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# LITIGATION ALERT

June 19, 2026

Guwahati High Court upholds personal penalty on partners under Section 122(1A) and extends its application to pre-2021 transactions



# Guwahati High Court upholds personal penalty on partners under Section 122(1A) and extends its application to pre-2021 transactions

## Mayank Bansal v. Union of India & Ors<sup>1</sup>

The Guwahati High Court has held that partners of a partnership firm can be subjected to personal penalty under Section 122(1A) of the CGST Act, 2017 where the alleged tax-evasive transactions were undertaken at their instance and the benefits thereof were retained by them.

The Court also held that the said provision can be invoked even in respect of transactions undertaken prior to its introduction on 1 January 2021, provided the proceedings were initiated after the provision came into force.

### Background and facts

- The Petitioners, Mayank Bansal and Nadar Hussain, are partners of Quantum Infratech, a partnership firm engaged in the business of construction of residential buildings in Assam.
- A Show Cause Notice ('SCN') was issued to the firm and its partners under Sections 74(1), 122(1A) and 122(3)(a) of the CGST Act for the period July 2017 to March 2023 alleging GST evasion, including non-payment of tax on certain construction-related transactions and availment of ineligible Input Tax Credit ('ITC').
- The Revenue alleged that the partners were actively involved in the impugned transactions and had retained the benefits arising therefrom. Penalties under Section 122(1A) of the CGST Act were accordingly proposed and subsequently

confirmed by the adjudicating and appellate authorities.

- The Petitioners challenged the orders on the following grounds:
  - Section 122(1A) of the CGST Act can be invoked only against the taxable person, i.e., the partnership firm, and not against its partners.
  - The said provision, having been introduced with effect from 1 January 2021, could not be applied to transactions undertaken prior to its insertion.

### Contentions of the Revenue

- The Revenue contended that the expression "any person" used in Section 122(1A) is wider than the taxable person and can therefore extend to individuals who retain the benefits of the impugned transactions.
- On retrospective application, the Revenue contended that Section 122(1A) of the CGST could be invoked since the proceedings were initiated after the provision came into force.

### Findings of the Court

- The Court held that the expression "any person" used in Section 122(1A) of the CGST Act is wider than a taxable person and is intended to cover individuals who retain the benefits of specified transactions and at whose instance such transactions are undertaken. Restricting the

<sup>1</sup> TS-422-HC(GAUH)-2026-GST

provision only to the taxable person would render it otiose.

- The Court disagreed with the interpretation adopted by the Bombay High Court in *Shantanu Sanjay Hundekari*<sup>2</sup> (against which an SLP was dismissed by the SC<sup>3</sup>) and *Amit Manilal Haria*<sup>4</sup> wherein it was held that the contraventions contemplated under Section 122(1) of the CGST Act can be committed only by the taxable person and, therefore, penalty under Section 122(1A) of the CGST Act cannot be imposed on persons other than taxable persons.
- The Court drew support from the Delhi High Court's decision in *Gurudas Mallik Thakur*<sup>5</sup>, which recognised that Section 122(1A) of the CGST Act was introduced to impose liability on individuals who orchestrate and benefit from the specified contraventions.
- On retrospective application of Section 122(1A) of the CGST Act to pre-2021 periods, the Court disagreed with the Bombay High Court's view in *Amit Manilal Haria* and held that Section 122(1A) of the CGST Act can be invoked in respect of pre-2021 transactions, as the provision merely identifies the persons liable for existing contraventions under Section 122(1) and does not create a new offence.
- The Court further held that proceedings under Section 122 of the CGST Act involve civil penalties and not criminal offences and, therefore, the constitutional protection against retrospective penal laws under Article 20(1) would not apply.

### Judgement

- The Guwahati High Court dismissed the jurisdictional challenge raised by the Petitioners and held that:
  - Penalty under Section 122(1A) of the CGST Act can be imposed on partners or other

individuals who retain the benefit of specified transactions and at whose instance such transactions are undertaken; and

- Section 122(1A) of the CGST Act can be invoked even in respect of transactions undertaken prior to 1 January 2021, provided the proceedings are initiated after the provision came into force;
- The Petitioners were granted liberty to approach the GST Appellate Tribunal on factual issues relating to their involvement in the transactions, with interim protection against coercive recovery continuing until disposal of their stay applications.

<sup>2</sup> Shantanu Sanjay Hundekari vs UOI, TS-166-HC(BOM)-2024-GST

<sup>3</sup> UOI v Shantanu Sanjay Hundekari, 2025 (1) TMI 1249 - SC Order,

Note: The SC dismissed the SLP on agreement with the High Court's reasoning that penalty was imposed on an employee (tax manager) of the Company, and he could not have been fastened with the liability.

<sup>4</sup> Amit Manilal Haria & Ors. vs Joint Commissioner of CGST & CE, TS-105-HC(BOM)-2026-GST

<sup>5</sup> Gurudas Mallik Thakur v. Commissioner of Goods and Service Tax, 2025 SCC Online Del 3108,

The ruling is significant on two counts. First, it adopts a wider interpretation of Section 122(1A) of the CGST Act and permits penalty proceedings against partners and other individuals who are alleged to have orchestrated or benefited from the underlying transactions, and not merely against the taxable entity itself. This is likely to strengthen the Revenue's ability to pursue personal penalties against key individuals involved in GST disputes.

More importantly, the Court has held that Section 122(1A) can be invoked even in respect of transactions undertaken prior to its introduction on 1 January 2021. This finding is likely to generate considerable debate, as it allows personal penalty exposure under a provision that was not in force when the underlying transactions were undertaken. While the Court has reasoned that Section 122(1A) merely identifies the persons liable for existing contraventions and does not create a new offence, the issue remains contentious as it appears to depart from the well-established principle that a penal provision should not ordinarily operate retrospectively unless expressly provided by the legislature.

The legal position, however, remains far from settled. Divergent views have emerged from the Bombay, Delhi and Guwahati High Courts on both the scope of persons covered under Section 122(1A) and its applicability to pre-2021 transactions. The Bombay High Court has recently granted ad-interim protection to an independent director facing proceedings under Section 122(1A), relying on its earlier decision in *Shantanu Sanjay Hundekari*. With similar issues already engaging the attention of the Supreme Court, the eventual outcome is likely to have significant implications for pending and future proceedings involving personal penalties under Section 122(1A), particularly in relation to pre-2021 periods.

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