ROHIT GARG & ORS. v. UNION OF INDIA & ORS.

Validity of proceedings and penalties under Section 122 of the CGST Act, including officer competence and natural justice. Applicability of Sections 122(1), 122(1A), 122(3)(a), amended Section 107(6), and writ jurisdiction under Article 226.

Date of Order: September 7, 2026
Case Law No: GIB-DHC-2026-111
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CASE DESCRIPTION / SUMMARY

Background

The proceedings arose from a GST investigation concerning allegations of issuance of invoices without actual supply of goods, wrongful availment or passing on of Input Tax Credit and allied contraventions under the CGST Act. The investigation involved search proceedings and reliance by the Department on statements, electronic material and handwritten records. The Petitioners disputed the allegations and contended that the material relied upon did not independently establish their involvement in the alleged transactions.

SCNs were issued under Section 122 proposing penalties under various provisions of Section 122. The Petitioners challenged the consequential adjudication orders on several grounds, including lack of jurisdiction of the officer issuing the SCNs, non-supply of relied-upon documents, denial of effective personal hearing and cross-examination, reliance on untested statements/electronic material, multiplication of penalties under different clauses of Section 122(1), and alleged inconsistencies in findings arising from the same investigation.

Court Observation

- The Court held that **Section 122(1)** predicates liability upon a person being a **"taxable person"**, whereas Section 122(1A) is differently worded and operates upon **"any person"** in the specified circumstances. However, whether a particular person satisfies the statutory description and the precise role attributed to that person are intertwined with the factual material. The Court therefore **left the question of applicability of Section 122(1) to a person who is not a taxable person open**, as the issue is pending before the Supreme Court.
- Regarding the competence of the officer issuing the SCN, the Court observed that the

expression **"proper officer" under Section 2(91) is function-specific** and that merely being an officer of central tax does not automatically make an officer the proper officer for every statutory function. At the same time, the Court noted that Notification Nos. 02/2017 and 14/2017 had to be considered along with Sections 3 and 5 of the CGST Act.

- The Court was **unable to hold that absence of a specific assignment under Section 2(91), by itself, rendered the concerned central tax officer legally without authority**. Notification No.14/2017 invested DGGI officers with powers corresponding to officers of the relevant rank, while Notification No.02/2017 assigned specified functions. Therefore, the question of competence could not be determined merely by relying upon the subsequent Circular dated 27.10.2025.
- The Court further observed that the objection regarding officer competence was **not a patent or self-evident absence of jurisdiction** warranting interference under Article 226. It involved interpretation of the statutory scheme, notifications, the subsequent Circular and the relationship between proceedings under Sections 73/74 and consequential penalties under Section 122. These issues could be examined by the statutory Appellate Authority under Section 107.
- The Court also found that the remaining challenges—relating to replies, relied-upon documents, personal hearing, cross-examination, evidentiary material, multiplication of penalties, clubbing of financial years and alleged inconsistent findings—required detailed examination of the underlying record and factual position of the respective noticees.
- Importantly, the Court held that the **amended pre-deposit requirement under Section 107(6), effective from 01.10.2025, would not apply to appeals arising from SCNs issued before that date**. Such appeals would be governed by Section 107(6) as it stood on the date on which the respective adjudicatory proceedings commenced.

Final Verdict

The High Court **disposed of the writ petitions on the ground that an efficacious statutory remedy was available under Section 107 of the CGST Act**. The Court declined to exercise its extraordinary jurisdiction under Article 226 and permitted the Petitioners to pursue statutory appeals. The Appellate Authority was directed to examine all grounds, including the issues left open by the judgment, independently and uninfluenced by the observations made by the High Court.

The Court specifically directed that appeals arising from SCNs issued before **01.10.2025** would be governed by the Section 107(6) pre-deposit provision applicable on the respective dates of issuance of the SCNs and could not be rejected merely because the Orders-in-Original were passed after 01.10.2025. The Petitioners were also permitted to seek exclusion of the period during which the writ petitions remained pending for limitation purposes.

Cases Referred by Court

1. **Gaurav Jain & Anr. v. Joint Commissioner (Appeals-II), CGST Delhi Zone & Anr. — 2026:DHC:6124-DB**.
   Considered on the applicability of the amended Section 107(6) pre-deposit requirement.
2. **Mukesh Kumar Garg v. Union of India & Ors. — SLP(C) No.18178/2025**.
   The issue concerning applicability of Section 122(1) to a person who is not a "taxable person" was pending before the Supreme Court.
3. **Arun Kumar Jain v. Additional Commissioner, CGST, Delhi West & Ors. — 2026:DHC:6609-DB**.
   Considered regarding applicability of Section 122(1) to a person who is not a taxable person.
4. **Devender Singh v. Additional Commissioner, CGST, Delhi West — 2025:DHC:9881-DB**.
   Considered on the competence of the Additional Commissioner/officer to issue SCNs under Section 122.
5. **Sunil Chauhan, Proprietor of Shree Chem India v. Principal Commissioner of CGST, Delhi North & Ors. — 2026:DHC:5477-DB**.
   Considered regarding the relationship between proceedings under Sections 73/74 and consequential penalties under Section 122.
6. **Alokadei Holdings Pvt. Ltd. v. Commissioner of Central Tax — W.P. No.4426/2026**.
   Considered on the competence of the officer and the relationship between the statutory adjudication and Section 122 penalty proceedings.
7. **Patanjali Ayurved Ltd. v. Union of India & Ors. — [2025] 99 GSTL 7 (Allahabad)**.
   Considered on whether consequential Section 122 penalty forms part of the adjudicatory exercise under Sections 73/74; the Court noted that the decision was under challenge before the Supreme Court.
8. **Assistant Commissioner of State Tax & Ors. v. Commercial Steel Limited — (2022) 16 SCC 447**.
   Referred to on the principles governing exercise of writ jurisdiction where an alternative statutory remedy exists.
9. **Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh & Ors. — 1953 SCC OnLine SC 33**.
   Referred to in the context of the contention concerning the substantive/vested nature of the right of appeal and the applicable pre-deposit requirement.
10. **Amit Manilal Haria & Ors. v. Joint Commissioner, CGST & Central Excise & Ors. — W.P. No.5001/2025 (Bombay High Court)**.
    Referred to concerning the contention against retrospective application of Section 122(1A).
11. **Paramvir Singh Saini v. Baljit Singh & Ors. — SLP(Crl.) No.3543/2020**.
    Referred to in relation to the safeguards concerning statements recorded under Section 70 of the CGST Act.