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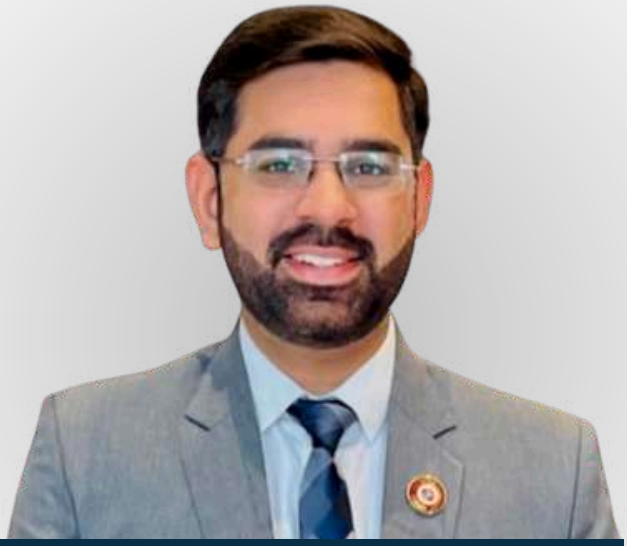

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EXCERPTS

Whether Input Tax Credit can be denied under Section 16(2)(c) of the CGST Act to a bona fide purchasing dealer merely because the selling dealer failed to deposit the tax collected?

Whether time spent pursuing rectification under Section 161 of the GST Act can be excluded while computing limitation for filing an appeal under Section 107?

Whether assessment proceedings initiated u/s 74 of the CGST Act for periods after 01.04.2024 are sustainable when the statutory framework now requires invocation of Section 74A?

Let's decode GST litigation together

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Whether Input Tax Credit can be denied under Section 16(2)(c) of the CGST Act to a bona fide purchasing dealer merely because the selling dealer failed to deposit the tax collected?

No, The Hon'ble Tripura High Court in ***M/s. Malaya Rub-Tech Industries v. Union of India & Ors. [WP(C) No. 849 of 2022, decided on 10.02.2026 | 2026 (2) TMI 654 – TRIPURA HIGH COURT]*** held that denial of Input Tax Credit under Section 16(2)(c) cannot be invoked against a bona fide purchasing dealer solely on the ground that the supplier failed to deposit the tax with the Government. The Court held that the provision must be read down to operate only in cases involving collusion, fraud, or transactions lacking bona fides. In the absence of any such finding, the purchasing dealer cannot be penalised for the default of the seller. In the present case, the petitioner, a registered dealer engaged in manufacturing activities, had availed Input Tax Credit on purchases made from registered suppliers. During assessment proceedings, the department denied the ITC on the ground that the supplier had failed to deposit the tax collected from the petitioner into the Government treasury. The department invoked Section 16(2)(c) of the CGST Act, which provides that a registered person shall be entitled to ITC only if the tax charged on the supply has been actually paid to the Government, either in cash or through utilisation of input tax credit. It was argued that the purchaser had no control over the seller's subsequent compliance with tax payment obligations, and therefore denial of ITC in such circumstances would impose an unreasonable and disproportionate burden. The petitioner further contended that the impugned assessment order did not record any finding of fraud, collusion, or involvement of the purchaser in tax evasion, and that the proceedings had been initiated under the non-fraud assessment mechanism, which itself demonstrated the absence of allegations of fraudulent conduct. The Court observed that a strict interpretation of Section 16(2)(c), if applied mechanically, would lead to penal consequences for a purchaser who has acted in good faith, merely because the supplier defaulted in depositing tax. Such interpretation would result in unequal treatment and arbitrary consequences, potentially violating constitutional guarantees of fairness and equality. The Court therefore held that Section 16(2)(c) must be read down to ensure that it does not operate harshly against bona fide purchasers. The provision can be invoked against a purchasing dealer only where the underlying transaction is shown to be collusive, fraudulent, or otherwise lacking in bona fides.

In the present case, the Court found that the impugned assessment order contained no findings indicating collusion, fraud, or knowledge of tax evasion on the part of the petitioner. The proceedings were conducted under the ordinary assessment procedure applicable to non-fraud cases, further confirming that the department had not established any fraudulent conduct. The High Court therefore concluded that denial of ITC solely due to the seller's failure to deposit tax was unsustainable in law, particularly when the purchaser had complied with statutory requirements and acted bona fide. Accordingly, the Court set aside the impugned order denying ITC and held that the petitioner was entitled to the input tax credit claimed. The writ petition was allowed, restoring the petitioner's entitlement to ITC.

Author's Comments:

Section 16(2)(c) undoubtedly places a statutory burden on the recipient by making availment of Input Tax Credit conditional upon actual payment of tax by the supplier to the Government. In its plain form, the provision operates as a condition precedent to the availment of credit. The consistent stand of the Government has been that credit cannot be allowed unless tax has actually reached the exchequer. However, a literal and inflexible application of this condition leads to an impossible eventuality for a bona fide purchaser. Once the recipient has paid consideration along with tax to a duly registered supplier, issued a valid tax invoice, received goods or services, and reported the transaction in returns, there exists no statutory mechanism by which the recipient can ensure or enforce actual remittance of tax by the supplier. Penalising the recipient for a subsequent default of the supplier, despite full compliance and due diligence, renders the condition manifestly arbitrary and disproportionate. It is for this reason that the Tripura High Court has correctly chosen the doctrine of "reading down" instead of striking down Section 16(2)(c). The Court has confined the operation of the provision to cases where the transaction itself is tainted, namely, where there is fraud, collusion, sham transactions, or conscious participation of the recipient in a tax-evasion scheme. In such cases, denial of ITC is justified. Outside these exceptional situations, mechanical denial of credit merely because the supplier failed to pay tax cannot be sustained.

That said, judicial opinion across High Courts remains sharply divided. Several High Courts—including the Kerala High Court in M. Trade Links (2024 (6) TMI 288 - KERALA HIGH COURT), the Patna High Court in Aastha Enterprises (2023 (8) TMI 1038), the Madhya Pradesh High Court in Shree Krishna Chemicals(2025 (2) TMI 1006), the Madras High Court in Baby Marine (Eastern) Exports (2025 (8) TMI 791), and the Andhra Pradesh High Court in Thirumalakonda Plywoods (2023 (7) TMI 1226), have upheld the constitutional validity of Section 16(2)(c) without reading it down, emphasising legislative wisdom and fiscal discipline. On the other hand, the Gauhati High Court in National Plasto Moulding (2024 (8) TMI 836) has followed the Delhi High Court's reasoning in On Quest Merchandising (2017 (10) TMI 1020), as approved by the Supreme Court in Arise India, and declined to apply Section 16(2)(c) against a bona fide purchaser. What clearly emerges is that there is no blanket immunity available to taxpayers under Section 16(2)(c). Relief is conditional and fact-specific, available only where the recipient establishes bona fides and absence of fraud or collusion. This divergence of judicial views makes it inevitable that the Supreme Court will have to finally settle the law to ensure uniformity and certainty.

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Whether time spent pursuing rectification under Section 161 of the GST Act can be excluded while computing limitation for filing an appeal under Section 107?

Yes, The Hon'ble Allahabad High Court in ***M/s. Vyas Traders, Sawarlal Agarwal v. Additional Commissioner, Grade–2 (Appeal)–II, State Tax, Meerut & Anr. [Writ Tax No. 1054 of 2025 (Leading) with Writ Tax No. 2897 of 2025, decided on 03.02.2026 | 2026 (2) TMI 386 – ALLAHABAD HIGH COURT]*** held that where a taxpayer bona fide pursues a rectification remedy under Section 161 of the UPGST Act, the period spent in such proceedings must be excluded while computing limitation for filing a statutory appeal. Consequently, the appeal cannot be rejected as time-barred if the delay occurred due to bona fide pursuit of the rectification remedy. In the present case, the petitioners challenged orders passed by the appellate authority dismissing their appeals on the ground of limitation. The petitioners had initially filed applications for rectification under Section 161 of the UPGST Act, seeking correction of alleged errors in the adjudication order. These rectification applications were pursued bona fide and were subsequently rejected by the authorities. After rejection of the rectification applications, the petitioners proceeded to file statutory appeals against the original adjudication orders.

However, the appellate authority dismissed the appeals on the ground that they had been filed beyond the limitation period prescribed under Section 107 of the GST Act. The petitioners approached the High Court contending that the time spent in pursuing rectification proceedings should be excluded from the computation of limitation. The Court referred to the principle that limitation remains "in abeyance" when a party is diligently pursuing a remedy provided under the statute, even if that remedy ultimately proves ineffective. The Court relied upon a Division Bench precedent of the same High Court which held that the period spent pursuing rectification under Section 161 must be excluded while calculating the limitation for filing an appeal. Applying this principle, the Court concluded that the delay in filing the appeals was attributable to the time spent in pursuing rectification and therefore could not be treated as fatal to the maintainability of the appeals. The High Court further noted that the petitioners had already deposited the statutory amounts required for maintaining the appeals, 10% and 25% respectively of the disputed tax liability, which demonstrated their intention to pursue the appellate remedy in accordance with law.

In view of these circumstances, the Court held that the appeals ought not to have been dismissed on limitation grounds. The High Court accordingly directed the appellate authority to entertain the appeals and decide them on merits. Accordingly, the writ petitions were allowed, and the matter was remitted to the appellate authority for adjudication of the appeals on merits.

Author's Comments:

The ruling adopts an equitable approach by allowing exclusion of time spent in bona fide rectification proceedings under Section 161 while computing limitation for appeal under Section 107. This aligns with the broader principle that a litigant diligently pursuing a statutory remedy should not be prejudiced on limitation.

However, the position warrants careful qualification. Section 161 is a narrow provision, confined to correction of errors apparent on the face of record, and does not contemplate reopening or review of the original order. Where a rectification application is rejected without issuance of a modified order (DRC-08), the original order remains intact, and strictly speaking, limitation for appeal continues to run from the date of its communication, not from disposal of the rectification application.

Therefore, treating Section 161 proceedings as automatically suspending or extending limitation may risk diluting the statutory timelines under Section 107.

In fact, Section 161 is increasingly being misused as a substitute for appeal, despite its very limited scope. Unless a rectification results in an actual modification of the order, it cannot reset the appellate clock.

That said, the Court's intervention is grounded in fairness, preventing denial of appellate remedy due to procedural overlap. But from a strict legal standpoint, rectification and appeal operate in distinct fields, and taxpayers must exercise caution in relying on Section 161 so as not to jeopardise limitation for appeal.

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Whether assessment proceedings initiated u/s 74 of the CGST Act for periods after 01.04.2024 are sustainable when the statutory framework now requires invocation of Section 74A?

No, The Hon'ble Madras High Court in ***Tvl. RB Communication represented by its Proprietor M. Ramachandran v. State Tax Officer, Virudhunagar [W.P. (MD) No. 3819 of 2026, decided on 11.02.2026 | 2026 (2) TMI 656 – MADRAS HIGH COURT]*** held that proceedings initiated under Section 74 for periods after the statutory introduction of Section 74A lacked jurisdiction. The Court further held that the show cause notice contained a confusing and mixed invocation of Sections 74 and 74A(5), demonstrating non-application of mind by the authority and prejudicing the taxpayer's ability to respond. Consequently, the impugned assessment order was set aside and the matter remitted for fresh consideration under the correct statutory provision. In the present case, the petitioner, a registered taxpayer, was subjected to assessment proceedings by the State Tax Officer under the GST framework. The department issued a show cause notice invoking Section 74 of the CGST/TNGST Acts, alleging tax liability and proposing recovery on the ground of suppression and other irregularities. The petitioner challenged the proceedings before the High Court contending that the statutory scheme had undergone amendment, and with effect from 01.04.2024, the earlier provisions relating to Sections 73 and 74 had been replaced or modified with the introduction of Section 74A, which governs the adjudication mechanism for certain periods thereafter.

According to the petitioner, the proceedings initiated under Section 74 were therefore without jurisdiction, since the relevant tax period fell within the scope of the newly introduced provision. The petitioner further pointed out that the show cause notice itself referred simultaneously to Section 74 and Section 74A(5), which created ambiguity as to the statutory basis of the proceedings. It was argued that this mixed invocation of statutory provisions reflected clear non-application of mind by the adjudicating authority and made it impossible for the petitioner to understand the precise legal basis of the proposed demand. Consequently, the petitioner contended that the proceedings were legally unsustainable and violated principles of natural justice. The Court observed that the legislature had introduced Section 74A as part of a revised adjudication structure for certain tax periods, and that authorities must strictly follow the applicable statutory provision corresponding to the relevant period. The Court emphasised that a show cause notice must clearly specify the statutory provision invoked and the basis of the proposed demand, as it forms the foundation of the adjudication proceedings. Where the notice itself is ambiguous or internally inconsistent, the entire proceeding becomes vulnerable to challenge. The High Court therefore held that the assessment order passed pursuant to the defective notice could not be sustained. The proceedings suffered from jurisdictional error and procedural infirmity due to the incorrect invocation of statutory provisions.

Accordingly, the Court set aside the impugned assessment order and remitted the matter to the tax authorities for fresh consideration under the correct statutory provision, namely Section 74A. The Court directed that the petitioner shall be permitted to file objections within the time prescribed by the authority, and that a clear and meaningful personal hearing must be afforded before any fresh decision is taken on merits. On these terms, the writ petition was allowed and the matter remanded for de novo adjudication.

Author's Comments:

This ruling rightly underscores that correct invocation of the statutory provision is jurisdictional, and once the legislature mandates application of Section 74A for the relevant period, proceedings under Section 74 become inherently without authority. Further, a mixed and ambiguous show cause notice, invoking both provisions, reflects clear non-application of mind and undermines the taxpayer's ability to respond effectively—striking at the root of valid adjudication. However, the relief granted i.e. remand for de novo adjudication, raises practical concerns. Where the very foundation of proceedings (i.e., the SCN) is defective, the normal consequence should be outright quashing, as a defective notice is fatal to the demand. Remanding such matters often results in prolonged litigation without finality, merely giving the department a second opportunity to correct its errors.

From a strategic standpoint, choice of forum becomes critical. While jurisdictional errors justify invoking writ jurisdiction, repeated remands may dilute the benefit of such challenge. In appropriate cases, pursuing the statutory appellate route could lead to a more conclusive outcome. Further, applying the doctrine of election, once the department chooses an incorrect statutory route, it should ordinarily be bound by that choice, and the proceedings ought to have been given quietus rather than revival through remand.

The key takeaway is that jurisdictional defects and defective SCNs should not be lightly cured through remand, as doing so risks converting a fatal illegality into a curable irregularity, contrary to settled principles of law.

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Whether a circular issued by the CBIC under Section 168 of the CGST Act assigning functions to Central Tax Officers is constitutionally valid?

Yes, The Hon'ble Delhi High Court in ***Lovelesh Singhal, Proprietor, M/s. Shivani Overseas v. Central Board of Indirect Taxes & Customs & Ors. [W.P. (C) 1426 of 2026, decided on 02.02.2026 | 2026 (2) TMI 385 – DELHI HIGH COURT]*** upheld the validity of the impugned CBIC circular issued under Section 168 of the CGST Act, holding that the statute empowers the Board to issue orders, instructions and directions to Central Tax Officers, including assignment of functions. The Court further applied the principle of presumption of constitutionality to subordinate legislation and declined to interfere with the circular. However, the Court granted limited relief to the petitioner by rescheduling compliance with the summons issued by the department. In the present case, the petitioner challenged the validity of a CBIC circular dated 05 July 2017, contending that the circular improperly authorised officers to exercise certain functions under the GST framework and therefore exceeded the powers conferred by the CGST Act. The petitioner also sought relief against summons issued by the GST authorities in connection with an ongoing investigation. The High Court examined the statutory framework of Section 168 of the CGST Act, which empowers the CBIC to issue instructions or directions to Central Tax Officers for the purpose of uniform implementation of the Act. The Court noted that such instructions are binding on departmental officers and form an integral part of the administrative structure governing GST enforcement. The Court further observed that the assignment of functions to officers under the GST regime may be carried out through an administrative process in which proposals are routed through the Commissioner and approved by the Board. Such administrative arrangements are necessary to ensure efficient implementation of the law and are consistent with the powers conferred under Section 168. Applying the well-established doctrine of presumption of constitutionality, the Court held that subordinate legislation and administrative circulars must be presumed valid unless clearly shown to be ultra vires the parent statute or unconstitutional. The petitioner had failed to demonstrate that the circular violated any statutory provision or exceeded the authority granted under the CGST Act. Accordingly, the Court held that the impugned circular dated 05 July 2017 was valid and within the powers conferred under Section 168 of the CGST Act. The Court therefore declined to quash the circular. With regard to the summons issued by the department, the Court observed that the summons formed part of an ongoing investigation and that the petitioner was required to cooperate with the authorities. However, considering the circumstances of the case, the Court granted limited relief by rescheduling the date of compliance with the summons so that the petitioner could appear before the competent officer on a later date and disposed of the writ petition with these observations.

Author's Comments:

The ruling reaffirms the wide administrative scope of Section 168, under which the Central Board of Indirect Taxes and Customs is empowered to issue instructions, including assignment of functions to Central Tax Officers for effective implementation of the GST law. Such circulars form part of the internal administrative framework and are binding on departmental authorities.

A key aspect is the presumption of validity of subordinate legislation, as reiterated in State of Tamil Nadu v. P. Krishnamurthy(2006) 4 SCC517. Unless a circular is shown to be ultra vires the Act or constitutionally infirm, courts will ordinarily refrain from interference. The burden lies heavily on the petitioner to establish lack of authority or illegality.

In the present context, even though the circular is issued under the signature of the Commissioner, it cannot be viewed in isolation. Section 168(2) envisages an institutional decision-making process within the Board, and the Commissioner, being part of the Board, acts within this framework. In absence of evidence to the contrary, it is reasonable to presume that the circular was issued with due approval of the Board.

Importantly, assignment of "proper officer" functions is a matter of administrative allocation, and unless such allocation conflicts with express statutory provisions, it remains legally sustainable.

The broader takeaway is that procedural and administrative circulars will be upheld so long as they operate within the statutory scheme, and challenges to such circulars must clearly demonstrate lack of authority, procedural irregularity, or inconsistency with the parent Act.

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Whether summons issued by GST authorities during investigation can be treated as initiation of proceedings warranting anticipatory relief from the High Court?

No, The Hon'ble Delhi High Court in ***Naveen & Suraj Kumar v. Directorate General of Goods and Services Tax Intelligence, Delhi [W.P. (CRL) 1872/2024, decided on 30.01.2026 | 2026 (2) TMI 108 – DELHI HIGH COURT]*** held that issuance of summons by GST authorities for recording statements or production of documents during search or investigation constitutes an inquiry-stage evidence-gathering step and does not amount to initiation of criminal proceedings. Consequently, anticipatory relief at such an investigatory stage was held to be premature and unwarranted.

In the present case, the petitioners approached the High Court challenging summons issued by the Directorate General of GST Intelligence (DGGI) during an investigation relating to alleged tax fraud. The summons required the petitioners to appear before the authorities, record statements and produce invoices and related documents. The petitioners contended that the summons amounted to harassment and sought anticipatory relief from the Court, claiming that the proceedings were coercive and that they apprehended criminal prosecution. The High Court examined the statutory powers of GST authorities under the CGST Act and observed that the power to issue summons for recording statements and production of documents is a recognised investigative tool available to tax authorities. Such summons are issued in aid of inquiry and cannot be equated with initiation of criminal prosecution. The Court emphasised that investigative agencies must be allowed to collect evidence and verify transactions before deciding whether further action, including prosecution, is warranted. It was further noted that one of the accused persons had already been released on bail and that the petitioners had failed to demonstrate that the summons themselves were illegal or issued without jurisdiction. On these considerations, the Court held that judicial interference at the stage of investigation would be premature and could impede the statutory functions of the investigative authority. Accordingly, the writ petition was dismissed, with liberty to the petitioners to pursue appropriate remedies if and when any adverse action is taken at a later stage.

Author's Comments:

This decision reiterates an important procedural principle often overlooked in tax litigation, not every investigative step warrants immediate judicial intervention. The mere issuance of summons by GST authorities does not amount to initiation of criminal proceedings; it is only a step in the course of investigation intended to gather information, record statements and verify documents.

Under the CGST framework, summons are issued as part of the evidentiary discovery process in investigations that may arise from actions under Sections 67, 129 or 130, and may eventually culminate in adjudication proceedings under Sections 74, 74A or 76, or even prosecution under Section 132. At this stage, the authorities are merely collecting material to determine whether any contravention exists. Treating such summons as equivalent to initiation of prosecution would effectively paralyse statutory investigation and prematurely involve constitutional courts in fact-finding exercises.

The judgment also highlights the often-misunderstood concept of maintainability of writ petitions. Relief from High Courts is ordinarily invoked where there is a jurisdictional error, violation of natural justice, or clear abuse of statutory power. A routine summons requiring appearance or production of records does not meet this threshold. Consequently, approaching the High Court at this preliminary stage is generally premature and unwarranted.

From an evidentiary perspective, statements recorded during summons proceedings are not conclusive proof of liability. Except in limited circumstances recognised under Section 136 of the CGST Act, such statements remain weak forms of evidence, particularly where they are not tested through cross-examination during adjudication. Their primary role is to assist investigation rather than determine liability conclusively.

Taxpayers should therefore appreciate that summons are not the end of investigation but merely one step in the investigative process. While misuse of summons as a tool of harassment must be discouraged, lawful compliance coupled with truthful disclosure of facts generally remains the most prudent course.

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Whether GST adjudication can proceed when seized documents and electronic evidence relied upon by the department are not supplied to the taxpayer?

No, The Hon'ble Calcutta High Court in ***M/s. Priti Builders v. Deputy Commissioner of State Tax, Bally and Salkia Charge & Ors. [WPA 7574 of 2025, decided on 03.02.2026 | 2026 (2) TMI 387 – CALCUTTA HIGH COURT]*** held that adjudication proceedings under the GST law cannot be sustained when the taxpayer is denied access to seized documents and electronic evidence relied upon by the department. The Court ruled that supply of such material is essential to ensure a meaningful opportunity of defence and compliance with principles of natural justice. In the present case, the petitioner challenged an adjudication order passed by the GST authorities on the ground that several documents and electronic records had been seized during departmental proceedings but were not made available to the petitioner before adjudication. The petitioner contended that the department relied upon these seized records while initiating proceedings but failed to provide copies or access to the material, thereby depriving the petitioner of an effective opportunity to rebut the allegations. The High Court examined the circumstances of the case and observed that access to seized documents and electronic evidence is a fundamental procedural requirement in adjudication proceedings. Where the department relies upon documents or digital records as part of its case, the taxpayer must be given copies or access to such material so that an effective response may be prepared. The Court further noted that in the present case the petitioner had not been granted a meaningful opportunity to participate in the adjudication process because the relevant documents and electronic evidence were not supplied. The Court emphasised that denial of access to relied-upon material violates the principles of audi alteram partem, which require that a person facing adverse proceedings must be given full knowledge of the evidence relied upon by the authority. In view of these procedural deficiencies, the Court held that the impugned adjudication order could not be treated as a final determination. Instead, the Court directed that the order be treated as an additional show-cause notice so that the petitioner could respond after receiving access to the relevant records. The High Court issued specific directions to ensure procedural fairness. The petitioner was directed to submit an application within one week seeking return of the seized records and the CPU containing electronic data. Upon receipt of such application, the adjudicating officer was directed to return the documents or provide copies within two days. Thereafter, the petitioner must be given a proper opportunity to respond to the allegations and participate in the proceedings. Importantly, the Court clarified that it had not expressed any opinion on the merits of the dispute, leaving all factual and legal issues open for consideration by the adjudicating authority. Accordingly, the writ petition was disposed of with directions for fresh adjudication after supply of the seized documents and electronic evidence.

Author's Comments:

This decision reinforces a core procedural safeguard that adjudication cannot proceed on the basis of undisclosed material. Where seized documents or electronic evidence form the foundation of the department's case, non-supply of such material vitiates the entire proceedings as it deprives the taxpayer of a meaningful opportunity to defend, in clear breach of principles of natural justice.

At a practical level, such situations often arise from a hasty adjudication approach, where reliance is placed on seized data without first ensuring its proper disclosure. However, GST adjudication is not merely outcome-driven; it must adhere to fair process and transparency.

From a litigation strategy perspective, the taxpayer should initially invoke Section 67(10) by formally seeking copies/return of seized records and access to electronic evidence from the Commissioner. Upon denial, a challenge before the High Court on grounds of procedural violation and incomplete investigation would carry significantly greater force.

That said, the relief granted in the present case, treating the order as a show-cause notice and remanding the matter for fresh adjudication, though procedurally corrective, may not always yield substantive relief to the taxpayer.

In appropriate cases, especially where non-disclosure is fundamental and goes to the root of jurisdiction, the taxpayer may consider seeking outright quashing of proceedings rather than remand. Otherwise, remand orders, while curing procedural defects, often fail to bring finality and merely result in another round of adjudication based on the same investigation.

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Whether delay in filing a statutory appeal under the CGST Act can be condoned by the High Court in exercise of extraordinary constitutional jurisdiction?

Yes, The Hon'ble Rajasthan High Court in ***M/s. M.R. Traders v. Union of India & Ors. [D.B. Civil Writ Petition No. 4558/2025, decided on 07.01.2026 | 2026 (2) TMI 99 – RAJASTHAN HIGH COURT]*** exercised its extraordinary jurisdiction under Article 226 of the Constitution to condone delay in filing a statutory appeal under the GST law, holding that a litigant should not suffer irreparable consequences merely because of negligence or lapse on the part of the counsel or consultant handling the matter. In the present case, the petitioner approached the High Court challenging the consequences arising from failure to file a statutory appeal within the time prescribed under Section 107 of the CGST Act. The petitioner submitted that the delay in filing the appeal had occurred due to the negligence and inaction of the chartered accountant/consultant entrusted with handling GST compliance and litigation matters. As a result, the statutory time limit for filing the appeal expired, leaving the petitioner without an effective remedy before the appellate authority. The High Court examined the circumstances leading to the delay and observed that the petitioner had demonstrated bona fide intention to pursue the statutory remedy but was prevented from doing so due to professional lapse on the part of the authorised representative. The Court emphasised the settled legal principle that a litigant who has acted diligently should not be penalised for the mistakes or negligence of legal advisors or consultants. Denial of remedy in such circumstances would lead to disproportionate hardship and defeat the cause of justice. The Court further observed that the GST regime is intended to function as a facilitative tax framework, designed to promote compliance and ease of doing business rather than impose punitive consequences that permanently exclude taxpayers from the statutory framework. The Court noted that rigid insistence on procedural timelines, without considering exceptional circumstances, may result in grave injustice, particularly where the taxpayer is willing to comply with statutory obligations, file returns and discharge tax liabilities.

Taking note of these factors, the Court exercised its extraordinary constitutional jurisdiction to grant relief and permitted the petitioner to pursue the statutory appellate remedy despite the delay. The Court held that in appropriate cases, where the taxpayer demonstrates bona fide conduct and the delay is attributable to professional negligence rather than deliberate inaction, constitutional courts may intervene to prevent miscarriage of justice.

Accordingly, the writ petition was allowed, and the petitioner was granted the opportunity to pursue the statutory appeal and regularise compliance under the GST law.

Author's Comments:

Section 107 of the CGST Act prescribes a strict statutory limitation framework for filing appeals. An appeal must be filed within three months from the date of communication of the order, and the appellate authority may condone delay only up to one additional month upon showing "sufficient cause." Once this outer limit of four months expires, the appellate authority becomes functus officio and lacks jurisdiction to entertain the appeal.

The expression "sufficient cause" used in Section 107(4) resembles the language employed in Section 5 of the Limitation Act, 1963. However, Section 29(2) of the Limitation Act clarifies that where a special statute prescribes its own limitation period along with a restricted condonation mechanism, the general provisions of the Limitation Act cannot enlarge that statutory period. Thus, while the concept of "sufficient cause" may be interpreted with reference to established principles under the Limitation Act, the statutory cap on condonation cannot be exceeded by the appellate authority. The controversy, however, arises when litigants approach High Courts under Article 226 of the Constitution after the statutory limitation period has expired. A line of judicial decisions has recognised that although the appellate authority is bound by the statutory limitation, the constitutional powers of High Courts are not curtailed by the statute. Courts have therefore intervened in exceptional circumstances to permit taxpayers to pursue their appellate remedies despite the lapse of the statutory timeline. This approach has been adopted in decisions such as Vasudeva Engineering v. Union of India (2024 (11) TMI 259 - PUNJAB AND HARYANA HIGH COURT), S.K. Chakraborty & Sons v. Union of India (2023 (12) TMI 290 - CALCUTTA HIGH COURT), and Chelliah Meenambigai v. Commissioner of CGST and Central Excise(2023 (9) TMI 1243 - MADRAS HIGH COURT), where High Courts held that constitutional jurisdiction can be exercised to prevent manifest injustice even when statutory remedies become time-barred.

At the same time, a contrary approach has also emerged. In Hariom Industries v. State of Gujarat, (2026 (2) TMI 105 - GUJARAT HIGH COURT), the Court held that the limitation prescribed under Section 107 constitutes an absolute outer limit which cannot be extended even by invoking writ jurisdiction, as doing so would defeat the legislative scheme.

In the author's view, the divergence in judicial opinion indicates that the true scope of constitutional intervention in GST limitation matters remains unsettled.

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Whether transfer of a business as a going concern permits transfer of ITC to the transferee and whether such transfer remains exempt under Notification No. 12/2017–CT (Rate)?

Yes, The Hon'ble Andhra Pradesh High Court in ***M/s. Shilpa Medicare Limited v. Union of India & Ors. [W.P. No. 15955 of 2021, decided on 31.01.2026 | 2026 (2) TMI 169 – ANDHRA PRADESH HIGH COURT]*** held that transfer of a business as a going concern continues to enjoy exemption under Notification No. 12/2017–Central Tax (Rate) and that the statutory framework under Section 18(3) of the CGST Act permits transfer of Input Tax Credit to the transferee when the business is transferred through sale, merger, amalgamation, lease or similar restructuring. In the present case, the petitioner company undertook a restructuring transaction involving transfer of a business unit as a going concern to another entity. In connection with the transfer, the petitioner sought clarity regarding the tax implications of the transaction and the transferability of the accumulated ITC lying in its electronic credit ledger. The issue had earlier been examined by the Authority for Advance Ruling (AAR), which had adopted a affirmative interpretation regarding the transfer of credit and the applicability of the exemption. The Revenue challenged the AAR ruling before the AAAR and the petitioner challenged order of AAAR before High Court, contending that the transfer of business as a going concern is specifically recognised under Entry 2 of Notification No. 12/2017–CT (Rate) as an exempt supply. It was further argued that Section 18(3) of the CGST Act explicitly allows transfer of input tax credit where a registered person transfers the business on account of sale, merger, demerger, amalgamation, lease or transfer of business, provided the liabilities are also transferred to the transferee.

The High Court examined the relevant statutory provisions and the notification granting exemption for transfer of a going concern. The Court observed that the exemption notification clearly treats transfer of a going concern, whether as a whole or an independent part thereof, as an exempt supply. Although the Court left open the broader conceptual question of whether such transfer itself constitutes a "supply" under the GST Act, it held that the exemption notification specifically covers such transactions and therefore shields them from tax liability. The Court also considered the scope of Section 18(3) of the CGST Act, which permits transfer of input tax credit in cases involving sale, merger, amalgamation, lease or transfer of business with specific provision for transfer of liabilities. The Court observed that the phrase "change in the constitution of the registered person" should not be interpreted narrowly. Instead, it must be understood in a manner that allows the transfer of credit balances from the transferor's electronic credit ledger to the transferee entity when the business is transferred as a going concern. The High Court further observed that GST is intended to function as a seamless credit-based tax system, and therefore denial of ITC transfer in genuine business restructuring transactions would defeat the objective of avoiding cascading of taxes. The Court noted that practical issues relating to the mechanics of transfer of credit, particularly where different State GST registrations are involved, may require administrative examination by the concerned authorities.

On these considerations, the High Court concluded that the interpretation adopted by the AAR was unsustainable. Accordingly, the impugned AAR ruling was set aside and the matter was remitted to the competent authority for fresh consideration in accordance with the statutory framework and the observations made by the Court.

Author's Comments:

The ruling brings into focus the unique treatment accorded to transfer of business as a going concern under the GST framework, where multiple provisions operate harmoniously to achieve tax neutrality in genuine business reorganisations. At the outset, it is important to note that "transfer of a going concern" is specifically recognised under Entry 2 of Notification No. 12/2017–CT (Rate) as an exempt supply of service, even though such transfer may involve a bundle of assets including inventory, capital goods, contracts and intangible rights. This classification as a service flows from Schedule II; however, paragraph 4(c) of Schedule II does not independently characterise the transaction, but merely clarifies the nature of supply once the existence of "supply" is otherwise established. A critical aspect often overlooked is that Schedule II does not determine taxability, it only determines classification.

The more nuanced issue arises in the context of Input Tax Credit. Section 18(3) of the CGST Act expressly permits transfer of ITC in cases of sale, merger, demerger, amalgamation, lease or transfer of business, subject to transfer of liabilities. This creates a significant distinction from the general rule under Section 17(2), which requires reversal of ITC attributable to exempt supplies. A transfer of business as a going concern is therefore a rare instance where an exempt supply does not trigger reversal of ITC, because the statute itself provides for seamless transfer of credit to the transferee. This position is further reinforced by the deeming fiction contained in Schedule II relating to cessation of business. Where a person ceases to be a taxable person, the assets of the business are deemed to be supplied immediately before cessation. However, this deeming fiction is expressly carved out in cases where the business is transferred as a going concern. This carve-out ensures that such transfers are not artificially subjected to tax merely due to deregistration or restructuring.

Further, the expression "transfer of business" must be interpreted broadly to include recognised modes such as slump sale, demerger, amalgamation or other forms of restructuring under corporate and commercial laws. The emphasis is on continuity of the business undertaking rather than the form of the transaction. Lastly, the phrase "deemed to be supplied" appearing in the context of cessation provisions does not expand the scope of "supply" beyond Section 7. It merely ensures that once a supply is otherwise established, certain consequences follow unless specifically excluded—such as in the case of transfer of a going concern.

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Whether payment of penalty under protest during interception proceedings extinguishes the taxpayer's right to challenge the demand under Section 129(5) of the GST Act?

No, The Hon'ble Punjab and Haryana High Court in ***M/s. Deutsche Cars Pvt. Ltd. v. State of Haryana & Ors. [CWP-21628-2025, decided on 31.01.2026 | 2026 (2) TMI 823 – PUNJAB AND HARYANA HIGH COURT]*** held that payment of tax and penalty under protest during detention proceedings under Section 129 does not automatically conclude the proceedings under the deeming provision contained in Section 129(5). Where the taxpayer has simultaneously raised objections and disputed the demand, the proper officer is obligated to consider those objections and pass a reasoned speaking order after granting an opportunity of hearing. In the present case, the petitioner, M/s. Deutsche Cars Pvt. Ltd., challenged the legality of an order issued in Form GST MOV-09 following interception and detention of goods in transit under Section 129 of the Haryana GST Act. During the interception proceedings, the authorities alleged certain discrepancies in the transportation documents and proceeded to demand tax and penalty. The petitioner made the payment demanded by the authorities under protest in order to secure immediate release of the detained goods and conveyance. Simultaneously, the petitioner submitted written objections disputing the liability, contending that the alleged discrepancies did not justify the imposition of tax and penalty.
However, the proper officer treated the payment as conclusive under the deeming provision contained in Section 129(5) and proceeded to pass the order without meaningfully considering the objections raised by the petitioner. Aggrieved by this action, the petitioner approached the High Court contending that the payment was made only to avoid commercial disruption caused by continued detention of goods and that the objections raised against the demand had not been adjudicated. It was argued that the authorities were required to examine the objections and pass a reasoned order, rather than treating the payment as final settlement of the proceedings. The Court observed that while the provision contemplates conclusion of proceedings upon payment of tax and penalty, such conclusion cannot be presumed where the payment has been explicitly made under protest and accompanied by objections challenging the demand. The Court emphasised that principles of natural justice require the proper officer to consider the objections raised by the taxpayer and to pass a reasoned and speaking order addressing those objections. The High Court therefore held that payment under protest cannot extinguish the taxpayer's statutory right to challenge the demand, particularly where objections have been raised and remain undecided. Accordingly, the Court set aside the order dated 06.05.2025 passed in Form GST MOV-09 and remitted the matter to the proper officer to reconsider the objections filed by the petitioner and pass a fresh reasoned order after granting an opportunity of hearing. The writ petition was allowed to that extent, with directions for fresh adjudication.

Author's Comments:

This ruling reinforces a crucial principle in GST jurisprudence that procedural convenience cannot override substantive rights of the taxpayer. The Court has rightly clarified that the deeming fiction under Section 129(5) must be interpreted in a limited and contextual manner, and not as an absolute bar against challenging the levy. At the heart of the controversy lies the scope of the expression "proceedings shall be deemed to be concluded" under Section 129(5). The department has often taken a rigid view that once payment is made, the matter stands closed. However, the High Court has correctly held that such a deeming provision cannot be stretched to infer waiver or acceptance of liability, particularly when payment is made under protest to secure release of detained goods, a situation driven more by commercial compulsion than legal admission.
This position finds strong support in the judgment of the Supreme Court of India in M/s ASP Traders v. State of Uttar Pradesh(2025 (7) TMI 1525 - Supreme Court), where it was emphasised that every show cause proceeding must culminate in a reasoned and speaking order, and that statutory rights of appeal cannot be defeated by procedural shortcuts. The Supreme Court's reasoning underscores that the term "conclusion" in Section 129(5) merely denotes closure of detention proceedings, not extinguishment of adjudicatory or appellate remedies.
The doctrine that "there is no estoppel against law" is particularly relevant in tax jurisprudence. Article 265 of the Constitution mandates that no tax shall be levied or collected except by authority of law, which implies that even voluntary or coerced payments cannot legitimise an otherwise unsustainable demand. Thus, the concepts of waiver and acquiescence must be applied with great caution:

- Waiver requires a conscious and voluntary relinquishment of a known right;
- Acquiescence arises from prolonged inaction despite knowledge of illegality.

In interception cases, neither condition is ordinarily satisfied, as taxpayers often pay under protest merely to avoid business disruption, demurrage costs, and supply chain breakdowns.
Another important procedural takeaway from this ruling is the reaffirmation of the statutory requirement to:

- Pass a formal adjudication order in Form GST MOV-09, and
- Upload a summary in Form GST DRC-07 under Rule 142(5),

thereby enabling the taxpayer to exercise the statutory right of appeal under Section 107. Failure to follow this process effectively denies access to appellate remedies, which would be contrary to principles of natural justice.

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Whether a GST show-cause notice issued in late November was barred by limitation under Section 73 when the statute requires issuance "at least three months prior" to the expiry of the limitation period?

No, The Hon'ble Gauhati High Court in ***M/s. Surya Business Private Limited v. State of Assam & Ors.[Writ Petition (C) No. 6666 of 2024, decided on 12.02.2026 | 2026 (2) TMI 831 – GAUHATI HIGH COURT]*** held that the impugned show-cause notice was issued within the statutory limitation period when the computation of time was made in accordance with the calendar-month rule and the corresponding-date principle under the General Clauses Act. The Court clarified that for determining whether a notice satisfies the requirement of being issued "at least three months prior" to the expiry of the limitation period under the GST law, the computation must follow the calendar-month method rather than counting days mechanically. In the present case, the petitioner contended that the notice had been issued beyond the permissible limitation period and therefore was liable to be quashed. The core dispute related to computation of limitation prescribed under Section 73 of the GST Act. Under the statutory scheme, the department must issue a show-cause notice at least three months prior to the expiry of the three-year limitation period for passing the adjudication order. The petitioner argued that when the limitation period was calculated on the basis of days, the notice issued in late November fell outside the permissible period. According to the petitioner, the authorities had issued the notice after the statutory deadline and therefore the entire proceedings were without jurisdiction. The department, however, contended that the computation of limitation under the GST Act must follow the principles contained in the General Clauses Act, which define the term "month" as a calendar month. It was argued that when the calendar-month method and the corresponding-date rule are applied, the impugned notice clearly fell within the statutory time frame. The High Court examined the statutory provisions governing limitation under Section 73, along with the relevant provisions of the General Clauses Act relating to computation of time. The Court observed that when a statute prescribes a limitation period in terms of months rather than days, the computation must be made by applying the calendar-month principle.

The Court further explained the corresponding-date rule, under which a period expressed in months expires on the day corresponding to the date on which the period began in the relevant month. Applying this principle, the Court held that the limitation period must be calculated with reference to the extended due date for filing the annual return, which constituted the relevant starting point for the computation. The Court clarified that when the statute requires issuance of a show-cause notice "at least three months prior" to the expiry of the limitation period, the notice will be valid if it is issued on or before the day preceding the corresponding date calculated in accordance with the calendar-month method. Upon applying this method of computation, the High Court concluded that the late-November notice fell within the permissible statutory period and therefore could not be said to be time-barred. The Court therefore held that the impugned show-cause notice had been validly issued within limitation, and the challenge raised by the petitioner on the ground of limitation was unsustainable. Accordingly, the writ petition was dismissed.

Author's Comments:

This ruling provides important clarity on computation of limitation under the GST law, particularly in relation to the issuance of show-cause notices under Section 73. The decision reinforces that where the statute refers to a limitation period expressed in months rather than days, the computation must follow the calendar-month rule contained in the General Clauses Act. Courts have consistently applied similar principles when interpreting limitation provisions across tax statutes. For instance, the Supreme Court in State of Himachal Pradesh v. Himachal Techno Engineers [2010] 12 SCC 210] recognised the corresponding-date rule for computing statutory periods expressed in months. Likewise, in GST jurisprudence, High Courts have repeatedly emphasised that statutory limitation must be interpreted in accordance with established principles of time computation rather than arbitrary day-to-day counting. The present decision is also consistent with the broader judicial approach that procedural provisions governing limitation must be interpreted in a manner that preserves legislative intent while ensuring certainty in tax administration.

In the author's considered view, this decision serves as an instructive precedent for both taxpayers and tax authorities regarding the correct method for computing limitation under Section 73, especially in cases involving extended due dates for annual returns and the statutory requirement that notices be issued at least three months prior to the expiry of the adjudication period. Although, the Honorable Andhra Pradesh High Court in case of M/s Cotton Corporation of India v. Assistant Commissioner (ST) (Audit) & Others (W.P. No. 1463 of 2025, Dated: 05-02-2025) has taken a divergent view on interpretation of limitation.

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Whether affiliation and inspection services provided by a University to colleges qualify as exempt educational services under Notification No. 12/2017–Central Tax (Rate)?

No, The Hon'ble Madras High Court in ***Bharathidasan University v. Joint Commissioner of GST (ST-Intelligence), Trichy Division & Ors. [W.P. (MD) Nos. 27453, 27456 to 27458 of 2025, decided on 10.02.2026 | 2026 (2) TMI 722 – MADRAS HIGH COURT]*** held that affiliation charges collected by a university from affiliated colleges do not qualify as services "relating to admission to, or conduct of examination by, an educational institution" under Notification No. 12/2017-CT (Rate). The Court ruled that the activity of granting affiliation and conducting inspection of colleges is a distinct regulatory and eligibility-verification service occurring prior to admission of students, and therefore constitutes a taxable supply under the GST regime. In the present case, Bharathidasan University, challenged GST demands raised by the State tax authorities on affiliation fees, inspection fees and related charges collected from affiliated colleges. The petitioner contended that such services form part of the overall educational framework and therefore fall within the exemption granted to services provided by educational institutions relating to admission and examination under Entry 66 of Notification No. 12/2017-Central Tax (Rate). The University argued that affiliation is an essential prerequisite for colleges to admit students and conduct courses under the university's academic system. According to the petitioner, the affiliation process, including inspection and evaluation of infrastructure, faculty, and facilities, forms an integral component of the educational process and should therefore be treated as an exempt educational service. The tax department, however, contended that the grant of affiliation is a regulatory and administrative function performed by the university to determine whether a college meets prescribed academic standards. It was argued that such services are provided to institutions rather than students and occur prior to admission, thereby falling outside the scope of the exemption relating to admission or conduct of examination. The Court observed that the exemption specifically covers services relating to admission to educational institutions or conduct of examinations, which are activities directly connected with the student admission process or evaluation of students. The Court noted that grant of affiliation is a preliminary process whereby the university determines the eligibility of an institution to offer courses under its academic supervision. Such activities include inspection of infrastructure, verification of faculty strength, compliance with academic regulations, and grant or renewal of affiliation.

According to the Court, these activities are distinct from admission or examination functions, as they occur prior to the stage at which students are admitted or evaluated. Therefore, affiliation services cannot be considered services "relating to admission" within the meaning of the exemption notification. The Court also examined administrative clarifications and statutory developments, including Circular No. 234/28/2024-GST and Notification No. 08/2024-Central Tax (Rate), which addressed the taxability of certain services provided by educational institutions. After considering these materials and relevant judicial precedents, the Court concluded that affiliation services are taxable supplies under GST. Accordingly, the writ petitions challenging the tax demand were dismissed, and the view favouring taxability of affiliation charges was upheld.

Author's Comments:

This decision marks a significant development in the jurisprudence on GST applicability to statutory functions performed by universities. The Court has adopted a strict and literal interpretation of Entry 66 of Notification No. 12/2017-CT (Rate), confining the exemption only to services directly linked with admission of students or conduct of examinations, thereby excluding preparatory or regulatory activities such as affiliation and inspection.

At a conceptual level, the ruling draws a clear distinction between:

- Core educational functions (admission, examination – exempt), and
- Regulatory/administrative functions (affiliation, inspection – taxable).

While this distinction appears legally sound under a narrow reading of the exemption notification, it arguably overlooks the integrated nature of the educational ecosystem, where affiliation is a statutory sine qua non for colleges to admit students and impart education under a university framework. Without affiliation, the very process of admission and examination cannot legally take place, suggesting a functional nexus between these activities. A contrasting and more liberal approach was adopted by the Bombay High Court in Goa University v. Joint Commissioner of CGST (2025 (4) TMI 1056 - BOMBAY HIGH COURT), where affiliation services were treated as part of the broader educational function of the university. The Court recognised that universities and their affiliated colleges form a composite academic structure, and therefore, services rendered in that framework, including affiliation, should be viewed as incidental to education, and consequently eligible for exemption.

The divergence essentially stems from two competing interpretative approaches:

1. Strict interpretation of exemption notifications (as emphasised by the Constitution Bench in Commissioner of Customs v. Dilip Kumar and Company), which favours taxability unless clearly exempt; and
2. Purposive interpretation, which considers the broader objective of promoting education as a public good and treating ancillary services as part of that ecosystem.

The Madras High Court has leaned heavily towards the former, reinforcing the principle that exemptions must be construed narrowly, especially when the activity in question (affiliation/inspection) is not explicitly covered.

Given the conflicting views between High Courts, the issue is ripe for authoritative settlement by the Supreme Court of India. Until then, taxpayers, particularly universities and similar institutions, will face litigation uncertainty.

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Whether re-blocking of the Electronic Credit Ledger beyond the initial blocking period under Rule 86A of the CGST Rules is invalid for want of jurisdiction?

No, The Hon'ble Telangana High Court in ***M/s. Creative Enterprises v. The State of Telangana & Ors. [Writ Petition No. 19357 of 2025, decided on 03.02.2026 | 2026 (2) TMI 651 – TELANGANA HIGH COURT]*** held that re-blocking of the Electronic Credit Ledger (ECL) under Rule 86A of the CGST Rules is permissible so long as the action falls within the statutory one-year limitation period and is supported by ongoing adjudicatory proceedings. The Court further observed that where the taxpayer fails to disclose material facts relating to prior proceedings or orders, the writ court may decline relief. Accordingly, the High Court upheld the action of the department in re-blocking the electronic credit ledger and dismissed the writ petition. In the present case, the petitioner challenged the action of the tax authorities in re-blocking the Electronic Credit Ledger, contending that the action exceeded the one-year time limit prescribed under Rule 86A of the CGST Rules. The petitioner argued that once the statutory period for blocking the credit ledger had expired, the department lacked jurisdiction to impose a fresh restriction on utilisation of input tax credit. The petitioner further contended that Rule 86A is an extraordinary preventive provision intended to temporarily safeguard revenue where there is a reasonable belief that input tax credit has been fraudulently availed or is otherwise ineligible. It was brought to the notice of the Court that assessment proceedings had already culminated in a demand and penalty order against the petitioner and that the credit ledger had been re-blocked within the statutory time frame permissible under Rule 86A. The authorities contended that the restriction imposed on the electronic credit ledger was directly connected with the ongoing statutory proceedings concerning alleged irregular availment of input tax credit and therefore constituted a lawful administrative safeguard pending final adjudication. The High Court examined the statutory framework governing Rule 86A of the CGST Rules, which empowers the proper officer to block utilisation of input tax credit where he has reason to believe that such credit has been fraudulently availed or is otherwise ineligible. The Court observed that the rule prescribes a maximum period of one year during which such restriction may remain in force.

Upon examining the factual record, the Court noted that the re-blocking of the electronic credit ledger had occurred within the permissible statutory period and was supported by the existence of a prior demand and penalty order passed against the petitioner. The Court also recorded that the petitioner had failed to disclose these material facts while approaching the High Court under Article 226. The Court emphasised that writ jurisdiction is discretionary and equitable, and a petitioner approaching the Court must disclose all relevant facts fully and fairly. Suppression of material facts may itself constitute a ground for refusal of relief. The High Court therefore held that the administrative action of re-blocking the electronic credit ledger was not without jurisdiction, particularly when statutory proceedings were already underway and the restriction was imposed within the time limit contemplated under Rule 86A. Finding no illegality or arbitrariness in the action of the department, the Court declined to interfere with the impugned order. Accordingly, the writ petition was dismissed.

Author's Comments:

Rule 86A is intended as a temporary, precautionary measure during investigation to protect revenue in cases of suspected fraudulent or ineligible Input Tax Credit. Its character is not adjudicatory or punitive, but merely preventive and interim. Therefore, once the investigation culminates into issuance of a show cause notice and adjudication order, the continued or repeated blocking of the Electronic Credit Ledger arguably loses its foundational justification. At that stage, the statute provides specific recovery mechanisms under Sections 79 read with 78, which must be resorted to instead of indirectly enforcing recovery through credit restrictions.

The concept of "re-blocking" the ECL is particularly contentious. Although the High Court accepted it on facts, the GST framework does not expressly contemplate successive or repeated blocking orders for the same cause of action. Permitting such action risks converting Rule 86A into a tool of prolonged coercion, which is inconsistent with its limited temporal design.

A useful parallel can be drawn from provisional attachment under Section 83, where sub-section (2) clearly provides that attachment ceases after one year. Re-initiation is not automatic and requires:

1. Fresh proceedings under the Act; and
2. Formation of a new, independent "reason to believe".

In this context, the Supreme Court's observations in RHC Global Exports (P.) Ltd. v Union of India [2024] 166 taxmann.com 730 (SC)/[2024] assume significance. The Court emphasized that once an attachment lapses by operation of law, there is no inherent power to revive or reimpose it without satisfying fresh jurisdictional conditions.

Thus, while the High Court's decision may be justified on the peculiar facts (especially suppression of material facts by the petitioner), it should not be read as a blanket endorsement of re-blocking powers.

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Whether issuance of a summary in Form GST DRC-01 can substitute the statutory requirement of a Show Cause Notice under Section 73 of the CGST/SGST Act?

No, The Hon'ble Gauhati High Court in ***Md. Shoriful Islam v. State of Assam & Ors. [WP(C) No. 471 of 2026, decided on 06.02.2026 | 2026 (2) TMI 507 – GAUHATI HIGH COURT]*** held that issuance of a summary in Form GST DRC-01 cannot replace the mandatory requirement of issuing a proper Show Cause Notice under Section 73 of the GST Act. The Court ruled that failure to issue a valid SCN and statement of determination by the Proper Officer renders the adjudication order legally unsustainable. In the present case, the petitioner challenged an order passed by the GST authorities determining tax liability under Section 73 of the GST Act. The petitioner contended that the authorities had merely issued a summary notice in Form GST DRC-01 without issuing a detailed show cause notice specifying the allegations, computation of tax and legal basis of the proposed demand. It was further argued that the petitioner had not been granted a proper opportunity of personal hearing before the order was passed. The High Court examined the statutory framework of Section 73 of the CGST/SGST Act, which governs determination of tax not paid or short paid without involving fraud or suppression. The Court observed that the provision mandates issuance of a proper show cause notice by the Proper Officer before any determination of tax liability can be made. Such notice must clearly specify the allegations against the taxpayer, the legal provisions invoked and the basis of computation of the proposed demand.

The Court further observed that Form GST DRC-01 prescribed under the GST Rules is merely a summary of the show cause notice and cannot substitute the detailed notice itself. The summary form is intended only to provide a brief reference of the demand and must necessarily be accompanied by a valid show cause notice issued under the statute. The Court also emphasised that under Section 75(4) of the GST Act, the Proper Officer must grant an opportunity of personal hearing where a request is made or where an adverse decision is contemplated. In the present case, the failure to issue a proper show cause notice and the absence of a personal hearing constituted a violation of statutory requirements as well as principles of natural justice. On these findings, the High Court held that the impugned adjudication order was vitiated due to non-compliance with the mandatory procedure prescribed under Section 73. Consequently, the impugned order was quashed.

However, recognising that the department may initiate proceedings in accordance with law, the Court granted liberty to the authorities to commence fresh proceedings (de novo adjudication) after issuing a proper show cause notice and following the statutory procedure. Additionally, since the petitioner's bank account had been frozen during the course of the proceedings, the Court directed the authorities to defreeze the bank account forthwith. Accordingly, the writ petition was allowed, and the matter was remitted to the authorities for fresh action in accordance with law.

Author's Comments:

This ruling emphatically reiterates that issuance of a proper Show Cause Notice under Section 73/74 is a mandatory precondition, and Form GST DRC-01 is merely a summary, not a substitute. The statutory scheme under Rule 142(1)(a) clearly contemplates two distinct documents, a detailed SCN and its accompanying summary. Absence of the former renders the entire proceedings void ab initio.

The principle that "what is required to be done in a particular manner must be done in that manner or not at all", as laid down in Nazir Ahmad v. King Emperor, squarely applies. Treating DRC-01 as a standalone notice dilutes due process and deprives the taxpayer of clear allegations, computation, and legal basis, thereby violating natural justice.

Further, the statutory framework maintains a similar structure at the adjudication stage:

- Adjudication Order → accompanied by DRC-07 (summary)
- DRC-07 → operates as a notice for recovery under Rule 142(6)

Thus, DRC-07 without a valid adjudication order is equally non-est, and any recovery initiated solely on such summary lacks authority of law.

This position finds consistent judicial backing in decisions such as NKAS Services Private Limited v. State of Jharkhand (2022 (2) TMI 1157 - JHARKHAND HIGH COURT) and LC Infra Projects Pvt. Ltd. v. Union of India (2019 (8) TMI 84 - KARNATAKA HIGH COURT), which have categorically held that summary forms cannot replace substantive statutory requirements.

The broader takeaway is clear, Due process of law has to be followed by every stakeholder and GST proceedings are procedure-sensitive. Any attempt to shortcut mandatory steps, especially issuance of SCN, is fatal to the demand. While courts may permit de novo proceedings, such remands often prolong litigation without granting final relief, reinforcing the need for strict compliance at the initial stage itself.

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Whether recovery proceedings under the GST law can be initiated before uploading the summary of the adjudication order in FORM GST DRC-07 on the GST portal?

No, The Hon'ble Madras High Court in ***JVS Agencies v. Superintendent, Range-III, Thiruvottiyur Division, Chennai [W.P. No. 30727 of 2025, decided on 04.02.2026 | 2026 (2) TMI 1322 – MADRAS HIGH COURT]*** held that uploading the summary of the adjudication order in FORM GST DRC-07 on the GST portal is a mandatory procedural requirement and a precondition for initiating recovery proceedings. The Court observed that failure to upload such summary violates the procedural framework prescribed under Rules 142(5) and 142(6) of the CGST Rules, and consequently recovery proceedings must remain in abeyance until the statutory requirement is complied with. In the present case, the petitioner, challenged the recovery proceedings initiated by the GST authorities pursuant to an Order-in-Original dated 09.04.2024 determining tax liability. The petitioner contended that although the adjudication order had been passed, the department had not uploaded the mandatory summary of the order in FORM GST DRC-07 on the GST portal. Despite this omission, the authorities proceeded to initiate recovery measures against the petitioner. It was argued that uploading the summary in FORM GST DRC-07 is an essential procedural step that communicates the outcome of adjudication electronically through the GST system, thereby enabling the taxpayer to take appropriate steps such as filing an appeal within the prescribed time. The petitioner further submitted that non-uploading of DRC-07 effectively deprives the taxpayer of a clear electronic record of the demand, thereby affecting the taxpayer's right to challenge the order through the statutory appellate mechanism. The High Court examined the scheme of Rule 142 of the CGST Rules, Under Rule 142(5), the proper officer is required to issue a summary of the order in FORM GST DRC-07 specifying the amount of tax, interest and penalty payable. Rule 142(6) further contemplates the electronic communication of such orders through the GST portal. The Court observed that these provisions form an integral part of the electronic compliance architecture of the GST regime, which is designed to ensure transparency and provide taxpayers with a clear digital trail of notices, orders and demands. The High Court therefore held that uploading the summary in FORM GST DRC-07 is not a mere procedural formality but a mandatory requirement, particularly because it has a direct bearing on the taxpayer's right to pursue appellate remedies. The Court held that such action was procedurally improper, as recovery cannot be initiated unless the statutory requirement of issuing the summary in FORM GST DRC-07 has been fulfilled.

Accordingly, the High Court directed that recovery proceedings pursuant to the Order-in-Original dated 09.04.2024 shall remain in abeyance until the department uploads the summary in FORM GST DRC-07. The Court further clarified that once the summary is uploaded in accordance with the Rules, the respondent authorities would be at liberty to proceed in accordance with law, and the petitioner would be entitled to avail the statutory remedy of appeal before the appellate authority. The writ petition was disposed of with these directions.

Author's Comments:

This ruling once again highlights the centrality of the electronic compliance framework under GST and the legal significance attached to statutory forms such as FORM GST DRC-07. The Court has rightly treated the requirement under Rules 142(5) and 142(6) as mandatory and not merely directory, particularly because it directly impacts the taxpayer's right to appeal and procedural certainty.

The reasoning aligns with the broader jurisprudence emerging from the Supreme Court of India in ASP Traders v. State of Uttar Pradesh [2025 (7) TMI 1525 - SUPREME COURT], where emphasis was placed on strict adherence to procedural safeguards in GST adjudication and recovery proceedings. The Supreme Court has consistently underlined that procedural lapses which impair statutory rights, especially appellate remedies, cannot be trivialised.

At the same time, the administrative position reflected in Instruction No. 04/2023-GST dated 23.11.2023 issued by the CBIC acknowledges that non-uploading of DRC-07 is a clear violation of the Rules, but stops short of declaring all consequential proceedings automatically void. This creates a nuanced distinction between:

- Illegality affecting jurisdiction or substantive rights (fatal defects), and
- Procedural irregularities which may be curable (non-fatal defects)

This distinction becomes crucial in litigation strategy. While the High Court has, in the present case, granted relief by keeping recovery in abeyance, it is equally important to recognise that not every procedural lapse will invalidate proceedings altogether. Taxpayers must carefully assess whether the defect is worth litigating or can be resolved administratively. In many cases, a simple request to the department for uploading DRC-07 could have served the purpose.

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Whether GST show-cause notices and assessment orders issued in the name of a deceased taxpayer are valid without serving notice on the legal representative?

No, The Hon'ble Allahabad High Court in ***Rajvanti Devi v. State of U.P. through Principal Secretary, State Tax, Lucknow & Ors. [Writ Tax No. 142 of 2026, decided on 29.01.2026 | 2026 (2) TMI 164 – ALLAHABAD HIGH COURT]*** held that show-cause notices and tax determinations issued in the name of a deceased taxpayer are legally unsustainable where notice is not served upon the legal representative. The Court ruled that once the registered person has died, proceedings must be initiated against the legal representative in accordance with the statutory framework governing post-death liability under the GST law. In the present case, the writ petitioner, being the legal heir of a deceased proprietor, challenged the validity of show-cause notices and consequential tax determination orders issued by the GST authorities in the name of the deceased proprietor. The petitioner contended that the proprietor had already passed away prior to the issuance of the notice and that the authorities had proceeded to determine tax liability without issuing notice to the legal representative or providing an opportunity of hearing. The High Court examined the statutory scheme governing liability after the death of a taxable person under the GST law. The Court observed that where a registered person dies, the liability to pay tax, interest or penalty may be enforced against the legal representative, but such enforcement must strictly comply with the statutory procedure. The authorities are required to issue notice to the legal representative who represents the estate of the deceased taxpayer and provide an opportunity to respond before any determination is made.

The Court emphasised that proceedings initiated against a deceased person are void and unenforceable, as a deceased individual cannot respond to notices or participate in adjudication. Failure to bring the legal representative on record and to serve notice upon such representative amounts to a clear violation of statutory provisions as well as principles of natural justice. The High Court further noted that the liability of a legal representative under GST is not personal but limited to the extent of the estate inherited from the deceased taxpayer. Therefore, proper notice and opportunity must be provided to the legal representative so that the representative may explain the factual position and defend the estate against the proposed demand.

In the present case, the Court found that the show-cause notice and subsequent tax determination had been issued directly in the name of the deceased proprietor without bringing the legal representative on record. Such proceedings were held to be fundamentally defective and incapable of being sustained in law. Accordingly, the impugned show-cause notices and tax determination orders were set aside, and the writ petition was allowed.

Author's Comments:

The Court has rightly reaffirmed a settled principle of law that proceedings against a deceased person are void ab initio. A dead person ceases to be a legal entity capable of being issued notice, participating in adjudication or defending a claim. Consequently, any show-cause notice or assessment order issued in such name is a nullity in the eyes of law. Section 169 of the CGST Act, which governs service of notice, inherently presupposes service upon a living person capable of responding, and therefore cannot be satisfied by addressing communication to a deceased assessee.

However, the more nuanced issue arises in relation to the permissibility of initiating fresh proceedings against legal representatives. Section 93 of the CGST Act, which deals with liability in case of death of a taxable person, is fundamentally a recovery provision. It enables the department to recover dues already determined from the estate of the deceased, to the extent inherited by the legal representative. It does not, in its plain language, confer authority to initiate or continue adjudication proceedings for determination of tax liability.

This distinction is crucial. The machinery provisions under Sections 73, 74 and 74A contemplate issuance of show-cause notice to a "person chargeable with tax." A legal representative, merely by virtue of succession, does not automatically assume the character of a taxable person under GST, especially where the business is not continued. Extending adjudicatory proceedings to legal heirs risks expanding the scope of Section 93 beyond recovery into determination, which would be contrary to the statutory scheme. The analogy with procedural law further strengthens this position. Under general principles reflected in Order XXII of the Code of Civil Procedure, proceedings abate where the right to sue does not survive. Similarly, in GST, while recovery of crystallised liability may survive against the estate, the power to determine liability is intrinsically linked to the taxable person and may not survive his death in the absence of explicit statutory provision.

Therefore, while the Court is correct in quashing proceedings initiated against a deceased person, the direction permitting fresh proceedings against legal representatives' warrants reconsideration. In the author's considered view, if adjudication had not culminated in determination of liability during the lifetime of the taxable person, the proceedings ought to lapse, and only those liabilities already crystallised can be enforced against the estate under Section 93.

This issue highlights a significant legislative gap in GST, the absence of a clear framework for continuation or abatement of proceedings upon death of a taxpayer, which may require authoritative judicial clarification or legislative intervention.

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Whether reversal of Input Tax Credit can be sustained when adjudicating and appellate authorities fail to consider statutory returns available on the GST portal such as GSTR-1, GSTR-3B and GSTR-9?

No, The Hon'ble Calcutta High Court in **Shine Pharmaceuticals Ltd. v. Joint Commissioner of Revenue, Large Taxpayer Unit & Ors. [WPA 9722 of 2025, decided on 28.01.2026 | 2026 (2) TMI 107 – CALCUTTA HIGH COURT]** held that reversal of Input Tax Credit cannot be sustained where the adjudicating and appellate authorities fail to examine statutory GST returns available on the portal and thereby abdicate their statutory duty to properly adjudicate the dispute. In the present case, the petitioner challenged the adjudication order and the appellate order by which reversal of ITC was confirmed. The petitioner contended that the authorities had ignored crucial statutory records filed on the GST portal, namely GSTR-1, GSTR-3B and GSTR-9, which contained detailed disclosure of outward supplies, tax liability and reconciliation of turnover. According to the petitioner, the authorities had proceeded on certain assumptions regarding discrepancies without reconciling the data available in the portal returns. It was further contended that the appellate authority had mechanically affirmed the adjudication order without addressing the specific grounds raised by the petitioner based on the statutory returns.

The High Court observed that the GST regime is fundamentally built upon a self-assessment and return-based compliance system, where statutory returns such as GSTR-1, GSTR-3B and GSTR-9 constitute primary evidence of transactions and tax liability. The Court held that when such statutory returns are already available on the portal and form part of the official record, the adjudicating authority is duty-bound to examine and reconcile them before arriving at any finding regarding tax liability or eligibility of ITC. Ignoring these records amounts to non-application of mind and renders the decision-making process arbitrary. The Court further held that the appellate authority has an independent duty to evaluate the evidence and address the grounds raised by the appellant; failure to consider the portal returns and the reconciliation explanation amounts to abdication of appellate responsibility. On these findings, the High Court set aside both the adjudication order and the appellate order. The matter was remanded to the adjudicating authority for fresh adjudication on merits, with directions to examine the statutory returns, consider the petitioner's explanations and pass a reasoned and speaking order after granting an effective opportunity of hearing. The Court also directed that no recovery proceedings shall continue pursuant to the impugned orders during the pendency of the fresh adjudication.

Author's Comments:

This decision underscores a recurring concern in GST adjudication that is mechanical confirmation of demands without proper examination of statutory records. The GST framework is built upon a self-assessment and return-based compliance system, where statutory returns such as GSTR-1, GSTR-3B and GSTR-9 form the primary evidentiary basis of a taxpayer's disclosures. When these returns are already available on the GST portal and form part of the official record, the adjudicating authority cannot ignore them and proceed on assumptions or incomplete data.

The ruling reiterates that adjudication under the CGST Act is not a mere procedural formality. The adjudicating authority is required to reconcile the data available in statutory returns, examine explanations furnished by the taxpayer, and record clear findings supported by evidence. Failure to consider these portal-based records amounts to non-application of mind and renders the order vulnerable to judicial interference.

Equally important is the role of the first appellate authority, which is not expected to act as a rubber stamp for the adjudication order. The appellate authority has an independent statutory duty to examine the grounds raised by the appellant, evaluate the evidentiary material and pass a reasoned order. Mechanical affirmation of the adjudication order without addressing the reconciliation of statutory returns amounts to abdication of appellate responsibility.

Since GST operates as a self-assessment regime, the burden initially lies on the Revenue to demonstrate, through proper analysis of the available records, how the taxpayer's declarations are incorrect or inconsistent. Confirming demands without undertaking such reconciliation defeats the very architecture of the GST system. Experience shows that several demands raised through automated data analytics or mismatch reports eventually collapse in judicial review because the underlying adjudication lacked proper scrutiny. Such mechanical adjudication neither advances revenue interests nor strengthens tax administration; instead, it leads to avoidable litigation and delays in final determination of liability.

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Whether the High Court can extend the statutory time limit beyond 4 months for filing an appeal under Section 107 of the CGST Act?

No, The Hon'ble Gujarat High Court in ***Hariom Industries through Proprietor Palakben Devendra kumar Patel v. State of Gujarat & Anr. [R/Special Civil Application No. 15039 of 2025, decided on 22.01.2026 | 2026 (2) TMI 105 – GUJARAT HIGH COURT]*** held that the statutory time limit prescribed under Section 107 of the CGST Act for filing an appeal cannot be extended beyond the outer limit of 120 days, and that the High Court in exercise of writ jurisdiction cannot enlarge the limitation period fixed by the statute. In the present case, the petitioner challenged the rejection of its appeal by the appellate authority on the ground of limitation. The appeal had been filed beyond the statutory time period provided under Section 107 of the CGST Act. The petitioner contended that there were sufficient reasons for the delay and urged the High Court to exercise its writ jurisdiction under Article 226 of the Constitution to condone the delay and permit the appeal to be heard on merits. The High Court analysed the statutory framework of Section 107 of the CGST Act, which provides that an appeal must be filed within 90 days from the date of communication of the order. Section 107(4) empowers the appellate authority to condone delay only up to one additional month (30 days) if the appellant demonstrates sufficient cause. The Court observed that the language of the statute clearly imposes an absolute outer limit of 120 days, after which the appellate authority has no jurisdiction to entertain the appeal.

The Court emphasised that where the legislature has consciously prescribed a specific limitation period along with a limited power of condonation, the courts cannot extend that period by invoking equitable considerations or constitutional jurisdiction. Allowing such extension would effectively defeat the statutory scheme and render the limitation provision meaningless. The Court also referred to the principle that provisions of the Limitation Act cannot override a special statute which prescribes its own limitation and condonation framework. On facts, the Court further noted that the explanations offered by the petitioner for the delay were unsatisfactory. The petitioner had attempted to attribute the delay to lack of awareness of proceedings and portal communications. The Court held that under the GST regime, taxpayers are expected to exercise due diligence and regularly monitor the GST portal where orders, notices and communications are uploaded. Failure to do so cannot constitute a valid ground for condoning delay beyond the statutory limit.

In view of these findings, the Court held that the appellate authority had rightly dismissed the appeal as time-barred and that the High Court could not extend the limitation beyond the maximum statutory window of 120 days. Consequently, the writ petition challenging the dismissal of the appeal was rejected.

Author's Comments:

This decision reiterates the strict limitation framework governing appeals under Section 107 of the CGST Act. The statute prescribes a clear limitation i.e. an appeal must be filed within 3 months from the date of communication of the order, with a limited power of condonation of delay up to one additional month upon showing "sufficient cause." Once this outer limit of 4 months expires, the appellate authority becomes functus officio and lacks jurisdiction to entertain the appeal.

The expression "sufficient cause" appearing in Section 107(4) is conceptually similar to the language used in Section 5 of the Limitation Act, 1963. However, the interplay with Section 29(2) of the Limitation Act makes it clear that where a special statute prescribes its own limitation period along with a restricted condonation mechanism, the general provisions of the Limitation Act cannot enlarge that period. In other words, the machinery of the Limitation Act may assist in interpreting "sufficient cause," but it cannot override the statutory cap imposed by the special legislation.

Another practical dimension emerging from the case relates to the litigation strategy adopted by taxpayers. In many GST disputes, the critical issue is the "date of communication" of the order, since the limitation period under Section 107 runs from that date. If a taxpayer genuinely claims that the order was never served or that it became known only when recovery proceedings commenced, such as attachment of bank accounts or debit from the electronic credit/cash ledger, then the challenge should logically focus on disputing the date of communication itself.

In the present case, the pleadings appear to have lacked such strategic clarity. If the petitioner asserted lack of knowledge of the order, the logical argument would have been that the actual communication occurred only when coercive recovery action was initiated. Accepting an earlier date of communication while simultaneously claiming ignorance of the order creates an inherent inconsistency. Taxpayers cannot approbate and reprobate on the same issue, as contradictory positions undermine the credibility of the challenge.

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Whether the High Court can interfere with a show-cause notice issued under the GST law at the initial stage of adjudication?

No, The Hon'ble Allahabad High Court in ***M/s. Ishan Industries v. Director, Directorate General of GST Intelligence & Anr. [Writ Tax No. 784 of 2026, decided on 02.02.2026 | 2026 (2) TMI 224 – ALLAHABAD HIGH COURT]*** declined to interfere with a show-cause notice issued under the GST framework at the initiation stage, holding that disputed questions of fact must ordinarily be examined during adjudication. However, the Court protected the procedural rights of the taxpayer by clarifying that the petitioner cannot be compelled to deposit the proposed tax amount before adjudication and that the petitioner retains the right to cross-examine witnesses and rebut the evidence relied upon by the department. In the present case, the petitioner challenged a show-cause notice issued by the Directorate General of GST Intelligence (DGGI) alleging irregularities based on statements of certain recipients and documentary materials relied upon by the department. The petitioner approached the High Court contending that the allegations were unfounded and that the show-cause notice itself was legally untenable. It was argued that the department was attempting to rely on third-party statements and documents without giving the petitioner an opportunity to challenge the reliability of such evidence.

The High Court examined the nature of the proceedings and observed that the impugned notice was only a show-cause notice initiating adjudication proceedings and did not constitute a final determination of liability. The Court reiterated the well-established principle that judicial review under Article 226 is generally not exercised at the stage of issuance of a show-cause notice, particularly where the issues raised involve disputed questions of fact requiring detailed examination by the adjudicating authority. The Court further observed that the show-cause notice referred to statements of certain recipients and documents forming part of the Relied Upon Documents (RUDs). Such materials may form the basis of the department's allegations, but their evidentiary value must be tested during adjudication. The Court held that the petitioner must be given a full opportunity to challenge the credibility and relevance of such statements and documents. Importantly, the Court clarified that while the petitioner must participate in the adjudication process, the department cannot compel the petitioner to deposit the proposed tax demand prior to completion of adjudication. The Court emphasised that liability can arise only after a proper determination is made by the competent authority in accordance with the statutory scheme.

The High Court also recognised the petitioner's right to cross-examine witnesses whose statements are relied upon by the department, particularly where such statements form a substantial part of the allegations. The Court held that if the adjudicating authority relies on such statements, the petitioner must be afforded an opportunity to cross-examine those witnesses and to present rebuttal evidence in accordance with principles of natural justice. In view of these observations, the High Court declined to quash the show-cause notice but directed that the issues raised by the petitioner be examined during adjudication both on facts and law, with full opportunity to contest the evidence relied upon by the department. Accordingly, the writ petition was disposed of with the above observations.

Author's Comments:

This decision reinforces a well-settled principle of tax jurisprudence that judicial review at the stage of show-cause notice is an exception, not the rule. A show-cause notice merely initiates adjudication and does not determine liability. Interference by the High Court at this stage is ordinarily unwarranted, especially where the dispute involves questions of fact, appreciation of evidence, or verification of transactions, all of which fall squarely within the domain of the adjudicating authority.

In practice, however, taxpayers frequently rush to invoke writ jurisdiction at the notice stage, often without exhausting the statutory process. Such premature challenges rarely yield substantive relief and may even weaken the taxpayer's position by bypassing opportunities to build a factual record during adjudication.

The present case highlights an important procedural dimension, rights relating to Relied Upon Documents (RUDs) and cross-examination. Where the department relies on third-party statements or documentary evidence, the taxpayer has a legitimate right to:

- Seek complete disclosure of all RUDs,
- Challenge the admissibility and credibility of such evidence, and
- Cross-examine witnesses whose statements are relied upon.

These rights are integral to the principles of natural justice and must be asserted before the adjudicating authority in the first instance. A more effective approach in such cases would be to file a detailed application under Section 67(10) of the Act, before the Commissioner, seeking RUDs and cross-examination, and if denied, place such denial on record. Only in the event of procedural denial or violation of natural justice would recourse to the High Court become meaningful and sustainable.

In essence, the ruling serves as a practical reminder that GST litigation is as much about procedural discipline as substantive law. Effective defence begins at the adjudication stage itself, and premature invocation of writ jurisdiction should be avoided unless there is a clear case of jurisdictional error, illegality or violation of natural justice.

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Whether a general penalty under the CGST Act can be imposed in addition to statutory late fee for delayed filing of returns, resulting in double punishment?

No, The Hon'ble Madras High Court in ***Prajith Enterprises represented by its Proprietor Deepa v. State Tax Officer, Vellore [WP No. 2618 of 2026 & connected WMPs, decided on 27.01.2026 | 2026 (2) TMI 278 – MADRAS HIGH COURT]*** held that imposition of a general penalty in addition to the statutory late fee for delayed filing of returns amounts to impermissible double punishment. The Court therefore set aside the penalty while allowing recovery of the statutory late fee subject to compliance with specified conditions. In the present case, the petitioner challenged an assessment order issued by the GST authorities which imposed both late fee for delayed filing of returns and an additional general penalty of ₹50,000. The petitioner contended that the GST law already prescribes a specific consequence, namely late fee, for delayed filing of returns and that imposition of a separate general penalty for the same default was unjustified and amounted to double punishment. The High Court examined the statutory framework governing late filing of GST returns and noted that the CGST Act specifically provides for levy of late fee as a statutory consequence for delay in filing returns. The Court observed that once the legislature has prescribed a specific monetary consequence for such default, the authorities cannot simultaneously impose a general penalty for the same act unless the statute expressly authorises such additional punishment. The Court further observed that imposing both late fee and a general penalty for the same default results in disproportionate and unequal treatment, as it effectively penalises the taxpayer twice for a single lapse. Such an approach is inconsistent with principles of fairness embedded in tax jurisprudence and may amount to arbitrary exercise of penal powers. On examining the facts of the case, the Court found that the petitioner had already been subjected to a confirmed late fee liability of ₹1,67,200. Since the late fee itself is a statutory consequence of delayed filing, the Court held that imposition of an additional general penalty of ₹50,000 could not be sustained.

Accordingly, the High Court set aside the general penalty of ₹50,000, holding that such penalty would amount to impermissible double punishment. However, the Court directed the petitioner to pay the confirmed late fee of ₹1,67,200 within 30 days. The Court further directed that upon payment of the late fee within the stipulated period, the impugned assessment order shall stand quashed and the recovery proceedings shall be dropped. Conversely, if the petitioner fails to comply with the direction within the prescribed time, the department would be at liberty to proceed with recovery as if the writ petition had been dismissed. On these terms, the writ petition was disposed of, granting relief against the imposition of the additional penalty.

Author's Comments:

The decision brings into focus the limits of penal powers under the CGST Act, particularly in situations where the statute itself prescribes a specific consequence for a specific default. Delay in filing returns is expressly dealt with under Section 47 through levy of late fee, which is a self-contained statutory consequence. Once such consequence is triggered, invocation of a residuary penalty under Section 125 for the very same default raises concerns of double penalisation.

The principle against double punishment, though often loosely equated with constitutional "double jeopardy," operates here in a statutory interpretation context, where the legislature has already provided a specific penalty mechanism, resort to a general penalty provision for the same cause is unwarranted unless expressly authorised.

That said, the issue requires a nuanced understanding. Judicial precedents such as Gujarat Travancore Agency v. CIT [1989 (3) SCC 52] and Chairman SEBI v. Shriram Mutual Fund[2006-TIOL-72-SC-SEBI] have upheld simultaneous penalties where each penalty addresses distinct and independent defaults. For instance, under the erstwhile service tax regime, penalties for failure to pay tax and failure to file returns operated in different fields.

Applying that rationale to GST, a distinction must be maintained:

- Late fee (Section 47) → delay in filing returns
- Penalty (Section 125 or others) → may apply to separate contraventions (e.g., contravention of provisions not specifically covered)

Where both are invoked for the same act of delayed filing, the overlap becomes impermissible. However, where the defaults are distinct, simultaneous consequences may still be legally sustainable.

Another important dimension, perhaps underexplored in the case is the jurisdictional basis for recovery of late fee. Section 73 of the CGST Act is designed for determination of tax not paid/short paid, erroneous refunds, or ITC wrongly availed. It does not expressly extend to determination of late fees. Invoking Section 73 machinery for recovery of late fee may therefore amount to a misapplication of statutory provisions, as late fee is governed independently under Section 47.

Further, the procedural requirement under Section 46 read with Rule 68 for issuance of notice in Form GSTR-3A to non-filers is a critical precondition before proceeding against a taxpayer for non-filing of returns. Failure to comply with this mandatory step vitiates the proceedings and reflects breach of due process.

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Whether a single show-cause notice under the CGST Act can validly club multiple tax periods or financial years for adjudication?

No, The Hon'ble Karnataka High Court in ***M/s. MCR Marketing v. The Assistant Commissioner of Central Tax, Audit Circle-3 Bangalore & Ors. [Writ Petition No. 5739 of 2025 (T-RES), decided on 20.01.2026 | 2026 (2) TMI 100 – KARNATAKA HIGH COURT]*** held that a composite show-cause notice clubbing multiple tax periods or financial years into a single proceeding is legally unsustainable. The Court ruled that such notices violate the statutory structure of GST adjudication, where tax liability is intrinsically linked to specific tax periods and return cycles. Consequently, adjudication orders passed on the basis of such defective notices are liable to be set aside. In the present case, the petitioner challenged a show-cause notice issued by the department which sought to determine tax liability for several distinct tax periods and financial years through a single consolidated proceeding. Based on this composite notice, the authorities proceeded to pass adjudication orders determining tax, interest and penalty across multiple years collectively. The petitioner contended that GST liability must be examined period-wise, as each tax period constitutes a separate compliance unit under the GST regime. It was argued that the composite notice failed to clearly segregate allegations and computations for each period, thereby depriving the taxpayer of a meaningful opportunity to respond. The High Court examined the scheme of the CGST Act, particularly Sections 73 and 74, which provide for determination of tax not paid or short paid for a specified tax period. The Court observed that GST compliance operates on a return-based framework, where taxpayers file periodic returns such as GSTR-1 and GSTR-3B for each tax period. Consequently, adjudication proceedings must ordinarily correspond to those specific periods. Clubbing multiple financial years or tax periods into a single show-cause notice creates confusion regarding the scope of allegations and the basis of computation, making it difficult for the taxpayer to defend the case effectively.

The Court further emphasised that the show-cause notice is the foundation of any tax demand, and therefore it must satisfy the requirements of clarity, precision and specificity. Each notice must clearly identify the relevant tax period, the nature of alleged contravention, the statutory provisions invoked and the computation of tax liability. When several tax periods are aggregated into a single notice, the allegations often become vague and omnibus in nature, which is inconsistent with the principles of natural justice embodied in Section 75 of the CGST Act. Relying on earlier judicial precedents addressing similar procedural defects, the Court held that a composite notice covering multiple tax periods is inherently defective. The Court observed that each tax period involves distinct factual circumstances, including different transactions, returns, reconciliations and documentary evidence. Therefore, adjudication for each period must be carried out independently to ensure fairness and transparency in the proceedings. On these findings, the High Court concluded that the show-cause notice issued in the present case suffered from a fundamental procedural defect because it clubbed annual adjudications across different tax periods into one proceeding. As a result, the impugned show-cause notices, adjudication orders and related statutory forms were quashed. However, the Court granted liberty to the revenue authorities to initiate fresh proceedings in accordance with law, provided that such proceedings are undertaken through proper period-specific notices and without relying on the defective composite notice.

Author's Comments:

The validity of a composite show-cause notice (SCN) covering multiple tax periods or financial years is emerging as one of the most debated procedural issues in GST litigation. The GST statute operates on a period-based compliance structure, where returns such as GSTR-1, GSTR-3B and the annual return are filed for defined tax periods. Correspondingly, Sections 73 and 74/74A of the CGST Act contemplate determination of tax liability for a specified tax period, making clarity of period an important component of adjudication. At the same time, the statute contains an interesting procedural mechanism under Sections 73(3) and 74(3) which permits the issuance of a "statement" for subsequent periods, deemed to be a notice under Sections 73(1) or 74(1), where the grounds are identical to those mentioned in the original notice. This provision indicates that the legislature did contemplate situations where disputes extend across multiple tax periods arising from the same cause of action. However, the framework still requires period-wise identification and computation rather than a vague aggregation of multiple years. Another critical statutory consideration is the limitation structure under Sections 73(10) and 74(10). The limitation period for issuing orders is linked to the due date for furnishing the annual return for the relevant financial year, thereby treating each financial year as an independent unit for limitation purposes. The constitutional principle that assessments for different years should ordinarily be kept distinct was emphasised by the Supreme Court in State of J&K v. Caltex (India) Ltd. (1966 AIR 1350). Although rendered in the context of a different taxation statute, the underlying logic that each assessment year involves its own factual matrix and statutory timeline remains relevant in a return-based regime such as GST.

In the author's view, the controversy arises because GST transactions often span across financial years. Input tax credit may be availed in one year, reversed or disputed in another, and investigations into suppression or fraud frequently involve patterns of transactions over multiple periods. Treating each year as an entirely watertight compartment may therefore undermine the objective of Sections 73 and 74, particularly in cases involving continuing contraventions.

However, the countervailing concern is equally significant. If multiple years are clubbed in a single notice without clear period-wise allegations, computations and evidentiary basis, it can prejudice the taxpayer's ability to respond effectively and may also obscure limitation calculations. Accordingly, the more balanced approach would be that multiple periods may be addressed in one proceeding only where the cause of action is common and the allegations are clearly segregated period-wise, with separate computation and reasoning for each period. Until authoritative clarity emerges, this issue remains ripe for final determination by the Supreme Court, as divergent judicial views continue to shape GST procedural jurisprudence.

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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.

Professional Credentials:

- Author of 'GST Gavel – A Litigation Guide'
- Specialist in GST litigation and advisory services
- Special Invitee Member of Indirect Taxes Committee of NIRC of ICAI 2025-26
- Vice Chairman of ICAI Amritsar Branch (2024–25)
- NICASA Chairman of ICAI Amritsar (2024–25)
- Previous Treasurer of ICAI Amritsar (2022–23, 2023–24)
- Speaker and contributor to professional development in taxation and finance

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

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