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## Partners Personally Liable to Penalty u/s 122(1A) of the CGST Act Even for Pre-2021 Transactions

The Hon'ble Gauhati High Court in *Mayank Bansal v. Union of India & Ors. [WP(C) No. 24 of 2026 dated June 08, 2026]* upheld the imposition of personal penalty on partners of a partnership firm under Section 122(1A) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") for the tax evaded by the firm and held that the term "any person" in Section 122(1A) is not confined to a "taxable person" as defined under Section 2(107) and would cover partners/ officers who retain the benefit of the fraudulent transactions and at whose instance such transactions are conducted. The Court further held that Section 122(1A), although inserted with effect from January 01, 2021, can be invoked for transactions pertaining to the period prior to its insertion, since the said sub-section does not create any new offence but only identifies the natural person liable for the underlying violations enumerated in clauses (i), (ii), (vii) and (ix) of Section 122(1) of the CGST Act, which already existed since the inception of the CGST Act.

### **Facts:**

Mr. Mayank Bansal and Mr. Nadar Hussain ("**the Petitioners**") are the partners of M/s Quantum Infratech ("**the Firm**"), a partnership firm engaged in the business of construction of residential buildings. Pursuant to investigation conducted by the Directorate General of GST Intelligence, a consolidated Show Cause Notice dated August 03, 2024 ("**the SCN**") was issued under Section 74(1) read with Sections 122(1A) and 122(3)(a) of the CGST Act for the period July, 2017 to March, 2023 alleging:

- evasion of GST on supply of construction of residential complex to landowners;
- non-discharge of tax under reverse charge mechanism on supply of service by way of transfer of development rights; and

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- availment of ineligible Input Tax Credit ("ITC").

The SCN specifically alleged at paragraphs 9.6 and 9.7 that the Petitioners, being partners of the Firm, had concerned themselves with supply of services in contravention of the Act, suppressed turnover, collected undisclosed cash without issuing invoices, obstructed investigation by not furnishing documents called for under Section 70, and retained the benefit of the transactions carried out at their instance, thereby rendering them liable to penalty under Section 122(1A) of the CGST Act.

The Petitioners did not file any substantive reply controverting the said allegations. The Adjudicating Authority, vide Order-in-Original dated February 04, 2025, imposed personal penalty equivalent to the tax evaded by the Firm on each of the Petitioners under Section 122(1A) of the CGST Act. The Appellate Authority, vide Order-in-Appeal dated August 26, 2025, dismissed the appeals filed by the Petitioners and confirmed the demand.

Aggrieved, the Petitioners filed the present writ petitions challenging the impugned orders on two jurisdictional grounds, namely (i) the penalty under Section 122(1A) can be imposed only upon a "taxable person" i.e. the Firm and not on its partners; and (ii) Section 122(1A) having come into force only with effect from January 01, 2021 by virtue of the Finance Act, 2020, could not have been retrospectively applied to the period prior thereto.

## **Issues:**

- Whether partners of a partnership firm, who are not themselves "taxable persons" under Section 2(107) of the CGST Act, can be saddled with personal penalty under Section 122(1A) of the CGST Act?
- Whether Section 122(1A) of the CGST Act, inserted with effect from January 01, 2021, can be invoked to impose penalty for transactions pertaining to the period prior to its insertion?

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## Held:

The Hon'ble Gauhati High Court in **WP(C) No. 24 of 2026** held as under:

- **Observed that**, on a conjoint reading of Sections 2(84), 2(94), 2(107), 122(1), 122(1A), 122(2) and 122(3) of the CGST Act, the Legislature has consciously used three distinct expressions, viz. "taxable person", "registered person" and "any person", and the said expressions cannot be read interchangeably. Sub-section (1A) of Section 122 specifically uses the words "any person" with a twofold qualifier — such person should have (a) retained the benefit of a transaction covered under clauses (i), (ii), (vii) or (ix) of sub-section (1); and (b) such transaction should have been conducted at his instance.
- **Noted that**, a Company, LLP, partnership firm or any juridical person cannot, on its own, without the involvement of a natural person, commit the violations enumerated in clauses (i), (ii), (vii) and (ix) of Section 122(1). If the interpretation canvassed by the Petitioners, as accepted by the Hon'ble Bombay High Court in **Shantanu Sanjay Hundekari and Amit Manilal Haria** were to be accepted, Section 122(1A) would be rendered otiose and nugatory. The Court accordingly respectfully disagreed with the said view of the Bombay High Court.
- **Held that**, the legislative intent behind Section 122(1A) is to fasten liability on the natural person at whose instance the violation took place and who retained the benefit thereof. The Court drew support from the Delhi High Court's decision in **Gurudas Mallik Thakur v. Commissioner of Goods and Service Tax [2025 SCC OnLine Del 3108]** wherein it was held that Section 122(1A) is intended to fix responsibility upon persons who retain benefit of bogus transactions, since companies, being inanimate, function through their management.
- **Held that**, Section 122(1A) does not create any independent or new violation and merely identifies the person at whose instance the violations specified in clauses (i), (ii),

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(vii) and (ix) of Section 122(1) took place. As clauses (i), (ii), (vii) and (ix) of Section 122(1) have been on the statute book since the inception of the CGST Act, there is no question of retrospective application of any "new" penal provision. The Court further distinguished between an "offence" and a civil "penalty" by relying on the Constitution Bench judgment of the Hon'ble Supreme Court in ***Jawala Ram v. State of Pepsu [1961 SCC OnLine SC 47]*** and held that Article 20(1) of the Constitution is not attracted to civil penalty proceedings under Section 122. The Court accordingly respectfully disagreed with the view of the Bombay High Court in ***Amit Manilal Haria*** and followed the view of the Delhi High Court in ***Bhupender Kumar v. Additional Commissioner Adjudication CGST Delhi North [2025 SCC OnLine Del 4848]***.

- **Held that**, the Petitioners having failed to file any substantive reply to the specific allegations in paragraphs 9.6 and 9.7 of the SCN, and the findings of fact recorded in the Order-in-Original (paragraphs 20.6 and 20.7) and the Order-in-Appeal (paragraph 21(J)) having concurrently established that the Petitioners retained the benefits of the transactions and that such transactions were conducted at their instance, the twin requirements of Section 122(1A) stood satisfied and the impugned orders did not call for interference on jurisdictional grounds.
- **Directed that**, the Petitioners are granted liberty to file appeals before the GST Appellate Tribunal under Section 112 of the CGST Act within a period of 30 days from the date of the judgment, and the Appellate Tribunal shall consider such appeals on merits without raising the question of limitation. The interim protection against coercive recovery, as granted in the writ proceedings, shall continue until the stay applications are taken up by the Tribunal. The Court clarified that it had decided only the jurisdictional issues and that the questions whether the Petitioners actually retained the benefits of the transactions and whether such transactions were conducted at their instance remain open for adjudication on merits before the Tribunal.

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## Our Comments:

Section 122 of the CGST Act forms part of Chapter XIX dealing with offences and penalties. Sub-section (1) of Section 122 enumerates twenty-one categories of contraventions and provides for levy of penalty on the "taxable person" who commits the said contraventions. Sub-section (1A), inserted with effect from January 01, 2021 vide the Finance Act, 2020 and **Notification No. 92/2020-Central Tax dated December 22, 2020**, casts personal liability on "any person" who retains the benefit of transactions covered under clauses (i), (ii), (vii) or (ix) of sub-section (1) and at whose instance such transactions are conducted. The penalty is equivalent to the tax evaded or the ITC wrongly availed of or passed on. The legislative scheme is clearly aimed at piercing the corporate veil and reaching out to the masterminds and beneficiaries of bogus billing rackets and fake ITC chains, which would otherwise escape liability merely because the registration stands in the name of a juridical entity.

The Gauhati High Court has taken a markedly different view from the Bombay High Court on both the interpretive and the temporal issues surrounding Section 122(1A). The Bombay High Court in **Shantanu Sanjay Hundekari v. Union of India [2024 SCC OnLine Bom 929]** had quashed a demand-cum-show-cause notice proposing penalty of approximately Rs. 3,731 crore on the Taxation Manager and other employees of Maersk on the ground that mere employees, who are not "taxable persons", cannot be saddled with personal penalty under Section 122(1A) and that there can be no vicarious liability under Sections 122 and 137 of the CGST Act. The Special Leave Petition filed by the Revenue against the said judgment was dismissed by the Hon'ble Supreme Court in **Union of India v. Shantanu Sanjay Hundekari [(2025) 27 Centax 14 (SC)]** with the observation that the respondent was merely an employee, while keeping the question of law open.

Subsequently, the Bombay High Court in **Amit Manilal Haria v. Joint Commissioner of CGST & Central Excise [2026 SCC OnLine Bom 1510]** reiterated its earlier view and quashed the order imposing personal penalty of approximately Rs. 133.60 crore each on the CFO, CEO and Joint

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Managing Director of M/s Shemaroo Entertainment Limited, additionally holding that retrospective application of Section 122(1A) to the period prior to January 01, 2021 would be hit by Article 20(1) of the Constitution.

On the other hand, the Delhi High Court in ***Bhupender Kumar v. Additional Commissioner Adjudication CGST Delhi North [2025 SCC OnLine Del 4848]*** declined to interfere with the order imposing penalty of approximately Rs. 285 crore on a GST consultant who was found, prima facie, to have orchestrated creation of 63 fake firms for fraudulent availment and passing on of ITC, and held that retrospective applicability of Section 122(1A) is to be tested with reference to the date of the SCN. The Delhi High Court took a similar view in ***Mukesh Kumar Garg v. Union of India [2025 SCC OnLine Del 3324]***, dismissing the writ petition with costs and relegating the assessee to the appellate remedy, while observing that ITC frauds create an enormous dent in the GST regime and that writ jurisdiction ought not to be exercised to support unscrupulous litigants.

It is pertinent to note that the Hon'ble Supreme Court in ***Mukesh Kumar Garg v. Union of India [SLP (C) No. 18178/2025, order dated August 04, 2025]*** has granted leave and stayed the recovery of the demand, subject to deposit of 25% of the demand, while taking on board the twin contentions that (i) Section 122(1) of the CGST Act would not be applicable to a non-taxable person; and (ii) Section 122(1A), having come into force with effect from January 01, 2021, cannot be applied retrospectively for the Assessment Years 2017-2020. The matter is presently pending adjudication before the Supreme Court and the law on both these aspects, on which there exists a clear conflict of opinion between the Bombay High Court on one hand and the Delhi and Gauhati High Courts on the other, is therefore at large.

The Gauhati High Court has anchored its reasoning on three planks. First, the deliberate and differential use by the Legislature of the expressions "taxable person", "registered person" and "any person" within the four corners of Section 122 itself, which militates against equating "any person" in Section 122(1A) with "taxable person". Second, the practical impossibility of a

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juridical entity committing the contraventions in clauses (i), (ii), (vii) and (ix) of Section 122(1) without the active involvement of a natural person, which makes Section 122(1A) a meaningful targeting provision rather than a redundant one. Third, the conceptual distinction between an "offence" under Section 132 (which was amended with effect from January 01, 2021 to add the words "or causes to commit and retains the benefit arising out of") and a civil "penalty" under Section 122, which takes Section 122(1A) outside the protective sweep of Article 20(1) of the Constitution as expounded by the Constitution Bench in *Jawala Ram (supra)*.

From a practical standpoint, the Gauhati High Court's ruling significantly expands the universe of persons who can be visited with personal penalty equivalent to the tax evaded by their employer/firm/company. Directors, partners, key managerial personnel, in-house tax heads, consultants and any other natural person identified as having retained the benefit of bogus invoices, sham supplies, fake ITC or wrongful distribution of ITC by an Input Service Distributor will now have to defend such allegations on merits, especially in jurisdictions outside the Bombay High Court. The judgment also underscores the importance of filing a substantive and well-reasoned reply to the SCN denying both the limbs of Section 122(1A), namely retention of benefit and the transactions having been conducted at the instance of the noticee, since the Gauhati High Court has placed considerable weight on the fact that the Petitioners did not controvert the specific allegations at the SCN stage.

Until the Hon'ble Supreme Court authoritatively settles the conflict between the Bombay High Court (in *Shantanu Sanjay Hundekari and Amit Manilal Haria*) and the Delhi and Gauhati High Courts (in *Bhupender Kumar, Mukesh Kumar Garg and Mayank Bansal*), it is advisable for noticees to (i) contest the SCN on facts by demonstrating absence of retention of benefit and absence of the transaction being conducted at their instance; (ii) carve out the period prior to January 01, 2021 on the ground of non-existence of the penal provision; and (iii) where appropriate, seek protection under the Bombay High Court's binding precedent in jurisdictions where it is applicable. The outcome of the pending SLP in *Mukesh Kumar Garg (supra)* before

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the Hon'ble Supreme Court will, in due course, provide a definitive resolution to the divergent judicial opinions on the scope and temporal reach of Section 122(1A) of the CGST Act.

## **Relevant Provision:**

### **Section 122(1A) of the CGST Act:**

*“Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.”*

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