Supreme Court Stays Allahabad High Court Ruling on UP State's Deputy Commissioner Power to Issue Penalty Notice U/S 122

The Hon'ble Supreme Court in ***M/s Nageen Traders and Molding India Pvt. Ltd. v. State of U.P. & Ors. [SLP (C) Nos. 30711-30713 of 2026 dated September 07, 2026]*** issued notice and stayed the operation of the judgment of the Hon'ble Allahabad High Court, Lucknow Bench, in ***M/s Nageen Traders and Molding India Pvt. Ltd. v. State of U.P. & Ors. [Writ Tax Nos. 989, 991 and 992 of 2026 dated August 10, 2026]***, wherein the High Court had held that the Deputy Commissioner of State Tax was competent to issue a show cause notice under Section 122 of the Uttar Pradesh Goods and Services Tax Act, 2017 (**"the UPGST Act"**) and had relegated the assessee to the statutory appellate remedy by applying the doctrine of election.

Facts:

M/s Nageen Traders and Molding India Pvt. Ltd. (**"the Petitioner"**) was issued a show cause notice dated November 19, 2025 in Form GST DRC-01 under Section 122(1)(ii) of the UPGST Act for FY 2023-24 by the Deputy Commissioner of State Tax, proposing penalty exceeding Rs. 1 crore. After the Petitioner contested the notice on merits, a penalty order dated June 24, 2026 under Sections 122(1)(ii) and 122(1)(vii) with Form GST DRC-07 (**"the Impugned Order"**) was passed.

The Petitioner challenged the show cause notice and the Impugned Order before the High Court under Article 226 contending that the expression "proper officer" has not been defined for the purposes of Section 122; that the CBIC, noticing this lacuna, issued Circular No. 254/11/2025-GST dated October 27, 2025 prescribing the proper officer and monetary limits for notices under Sections 74A and 122; that a penalty above Rs. 1 crore could be proposed only by an Additional or Joint Commissioner; and that unless the State issued a corresponding circular, the notice issued by the Deputy Commissioner was without jurisdiction.

The State relied on UPGST Circulars dated December 11, 2018 and May 10, 2022 to contend that the proper officer for Section 122 is the proper officer under Section 127 and that, for taxpayers with turnover exceeding Rs. 2.5 crore, the Deputy Commissioner exercises such jurisdiction.

Issues:

- Whether a show cause notice under Section 122 of the UPGST Act proposing penalty above Rs. 1 crore, issued by the Deputy Commissioner of State Tax, suffers from lack of jurisdiction in the absence of the expression "proper officer" in Section 122 and in view of CBIC Circular No. 254/11/2025-GST?

- Whether an assessee who participated in the proceedings on merits without objecting to jurisdiction can be relegated to the statutory appellate remedy under the doctrine of election?

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Held:

The Hon'ble Allahabad High Court, Lucknow Bench, in ***Writ Tax Nos. 989, 991 and 992 of 2026*** held as under:

- Observed that Section 127 empowers the proper officer to levy penalty not covered under Sections 62, 63, 64, 73, 74, 129 or 130; the clarificatory Circular dated December 11, 2018 provides that the proper officer under Section 127 is competent to issue notice under Section 122, so the expression need not appear in Section 122 itself.

- Noted that, per the Circular dated May 10, 2022, jurisdiction in cases exceeding Rs. 2.5 crore lies with the Deputy Commissioner and, prima facie, the issuing authority did not lack jurisdiction.

- Noted that the Petitioner raised no jurisdictional objection at the notice stage, argued on merits and took a volte-face only after an adverse order; though jurisdiction can be raised before a Constitutional Court at any stage, Article 226 jurisdiction is discretionary.

- Held that the Petitioner is hit by the doctrine of election and is to be relegated to the statutory appellate remedy; the writ petitions were disposed of with liberty to file appeal, with the benefit of Section 14 of the Limitation Act, 1963 for the period the writ remained pending.

On the Petitioner's challenge, the Hon'ble Supreme Court issued notice returnable on October 09, 2026 and directed that, in the meantime, there shall be stay of operation of the impugned orders of the High Court.

Our Comments:

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Section 2(91) of the CGST Act / UPGST Act defines "proper officer", in relation to any function, as the Commissioner or the officer to whom that function has been assigned by the Commissioner, and Section 5(2) permits such assignment. Section 122, unlike Sections 73, 74 and 74A, does not itself use the words "proper officer"; the power to adjudicate such penalty flows from Section 127. Centrally, Circular No. 31/05/2018-GST dated February 09, 2018 fixed amount-based limits (Superintendent up to Rs. 10 lakh; Deputy/Assistant Commissioner up to Rs. 1 crore; Additional/Joint Commissioner above Rs. 1 crore), and Circular No. 254/11/2025-GST dated October 27, 2025 extended this scheme to Sections 74A and 122. The UPGST circulars, however, allocate jurisdiction on the taxpayer's turnover rather than the amount involved, which is the crux of the dispute before the Hon'ble Supreme Court, especially as Section 6 cross-empowers State officers under the CGST Act.

In ***Canon India Pvt. Ltd. v. Commissioner of Customs [(2021) 18 SCC 563]*** the Hon'ble Supreme Court held that a notice by an officer not assigned as "the proper officer" is without jurisdiction, reconsidered in ***Commissioner of Customs v. Canon India Pvt. Ltd.*** **[2024 INSC 854 dated**

November 07, 2024], which reaffirmed that competence depends on valid assignment of function. On alternative remedy, *Whirlpool Corporation v. Registrar of Trade Marks* [(1998) 8 SCC 1] recognises lack of jurisdiction as an exception to the rule of alternative remedy, and in *Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority* [CIVIL APPEAL NO. 5393 OF 2010 dated February 01, 2023] the Court deprecated relegation of a pure jurisdictional question to the statutory appeal. Contrarily, *Assistant Commissioner of State Tax v. Commercial Steel Ltd. [(2021) 9 SCC 683]* holds that writ jurisdiction should ordinarily not be exercised where an efficacious statutory remedy exists. Taxpayers facing Section 122 notices from State officers should raise the jurisdictional objection at the threshold; the hearing on October 09, 2026 merits close watch.

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