Penalty on partners under Section 122(1A) of the CGST Act upheld where complicity in fake invoicing and hawala-linked ITC fraud stands established

The Hon'ble Gujarat High Court in ***Manoj Ramkishan Agrawal & Anr. v. Union of India & Anr. [R/Special Civil Application No. 7965 of 2026 dated June 17, 2026]*** dismissed the writ petition filed by the partners of a partnership firm challenging the Order-in-Original imposing penalties upon them under Section 122(1A) and Section 122(3) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**), holding that the adjudicating authority has recorded detailed and categorical findings establishing the knowledge, consent and active participation of the partners in the generation of fake invoices and e-way bills without actual supply of goods, fraudulent availment of Input Tax Credit (**"ITC"**) and routing of funds through hawala channels. The Court held that any person who retains the benefit of the specified transactions and at whose instance such transactions are conducted is liable to penalty under Section 122(1A) of the CGST Act, and that factual issues, including the retrospective applicability of Section 122(1A) of the CGST Act, could be examined by the Appellate Authority under Section 107 of the CGST Act.

Facts:

Mr. Manoj Ramkishan Agrawal and Mr. Yash Goyal (**"the Petitioners"**) are partners of M/s. Maa Renuka Trading Company, Indore (**"the Firm"**). Acting upon specific intelligence, the Revenue Department (**"the Respondent"**) carried out search proceedings under Section 67(2) of the CGST Act at the registered place of business in relation to the generation of fake invoices and e-way bills without any actual supply of goods for the FY 2020-21 and FY 2021-22. A total of 23 persons/firms, including the Firm and its partners, were issued Show Cause Notices.

During the course of the investigation, statements of various persons, including the Petitioners and the broker, were recorded, and panchnamas were drawn. Petitioner No. 2, in his statement, admitted that the e-way bills were not correctly generated, as the vehicles concerned could not have covered the distances within the time reflected therein, and that one vehicle was shown to have been used by three different firms for transportation of goods. He further admitted that the Firm was receiving invoices of various Delhi-based firms through the broker, and that such firms had not made any genuine purchases and were merely engaged in paper transactions with the object of passing on ITC.

The forensic examination of the mobile phone of Petitioner No. 1 and the WhatsApp chats exchanged with the broker revealed that amounts were transferred into the bank accounts of the parties as instructed by the broker, who would thereafter return the money in cash through angadia after deducting his commission. Petitioner No. 1, in his statement recorded under Section 70 of the CGST Act, admitted his active role in coordinating the transactions, including sending images of currency notes as coded signals for routing cash through hawala channels.

The adjudicating authority, vide Order-in-Original dated January 30, 2026 (**"the Impugned Order"**), imposed penalties upon the Petitioners under Section 122(1A) and Section 122(3) of the CGST Act, recording categorical findings that the affairs of the Firm were conducted with the full knowledge and consent of both the partners.

Aggrieved thereby, the Petitioners filed a writ petition contending that no specific finding establishing their liability under Section 122(1A) of the CGST Act was recorded, that the Impugned Order was passed in violation of the principles of natural justice without considering their reply dated May 15, 2025, and that separate penalties could not be imposed upon the partners when penalty had already been imposed upon the Firm. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***M/s. Kranti Associates Pvt. Ltd. & Anr. v. Sh. Masood Ahmed Khan & Ors. [Civil Appeal No. 7472 of 2010 dated September 08, 2010]*** and the judgment of the Hon'ble Bombay High Court in ***Amit Manilal Haria & Ors. v. Joint Commissioner, CGST and Central Excise & Anr. [Writ Petition No. 5001 of 2025 dated***

February 25, 2026] questioning the retrospective applicability of Section 122(1A) of the CGST Act.

Per contra, the Respondent contended that the Petitioners have an efficacious alternative remedy of appeal under Section 107 of the CGST Act, that the adjudicating authority had extensively considered all the relevant facts including the defence put forth by the Petitioners, that the Petitioners had admitted their involvement during the investigation, and that Section 122(1A) of the CGST Act was introduced with effect from January 01, 2021 and was rightly invoked. Notably, the Petitioners, on instructions, opted to invite an order on merits instead of preferring an appeal under Section 107 of the CGST Act.

Issue:

Whether separate penalties under Section 122(1A) and Section 122(3) of the CGST Act can be imposed upon the partners of a partnership firm, where penalty has already been imposed upon the firm, when the adjudicating authority has recorded categorical findings establishing their complicity in the fraudulent availment of ITC through fake invoices and hawala transactions?

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Held:

The Hon'ble Gujarat High Court in ***R/Special Civil Application No. 7965 of 2026*** held as under:

- **Observed that,** the investigation revealed a large-scale fraud involving multiple entities, and the statements of the partners, the forensic examination of the mobile phones, the WhatsApp chats and other evidence establish that the invoices were procured through brokers, funds were routed through bank accounts and returned in cash after deduction of commission through hawala channels.
- **Noted that,** the adjudicating authority has specifically analysed the complicity of each partner and recorded categorical findings that the affairs of the Firm were conducted

with the full knowledge and consent of both its partners, and the findings delineate the entire modus operandi adopted by the Petitioners i.e. the creation of multiple fictitious suppliers, routing of invoices through a broker, circular movement of funds through hawala channels, generation of fake e-way bills, and continued availment of ITC despite knowledge of the cancellation of the registrations of the supplier firms, all with the object of availing ITC without actual payment of tax.

- **Noted that,** a plain reading of Section 122(1A) of the CGST Act makes it evident that any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or (ix) of sub-section (1) of Section 122 of the CGST Act, and at whose instance such transaction is conducted, is liable to a penalty equivalent to the tax evaded or the ITC availed of or passed on.

- **Held that,** the findings recorded by the adjudicating authority unequivocally establish the complicity of the Petitioners in the generation of fake invoices and e-way bills without any actual supply of goods, as well as their involvement in hawala transactions, and the Impugned Order contains detailed findings based on the statements of the Petitioners themselves, documentary evidence and electronic records. Hence, there is no violation of the principles of natural justice or absence of reasons warranting interference under Article 226 of the Constitution of India.

- **Held that,** the judgment in ***M/s. Kranti Associates Pvt. Ltd. (supra)*** will not even remotely apply to the present case, as the Impugned Order is not an unreasoned order, and the judgment in *Amit Manilal Haria (supra)* is distinguishable, since the present case involves a widespread network of numerous transactions by various entities defrauding the Revenue. All factual findings, including the retrospective applicability of Section 122(1A) of the CGST Act, could be examined by the Appellate Authority under Section 107 of the CGST Act.

- **Accordingly,** declined to interfere with the Impugned Order and dismissed the writ petition.

Our Comments:

Section 122(1A) of the CGST Act was inserted vide Section 126 of the Finance Act, 2020 and was made effective from January 01, 2021 vide Notification No. 92/2020-Central Tax dated December 22, 2020. The provision travels beyond the “taxable person” covered under Section 122(1) of the CGST Act and fastens liability on “any person” who retains the benefit of the transactions specified in clauses (i) [supply without invoice], (ii) [invoice without supply], (vii) [availment of ITC without actual receipt of goods or services] or (ix) [availment or distribution of ITC in contravention of the Act] of Section 122(1) of the CGST Act, and at whose instance such transactions are conducted, exposing such person to a penalty equivalent to the tax evaded or the ITC availed of or passed on. Further, Section 122(3) of the CGST Act penalises, inter alia, any person who aids or abets any of the offences specified in Section 122(1) of the CGST Act.

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The present ruling makes it clear that the twin conditions of Section 122(1A) of the CGST Act – retention of benefit and conduct of the transaction at the instance of such person – once established by categorical findings, would justify imposition of penalty on the partners in their individual capacity, notwithstanding that the partnership firm has separately been penalised. The judgment also reinforces the settled position that where detailed findings of fraud are recorded, writ courts would relegate the assessee to the statutory appellate remedy. In this regard, the Hon’ble Supreme Court in ***The Assistant Commissioner of State Tax & Ors. v. M/s. Commercial Steel Limited [Civil Appeal No. 5121 of 2021 dated September 03, 2021]*** held that a writ petition against an adjudication order can be entertained only in exceptional circumstances such as breach of fundamental rights, violation of the principles of natural justice, excess of jurisdiction, or a challenge to the vires of the statute.

It is pertinent to note that the Hon'ble Bombay High Court in ***Shantanu Sanjay Hundekari v. Union of India & Ors. [Writ Petition (L) No. 30198 of 2023 dated March 28, 2024]*** quashed the penalty of approximately Rs. 3,731 crores proposed under Section 122(1A) of the CGST Act on an employee of the company, holding that Section 122(1A) of the CGST Act can apply only to a person who is a taxable person and who has retained the benefit of the transaction, and cannot be mechanically invoked against employees who merely act on behalf of the company without retaining any benefit. Similarly, in *Amit Manilal Haria (supra)*, the Hon'ble Bombay High Court has doubted the invocation of Section 122(1A) of the CGST Act for the period prior to January 01, 2021, since the provision was brought into force prospectively. The Hon'ble Gujarat High Court, in the present case, has consciously distinguished the said decision on facts and left the question of retrospective applicability open for examination by the Appellate Authority.

The decision, therefore, serves as a stern reminder that in cases of fake invoicing and circular trading, the personal exposure of partners, directors and key managerial persons under Section 122(1A) and Section 122(3) of the CGST Act is real and substantial where the evidence, such as admissions under Section 70 of the CGST Act, forensic data and money trail, establishes their knowledge, consent and retention of benefit. Businesses must, therefore, ensure robust vendor due diligence, genuine movement of goods duly supported by transport documents, and contemporaneous records to substantiate the authenticity of transactions.

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