Mayank Bansal vs The Union of India & Ors.

Whether penalty under Section 122(1A) of the CGST Act can be imposed on the partners of a firm (the taxable person), and whether it can apply to periods prior to 01.01.2021, the date Section 122(1A) came into force.

Date of Order: June 8, 2026
Case Law No: GIB-GHC-2026-62
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The petitioners are partners of M/s Quantum Infratech, a partnership firm engaged in construction of residential buildings, which is the "taxable person." Following an investigation alleging GST evasion (on construction services to landowners, reverse charge on transfer of development rights, and ineligible ITC for July 2017 to March 2023), penalty equivalent to the tax evaded was imposed on each partner under Section 122(1A). The partners challenged this on two jurisdictional grounds — that 122(1A) penalty can only fall on the taxable person, and that it cannot apply retrospectively for the pre-01.01.2021 period.

FACTS

A Show Cause Notice was issued on 03.08.2024 to the firm, both petitioners, and the accountant under Section 74(1) read with Sections 122(1A) and 122(3)(a). Specific allegations against each partner were made at paragraphs 9.6 and 9.7 of the SCN — that they retained the benefit of transactions and at their instance such transactions (suppression of turnover, supply without invoices, collection of undisclosed cash) were conducted. The petitioners did not submit any reply to these specific allegations, though they appeared for personal hearing. The Order-in-Original dated 04.02.2025 found both partners liable under Section 122(1A) to the extent of the evaded tax, and the Order-in-Appeal dated 26.08.2025 dismissed all appeals. Two points were framed for determination: (i) whether the partners of the taxable firm can be imposed penalty under Section 122(1A); and (ii) if (i) is decided against them, whether Section 122(1A) can apply for the period prior to 01.01.2021. The petitioners relied on the Bombay High Court rulings in Shantanu Sanjay

Hundekari and Amit Manilal Haria (penalty only on taxable person; no retrospective application), while the Revenue relied on the distinct statutory use of "taxable person," "any person," and "registered person," and on the Delhi High Court rulings in Gurudas Mallik Thakur and Bhupender Kumar.

COURT OBSERVATIONS (Verbatim)

On who can be penalised under Section 122(1A):

"*True, if the taxable person is the sole proprietor or an individual who solely is responsible for the commission of the violations contained in Clauses (i), (ii), (vii) and (ix) of Section 122(1) of the Act of 2017, then the taxable person would be the person as mentioned in Sub-Section (1A) of Section 122 of the Act of 2017. But let this Court take the example of a Company, LLP, Partnership Firm, or any juridical person which is the taxable person. Can the Company, LLP, Partnership Firm or any juridical person on its own without the involvement of a natural person commit the violations as mentioned in clauses (i), (ii), (vii) and (ix) of Section 122(1) of the Act of 2017. The answer would be a simple 'No'.*" (Para 36)

"*Therefore with great respect, this Court cannot agree with the proposition of law laid down by the learned Division Bench of the Bombay High Court in Shantanu Sanjay Hundekari (supra) and Amit Manilal Haria (supra)... if accepted, it would render the provision of Sub-Section (1A) of Section 122 of the Act of 2017 otiose and nugatory.*" (Paras 37–38)

On retrospective application:

"*Therefore Section 122(1A) of the Act of 2017 do not create any independent violation nor does it enlarges the violations contemplated under Section 122(1) of the Act of 2017. The legislative intent behind Section 122(1A) of the Act of 2017 is solely to identify the person at whose instance the violations took place and if the person had retained the benefits, the person would be liable to a penalty as mentioned therein.*" (Para 50)

"*...there being no new violations created by Section 122(1A) of the Act of 2017, there is no question of the said Sub-Section to be applied retrospectively.*" (Para 51)

"*...the learned Division Bench of the Bombay High Court failed to take note of the difference between an offence and penalty in respect to a civil adjudication while applying Article 20(1) of the Constitution.*" (Para 52)

"*Section 122(1A) of the Act of 2017 is complementary to Section 122(1) of the Act of 2017. Section 122(1A) of the Act of 2017 would not spring into action and until violations of*

Clauses (i), (ii), (vii) and (ix) of Section 122(1) of the Act of 2017 by the taxable person is adjudicated upon. Under such circumstances, the question of applying Section 122(1A) of the Act of 2017 retrospectively or not does not arise." (Para 53)

FINAL VERDICT

Both jurisdictional issues decided against the petitioners — penalty under Section 122(1A) can be imposed on partners (not only the taxable firm), and it applies even for transactions prior to 01.01.2021. Writ petitions disposed of with liberty to appeal before the Appellate Tribunal within 30 days, interim protection continued, and the question of quantum/findings of fact left open.

CASES REFERRED

By the Petitioners:

- *Amit Manilal Haria & Ors. v. Joint Commissioner, CGST and Central Excise & Anr.* — 2026 SCC OnLine Bom 1510 *(disagreed with)*
- *Shantanu Sanjay Hundekari v. Union of India & Ors.* — 2024 SCC OnLine Bom 929 *(disagreed with)*
- *Union of India v. Shantanu Sanjay Hundekari* (SLP dismissed by SC) — 2025 SCC OnLine SC 1358

By the Revenue:

- *Gurudas Mallik Thakur & Anr. v. Commissioner of GST & Anr.* — 2025 SCC OnLine Del 3108 *(relied on by Court)*
- *Bhupender Kumar v. Additional Commissioner Adjudication, CGST Delhi North & Ors.* — 2025 SCC OnLine Del 4848 *(agreed with by Court)*

Also Noted/Relied on by the Court:

- *Mukesh Kumar Garg v. Union of India & Ors.* — 2025 SCC OnLine Del 3324 (SLP (Civil) No.18178/2025 pending; SC stayed recovery on 04.08.2025 subject to 25% deposit)
- *Jawala Ram & Ors. v. State of Pepsu* (Constitution Bench, on the offence-vs-penalty distinction under Article 20(1)) — 1961 SCC OnLine SC 47