Court in ***Ultratech Cement Limited v. Commissioner (Appeals), CGST & CE, Siliguri [WPA 137 of 2025, decided on 14.05.2025, Citation: 2025 (5) TMI 1729 - CALCUTTA HIGH COURT]*** held that such a rejection without appreciating the demerger and factual matrix is unsustainable, and remanded the matter for fresh adjudication by a different officer. The petitioner, Ultratech Cement, had acquired the cement business of M/s Century Textiles & Industries Ltd. under a demerger sanctioned by NCLT effective from 01.10.2019, and obtained its own GST registration accordingly. However, despite this legal transition, audit and show-cause proceedings for the FY 2017-18 to 2019-20 were initiated in the name of Century Textiles, culminating in an adjudication order dated 15.12.2023 also passed in that name. The said order was never uploaded on the portal of Ultratech Cement. Due to this, the petitioner was compelled to file the appeal manually with the mandatory pre-deposit. The Appellate Authority, without considering these circumstances or the fact that the order was never served digitally, summarily rejected the appeal merely because it was manually filed, relying on Rule 108 of the CGST/WBGST Rules. The department conceded the demerger and admitted that proceedings should have been against Ultratech Cement. Taking note of the situation, the Hon'ble Court directed that the matter be remanded back for adjudication by a different appellate officer and clarified that all orders including the show-cause notice and adjudication order shall be treated as issued to Ultratech Cement, with directions to upload all documents on the correct portal. The writ petition was accordingly disposed of.

Author's Comments:

The judgment reflects judicial pragmatism in recognizing genuine technical and transitional difficulties caused by corporate restructuring. However, from a strategic and legal standpoint, the petitioner missed a vital opportunity to challenge the jurisdiction and legality of the proceedings at the threshold.

Proceedings initiated against a non-existent entity—here, Century Textiles & Industries Ltd., post-demerger—are not merely procedural irregularities but jurisdictional nullities. The legal position is well-settled that any action initiated against a company that has ceased to exist due to amalgamation, merger, or demerger is void ab initio. This doctrine flows from a long line of precedents, including the Supreme Court's decision in Principal Commissioner v. Maruti Suzuki India Ltd. [(2020) 4 SCC 245], where it was categorically held that issuance of a notice to a non-existent entity is a nullity and cannot be cured by subsequent participation in proceedings.

In GST, Section 87 of the CGST Act, 2017 clearly provides that the transferee (amalgamated/demerged entity) is liable for the dues of the transferor entity. However, this liability arises only when proceedings are initiated properly against the transferee entity, not otherwise. In this case, the failure to serve notice and pass orders in the name of Ultratech Cement—which had legally stepped into the shoes of Century Textiles—amounted to a fundamental defect in jurisdiction.

Moreover, under Section 169 of the CGST Act, service of notice or order must be effective and legal. A notice or order uploaded on the wrong portal or against the wrong GSTIN does not constitute valid service. Such an omission robs the taxpayer of an opportunity to respond and violates principles of natural justice.

The High Court's decision to remand the matter is commendable in terms of procedural fairness. Yet, in the author's considered opinion, a more effective strategy would have been to seek quashing of the entire adjudication process as void, on the ground of lack of jurisdiction due to non-service of valid notice on the correct legal entity. Accepting a remand often prolongs litigation, gives the department a chance to correct fatal errors, and fails to grant the finality a taxpayer rightly deserves when legal process is violated at inception.

Whether Rule 36(4) of the CGST/TNGST Rules violates Article 14 of the Constitution and is ultra vires the law?

No. The Hon'ble Madras High Court in ***M/s L&T Geostructure LLP v. Union of India & Ors. [W.P. Nos. 5978 & 5983 of 2020, decided on 09.05.2025 | 2025 TMI 1976 – MADRAS HIGH COURT]*** upheld the constitutional validity of Rule 36(4) of the CGST and TNGST Rules, which restricts the availment of Input Tax Credit in cases where suppliers have not uploaded invoice details under Section 37(1). The petitioner challenged the vires of Rule 36(4) as being arbitrary, retrospective, and violative of Article 14. The Hon'ble Court rejected this contention, holding that the power to impose such restrictions flows from the combined reading of Sections 16 and 49 of the GST Act, and that Rule 36(4) is not ultra vires but a temporary regulatory measure designed to protect both revenue and taxpayers.

The Court traced the legislative and administrative history of ITC evolution from MODVAT/CENVAT to GST and noted that Rule 36(4) was introduced to address system-based reconciliation difficulties in the early years of GST implementation. The rule was meant to provide limited credit (initially 20%, later reduced to 10% and 5%) in respect of invoices not reflected in GSTR-2A, pending compliance by suppliers. It clarified that with the maturing of the GST ecosystem and the incorporation of GSTR-2A and auto-populated returns, the system now enables a more seamless ITC claim process. Hence, Rule 36(4), in its temporary application, served the dual purpose of ensuring supplier compliance and preventing fraudulent credit, and cannot be struck down as violative of constitutional equality principles. The Court emphasized that an exception created to operationalize legislative intent, if applied uniformly and reasonably, cannot be faulted under Article 14.

Author's Comments:

While the Hon'ble Madras High Court has upheld Rule 36(4) as a constitutionally valid and reasonable restriction aligned with the objectives of the GST law, certain deeper issues remain unaddressed. Primarily, Rule 36(4) was introduced by invoking the rule-making powers under Section 164 of the CGST/TNGST Act without any specific recommendation of the GST Council. This raises questions on procedural propriety, especially when such restrictions significantly curtail conditional vested rights like Input Tax Credit. It is now judicially settled that while ITC is a concession and not a vested right, any condition attached thereto must be grounded in statutory authority and follow due process, including Council recommendation in matters impacting national policy under GST. Even though the Hon'ble Court harmonized the rule with Section 16 and 49, the core concern remains: whether a delegated provision that effectively restricts ITC can be sustained and in absence of notification of section 43A.

It's also noteworthy that the Hon'ble Kerala High Court in ***Nahasshukoor v. Assistant Commissioner[2023] 157 taxmann.com 648 (Kerala) | [2024] 81 GSTL 384 (Ker.)*** had earlier upheld both Section 16(2)(c) and Rule 36(4), emphasizing the importance of supplier compliance in the ITC chain. This trend indicates judicial reluctance to dilute the matching principle that forms the cornerstone of GST credit architecture.

Can ITC be denied to the purchaser merely because the supplier failed to deposit the tax with the government, despite the purchaser having paid tax through banking channels and submitted all supporting documents?

No, the Hon'ble Allahabad High Court in ***M/s R.T. Infotech vs. Additional Commissioner Grade 2 and 2 Others*, *[Writ Tax No. 1330 of 2022, decided on 30.05.2025, citation: 2025 (6) TMI 116 - ALLAHABAD HIGH COURT]***, held that denial of ITC solely on the ground of supplier's default, despite payment through proper banking channels, is unsustainable in law. The petitioner, a registered supplier and authorized user of M/s Bharti Airtel Ltd.'s services, had purchased recharge coupons against seven tax invoices for the FY 2017–18. ITC of ₹28.52 lakhs was claimed based on these invoices, with CGST and SGST components of ₹14.26 lakhs each duly paid through RTGS. A discrepancy was later pointed out through an ASMT-10 notice under, which the petitioner responded to via ASMT-11, explaining that the invoices pertained to Bharti Airtel and that full payment had been made. Despite this, a SCN under Section 73 was issued on the ground that ITC was wrongly claimed under Section 16(2)(c), arguing that the supplier failed to deposit the tax. The petitioner contended that proceedings should instead be initiated against Bharti Airtel Ltd. and not him. The adjudication resulted in demand of ITC reversal, penalty, and interest. The appellate authority affirmed the order. The High Court, however, found merit in the petitioner's case, noting that all payments were made through banking channels and there was evidence that proceedings had already been initiated against the defaulting supplier. The Court observed that a purchasing dealer cannot be expected to compel the supplier to file returns or deposit tax, and failure by the supplier should not result in denial of ITC to the purchaser. Citing the Supreme Court's decision in ***Suncraft Energy Pvt. Ltd. [2023 (12) TMI 739 - SC ORDER]*** and the Madras High Court's ruling in ***D.Y. Beathel Enterprises [2021 (3) TMI 1020 - MADRAS HIGH COURT]* , *2022 (58) G.S.T.L. 269 (Mad.)*,** the Court held that simultaneous action must be taken against the supplier. The impugned orders were thus quashed, and the matter remanded back for reconsideration with a direction to pass a fresh speaking order after hearing all stakeholders within two months.

Author's Comments:

While this judgment of the Allahabad High Court has been widely celebrated, a closer legal scrutiny reveals that it does not grant any conclusive relief to the taxpayer but merely remands the matter for reconsideration, leaving the threat of denial of ITC still alive. This case is emblematic of systemic failure—both in investigative rigor and procedural discipline—where the entire SCN was premised on assumptions without concrete findings or disclosure of departmental action against the defaulting supplier. In such circumstances, before proceeding with the reversal of ITC, the department is duty-bound to furnish the following essential information to the taxpayer:

1. Nature and quantum of demand raised against the supplier;
2. Return filing and tax payment history of the supplier from the date of registration;
3. Actions taken under Section 79 in cases where GSTR-1 was filed but GSTR-3B was not;
4. Status of proceedings under Section 73/74 against such supplier;
5. Appeal status of any concluded adjudication;
6. Recovery proceedings initiated under Sections 83 and 93, if any;
7. Copies of all relevant documents forming the basis of the above actions.

In the absence of disclosure of this material information, the demand becomes vague, speculative, and contrary to principles of natural justice. The remand may offer temporary respite, but unless SCNs are contested on these jurisdictional and procedural grounds from the outset, relief on merits may remain elusive. This case thus underscores the need for robust litigation strategy grounded in due process challenges rather than relying solely on sympathetic judicial interpretation.

Whether delay beyond the statutory condonable period for filing GST appeal can be condoned by the High Court under writ jurisdiction if the petitioner was unaware of the ex parte order?

Yes, the Hon'ble Madras High Court in ***M/s HITECH CNC Engineering v. Deputy Commissioner (Commercial Tax) [W.P. No. 16902 of 2025, decided on 03.06.2025 | 2025 (6) TMI 518 - MADRAS HIGH COURT]*** condoned a delay of 285 days in filing appeal against an ex parte summary order under the CGST Act, where the petitioner was unaware of the original order, and directed the appellate authority to hear the matter on merits upon payment of an additional 5% pre-deposit. An ex parte summary order was passed against the petitioner on 25.07.2023. However, the petitioner remained unaware of the said order and did not file an appeal within the prescribed limitation period. The appeal was ultimately filed on 04.09.2024, resulting in a delay of 285 days. The appellate authority rejected the appeal as time-barred under the statutory limitation and condonable period prescribed under Section 107 of the CGST Act. Challenging this rejection, the petitioner approached the High Court, explaining that due to the ex parte nature of the order, they were not served and hence could not act in time. The Court found this explanation to be genuine and held that the strict limitation rules must be tempered where procedural fairness has been compromised. Acknowledging that the petitioner had already deposited 10% of the disputed tax at the time of filing the appeal, the Court directed the petitioner to deposit an additional 5% of the disputed tax as a condition for condoning the delay. Accordingly, the impugned rejection order dated 04.11.2024 was set aside. The writ was allowed with the direction that upon payment of the additional 5%, the appellate authority shall admit the appeal and decide the matter on merits after providing reasonable opportunity of hearing.

Author's Comments:

Section 107(4) of the CGST Act, 2017 prescribes a strict time limit for filing a first appeal—three months from the date of communication of the order, extendable by one additional month at the discretion of the Appellate Authority. Once this outer limit of four months' lapses, the Appellate Authority becomes functus officio and has no power to condone delay, even if compelling or bona fide reasons exist.

This position has been settled by the Hon'ble Supreme Court in ***Singh Enterprises v. CCE [2008 (221) ELT 163 (SC)]***, where it was held that when the statute clearly restricts the period for filing and condoning an appeal, no further extension can be granted, and any such attempt would override the legislative mandate.

The taxpayer should have strategically mentioned the actual date of receipt of the order as the date of communication under Section 107(1) of the CGST Act. This would align the appeal within the permissible limitation period. Accordingly, Table 17 of Form GST APL-01 should have clearly asserted that there is no delay in filing.

However, once the taxpayer admits delay, either expressly or by indicating an earlier date of communication, the Appellate Authority is stripped of any power to condone such delay beyond the statutorily allowed period. The rigid framework of Section 107(4) offers no discretion once the outer time limit is breached—turning a curable procedural lapse into a fatal legal bar.

Can a taxpayer's bank account be provisionally attached under Section 83 of the MGST Act without disclosure of reasons and material justifying such action?

No, The Hon'ble Bombay High Court in case of ***M/s Shubh Corporation v. State of Maharashtra & Ors. (2025 (6) TMI 107 – BOMBAY HIGH COURT | Writ Petition No. 5183 of 2025 | Date of Decision: 07.05.2025)*** held that the impugned order for attaching bank account lacked any such justification or disclosure and is thereby quashed. The petitioner, a partnership firm engaged in procuring and exporting heavy machinery, challenged the provisional attachment of its bank account under Section 83 of the Maharashtra GST Act. The attachment order, issued on 27.01.2025, was based on alleged proceedings under Section 67 (search and seizure). The petitioner contended that the search had concluded months earlier (on 18.10.2024), no show cause notice had been issued thereafter, and no tax liability was determined or pending against them. Despite a written representation dated 03.02.2025, the department failed to disclose the reasons or material forming the basis for such attachment. The Court emphasized that powers under Section 83 are drastic and must be exercised strictly in accordance with the law, supported by material evidence. The authority must demonstrate that provisional attachment is essential to protect government revenue, and such reasons must be communicated to the assessee when demanded. Since the impugned order lacked any such justification or disclosure and merely used the format of Form GST DRC-22 without detailing material grounds, the Court quashed the order and allowed the petitioner to operate the bank account. It clarified, however, that the revenue may initiate appropriate proceedings, if necessary, through a proper show cause notice.

Author's Comments:

This decision significantly fortifies the jurisprudence around provisional attachment under Section 83 of the GST law, emphasizing that such powers cannot be wielded in a mechanical or arbitrary manner. The Bombay High Court rightly stressed that mere issuance of Form GST DRC-22 is not sufficient compliance with legal requirements unless the reasons for attachment and supporting material are explicitly communicated to the taxpayer, especially when demanded. This case illustrates how departments often rely on templated orders devoid of application of mind, bypassing the crucial mandate that provisional attachment is to be used sparingly and only when justified by objective facts indicating a serious threat to revenue. The ruling reinforces that provisional attachment cannot be used as a tool for harassment or to pre-emptively penalize taxpayers without any adjudication. From a strategic standpoint, taxpayers facing such coercive measures must immediately invoke Rule 159(5) by filing Form GST DRC-22A, placing on record compelling evidence such as: absence of mala fide conduct, sound compliance history, financial capacity to pay any legitimate dues, pendency of appeals, or non-finality of alleged liability. Where such disclosures are made and yet the attachment is continued without cogent reasoning, the departmental action becomes ripe for judicial interference.

Can Input Tax Credit be claimed under Section 16 of the CGST Act if the supplier fails to deposit the tax with the Government?

No. The Hon'ble Allahabad High Court in ***Trendships Online Services Pvt. Ltd. v. Commissioner Commercial Taxes U.P. & Anr. [Writ Tax No. 501 of 2023, decided on 26.05.2025 | 2025 (6) TMI 98 – ALLAHABAD HIGH COURT]*** dismissed the writ petition seeking credit of GST paid on invoices raised in 2018 by M/s Shree Radhey International. The Court held that Input Tax Credit cannot be availed under Section 16(2)(c) of the CGST Act, 2017 where the supplier has not deposited the tax with the Government. The petitioner had claimed ITC based solely on the tax invoice issued by the supplier. However, it was found during departmental inquiry that the supplier never actually deposited the tax involved in the said transactions, and its registration was later cancelled.

The Hon'ble Court emphasized that Section 16(2)(c) of the Act mandates actual deposit of tax by the supplier as a condition precedent for the recipient to avail ITC. It observed that the statutory provision is explicit and unambiguous, and no ITC can be claimed merely on the basis of invoice if the underlying tax has not been remitted. The Court also distinguished the judgment in ***Solvi Enterprises [2025 (3) TMI 1313 - ALLAHABAD HIGH COURT]***, by stating that the coordinate bench in that case did not fully consider the implications of Section 16(2)(c).

Further, the petitioner's reliance on various High Court rulings where matters were remanded or stayed was held to be misplaced, as none of them dealt with the mandatory nature of Section 16(2)(c) or upheld ITC where tax was not deposited by the supplier. Since the condition prescribed under Section 16(2)(c) was not fulfilled, the Court refused to interfere and dismissed the petition.

Author's Comments:

This case is a textbook example of what happens when a taxpayer walks into a legal battle without a solid strategy. While the law under Section 16(2)(c) is quite clear—no ITC if the supplier hasn't paid the tax but the real issue here wasn't just about legal provisions, but about how the case was handled.

The petitioner relied only on the invoice and expected the Court to grant relief, but didn't demand any proof from the department about what action, if any, had been taken against the supplier. That's where things went wrong.

In such cases, the taxpayer must push the department to disclose:

- Whether any demand or action was initiated against the supplier under Section 73/74 or 79?
- Was any recovery proceeding launched under Sections 83 (provisional attachment) or 93 (recovery from third party)?
- Has the supplier filed GSTR-1 without paying tax in GSTR-3B? If so, what action has been taken?
- Has the department initiated cancellation proceedings and on what grounds?
- Is the supplier's liability determined and crystallized through a speaking adjudication order?
- Was the purchaser ever informed of such default or made part of the proceedings against the supplier?

In the absence of these disclosures, a blanket denial of ITC is nothing more than a conjecture and the demand against the purchaser becomes vague and arbitrary. Strategically, the better approach for the petitioner would have been to mount a writ challenge on grounds of failure of due process, non-application of mind, *and* failure to discharge the burden of proof by the department.

Instead, the writ was filed directly on merits of entitlement under Section 16, without confronting the foundational infirmities in the SCN or order. Courts aren't inclined to entertain such half-baked cases—and rightly so.

Whether the failure to upload the adjudication order on the GST portal and to provide a copy to the taxpayer amounts to a violation of the principles of natural justice?

Yes, The Hon'ble Jharkhand High Court in case of ***M/s Rahman Sales vs. The State of Jharkhand & Ors., W.P. (T) No. 1309 of 2024, Order dated 08.05.2025, 2025 (6) TMI 511 (Jhar. HC)*** held that there has been violation of the principles of natural justice on account of non-supply of the said order. The petitioner, M/s Rahman Sales, challenged the order in Form GST DRC-07 dated 14.03.2019 and related proceedings initiated after an inspection conducted on 01.12.2018 at its premises in its absence. The petitioner contended that no DRC-01 or pre-show cause notice in Form DRC-01A, as required under Section 73(1) of the JGST Act, was served before the issuance of the DRC-07. It was further submitted that although the department claimed to have issued the DRC-07 on 14.03.2019 and also sent an email on that date directing the petitioner to access the portal to download the order, the DRC-07 was neither attached to the email nor actually uploaded on the portal. The respondents asserted that there was a delay due to technical issues but failed to specify the date on which the DRC-07 was eventually uploaded. The Court observed that merely claiming technical glitches without furnishing the actual date of uploading does not meet the legal requirements of proper service or communication of the adjudication order. The Court held that non-supply of the adjudication order and the failure to properly upload it constituted a breach of natural justice. It is the duty of the authorities to ensure that orders are either uploaded on the portal or otherwise communicated. Consequently, the Court set aside the DRC-07 and the related proceedings, remanding the matter back to the authority to provide a copy of the adjudication order to the petitioner, grant a hearing, and then pass a fresh order as per law.

Author's Comments:

This case exposes not only procedural lapses but also deeper jurisdictional contradictions that often plague departmental adjudication under GST. While the High Court rightly set aside the DRC-07 on the limited ground of non-uploading and non-communication of the adjudication order, the larger issue of jurisdictional inconsistency was missed. Proceedings were initiated under Section 67—meant for search and inspection premised on tax evasion—yet the SCN and adjudication were carried out under Section 73, which applies only in non-fraudulent cases. This is a classic case of the department approbating and reprobating, acknowledging evasion to justify search, but disowning it to invoke the provisions of Section 73. Such inconsistency invalidates the entire proceeding.

Moreover, inspection teams cannot overreach beyond the "reasons to believe" recorded in the INS-01 authorization; any deviation renders the proceedings ultra vires. The taxpayer's litigation strategy also fell short—by focusing only on procedural service defects, they missed the opportunity to challenge the very jurisdiction and legality of the SCN itself. This case highlights that in GST litigation, merely pointing out departmental omissions may not suffice—success depends on invoking the correct jurisdictional and substantive legal grounds that go to the root of the matter.

Whether service of notices only through GST portal without exploring alternative modes under Section 169 of the CGST Act justifies ex parte adjudication?

No, the Hon'ble Madras High Court in ***Tvl. Fashion Falls Fabrics vs. Assistant Commissioner (ST), Tiruppur [W.P. No. 20245 of 2025, decided on 06.06.2025 | 2025 (6) TMI 923 – MADRAS HIGH COURT]*** held that though service through the GST portal is statutorily valid, exclusive reliance on the portal without resorting to alternative modes under Section 169(1)—especially in cases of non-response, renders the adjudication process ineffective and contrary to the principles of natural justice. The Court set aside the ex parte order and remanded the matter for fresh adjudication.

In this case, the petitioner challenged an ex parte adjudication order dated 17.02.2025 passed under DRC-07 for FY 2020–21, which was issued after multiple show cause notices and reminders were uploaded only on the GST portal. The petitioner contended that he was unaware of the proceedings due to limited digital literacy and had relied on a consultant who failed to monitor the portal. No notices were served by any alternative mode such as Registered Post with Acknowledgement Due (RPAD), despite the absence of any response from the petitioner. The petitioner expressed readiness to deposit 10% of the disputed tax and requested an opportunity to present his defense.

The High Court observed that while uploading notices on the portal is a valid mode of service, it becomes a mere formality when the taxpayer does not respond and the officer fails to consider other modes of service prescribed under Section 169(1)**.**The Hon'ble Court emphasized that fulfilling only the technical formality of notice service without ensuring effective communication defeats the purpose of adjudication and leads to avoidable litigation. It held that the adjudicating authority ought to have sent notices through RPAD or other valid modes once repeated non-response was noticed.

Accordingly, the Court set aside the impugned order subject to the petitioner depositing 10% of the disputed tax within four weeks. Upon compliance, the matter was remanded for fresh consideration after giving due opportunity, including a 14-day notice for personal hearing, and passing a reasoned order in accordance with law.

Author's Comments

Section 169 of the CGST Act lays down as many as 14 distinct modes for service of any notice, order, or communication. This wide range of options isn't incidental—it underscores the legislative intent that the most appropriate and effective mode must be adopted, depending on the facts and circumstances of the particular taxpayer.

Serving a notice through a mode that is least likely to reach the Noticee defeats the very purpose of the law. The primary object of any notice is to *"set the law in motion"* by informing the taxpayer of the allegations and giving them an opportunity to respond. Therefore, if the Proper Officer chooses a method that is unlikely to reach the taxpayer—especially when there are indications of non-receipt or non-response—it amounts to a failure to "put the taxpayer at notice" and violates the due process of law.

Service of notice is not a mere procedural formality; it must be real, effective, and result in actual knowledge to the recipient. The mode selected should be one that ensures prompt and reliable delivery of the notice.

This principle was also affirmed by the Hon'ble Madras High Court in ***Sakthi Steel Trading v. Assistant Commissioner (ST) [2024(2) TMI 357- MADRAS HIGH COURT]***, where the Court held that if the assessee failed to respond to a notice sent via email, it was incumbent upon the GST authorities to serve the same through at least one more alternate mode. The absence of such additional service, especially in the face of silence from the taxpayer, rendered the order unsustainable and warranted remand.

Whether a second adjudication order can be sustained under GST when the same issue has already been concluded in favour of the taxpayer by a prior order?

No, the Hon'ble Kerala High Court in ***M/s Winter Wood Designers & Contractors India Pvt. Ltd. v. State Tax Officer & Ors. [WP(C) No. 9086 of 2025, decided on 09.06.2025 | 2025 (6) TMI 1251 – KERALA HIGH COURT]*** held that once a show cause proceeding is concluded by a speaking order accepting the taxpayer's explanation, a second order on the same subject matter by another officer is impermissible and constitutes an error apparent on record which ought to be rectified under Section 161 of the CGST Act. The petitioner received two show cause notices pertaining to the same discrepancies in assessment for FY 2017–18. The first SCN culminated in Order dated 08.12.2023 (Ext. P7), wherein proceedings were dropped after considering the taxpayer's reply. However, a second SCN was also issued by another officer on the very discrepancy, culminating in a contradictory adjudication order dated 30.12.2023 (Ext. P8), confirming the demand. The petitioner immediately pointed out the error through an email dated 01.02.2024 (Ext. P9) and subsequent representations. While the authority acknowledged the duplication, it rejected the rectification request via Ext. P14 on the ground that no application was uploaded on the GST portal within the six-month time limit under Section 161. The Hon'ble Court held that the power of rectification under Section 161 is not restricted to applications filed through the portal but can also be exercised suo-motu by the officer if an error apparent on record comes to light. Since the department admitted that the same issue had been adjudicated twice with conflicting conclusions, and the petitioner had raised the matter within the statutory timeline, the non-exercise of rectification powers merely on procedural grounds was unsustainable. The Court observed that Ext. P8 (demand order) could not survive when Ext. P7 (order dropping proceedings) had already attained finality, and the passing of two contradictory orders amounted to a manifest error on record. Accordingly, the Court quashed both Ext. P8 and Ext. P14, restoring the matter as concluded by Ext. P7.

Author's Comments

Once a proceeding has attained finality, the department cannot re-litigate the same cause of action merely through a different officer or route. GST law does not permit a second bite at the cherry unless there is fresh investigative material or a different cause of action—and none was present here.

In this case, the first adjudicating authority had already applied its mind, considered the reply, and dropped proceedings through a speaking order. The second officer, perhaps unaware or careless, proceeded to issue a fresh SCN and pass an order on the same subject matter. This is not just a procedural lapse—it goes to the root of jurisdiction and legality.

More importantly, once the error was flagged by the taxpayer *within the statutory timeframe*, and the department itself admitted the duplication, the rectification should have been carried out without insisting on technicalities like uploading a fresh application on the portal. Proviso 2 to Section 161 clearly states that where the error is evident and admitted, rectification *must* follow. The Hon'ble Court rightly held that suo-motu powers of rectification exist independent of procedural formalities.

Whether issuance of a SCN under Section 74, after dropping issues under Section 73 without any allegation of fraud or suppression, is valid?

No, the Hon'ble Allahabad High Court in ***Bharat Mint & Allied Chemicals v. State of U.P. and Another [Writ Tax No. 2527 of 2025, decided on 30.05.2025 | 2025 (6) TMI 1243 – ALLAHABAD HIGH COURT]*** held that a notice under Section 74 of the CGST/UPGST Act cannot be sustained when there is no allegation of fraud, wilful misstatement, or suppression of facts. In this case, the petitioner was initially issued a Show Cause Notice under Section 73 covering ten issues. The taxpayer submitted a detailed reply. The adjudicating authority, in the Section 73(9) order dated 20.02.2025, accepted the explanation for several issues but stated that further investigation was needed for points 1, 6, 8, and 10. Instead of completing the inquiry under Section 73, the officer issued a fresh SCN under Section 74 dated 25.02.2025 covering the same issues, without any specific allegation of fraud, suppression, or wilful misstatement. The petitioner challenged the jurisdictional validity of this second SCN.

The High Court noted that the language of the SCN under Section 74 lacked the necessary allegations required to invoke the provision—namely, fraud or suppression. The Court relied on its earlier decision in ***M/s Vadilal Enterprises Ltd. v. State of U.P 2025 (6) TMI 1149 - ALLAHABAD HIGH COURT***. where it was held that a mere reference to unresolved issues or lack of time to verify earlier replies is not a sufficient ground to invoke Section 74. Since the notice did not contain the statutory ingredients justifying invocation of Section 74, and the officer had already exercised jurisdiction under Section 73 for the same issues, the subsequent SCN under Section 74 was declared without jurisdiction. The notice was quashed with liberty to initiate fresh proceedings in accordance with law, if warranted.

Author's Comments

Section 74 is not a fallback or substitute for incomplete adjudication under Section 73. The law draws a clear distinction between the two sections—Section 74 is reserved for fraud, wilful misstatement, or suppression, while Section 73 governs all other cases of tax shortfall or wrong availment.

In this case, the department initially acted under Section 73, acknowledged the taxpayer's replies for most issues, but for a few residual ones, instead of completing the same proceedings, it chose to switch gears and issue a fresh SCN under Section 74—without any new facts or fresh material, and without alleging fraud or suppression. That's a clear jurisdictional overreach.

The Hon'ble Court rightly emphasized that unless the statutory ingredients for invoking Section 74 are explicitly alleged and factually supported, such action is non est in law. The mere administrative difficulty or time constraints in verifying responses under Section 73 cannot justify a shift to a harsher provision like Section 74. For invoking Section 74 of CGST Act, 2017 where evasion of tax is alleged, it implies:

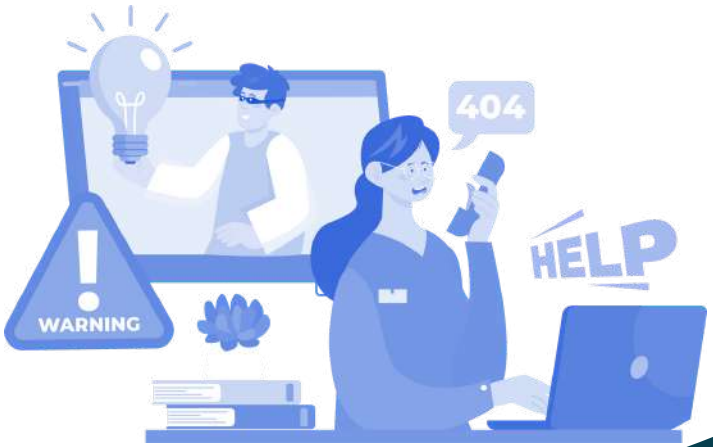
(*i*) non-payment of tax,

(*ii*) coupled with knowledge of liability,

(*iii*) while indulging in active concealment of information designed to render detection difficult and

(*iv*) deriving gains from this misadventure. In the absence of these special circumstances, jurisdiction under Section 74 cannot be invoked.

Also worth noting is the support from Section 75(2) and CBIC Circular 185/17/2022-GST dated 27.12.2022, which allow a downgrade from Section 74 to 73 when ingredients of fraud are not made out. In the same breath, this provision cannot be read to mean that proceedings can also be upgraded from Section 73 to 74.



Whether penalty under Section 129(1)(a) can be levied on goods meant for zero-rated export supply where no tax is payable on such supply?

No, the Hon'ble Gujarat High Court in case of ***Marcowagon Retail Pvt. Ltd. & Anr. v. Union of India & Ors. [2025:GUJHC:27848 – Gujarat High Court – R/Special Civil Application Nos. 2234 & 2236 of 2025, decided on 24.04.2025, 2025 (6) TMI 1236 - GUJARAT HIGH COURT]*** held that in absence of any tax payable on Zero rated supplies, such supplies are considered akin to exempt supplies for tax payable as a nil rate and penalty of Rs.25,000/- to be imposed. The petitioners, engaged in exports to UAE, purchased goods from Gurugram via a sister concern with the intent of export. The goods were detained, and penalty was imposed under Section 129(1)(a) of the CGST Act, treating the transaction as taxable. The Hon'ble Court, after examining the GST framework, held that zero-rated supplies under Section 16(1) of the IGST Act are treated as inter-State supplies but are not subject to tax liability, even though tax may be leviable. The Court clarified that zero-rated supplies cannot be equated with exempt supplies, as exporters are entitled to input tax credit and refund mechanisms under Sections 54(3), Rule 89, and Rule 96 of the CGST Rules. Since the goods were meant for export and tax was not payable, the penalty imposed at 200% of tax was unjustified. The Court modified the impugned order dated 19.11.2024 passed in Form GST MOV-09 and reduced the penalty to ₹25,000/-, directing the release of the bank guarantee. However, costs of ₹10,000/- per petition were imposed for suppression of relevant facts regarding the routing of orders through sister concerns, which was later sought to be amended.

Author's Comments:

This ruling brings much-needed clarity to an increasingly litigated area—levy of penalty under Section 129(1)(a) in cases involving zero-rated export supplies. The key issue often raised by taxpayers is that when no tax is payable on the supply, imposition of a penalty calculated at 200% of such "non-existent tax" is not only harsh but legally unsustainable.

While it is true that zero-rated supplies are not exempt in the strict sense—since they permit refund of input tax credit—they nonetheless carry a net tax liability of nil in many practical cases. This raises a fundamental interpretational issue: Can penalty be imposed when the tax payable itself is zero? The Court rightly distinguished zero-rated from exempt supplies but held that where tax is not payable, a reduced penalty of ₹25,000 suffices.

Importantly, provisions of section 129 of the CGST Act do not require authorities to establish mens rea(intent to evade). However, absence of requirement of mens rea cannot automatically justify the highest possible penalty, echoing the view of the Hon'ble Calcutta High Court in ***Asian Switch Gear [MAT No. 32 of 2023, 2023(12)TMI 236 - CALCUTTA HIGH COURT]***, which relied on ***Saw Pipes Ltd [2023 (4) TMI 761 - SUPREME COURT]*** . *and* ***Shri Ram Mutual Fund [2006 (5) TMI 191 - SUPREME COURT]***. In effect, the principle emerging is that discretion must be judicially exercised, even in strict liability regimes.

Whether recovery from Electronic Credit Ledger/Cash Ledger within four days of appellate order is valid when Section 112 appeal period is still open and no reasons are recorded under Section 78?

No, The Hon'ble Allahabad High Court in ***M/s SAB Engg Works v. State of U.P. and Another***, ***[Writ Tax No. 2254 of 2025, decided on 15.05.2025 | 2025 (6) TMI 1336 – ALLAHABAD HIGH COURT]***, quashed the department's recovery from the petitioner's Electronic Credit Ledger and Cash Ledger merely four days after the dismissal of first appeal, holding such recovery premature and contrary to law. The petitioner had filed an appeal against a demand order dated 29.04.2024, which was dismissed on 24.01.2025. On 29.01.2025, without issuing any recovery notice or waiting for the lapse of the three-month statutory period under Section 78 of the GST Act or providing any recorded reasons, the department unilaterally recovered ₹1,55,079. The petitioner argued that it had a statutory right to file a second appeal before the GST Appellate Tribunal under Section 112 within three months, and that such recovery not only defeated the remedy under Section 112(9), which provides deemed stay on payment of 10% pre-deposit, but also violated CBIC's Circular dated 11.07.2024 allowing pre-deposit and deferment of recovery in cases where the tribunal is yet to be constituted. The Court emphasized that as per Section 78, recovery proceedings cannot be initiated within three months unless the officer records specific reasons in writing for earlier action, which was absent in this case. It further held that allowing recovery within such a short period would render the appellate remedy nugatory, particularly when the circular and statutory scheme clearly recognize the extended protection to taxpayers awaiting tribunal constitution. Consequently, the High Court quashed the recovery and directed the respondents to credit back the amount recovered (except for the 10% pre-deposit already paid), and allowed the petitioner to comply with procedural requirements under the CBIC circular.

Author's Comments:

This judgment reinforces the sanctity of statutory appellate rights and the importance of following due procedure before coercive recovery. Even though the GST law provides for aggressive recovery tools, the safeguards embedded under Section 78 and Section 112 cannot be bypassed merely because an appeal is dismissed. The failure to record reasons under the proviso to Section 78 before early recovery vitiates the entire action. Moreover, the CBIC Circular No.224/18/2024-GST dated 11.07.2024, recognizing the gap due to non-constitution of GSTAT and allowing interim procedural protection to taxpayers, becomes legally binding on officers under Section 168 of the CGST Act.

Can goods be denied release under Section 129(1)(a) merely because the supplier disclaimed the tax invoice, even though the consignee produced valid documents?

Yes. The Hon'ble Calcutta High Court in case of ***Sandip Kumar Pandey & Anr. vs. Assistant Commissioner of State Tax, Bureau of Investigation (South Bengal), Asansole Unit & Ors. [2025 (5) TMI 1604 – Calcutta High Court, WPA 9544 of 2025, decided on 07.05.2025]*** held that since the petitioner is unable to establish ownership over the goods, provisional release cannot be allowed u/s 129(1)(a) and the petitioner must pursue remedy u/s 107. The petitioner, a registered taxpayer based in Delhi, had procured goods from M/s Ghosh Enterprises in Kolkata, supported by a tax invoice dated July 20, 2024, and an e-way bill dated July 21, 2024. While the goods were being transported to Delhi, they were intercepted in Asansole and detained. An order under Section 129(3) was issued in the name of the driver. The petitioner filed a writ petition and was allowed to apply for release under Section 129(1)(a). However, the department rejected the application, citing that the alleged supplier, Siddhartha Ghosh, denied having issued the invoice or being registered under GST. As a result, the release was permitted only under Section 129(1)(b) upon payment of 50% of the value of the goods as penalty. The petitioner argued that the tax invoice in his name was sufficient proof of ownership and relied on a binding CBIC Circular dated 31.12.2018 and the unreported decision in ***Surojit Das MAT 279 of 2023*****.** The Court noted that ordinarily a tax invoice would suffice to prove ownership, but in this case, since the purported supplier had come forward to deny the invoice and existence of any business, the benefit of the circular could not be extended. The Court held that the petitioner had not been given an opportunity to confront the supplier's statement and must be allowed to establish ownership before the appellate authority. The Court accordingly directed that if the petitioner files an appeal within 4 weeks, it should be decided on merits within 16 weeks, and the petitioner should be allowed to cross-examine the supplier whose statement was relied upon to reject ownership.

Author's Comments:

This decision underscores a nuanced yet critical interpretation of Section 129(1)(a) in cases involving denial of invoice authenticity by the supplier. The GST framework, particularly Rule 138A read with Sections 68 and 129, mandates that where valid documents like a tax invoice and e-way bill are produced and there is no discrepancy in the description of goods, the authority has no jurisdiction to doubt the transaction unless it is shown to be fraudulent or non-genuine through cogent material.

In the present case, the department relied solely on a post-detention disclaimer from the supplier to conclude that the invoice was bogus—without affording the petitioner an opportunity to rebut such statement or lead evidence of ownership. This approach is legally suspect.

Further, if the department believed the transaction was entirely fictitious and the supplier non-existent, it ought to have invoked proceedings under Section 130 (confiscation) instead of continuing under Section 129. The statutory scheme does not permit an arbitrary switch from clause (a) to (b) merely to impose harsher consequences, especially in absence of foundational allegations of intent to evade tax.

Moreover, Section 75(7) acts as a statutory limitation on altering the demand beyond what was proposed. The officer, having initiated proceedings under 129(1)(a), could not have unilaterally converted the action to 129(1)(b) without fresh show cause proceedings. This fundamental procedural error, if timely argued, would have severely undermined the department's case.

From a strategic standpoint, the taxpayer failed to assert jurisdictional objections and procedural infirmities before the High Court, instead relying on factual contentions.

ABOUT THE AUTHOR

CA Ritesh Arora

Senior Partner, Ritesh Arora & Associates

CA Ritesh Arora is a distinguished Chartered Accountant with over 12 years of focused expertise in Indirect Taxation, with a special emphasis on GST litigation, advisory, and appellate matters. A Fellow Member of the Institute of Chartered Accountants of India (ICAI), he qualified in 2013 and has since emerged as a trusted name in the field of GST, known for his deep legal insight and strategic approach to complex tax disputes.

His core areas of practice include appellate proceedings, departmental audits, inspection and search cases, and legal strategy formulation under the GST regime. His strong command over GST jurisprudence and nuanced understanding of procedural intricacies make him a sought-after consultant for challenging matters.

*CA Ritesh Arora is the author of the widely acclaimed publication **"GST Gavel – A Litigation Guide"**, which meticulously analyses over 500 landmark case laws with curated author's commentary, serving as a practical handbook for professionals navigating GST litigation. He is also the co-author of **"Reference Manual on Exports and Imports – Provisions under Distinct Laws"**, a comprehensive guide covering FTP 2023, the Customs Act, FEMA, and the IGST Act.*

His expert articles and insights regularly feature across leading professional platforms and are published in monthly newsletters of over 30 ICAI branches across India, further amplifying his contribution to the profession.

In recognition of his leadership and commitment to professional development, he served as Vice Chairman and NICASA Chairman of the ICAI Amritsar Branchfor the term 2024–25, and earlier as Treasurer during 2022–2024. During his tenure, he played a pivotal role in mentoring young professionals and driving capacity-building initiatives across the region.

Academic & Professional Credentials:

- *DISA (Diploma in Information Systems Audit) – ICAI*
- *B.Com (Professional) – Guru Nanak Dev University*
- *Certified in Concurrent Audit of Banks – ICAI*
- *Empanelled Peer Reviewer – Peer Review Board, ICAI*

Beyond his professional accomplishments, CA RiteshArora is also a former National Silver Medalist and Punjab Gold Medalist in Judo at CBSE National Tournaments—an early testament to his discipline and competitive spirit.

With a unique blend of subject-matter expertise, courtroom experience, and a passion for simplifying complex tax laws, CA Ritesh Arora continues to make a meaningful impact as a practitioner, author, speaker, and mentor in India's evolving GST landscape.

CARITESHARORA1628@GMAIL.COM
+91 98884 66739