



dhruva

A Ryan LLC Affiliate

LITIGATION ALERT

October 01, 2026

Section 122(1A) CGST Act: Delhi High
Court Rules on Scope and Temporal
Reach of Penalty

Delhi High Court: Penalty under Section 122(1A) can apply to non-taxable persons, but only for transactions on or after 01.01.2021 – the date of the SCN is irrelevant

The Delhi High Court (Division Bench), in *Parag Garg v. Commissioner, Adjudication, CGST Delhi West & Anr.*¹ (judgment dated 29 September 2026), has held that the penalty under Section 122(1A) of the Central Goods and Services Tax Act, 2017 (“CGST Act”) can be imposed on persons who are not taxable persons. The said penalty provision shall however apply in respect of transactions or acts on or after 01.01.2021, irrespective of the date of the Show Cause Notice (“SCN”).

The Court decided a batch of writ petitions against personal penalties imposed under Section 122(1A), the lead cases involving directors of a company, and gave its verdict amidst the divergent views of the Delhi, Bombay and Gauhati High Courts on both questions.

This Dhruva Alert provides a concise overview of the background, the Court’s reasoning, the position of the High Courts as it stands now and the takeaways therefrom.

1. Background

- **Lead cases:** Common SCN dated 27.07.2023 and common Order in Original (“OIO”) dated 22.01.2025 (under Section 74) against Worlds Window Impex India Pvt. Ltd. – demand confirmed on allegations of circular trading and irregular ITC through invoices without actual supply. The alleged ITC availment pertained to the period 01.07.2017 to 31.03.2019.

- **Personal penalties:** Imposed on three directors (past/present) under Section 122(1A) (equal to the full ITC), plus ₹25,000 each under Section 125.
- **Petitioners’ case:** The concerned persons were employee-directors and were neither promoters nor shareholders; two of them were appointed in August 2020 and one resigned on 07.08.2020; no individual role or benefit alleged in the SCN/OIO.
- **Revenue’s case:** Section 122(1A) provides for the consequence for conduct already prohibited; Article 20(1) of the Constitution does not apply to civil penalties (relying on *SEBI v. Ajay Agarwal*²; the Gauhati High Court in *Mayank Bansal* relied on *Jawala Ram*³)
- **Maintainability:** Although Section 107 appeal was available, the Court entertained the writs since the matter involves substantial, recurring questions of law and divergent High Court views.

2. Issues and the Court’s conclusion

Issue	Holding
(i) Can Section 122(1A) penalty be imposed on a non-taxable person?	Yes. “Any person” is wider than “taxable person” (Section 2(107)) and extends to every person, registered or not, who satisfies the twin conditions : (a) the person retained the benefit of a transaction covered by Section 122(1)(i), (ii), (vii) or (ix); and (b) the transaction was conducted at his instance.

¹*Parag Garg v. Commissioner, Adjudication, CGST Delhi West & Anr.*, W.P.(C) 13883/2026 & connected matters [TS-799-HC(DEL)-2026-GST].

²*SEBI v. Ajay Agarwal*, (2010) 3 SCC 765 (Supreme Court).

³*Jawala Ram & Ors. v. State of Pepsu (now Punjab) & Ors.*, 1961 SCC OnLine SC 47

Issue	Holding
(ii) Date of application of Section 122(1A).	Applicability of Section 122(1A) is to be tested by the date of the underlying act/transaction, not the date of the SCN . Accordingly, only acts on or after 01.01.2021 can attract the penalty.

3. Reasoning of the Court

Issue (i): Scope of “any person” under Section 122(1A)

- **Threshold first:** Section 122(1A) presupposes that a contravention under Section 122(1)(i), (ii), (vii) or (ix) is established against the taxable person; only then does the enquiry move to who retained the benefit and at whose instance.
- **Deliberate drafting:** Expressions “taxable person” in Section 122(1), “any registered person” in Section 122(2), “any person” in Sections 122(1A) and 122(3) carry distinct meanings; reading “taxable person” into Section 122(1A) would add words the Legislature chose not to use. The term “Person” under Section 2(84) is defined widely.
- **Object of the provision:** Fake-invoicing structures often run through shell entities in the names of a peon, driver or domestic help while the mastermind may never be registered; a narrow reading lets the beneficiary escape. Inserted by Finance Act, 2020 w.e.f. 01.01.2021 on the 38th GST Council recommendation (18.12.2019), the provision shows intent to enlarge the class of persons.
- **Companies act through natural persons:** Limiting Section 122(1A) to the entity would make it otiose in corporate fraud.
- **Court’s take on precedents cited:** The Delhi High Court agrees with the earlier High Court rulings *Bharat Parihar*⁴, *Gurudas Mallik*⁵ and

*Mayank Bansal*⁶; and declines the views in *Shantanu Hundekari*⁷ and *Amit Manilal Haria*⁸ on this point. The Court observes that the Supreme Court’s (“SC”) dismissal of the Special Leave Petition (“SLP”) in *Shantanu Hundekari* was on facts and left the question of law open.

Issue (ii): Temporal application

- **Parity with Section 132:** The simultaneous amendment of Section 122 by insertion of sub-section (1A) and of Section 132(1) was intended to bring the civil and criminal consequences into closer statutory alignment.
- **Article 20(1):** Section 132 “unquestionably” attracts Article 20(1) of the Constitution, which confines the operation of Section 132 to conduct occurring on or after 01.01.2021. It would be incongruous to treat the corresponding penalty under Section 122(1A) as applicable for earlier conduct absent clear words.
- **Penal in consequence:** Section 122(1A) is civil in form but penal in consequence, so its applicability must bear a nexus with the date of the underlying act; a later SCN cannot change when the contravention occurred.
- **SCN-date test rejected:** Applying the SCN date as the test would imply that identical transactions would attract different consequences depending on when the Department acts, making a penal provision contingent on an administrative act.
- **Court’s take on precedents cited:** On its earlier ruling in *Bhupender Kumar*⁹ the court observed that the bench’s attention does not appear to have been drawn to Article 20 and its observations appear to have been obiter, made while relegating the parties to the alternative remedy. The Court refuses to adopt the SCN-date test as followed in *Mayank Bansal*. The reasoning of *Amit Manilal Haria* on applicability of Article 20(1) adopted.

⁴*Bharat Parihar v. State of Maharashtra & Ors.*, [2025] 142 GSTR 164 (Bom).

⁵*Gurudas Mallik Thakur v. Commissioner of Central Goods and Service Tax & Anr.*, 2025:DHC:2957-DB.

⁶*Mayank Bansal v. Union of India & 5 Ors.*, 2026:GAU-AS:8028.

⁷*Shantanu Sanjay Hundekari v. Union of India*, (2024) 132 GSTR 346 (Bom). The Supreme Court dismissed the SLP against this decision (SLP

(C) Diary No. 55427/2024, order dated 24.01.2025, *Union of India v. Shantanu Sanjay Hundekari & Anr.*).

⁸*Amit Manilal Haria & Ors. v. Joint Commissioner, CGST and Central Excise & Anr.*, 2026 SCC OnLine Bom 1510.

⁹*Bhupender Kumar v. Additional Commissioner (Adjudication), CGST & Ors.*, 2025 SCC OnLine Del 4848; 2025:DHC:5406-DB.

4. Where the High Courts now stand

Decision	“Any person” covers non-taxable persons?	Temporal application of Section 122(1A)	Treatment in this judgment
<i>Bharat Parihar</i> (Bombay HC)	Yes – distinct expressions “taxable person” vs “any person”	Not addressed in the judgment	Followed
<i>Shantanu Hundekari</i> (Bombay HC)	Necessarily a taxable person; employees not liable without personal benefit and involvement	Not addressed in the judgment	Not followed on scope. SC dismissed SLP on facts; observed that question of law was left open
<i>Amit Manilal Haria</i> (Bombay HC)	No – employees not shown to be taxable persons/no finding of benefit or instance	Prospective from 01.01.2021 (Art. 20(1)); penalty for July 2017 to 01.01.2021 (pre-dating the provision) held unsustainable	Not followed on scope; adopted on temporal application point
<i>Gurudas Mallik</i> (Delhi HC, DB)	Yes – directors with an active managerial role; <i>Amit Manilal</i> distinguished	Not decided – plea that the directors had exited before 01.01.2021 left to the Appellate Authority	Followed
<i>Bhupender Kumar</i> (Delhi HC, DB)	Not decided – applicability of Section 122(1A) and twin conditions (GST consultant) relegated to appeal	SCN date governs; ITC availment seen as a continuing process	Not adopted; findings said to “appear to have been obiter”
<i>Mayank Bansal</i> (Gauhati HC)	Yes – follows <i>Gurudas Mallik</i>	Applies to pre-01.01.2021 transactions – creates no new violation, so retrospectivity does not arise; provision must be in force on SCN date; Art. 20(1) not attracted (<i>Jawala Ram</i>)	Followed on scope; not followed on temporal application point
This judgment (Delhi HC)	Yes , subject to twin conditions (benefit retention and transaction conducted at that person’s instance)	Prospective – date of underlying transaction/act	—

The Delhi High Court's ruling significantly expands the scope of personal penalties under **Section 122(1A)** to include **non-taxable persons** like corporate directors and managers, but it balances this by enforcing a strict **twin-condition test**. The Revenue can no longer penalize individuals based on corporate designations alone. Instead, authorities carry the onus to establish both **personal benefit retention** and that the transaction was **conducted at that specific person's explicit instance**. This creates a clear strategic divide: while promoters and executives with active managerial roles may face heightened exposure; employees (including employee-directors) should hold a stronger defense. This is because as proving the latter category personally orchestrated the fraud or financially enriched themselves will be a much higher hill for the Revenue to climb.

On the point of **temporal application**, the Court neutralized the Department's ability to resurrect legacy disputes by holding that the penalty applies **strictly prospectively from January 1, 2021**, based on the **date of the underlying transaction** rather than the notice date. The Bench established that because the penalty is penal in consequence, old conduct predating the provision cannot be retroactively punished. By rejecting the "notice-date test" and calling out a previous contrary bench observation as non-binding *obiter dicta*, this ruling provides strong protection for historical transactions. However, because this creates an active conflict with alternative high court views across the country, businesses should anticipate that the Revenue will aggressively appeal this timeline restriction to the Supreme Court.



ADDRESSES

Mumbai

Dhruva Advisors India Pvt. Ltd.
1101, One World Center,
11th Floor, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai – 400 013, Maharashtra
Tel: +91 22 6108 1000 / 1900

Ahmedabad

Dhruva Advisors India Pvt. Ltd.
402, 4th Floor, Venus Atlantis,
100 Feet Road, Prahlad Nagar,
Ahmedabad – 380 015, Gujarat.
Tel: +91 79 6134 3434

Bengaluru

Dhruva Advisors India Pvt. Ltd.
SKAV 909, 8th Floor
Ashok Nagar, Lavelle Road
Bengaluru – 560001, Karnataka
Tel: +91 90510 48715

Delhi / NCR

Dhruva Advisors India Pvt. Ltd.
305-307, Emaar Capital Tower-1,
MG Road, Sector 26,
Gurugram – 122 002, Haryana
Tel: +91 124 668 7000

GIFT City

Dhruva Advisor IFSC LLP
510, 5th Floor, Pragya II,
Zone-1, GIFT SEZ, GIFT City,
Gandhinagar – 382050, Gujarat.
Tel: +91 79 6512 3604

New Delhi

Dhruva Advisors India Pvt. Ltd.
1007-1008, 10th Floor, Kailash
Building, KG Marg, Connaught
Place, New Delhi – 110001
Tel: +91 11 4295 3180

Pune

Dhruva Advisors India Pvt. Ltd.
406, 4th Floor, Godrej Millennium,
Koregaon Park,
Pune - 411001, Maharashtra
Tel: +91 20 6730 1000

Kolkata

Dhruva Advisors India Pvt. Ltd.
4th Floor, Unit No 403 & 404B,
Camac Square, 24 Camac Street,
Kolkata – 700016, West Bengal
Tel: +91 33 6637 1000

Singapore

Dhruva Advisors Pte. Ltd.
#16-04, 20 Collyer Quay,
Singapore – 049319
Tel: +65 9144 6415

Abu Dhabi

Ryan Tax Services L.L.C.
1905 Addax Tower,
City of Lights, Al Reem Island,
Abu Dhabi, UAE
Tel: +971 2 678 0054

Dubai

Ryan Tax Services L.L.C.
Emaar Square Building 4,
2nd Floor, Office 207, Downtown,
Dubai, UAE
Tel: +971 4 240 8477

Saudi Arabia

Ryan Tax Consulting Services Company
308, 7775 King Fahd Rd,
Al Olaya, 2970,
Riyadh 12212, Saudi Arabia

KEY CONTACTS

Dinesh Kanabar

Chairman & CEO
dinesh.kanabar@dhruvaadvisors.com

Ranjeet Mahtani

Partner
ranjeet.mahtani@dhruvaadvisors.com

Jignesh Ghelani

Partner
jignesh.ghelani@dhruvaadvisors.com

Kulraj Ashpnani

Partner
kulraj.ashpnani@dhruvaadvisors.com

Disclaimer:

The information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and professional opinions. Before acting on any matters contained herein, reference should be made to subject matter experts, and professional judgment needs to be exercised. Dhruva Advisors India Pvt. Ltd. cannot accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of any material contained in this publication