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Can Advocate be prosecuted for professional services to Client?

The Hon'ble Allahabad High Court in ***Samarpan Jain v. State of U.P. and 2 Others [Criminal Misc. Writ Petition No. 23443 of 2025 dated May 21, 2026]*** quashed the First Information Report (**"the FIR"**), charge-sheet, and cognizance order initiated by the Deputy Commissioner of State GST, Rampur against an Advocate accused of criminal conspiracy with his client merely for filing a statutory appeal under Section 107 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") and tendering advise for the mandatory 10% pre-deposit through the Electronic Credit Ledger by utilising Input Tax Credit. The Court held that an Advocate cannot be roped into a criminal conspiracy with his client for performing a purely professional act such as preferring an appeal, and that permitting such prosecutions would spell the end of the very existence of the Bar and the right of Advocates to practice fearlessly under the Advocates Act, 1961.

Facts:

Samarpan Jain ("**the Petitioner**") is an Advocate enrolled with the Bar Council of Uttar Pradesh since December 20, 2021, who specialises in indirect taxes, direct taxes and corporate laws and is also an Advocate-on-Record before the Allahabad High Court.

One Mohd. Haris, proprietor of M/s M H Enterprises (GSTIN-09AJDPH7962C3Z5), Rampur ("**the Client**") engaged the Petitioner to file statutory appeals under Section 107 of the CGST Act, against orders dated April 16, 2025 passed by the Deputy Commissioner, GST, Sector-1, Rampur under Section 74 of the State GST Act, 2017 assessing tax, interest and penalty aggregating to several crores for FY 2021-22, FY 2022-23 and FY 2023-24.

On August 15, 2025, the Petitioner filed two online statutory appeals before the Appellate Authority-3, uploading the appeal memoranda on the GST Portal and tendering the 10% pre-deposit of the disputed tax by debiting the Client's Electronic Credit Ledger using Input Tax Credit. This was done relying on CBIC's ***Circular No. CBIC-20001/2/2022-GST dated July 06, 2022*** and the ratio of the Gujarat High Court's Division Bench decision in ***M/s Yasho Industries***

Ltd. v. Union of India**,** which view was subsequently affirmed by the Hon'ble Supreme Court in ***Union of India v. Yasho Industries Ltd. [2025 SCC OnLine SC 1526]***.

By intimation dated September 23, 2025, the Appellate Authority informed the Client that the pre-deposit made through the Electronic Credit Ledger by utilising Input Tax Credit was not acceptable as a valid statutory pre-deposit, and called for a clarification on maintainability. The Petitioner was unable to attend the hearing scheduled at Moradabad due to a prior engagement at Ghaziabad and the Client could not secure an adjournment. The Appellate Authority dismissed the appeal on maintainability.

Instead of proceeding to recover the assessed dues from the Client, the Deputy Commissioner of GST, Rampur (**"Respondent No. 3"**) lodged FIR dated October 04, 2025 (Case Crime No. 175 of 2025), Police Station-Kotwali, District-Rampur under Sections 61(2), 318(4), 336(3), 338 and 340(2) of the Bharatiya Nyaya Sanhita, 2023 ("**the BNS**"), nominating not only the Client but also the Petitioner-Advocate, alleging that the Petitioner had criminally conspired with the Client to evade GST and cause financial loss to the State Exchequer by advising the impugned pre-deposit mechanism.

Significantly, after notice was issued in the writ petition, the Police promptly cleared a charge-sheet (Case Crime No. 3171 of 2026) and the Additional Chief Judicial Magistrate, Court No. 1, Rampur passed an order of cognizance dated May 14, 2026 — all on the same day. The Petitioner accordingly amended the writ petition to also assail the charge-sheet and the cognizance order.

Petitioner's Contentions:

- In filing the appeal and tendering the requisite pre-deposit of the disputed tax, the Petitioner acted in his **"professional capacity"** and did so to the best of his knowledge, going by the laws of the land as declared by the Superior Courts and the binding CBIC Circular.

- There was nothing on record to show that the Petitioner was a partner in his Client's business or otherwise involved in the conduct of business affairs of the Client — he was merely the Advocate representing the Client.
- Even assuming the legal position adopted (debit of pre-deposit from the Electronic Credit Ledger) was erroneous, it was a **professional decision based on a particular view of the law** and could not, in any way, render the Petitioner a conspirator with the assessee.
- Permitting prosecution of an Advocate for taking a particular legal course of action on behalf of his client would be a perilous proposition striking at the very root of the right to legal representation guaranteed under Articles 14 and 21 of the Constitution of India.

Issue:

Whether an Advocate can be arraigned as an accused in a criminal conspiracy with his client merely for performing a professional act, viz., preferring a statutory appeal under Section 107 of the CGST Act, 2017 and tendering the mandatory pre-deposit through the Electronic Credit Ledger by utilising Input Tax Credit, when such act was done in the course of professional representation and based on a particular view of the law?

Held:

The Hon'ble Allahabad High Court in ***Criminal Misc. Writ Petition No. 23443 of 2025*** held as under:

- **Observed that,** the impugned FIR, the consequent police report and the order of cognizance *"violate all known principles of criminal liability"*. An Advocate, by his profession, is authorised to represent his client and to defend men charged with the gravest offences including murder, rape and terror offences, and it is his duty to do so.

- **Noted that,** if for doing a professional act — like preferring an appeal — an Advocate is to be held in conspiracy with his client, *"it would be the end of the very existence of the Bar and the right of an Advocate to practice under the Advocates Act"*, and would indirectly deprive citizens of their valued right to legal assistance, since every lawyer would, before filing a *vakalatnama*, first be compelled to think about his own defence. Such a situation hits the roots of the principles enshrined under Articles 14 and 21 of the Constitution of India and cannot be permitted.
- **Held that,** even if the Deputy Commissioner of GST is of the view that the pre-deposit of disputed tax could not be debited to the Electronic Credit Ledger out of the Input Tax Credit, *"the professional decision of the learned Advocate, to do so, does not, in any way, make him a conspirator with the assessee. It is purely a professional act and not at all something to do with his client's business. It was done in the course of filing an appeal and nothing more. It was based on a particular view of the law, whether right, wrong or utterly wrong."*
- **Directed that,** the impugned FIR dated October 04, 2025, the Charge-sheet No. 30 of 2026 dated April 04, 2026 and the cognizance order dated May 14, 2026 passed by the Additional Chief Judicial Magistrate-I, Rampur are **quashed** in so far as they relate to the Petitioner. The Chief Judicial Magistrate, Rampur shall cause an entry to be made in red ink in the General Diary of Police Station Kotwali, District Rampur recording the quashing, and the order shall be communicated to the Superintendent of Police, Rampur, the Station House Officer, Police Station Kotwali, and the Deputy Commissioner, GST, Sector-I, Rampur.
- **Held that,** the Advocate has to work fearlessly and discharge his professional duties, just as an officer of the State is entitled to discharge his duties.

Our Comments:

The ruling of the Hon'ble Allahabad High Court in *Samarpan Jain (supra)* is a landmark and much-needed reaffirmation of the institutional sanctity of the legal profession in the era of aggressive indirect tax enforcement. The judgment squarely insulates tax practitioners from being criminalised for taking a bona-fide legal position on behalf of their clients, especially when such position is supported by a CBIC circular and a Division Bench ruling of a coordinate High Court affirmed by the Hon'ble Supreme Court.

Section 107 of the CGST Act, 2017 confers a statutory right of appeal upon an aggrieved person against any decision or order passed under the Act, subject to deposit of (a) full admitted amount, and (b) a sum equal to ten per cent of the remaining amount of tax in dispute (capped at Rs. 20 crore under the CGST Act and Rs. 20 crore under the SGST Act). **CBIC Circular No. CBIC-20001/2/2022-GST dated July 06, 2022** categorically permits payment of the pre-deposit through the Electronic Credit Ledger by utilising available Input Tax Credit. The view that pre-deposit under Section 107(6) can be made by debit to the Electronic Credit Ledger has been judicially endorsed by the Gujarat High Court in *M/s Yasho Industries Ltd. v. Union of India*, which has been affirmed by the Hon'ble Supreme Court in *Union of India v. Yasho Industries Ltd. [2025 SCC OnLine SC 1526]*. The criminalisation of an Advocate for following a circular issued by the very Board that administers the levy is, therefore, doubly perverse.

The decision must be read alongside the consistent line of cases where High Courts have ring-fenced the legal profession against coercive State action under fiscal statutes:

- The Hon'ble Delhi High Court in ***Puneet Batra v. Union of India & Ors. [W.P.(C) 11021/2025 dated September 09, 2025]***, while dealing with a GST search at an Advocate's office, expressly cautioned the GST Department that *"unless there are exceptional circumstances and subject to further orders that may be passed by the Court, if any advocate's office is to be searched or computer is to be opened, the same ought to take place in the presence of the advocate and not otherwise"*. The Court further held that GST officials cannot be permitted to open the CPU or computer of any Advocate without his presence and consent, as the same would lead to a serious breach

of confidentiality and attorney-client privilege. The Court mandated a calibrated procedure for forensic examination of the CPU including presence of the Petitioner, his nominated counsels/forensic expert, two senior IT officials of the Delhi High Court, and a forensic expert of the GST Department, with cloning of the hard drive and supply of only client-specific files to the Department.

- Earlier, in the very first round of ***Puneet Batra v. UOI*** **(order dated July 28, 2025)**, the Delhi High Court held that *"an Advocate cannot be subjected to harassment in this manner unless and until there is some material for the GST Department to show that the advocate himself is not merely representing his client but is also personally involved in the alleged illegality."* This pari-materia threshold of **"personal involvement in the alleged illegality"** — supported by prima facie material — is the constitutional safeguard which alone can justify departure from the protective shield enjoyed by the Bar.
- On the closely related question of attorney-client privilege in search and seizure operations under tax laws, the Hon'ble Gujarat High Court in ***Maulikkumar Satishbhai Sheth v. Income Tax Officer Assessment Unit 4(2)(6), Ahmedabad & Ors. [SCA/20187/2023]***, although upholding the legality of the search (following the Constitution Bench ruling in ***Pooran Mal v. Director of Inspection (Investigation), New Delhi [(1974) 1 SCC 345]***), evolved a workable mechanism to balance the State's investigative interest with the privilege codified under Sections 126 and 129 of the Indian Evidence Act, 1872. The Court directed bifurcation of seized digital data into incriminating and non-incriminating data on separate hard discs, with the non-incriminating data to be permanently sealed and not accessed thereafter by the Income Tax Department. Critically, the Court clarified that documents reaching the Advocate prior to his engagement, or which do not fall within the "illegal purpose" exception under the illustrations to Section 126 of the Evidence Act, cannot be used against third-party clients.

Read together, *Samarpan Jain (Allahabad HC), Puneet Batra (Delhi HC)* and *Maulikkumar Satishbhai Sheth (Gujarat HC)* crystallise the following Standard Operating Safeguards which ought to inform the conduct of GST authorities while dealing with practising Advocates:

- **Threshold of prima facie material:** No search, summon, FIR or arraignment of an Advocate is permissible unless the Department possesses cogent prima facie material demonstrating that the Advocate is personally involved in the alleged illegality, going beyond his professional engagement as counsel.
- **Reasons to believe under Section 67 of the CGST Act:** Any search of an Advocate's premises must be preceded by recorded "reasons to believe" within the meaning of Section 67(1) of the CGST Act, 2017, and must be capable of being judicially scrutinised.
- **Mandatory presence during seizure of digital devices:** The CPU/electronic device of an Advocate must not be opened, accessed or contents downloaded without the Advocate's physical presence and informed consent, owing to the high probability of the device containing data relating to third-party clients protected by attorney-client privilege.
- **Forensic protocol with judicial oversight:** Where examination of a seized device is unavoidable, it should be conducted under a court-supervised protocol with neutral IT/forensic experts, cloning of the hard drive, supply of a cloned copy to the Advocate, and confining the data shared with the Department strictly to files relating to the client under investigation.
- **No coercive action for professional acts:** Professional decisions taken by an Advocate — such as adopting a particular legal interpretation, relying on a Board circular, invoking a High Court ruling, or making a tactical procedural choice in filing or prosecuting an appeal — cannot, by themselves, expose the Advocate to penal consequences under the BNS, the CGST Act or any allied statute, even if the underlying legal view is ultimately found to be incorrect.

- **Bifurcation of seized data:** Following the protocol in *Maulikkumar Sheth (supra)*, seized data must be bifurcated into incriminating (qua the Advocate himself) and non-incriminating (qua third parties/clients) categories, with the latter being permanently sealed and not accessed. Third parties whose documents are seized retain the right to independently raise the defence of attorney-client privilege under Sections 126 and 129 of the Indian Evidence Act, 1872.
- **Adherence to CBDT-style guidelines:** CBDT Instruction No. 7 dated July 30, 2003, which stipulates that *"taxpayers who are professionals of excellence need not be searched without there being compelling evidence and confirmation of substantial tax evasion"*, reflects a salutary principle that is equally apposite for GST enforcement and ought to be formally adopted by the Central Board of Indirect Taxes & Customs through an analogous instruction governing search and summon proceedings against legal professionals.

The judgment is also a timely reminder that **Sections 61(2), 318(4), 336(3), 338 and 340(2) of the BNS** (broadly dealing with criminal conspiracy, cheating, forgery for the purpose of cheating, using as genuine a forged document, and possession of forged document, respectively) cannot be invoked as a substitute for the recovery and adjudicatory mechanism statutorily prescribed under Chapters XV and XIX of the CGST Act, 2017. Where the Department disputes the validity of the mode of pre-deposit under Section 107(6) of the CGST Act, the appropriate remedy lies in adjudicating the appeal on maintainability, recovering the dues under Section 79, or invoking the GST-specific offences and prosecution provisions under Sections 132 and 138 of the CGST Act — not in dragging the assessee's Advocate into a criminal conspiracy charge under the BNS.

The ruling is squarely in line with the law laid down by the Hon'ble Supreme Court in ***State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]***, where the Apex Court enumerated the categories of cases in which the High Court may exercise its powers under Article 226 of the Constitution of India / Section 482 of the Code of Criminal Procedure, 1973 (now Section 528

of the BNSS, 2023) to quash a criminal proceeding, including where the allegations made in the FIR, even if taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. The *Samarpan Jain* FIR squarely fell within this category.

Conclusion: Taken together, this developing line of authority — spanning the Allahabad, Delhi and Gujarat High Courts — fortifies the constitutional protection enjoyed by Advocates from being criminalised, harassed or coerced for performing their professional duties on behalf of clients in indirect tax matters. The legal community, taxpayers and GST authorities alike would do well to internalise these safeguards, which alone can preserve the institutional independence of the Bar, protect the citizen's right to fearless legal representation under Article 22(1) of the Constitution, and ensure that enforcement powers under the CGST Act, 2017 are exercised within constitutional limits.

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