Who is a Proper Officer to adjudicate Penalties U/S 122 & Pre-Deposits requirement for SCN issued for Penalty only prior to Oct 1, 2025

The Hon'ble Delhi High Court in ***Rohit Garg v. Union of India & Ors. [W.P.(C) 8829/2026 & connected matters (2026:DHC:7502-DB) dated September 07, 2026]*** disposed of a batch of writ petitions assailing Show Cause Notices (**"the SCN"**) and Orders-in-Original (**"OIO"**) passed under Section 122 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) and relegated the Petitioners to the statutory appellate remedy under Section 107, holding the objection that the Additional Director, DGGI was not a "proper officer" for Section 122 on the date of the SCN, does not disclose a patent or self-evident absence of jurisdiction warranting interference under Article 226, since the competence flows from Notification No. 14/2017-Central Tax read with Notification No. 02/2017-Central Tax and cannot be negated merely by the subsequent Circular No. 254/11/2025-GST dated October 27, 2025, while clarifying that appeals arising from SCNs issued prior to October 01, 2025 shall not be subjected to the substituted pre-deposit proviso to Section 107(6) of the CGST Act.

Facts:

The Directorate General of GST Intelligence (**"DGGI"**) initiated an investigation into an alleged network of 629 firms/entities engaged in issuance of invoices without actual supply of goods and fraudulent availment/passing on of Input Tax Credit (**"ITC"**). The Department relied upon statements, electronic data and handwritten records recovered in search. On June 30, 2025, the Additional Director, DGGI, Ghaziabad Regional Unit issued SCN No. 48/2025-26 under Section 122 of the CGST Act read with the SGST Act and Section 20 of the IGST Act for FY 2018-19 to FY 2024-25, proposing penalties under various clauses of Section 122(1), Section 122(1A) and Section 122(3)(a). In the lead matter (*M/s Siwon Enterprises Pvt. Ltd.*), Form GST DRC-01 proposed a liability of about Rs. 45.55 crore, whereas the OIO dated December 26, 2025 imposed penalties under multiple clauses of Section 122(1), resulting in an aggregate liability of about Rs. 227.72 crore in Form GST DRC-07.

A connected petition by an individual (*Krishan Kumar*), claiming to be a non-taxable and unregistered person, challenged a separate SCN dated September 24, 2025 and OIO dated March 24, 2026 imposing two penalties under Section 122(1A) equal to the ITC availed (Rs. 68.62 crore) and ITC passed on (Rs. 94.84 crore).

The Petitioners contended that:

- on the date of the SCNs no officer had been assigned functions under Section 122 in terms of Section 2(91), as expressly recorded in Circular dated October 27, 2025, and a subsequent assignment cannot retrospectively validate a void SCN;
- the OIOs violated natural justice for non-consideration of replies, non-supply of relied-upon documents and denial of cross-examination;
- penalties were multiplied under several clauses of Section 122(1) for the same conduct, travelling beyond the SCN;
- Section 122(1A) inserted w.e.f. January 01, 2021 cannot be applied retrospectively in view of Article 20(1);
- Section 122(1) operates only against a "taxable person"; and
- the substituted proviso to Section 107(6) brought into force w.e.f. October 01, 2025, by Notification No. 16/2025-Central Tax cannot govern pending lis.

The Revenue opposed maintainability, relying on Notification No. 14/2017-Central Tax placing an Additional Director, DGGI at par with an Additional Commissioner, and on *Devender Singh v. Additional Commissioner, CGST, Delhi West* [2025:DHC:9881-DB], and contended that the other grounds involve disputed facts fit for appeal.

Issues:

- Whether an SCN under Section 122 of the CGST Act issued by an Additional Director, DGGI prior to Circular No. 254/11/2025-GST dated October 27, 2025 is void for want of assignment of the "proper officer" function under Section 2(91), warranting interference under Article 226?

- Whether the substituted proviso to Section 107(6) of the CGST Act, effective October 01, 2025, governs appeals arising out of SCNs issued prior to that date?

- Whether penalty under Section 122(1) can be imposed on a person who is not a "taxable person", and whether grounds of natural justice, multiplication of penalties and clubbing of periods justify bypassing the statutory appeal?

Held:

The Hon'ble Delhi High Court in ***W.P.(C) 8829/2026 & connected matters*** held as under:

- Observed that, the expression "proper officer" in Section 2(91) is function-specific; however, Notification No. 14/2017-Central Tax invests DGGI officers with the powers of central tax officers of corresponding rank and Notification No. 02/2017-Central Tax assigns functions to specified classes of officers, and whether these together confer sufficient authority cannot be answered merely on the basis of the subsequent Circular dated October 27, 2025.

- Noted that, the Circular dated October 27, 2025 was issued consequent to the Finance Act, 2024 amendments (including Section 74A) effective November 01, 2024 and is, at the highest, clarificatory of the manner of exercise of Section 122 functions; it cannot render nugatory or override statutory notifications already in force. Further, in terms of *Sunil Chauhan*, *Alokadei Holdings* and *Patanjali Ayurved*, where the contravention is adjudicated under Section 73/74, the consequential Section 122 penalty forms part of the same adjudicatory exercise and does not necessarily require a separately assigned officer.

- Held that, the objection to the competence of the officer is not a case of patent or self-evident absence of jurisdiction; it involves construction of the statutory scheme, Notification Nos. 02 and 14, the Circular and the interrelationship between Sections 73/74 and 122, all of which can be urged before the Appellate Authority under Section 107, which is competent to decide questions of fact and law. Following *Assistant Commissioner of State Tax v. Commercial Steel Ltd.* [(2022) 16 SCC 447], the mere assertion of jurisdictional defect or breach of natural justice does not warrant bypassing the statutory remedy.

- Held that, in terms of ***Gaurav Jain v. Joint Commissioner (Appeals-II), CGST Delhi Zone [2026:DHC:6124-DB]***, which the Revenue did not dispute, the substituted proviso to Section 107(6) does not govern appeals arising from SCNs issued prior to October 01, 2025; since all SCNs in the batch pre-date that cut-off, the appeals shall be governed by Section 107(6) as it stood on the date of the SCN and shall not be rejected merely because the OIOs were passed after October 01, 2025.

- Left open the question whether Section 122(1) applies to a person who is not a "taxable person", the issue being pending before the Supreme Court in ***Mukesh Kumar Garg v. Union of India [SLP(C) No. 18178/2025]***.

- Directed that, the writ petitions stand disposed of with liberty to avail the remedy under Section 107; the Appellate Authority shall examine all grounds, including the questions left open, uninfluenced by the observations in the judgment, and shall consider any request for exclusion of the period spent before the High Court for the purpose of limitation.

<u>Our Comments:</u>

Section 2(91) of the CGST Act defines “proper officer” as the Commissioner or the officer of central tax who is assigned that function by the Commissioner in the Board, while Sections 3 and 5 deal with classes and powers of officers. Notification No. 02/2017-Central Tax dated June 19, 2017 assigned functions to specified classes of officers and Notification No. 14/2017-Central Tax dated July 01, 2017 appointed DGGI officers as central tax officers with all-India powers of the corresponding rank.

Section 122(1) prescribes penalties on a “taxable person” for twenty-one enumerated contraventions, Section 122(1A) (inserted by the Finance Act, 2020 w.e.f. January 01, 2021) extends penalty to “any person” who retains the benefit of specified transactions and at whose instance they are conducted.

The proviso to Section 107(6), substituted w.e.f. October 01, 2025, requires a pre-deposit of 10% of the penalty where the appeal is against an order involving penalty alone.

The significance of the ruling lies in its refusal to treat Circular No. 254/11/2025-GST, which itself records that no proper officer had earlier been assigned for Section 122, as an admission that all prior stand-alone Section 122 proceedings are void. The Court instead reads the competence from the statutory notifications and regards the Circular as clarificatory. This is a considered departure from the strict approach in ***Canon India Pvt. Ltd. v. Commissioner of Customs [(2021) 18 SCC 563]*** on DRI officers under Section 28 of the Customs Act, since recalled in review in ***Commissioner of Customs v. Canon India Pvt. Ltd. [2024 INSC 854]*** on the strength of the assignment notifications, with which the present ruling is aligned.

On the taxable person question, the Bombay High Court in ***Shantanu Sanjay Hundekari v. Union of India [W.P. No. 3140 of 2024 (Bom)]*** quashed a Section 122(1A) notice against an employee, holding that the provision applies only to a person who retains the benefit and that Section 137 is a prosecution provision, while *Amit Manilal Haria v. Joint Commissioner, CGST & Central Excise* [W.P. No. 5001/2025 (Bom)] held Section 122(1A) cannot operate for periods prior to January 01, 2021.

On maintainability, the judgment reaffirms the *Commercial Steel* exceptions but reads them narrowly for fiscal statutes. A contrary strand is ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority [(2023) 109 GSTR 402 (SC)],*** where the Supreme Court held that a pure question of jurisdiction not requiring fact-finding ought to be decided by the writ court rather than relegated. The practical takeaway for assessees facing stand-alone Section 122 notices is twofold: the proper officer objection must be pleaded and preserved in the Section 107 appeal, and the pre-deposit for pre-October 01, 2025 SCNs is governed by the unamended Section 107(6). Multiplication of penalties under several clauses of Section 122(1) beyond the DRC-01 amount also remains a strong appellate ground in view of Circular No. 171/03/2022-GST dated July 06, 2022.

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