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THE TAXWEEKLY MAGAZINE

Authors: CA Amey Sharma | CA Sneha Sharma

In this issue:

Extension of E-Way Bill Functional Implementation Timelines

9th June 2026

The Goods and Services Tax Network (GSTN) has officially postponed the implementation date for two upcoming e-way bill system updates. Originally scheduled to go live on June 15, 2026, these changes have been deferred to allow businesses, Application Service Providers (GSPs), and ERP developers more time to adapt their systems.

The timeline extension applies to the following two features:

1. Mandatory "Ship To GSTIN" Capture: The compulsory entry of the recipient's GSTIN in all "Bill-To/Ship-To" transaction logs.
2. Voluntary E-Way Bill Closure: An operational function allowing taxpayers to voluntarily close active e-way bills.

Revised Schedule & Justification

- Original Implementation Date: June 15, 2026.
- Revised Implementation Date: August 1, 2026.
- Reason for Deferral: Multiple representations were submitted by trade and industrial bodies highlighting the need for additional time to perform master data updates, system changes, API/ERP software configurations, and system-wide testing.

Action Required

Taxpayers, GSPs, ERP system providers, and relevant technical stakeholders are advised to utilize this extended period to complete all necessary software testing, technical system adjustments, and operational workflows before the new August 1, 2026 deadline.

GSTAT Holds That Anti-Profiteering Must Be Computed on Actual Eligible ITC, Not on Incomplete Credit Figures

Director General of Anti-Profiteering (DGAP) v. M/s Vasavi and GP Infra LLP

Appeal Case Reference No. NAPA/28/PB/2025 - Order dated : 7th May 2026

GSTAT, Special Bench, Court I, New Delhi

The GSTAT affirmed that the Respondent builder profiteered by failing to completely pass on the incremental benefit of ITC to homebuyers after the introduction of GST. The Tribunal directed the Respondent to refund a revised profiteered amount of Rs 71,37,747 plus 12% GST and 18% per annum interest to eligible homebuyers within three months.

Facts of the case:

- **The Complaint:** Homebuyers of the project "Vasavi GP Trends" in Banjara Hills, Telangana, filed complaints alleging that the Respondent builder failed to pass on the benefit of Input Tax Credit (ITC) via a commensurate reduction in prices after GST was introduced on 01.07.2017.

- **Initial Investigation:** The DGAP initially calculated a total profiteered amount of Rs 6,02,89,656, leaving a balance of Rs 2,54,20,175 after adjusting for benefits already passed on by the builder.

- **Remand Order:** Upon the builder's objections to the methodology and factual aspects, GSTAT issued a limited remand on 13.02.2026 directing the DGAP to re-verify the calculations.

- **Revised Report:** The DGAP submitted a revised report on 13.03.2026. It recalculated the total profiteering at Rs 1,51,87,625 based on the ratio of ITC to construction costs.

- Factoring in financial adjustments verified through ledger books (including Rs 46,40,136 adjusted for 13 customers and embedded post-GST pricing policies), the net unpassed profiteered amount was revised downward to Rs 71,37,747.

Issues of the Case:

- Whether the Respondent derived an additional benefit of ITC post-GST implementation, and if so, whether it was commensurately passed on to homebuyers u/s 171 of the CGST Act, 2017.
- Whether ITC obtained on "input services" should be excluded from the profiteering computation.
- Whether the 12% GST collected on the profiteered amount should be included in the total refund, given that the builder had already deposited it with the government.
- Whether the Respondent is liable to pay interest and statutory penalties on the unpassed amount.

Grounds of the Case:

- **Inclusion of Goods and Services**: Section 171 of the CGST Act explicitly covers benefits arising from any reduction in tax rates or the availability of input tax credit. This includes credit on both material inputs (goods) and input services; no exclusion of services is statutorily permitted.

- **Rejection of Email Denials over Financial Records:** Email responses from 13 customers denying the receipt of benefits cannot override internal contemporaneous accounting ledger balances and credit notes showing actual price/demand adjustments. Price adjustment is a valid method of passing on benefits.

- **GST Component Part of Profiteering:** Relying on the Delhi High Court precedent (Reckitt Benckiser), any GST mistakenly collected from buyers on an inflated/unreduced base price constitutes an excess realization and forms an inseparable part of the profiteered amount requiring restitution.

- **Mandatory Interest & Deterrence**: Rule 133(3)(b) of the CGST Rules mandates interest at 18% per annum to compensate buyers for the time value of money pocketed by suppliers.

Judgement:

The GSTAT confirmed the findings of the revised DGAP report and ordered the following:

- **Restitution**: The Respondent must pass on the net profiteered amount of Rs 71,37,747 (exclusive of GST) along with GST @ 12% (Rs 8,56,530), aggregating to a total of Rs 79,94,277, to the eligible homebuyers listed in the report.

- **Interest**: The entire amount must be refunded along with 18% interest per annum, calculated from the date the excess amount was collected until its actual refund.

- **Compliance Timeline**: The builder must report compliance to the jurisdictional Commissioner within three months of the order.

- **Penalty**: Penalty under Section 171(3A) is attracted since the contravention period extended beyond 01.01.2020; however, no penalty applies if the entire profiteered amount is deposited within 30 days of this order.

Kerala High Court Holds That ISD Registration Was Not Mandatory for Distribution of Common ITC Prior to 1/04/2025

M/s. Intertek India Pvt. Ltd. v. Assistant Commissioner of Central Taxes and Central Excise

WP(C) No. 30075 of 2024 - Order dated : 8th June 2026

High Court of Kerala at Ernakulam

The Kerala High Court quashed a GST demand order that disallowed Input Tax Credit (ITC) to a company that paid taxes via the RCM on services imported by its corporate office and cross-charged to other units. The Court ruled that under the unamended Section 20 of the CGST Act, 2017, distributing ITC among branches without an Input Service Distributor (ISD) registration was perfectly legal, optional, and revenue-neutral.

Facts of the case:

- The Business Structure: The petitioner, M/s. Intertek India Pvt. Ltd., is a multinational company with separate GST registrations for its various state branches/units across India, including a corporate office in Delhi and a distinct unit in Kerala.

- The Transaction: Between July 2017 and March 2019, the foreign parent company (M/s Intertech USA Inc.) provided global IT support and infrastructure services to the petitioner. The invoice (Ext.P4) was addressed to the corporate office in Delhi.

- Payment & Tax Discharge: Per internal administrative practices, the petitioner's Kerala unit paid the consideration to the foreign entity. Operating under the Reverse Charge Mechanism (RCM), the Kerala unit raised a self-invoice (Ext.P6), deposited the Integrated GST (IGST) to the government, and subsequently claimed the corresponding ITC.

- Cross-Charging: Because the IT services were consumed globally by multiple units across India, the petitioner cross-charged the expenses and proportional credit to those units by issuing five distinct invoices (Ext.P7) under Section 25(4) of the CGST Act.

- The Departmental Action: Following a GST audit, the revenue authority issued a Show Cause Notice and subsequently passed an assessment order (Ext.P1) confirming a demand of ₹1,31,14,220 towards wrongly availed IGST along with an equivalent 100% penalty. The department alleged that the Kerala unit could not claim ITC because the foreign invoice was addressed to the Delhi branch, and that distributing credit without registering as an ISD violated the CGST Act. The petitioner challenged this order in a Writ Petition.

Issues of the Case

- **Wrongful Availment of ITC:** Whether a distinct unit (Kerala) is entitled to claim ITC under RCM when the foreign service provider's invoice lists the company's corporate office (Delhi) as the addressee, but the consideration and tax are entirely paid by the claiming unit.
- **Mandatory ISD Registration:** Whether it was mandatory under the unamended provisions of Section 20 of the CGST Act (prior to the Finance Act, 2024 amendments) to register as an Input Service Distributor (ISD) to distribute input tax credits to distinct branch offices.
- **Revenue Neutrality:** Whether a procedural technicality regarding ISD registration warrants tax demands and penalties when the underlying transaction is completely revenue-neutral to the exchequer.

Grounds

- **Definition of a Legal Recipient:** Under Section 2(93)(a) of the CGST Act, where consideration is payable for a supply, the person liable to pay that consideration is defined as the statutory "recipient." Since the petitioner's Kerala unit discharged the entire consideration and paid the RCM tax, it legitimately qualified as the recipient
- **Valid Tax-Paying Documentation**: For RCM transactions involving unregistered foreign suppliers, the commercial invoice from the supplier is not the operative document for claiming ITC. Under Section 16(2)(a) read with Rule 36(1)(b) of the CGST Rules, 2017, a self-invoice raised under Section 31(3)(f) constitutes the valid tax-paying document required to claim ITC.

- **Voluntary Nature of Unamended ISD Rules:** Prior to the enforcement of the Finance Act, 2024 (effective 01.04.2025), Section 20 was merely an enabling framework. It did not mandate that head offices distribute credit only via the ISD mechanism. The GST Council's own 50th meeting minutes and official FAQs explicitly stated that the ISD mechanism was optional, and head offices could legally distribute credit by issuing tax invoices under Section 31. Mandatory ISD rules apply strictly prospectively from April 2025.

- **Principle of Revenue Neutrality:** The entire arrangement caused zero revenue loss to the State. Penalizing a bona fide taxpayer over a technical registration preference when the complete tax liability has already been discharged violates the core spirit of the CGST Act, which promises a seamless, non-cascading credit structure.

Judgement

The High Court of Kerala allowed the writ petition and quashed the impugned order (Ext.P1) to the extent that it disallowed the ITC of Rs 1,31,14,220 and alleged illegal distribution.

The Court declared that the petitioner's RCM-based ITC claim was completely sustainable under the law and that distributing the credit without an ISD registration during the relevant period carried no illegal consequences. Accordingly, the entire tax demand and its corresponding penalty were set aside and declared legally unsustainable.

Revenue-Sharing Between Hospitals Does Not Alter the GST Exemption Available to Healthcare Services

M/s. Healthcare Global Enterprises Ltd. v. Assistant Commissioner of Commercial Taxes (Enforcement), South Zone & Others

Writ Petition No. 22236 of 2023 Order dated : 30th April 2026

In the High Court of Karnataka at Bengaluru

The High Court of Karnataka quashed multiple GST Show Cause Notices issued against a healthcare company, ruling that medical treatment services provided to patients under a revenue-sharing model with another hospital are completely exempt from GST. The Court rejected the revenue authority's attempt to reclassify healthcare services as taxable "business support services," affirming that tax exemptions for essential healthcare must be given full effect to ensure medical affordability.

Facts of the case:

- **The Business:** The petitioner, M/s Healthcare Global Enterprises Ltd., is a public limited company and a registered clinical establishment providing healthcare, medical laboratory, and diagnostic imaging services.
- **The Arrangement:** The petitioner entered into a Medical Services Agreement dated 10.07.2017 with M/s Suchirayu Health Care Solutions Limited (SHCS) to deploy a team of doctors, specialists, and paramedics to offer medical treatment to patients at the SHCS hospital.

- **Revenue Sharing:** Under the contract, SHCS directly invoiced the patients for the clinical treatments. The petitioner then raised an monthly invoice on SHCS to claim 75% of the gross collections as its contractually agreed share of the generated revenue.

- **Departmental Action**: The commercial tax authorities inspected the petitioner's premises and subsequently issued SCNs u/s 73(1) of the CGST/KGST Act, 2017. The department sought to levy 18% GST plus interest and penalties on the petitioner's 75% revenue share, asserting that the revenue represented a taxable B2B transaction for providing "Support Services" (under SAC 9985) rather than exempt healthcare services. The petitioner filed writ petitions to quash these notices.

Issues of the Case

- **Taxability of Revenue Share:** Whether the 75% gross revenue share received by the petitioner from SHCS for medical treatment provided through its doctors constitutes exempt "healthcare services" under Notification No. 12/2017-Central Tax (Rate) or taxable "support services" under SAC 9985.

- **Indirect Taxation:** Whether the revenue authority can indirectly levy GST on an explicitly exempted service by recharacterizing a healthcare collaboration agreement as commercial business support transaction.

Grounds

- **Unconditional Health Care Exemption:** Sl. No. 74 of Exemption Notification No. 12/2017-CGST (Rate) unconditionally exempts healthcare services supplied by a clinical establishment, an authorized medical practitioner, or paramedics. Since the petitioner is a registered clinical establishment whose medical professionals directly diagnose and treat patients, its services sit squarely within this exemption.

- **Clarification via Binding Circular:** CBIC Circular No. 32/06/2018-GST explicitly clarifies that healthcare services provided by consultants, senior doctors, or technicians hired by hospitals - regardless of whether they are regular employees or independent contractors - remain completely exempt from GST. The circular further notes that the entire volume of money pooled from patients for healthcare (including hospital retention components) is exempt.

- **Substance Over Form:** Classification of services must look at the true, predominant nature of the transaction rather than its contractual nomenclature. The core substance of the agreement is the actual medical treatment of human patients, not the administrative deployment of manpower or commercial support.

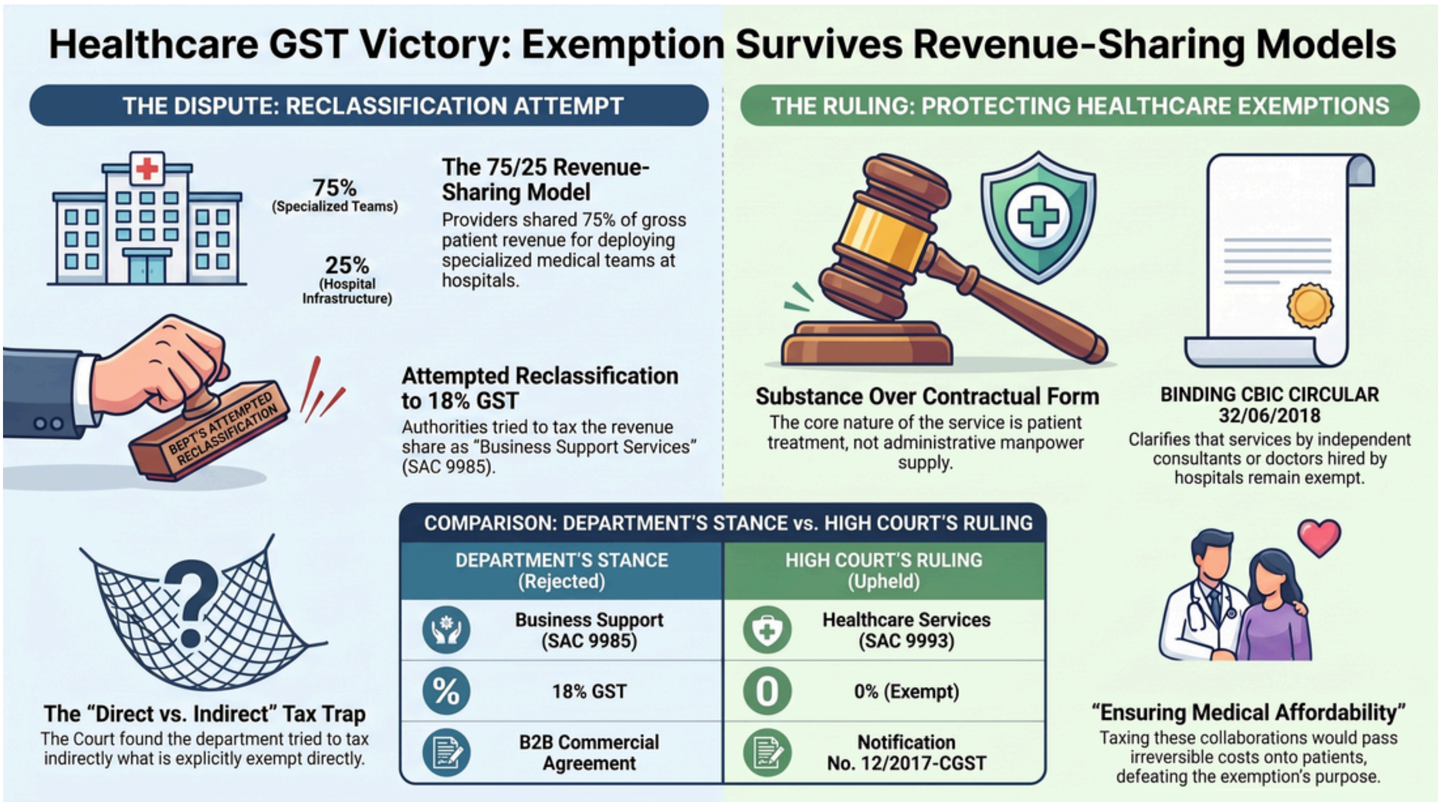
- **Prohibition Against Indirect Taxation:** Established judicial precedents (such as the Supreme Court rulings in Acer India and Mother Superior) dictate that what cannot be taxed directly cannot be taxed indirectly. Taxing the petitioner would artificially drive up final patient treatment costs because the intermediate tax could not be claimed as Input Tax Credit (ITC) by SHCS, whose output services are also exempt.

- **Exceptions to Alternative Remedy Rules:** The availability of an alternative remedy does not restrict the High Court’s constitutional jurisdiction under Article 226 when the impugned Show Cause Notices lack foundational jurisdictional facts and directly violate explicit statutory exemptions.

Judgement

The High Court of Karnataka allowed all three writ petitions and quashed the impugned Show Cause Notices along with their corresponding Form GST DRC-01 orders.

The Court formally declared that healthcare services provided by the petitioner through another hospital remain fully exempt from the levy of GST under Exemption Notification No. 12/2017-CT and CBIC Circular No. 32/06/2018. The tax department's attempt to impose demands, interest, and penalties was ruled illegal, arbitrary, and entirely without the authority of law.



ITC Cannot Be Denied to a Bona Fide Purchaser Merely for Absence of Secondary Transport Documents

M/s. Akal Trade Links v. Assistant Commissioner (ST), Kangeyam Assessment Circle

Writ Petition No. 20601 of 2023 - Order dated : 5th June 2026

Madras HC

The Madras High Court ruled that ITC cannot be mechanically denied to a bona fide buyer solely due to the absence of secondary transport documents like lorry receipts or weighment slips. The Court emphasized that when primary evidence of a genuine transaction and tax payment by the supplier exists, the department must conduct a deeper inquiry into the genuineness of the supply rather than dismissing the claim on technical grounds.

Facts of the case:

- **The Transaction:** During the Assessment Year (AY) 2018-19, the petitioner, M/s. Akal Trade Links, purchased goods from a registered supplier, Eco-friendly Coco Products, involving eight tax invoices issued between January and August 2018.

- **Supplier Status:** At the time of the transactions, the supplier's GST registration was active and valid, though it was cancelled by the department at a later date.

- **Compliance:** The supplier filed the corresponding GSTR-1 and GSTR-3B returns and duly remitted the GST collected on these supplies to the government exchequer. Furthermore, the tax invoices recorded specific vehicle numbers used for the transportation of the goods.

- **Departmental Action**: During the assessment proceedings, the revenue authority passed an order dated 28.04.2023, completely disallowing the petitioner's ITC and confirming the tax demand. The sole basis for this denial was the petitioner's failure to produce physical lorry receipts (LR) and weighment slips, which the officer ruled as a failure to prove the actual movement of goods under Section 16(2)(b) and Section 155 of the CGST Act. The petitioner challenged this assessment order via a writ petition.

Issues of the Case:

- Whether the revenue department can legally deny ITC to a recipient under Section 16 read with Section 155 of the CGST Act solely because ancillary transport documents (such as lorry receipts or weighment slips) are missing.

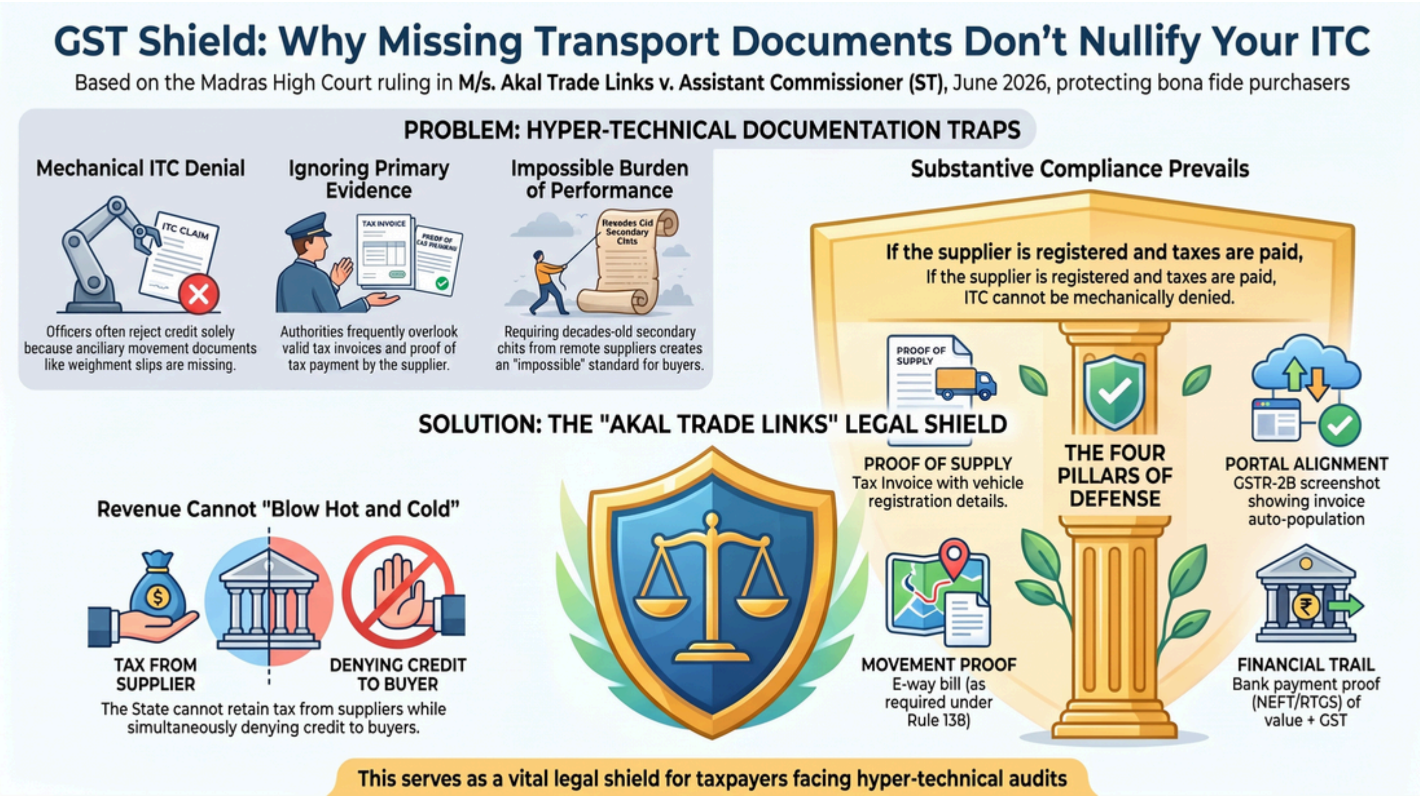
- Whether the production of valid tax invoices containing vehicle registration details, alongside evidence of tax payment by an active registered supplier, is sufficient to substantially discharge the recipient's initial burden of proof.
- Whether the state can disallow credit to a buyer while simultaneously retaining the tax collected from the supplier for the exact same transaction.

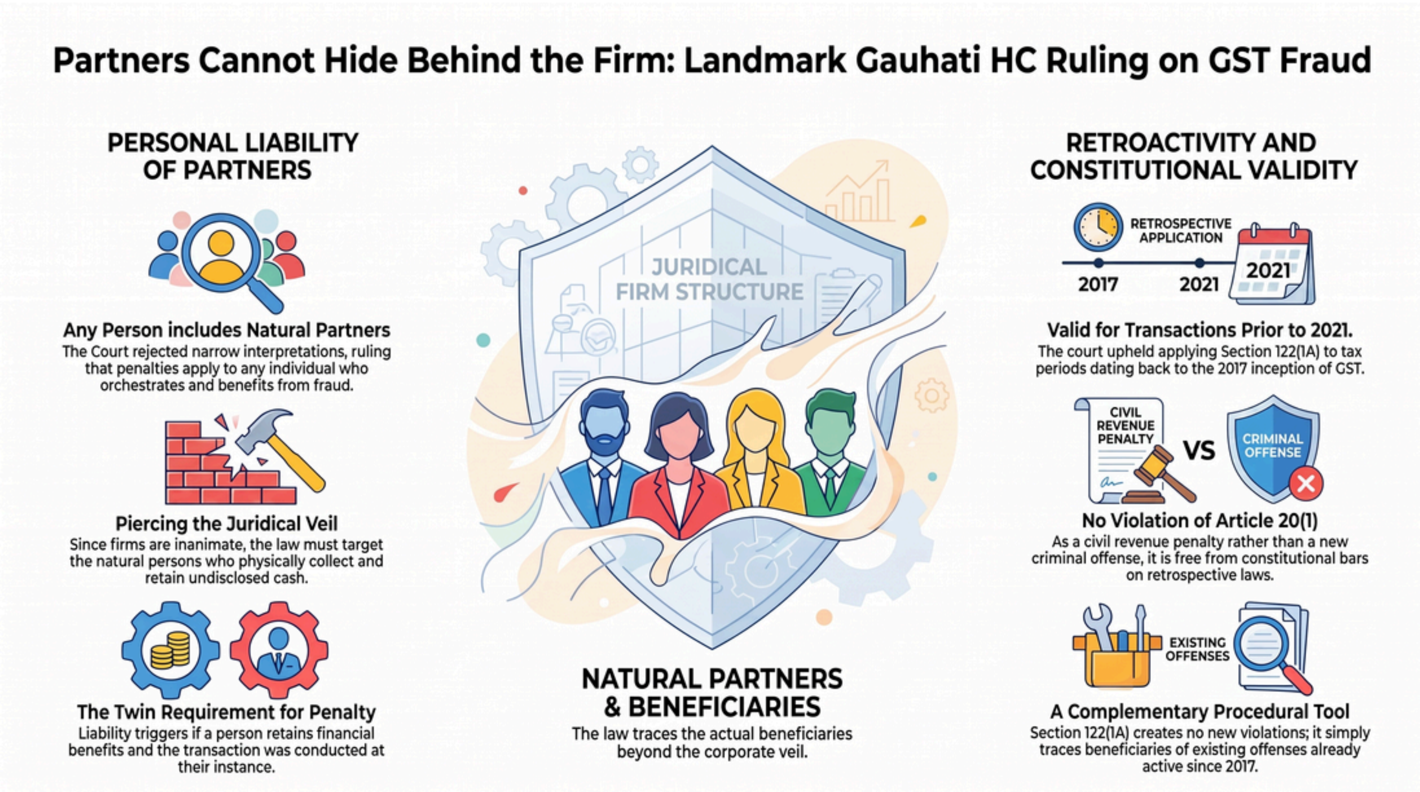
Grounds of the Case:

- **Substantive Compliance Over Hyper-Technicalities**: The core purpose of the GST framework is to ensure a seamless flow of credit. Where the primary statutory conditions under Section 16 are satisfied—namely, a valid invoice with vehicle details is issued, returns are filed, and tax has actually reached the exchequer—ancillary commercial paperwork cannot be turned into a mandatory make-or-break condition.
- **Discharge of the Burden of Proof:** While Section 155 places the burden of proving an ITC claim on the assessee, this burden is not infinite. The production of valid tax invoices showing vehicle details, bank payment records, and portal data showing the supplier paid the tax sufficiently establishes a prima facie genuine transaction, shifting the onus onto the department to prove otherwise.
- **Distinction from Clandestine Removal Precedents:** Checklists derived from Supreme Court rulings regarding lorry receipts are highly relevant in evasion or clandestine removal cases where transactions are completely unaccounted for. They cannot be blindly extrapolated to standard assessments where the supplier is a registered, compliant entity whose tax filings are fully recorded on the GST portal.

Judgement

- The Madras High Court allowed the writ petition, setting aside the impugned assessment order dated 28.04.2023.
- The Court remanded the matter back to the assessing authority for fresh, objective consideration.
- It permitted the petitioner to submit additional documentation within 15 days and directed the authority to conduct a proper verification of the transaction's genuineness based on the entire mosaic of available data. The department was ordered to grant the petitioner a personal hearing and pass a well-reasoned order within a period of three months.


GST Shield: Why Missing Transport Documents Don't Nullify Your ITC
Based on the Madras High Court ruling in M/s. Akal Trade Links v. Assistant Commissioner (ST), June 2026, protecting bona fide purchasers
PROBLEM: HYPER-TECHNICAL DOCUMENTATION TRAPS
Mechanical ITC Denial
ITC CLAIM
Officers often reject credit solely because ancillary movement documents like weighment slips are missing.
Ignoring Primary Evidence
TAX INVOICE
Authorities frequently overlook valid tax invoices and proof of tax payment by the supplier.
Impossible Burden of Performance
Requiring decades-old secondary chits from remote suppliers creates an "impossible" standard for buyers.
Substantive Compliance Prevails
If the supplier is registered and taxes are paid,
If the supplier is registered and taxes are paid, ITC cannot be mechanically denied.
SOLUTION: THE "AKAL TRADE LINKS" LEGAL SHIELD
Revenue Cannot "Blow Hot and Cold"
TAX FROM SUPPLIER
DENYING CREDIT TO BUYER
The State cannot retain tax from suppliers while simultaneously denying credit to buyers.
PROOF OF SUPPLY
PROOF OF SUPPLY
Tax Invoice with vehicle registration details.
THE FOUR PILLARS OF DEFENSE
PORTAL ALIGNMENT
GSTR-2B screenshot showing invoice auto-population
MOVEMENT PROOF
E-way bill (as required under Rule 138)
FINANCIAL TRAIL
Bank payment proof (NEFT/RTGS) of value + GST
This serves as a vital legal shield for taxpayers facing hyper-technical audits


Partners Cannot Hide Behind the Firm: Landmark Gauhati HC Ruling on GST Fraud
PERSONAL LIABILITY OF PARTNERS
Any Person includes Natural Partners
The Court rejected narrow interpretations, ruling that penalties apply to any individual who orchestrates and benefits from fraud.
Piercing the Juridical Veil
Since firms are inanimate, the law must target the natural persons who physically collect and retain undisclosed cash.
The Twin Requirement for Penalty
Liability triggers if a person retains financial benefits and the transaction was conducted at their instance.
JURIDICAL FIRM STRUCTURE
NATURAL PARTNERS & BENEFICIARIES
The law traces the actual beneficiaries beyond the corporate veil.
RETROACTIVITY AND CONSTITUTIONAL VALIDITY
RETROSPECTIVE APPLICATION
2017
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Valid for Transactions Prior to 2021.
The court upheld applying Section 122(1A) to tax periods dating back to the 2017 inception of GST.
CIVIL REVENUE PENALTY
VS
CRIMINAL OFFENSE
No Violation of Article 20(1)
As a civil revenue penalty rather than a new criminal offense, it is free from constitutional bars on retrospective laws.
EXISTING OFFENSES
A Complementary Procedural Tool
Section 122(1A) creates no new violations; it simply traces beneficiaries of existing offenses already active since 2017.

Partners Cannot Escape GST Penalty Where They Are Instrumental in Tax-Evading Transactions

Mayank Bansal & Another v. The Union of India & Others

Writ Petition (Civil) No. 24 of 2026 - Order dated : 8th June 2026

Gauhati High Court (High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

The Gauhati HC held that personal penalties under Sec. 122(1A) of the CGST Act can be legally imposed on individual partners if they orchestrated the fraudulent transactions and retained the financial benefits. The Court further ruled that Sec. 122(1A) is a procedural tool to trace the beneficiaries of pre-existing violations and does not create new offenses, making its application to transactions occurring prior to its 01.01.2021 enforcement date valid and free from Article 20(1) constitutional bars.

Facts of the case:

- **The Parties:** The petitioners, Mayank Bansal and Nadar Hussain, are individual partners in M/s. Quantum Infratech, a partnership firm engaged in the business of constructing residential buildings.

- **The SCN and Violations:** On 03.08.2024, the department issued a consolidated SCN under Sec 74(1) read with Sec 122(1A) to the firm & its partners. The notices covered transactions between 07/2017 & 03/2023, alleging widespread evasion of GST on residential complex supplies, reverse charge on transfer of development rights, and the wrongful claim of ineligible ITC.

- **Specific Allegations:** The proper officer specifically alleged that the partners collected undisclosed cash amounts from customers without generating tax invoices, suppressed actual turnovers, & personally retained the tax-evaded benefits.

- **The Adverse Orders:** The petitioners failed to reply to the specific allegations. Consequently, an Order-in-Original dated 04.02.2025 was passed, imposing personal penalties on the partners equivalent to the total tax evaded by the firm. This was confirmed by the Appellate Authority via an Order-in-Appeal dated 26.08.2025.

- **The Writ Challenge:** Bypassing the statutory alternative remedy of an appeal before the GST Appellate Tribunal under Section 112, the petitioners challenged the orders before the Gauhati High Court on key jurisdictional issues.

Issues of the Case:

- Whether personal penalties under Section 122(1A) of the CGST Act can be imposed on individuals like partners, or if the provision applies exclusively to the "taxable person"

- Whether the provisions of Sec 122(1A), which came into effect on 01.01.2021, can be applied to tax evasion transactions that occurred during periods prior to its enactment (i.e., from July 2017 to December 2020).

- Whether applying Sec 122(1A) to transactions prior to 01.01.2021 violates the protection against retroactive criminal laws under Article 20(1) of the Constitution of India.

Grounds of the Case:

- **Differentiated Scope of "Any Person":** Sec122 explicitly utilizes distinct statutory definitions. While Sec 122(1) targets the "taxable person" and Sec 122(2) targets a "registered person," Sec 122(1A) and 122(3) intentionally employ the broader phrase "any person". Interpreting "any person" to mean only the "taxable person" would unacceptably rewrite the statute and render the separate insertion of sub-section (1A) completely redundant.

- **Natural Persons Behind Juridical Outfits:** A partnership firm, company, or LLP is an inanimate juridical entity. Such setups cannot execute a tax fraud or physically pocket undisclosed cash collections without the active involvement of a natural person. Thus, Section 122(1A) specifically looks past the corporate or firm veil to penalize the natural person at whose instance the fraud was conducted and who retained the ultimate financial benefits.

- **No New Violation Created:** Sec 122(1A) does not create or introduce any independent or brand-new tax offenses. It merely functions as a complementary mechanism to trace the financial beneficiaries of infractions listed under Clauses (i), (ii), (vii), and (ix) of Sec 122(1), all of which have been active since the inception of the GST regime in July 2017.

- **Civil Penalties Exempt from Article 20(1)**: The protection under Article 20(1) of the Constitution is strictly limited to criminal convictions and punishments for "offenses" under penal laws. It has no application to civil tax adjudications and the imposition of monetary penalties designed to recover civil revenue defaults, as established by the Supreme Court Constitution Bench in Jawala Ram. Therefore, as long as Section 122(1A) was active on the date the SCN was issued, it can assess past transactions.

Judgement

- The Court held that u/s 122(1A), penalties can legally be imposed upon the individual partners if the underlying factual findings of benefit retention and orchestration are proved.

- The Court declared that Section 122(1A) is legally applicable to transactions matching the targeted clauses even for the period prior to 01.01.2021.

- Because the Court only ruled on the primary jurisdictional questions and left the factual quantum of the penalty open, the petitioners were granted liberty to file regular statutory appeals before the GST Appellate Tribunal within 30 days.
- If the appeals are filed within the stipulated 30 days, the department is restrained from taking any coercive recovery actions against the petitioners until their stay applications are heard and decided by the Appellate Tribunal.

Late Fee Under Section 47(2) Is Payable Even for Complete Non-Filing of GSTR-9 Annual Return

M/s. Tvl. KPK Fuel Services v. State Tax Officer, Hosur North II Assessment Circle

Writ Petition No. 17421 of 2026 Order dated : 02nd June 2026

Madras High Court

The Madras High Court dismissed a writ petition challenging a GST demand order, confirming that a late fee under Section 47(2) of the CGST/TNGST Act is legally leviable for the absolute non-filing of a GSTR-9 annual return by the due date, not just for belated filings. The Court further verified that a general penalty under Section 125 is validly applicable alongside late fees because the statute contains no separate specific penalty for the failure to submit an annual return.

<u>Facts of the case:</u>

- **The Dispute:** The petitioner, Tvl. KPK Fuel Services, approached the High Court via a writ petition under Article 226 of the Constitution of India to challenge an assessment order in Form GST DRC-07 dated 13.12.2023.
- **The Demands:** The contested order, issued under Section 73 of the Act, imposed both a statutory late fee and a monetary penalty on the petitioner for failing to submit its GSTR-9 annual return for the FY 2017-18.
- **Petitioner's Argument:** The petitioner contended that the maximum time limit to file an annual return stretches up to three years from the relevant due date. It further argued that while a late fee can be lawfully applied to a belated return, it cannot be levied in instances where the return was completely non-filed. Additionally, the petitioner argued that general penalties under Section 125 cannot be layered on top of a Section 47 late fee levy.

Issue of the Case:

- Whether a statutory late fee under Section 47(2) of the GST Act is legally enforceable strictly against delayed/belated filings, or if it actively extends to instances of complete failure/non-filing of the statutory GSTR-9 annual return.
- Whether the revenue authority can legally impose a general penalty under Section 125 for failing to file an annual return alongside a Section 47(2) late fee.

Grounds of the Case:

- **Plain Language of Late Fee Framework:** U/S 47(2) of the CGST Act, any registered person who fails to furnish the return required u/s 44 by its specified due date is explicitly made liable to pay a late fee. The statutory language targets a registered person who fails to file by the due date at a rate of ₹100 per day of ongoing default, subject to a statutory cap of 0.25% of the taxpayer’s state/union territory turnover. The petitioner's restrictive argument that non-filing escapes a late fee is directly contradicted by the text of the provision.
- **Validity of the General Penalty:** Section 125 functions as a residual penal clause enabling an additional penalty up to ₹25,000 for any contravention of the GST provisions or rules, provided that "no separate penalty is prescribed" elsewhere under the statute for that specific infraction. Because the GST framework does not define a separate, dedicated penalty specifically addressing the absolute failure to file an annual return, invoking Section 125 to levy a penalty alongside the Section 47(2) late fee is completely appropriate and legally sound.

Judgement

- The Court held that Section 47(2) fully enables the revenue department to levy late fees when a taxpayer fails to file their return, finding no statutory infirmity or illegality in the impugned order dated 13.12.2023 that would warrant extraordinary constitutional interference. All connected miscellaneous petitions were closed, and no orders were made as to costs.

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