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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment reserved on: 21.09.2026***
Judgment pronounced on: 29.09.2026
Judgment uploaded on: 29.09.2026

\# **CNR No. DLHC010450702026**
\+ W.P.(C) 13883/2026, CM APPL. 64918/2026, CM APPL. 64919/2026, CM APPL. 64920/2026 and CM APPL. 64921/2026

PARAG GARG .....Petitioner

Through: Mr. Chinmaya Seth, Ms. Palak Mathur, Mr. Karanveer Singh, Mr. Rupesh Gutpa, Advs.

versus

COMMISSIONER, ADJUDICATION, CGST DELHI WEST AND ANR. .....Respondents

Through: Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.

\# **CNR No. DLHC010877412024**
\+ W.P.(C) 16623/2024 and CM APPL. 70347/2024

DIPANSHU AGGARWAL .....Petitioner

Through: Mr. Manorath Rathi, Mr. Rakesh Jain and Ms. Vijay Laxmi Rathi, Advs.

versus

COMMISSIONER OF GOODS AND SERVICE TAX, CENTRAL TAX, (DELHI WEST) & ANR. .....Respondents

Through: Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.

\# **CNR No. DLHC010882432024**
\+ W.P.(C) 16685/2024 and CM APPL. 70601/2024

RAJESH AGGARWAL .....Petitioner

Through: Mr. Manorath Rathi, Mr. Rakesh Jain and Ms. Vijay Laxmi Rathi, Advs.

versus

COMMISSIONER OF GOODS AND SERVICE TAX CENTRAL TAX DELHI AND ANR .....Respondents

Through: Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.

CNR No. DLHC010634232025

\+ W.P.(C) 13363/2025 and CM APPL. 54793/2025

M/S SUN FLAME TRADING PVT LTD & ORS. .....Petitioners

Through: Ms. Priyadarshi Manish and Ms. Anjali J. Manish, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.

CNR No. DLHC010676232025

\+ W.P.(C) 14149/2025

ASHISH JAIN .....Petitioner

Through: Mr. Shivender Sharma, Ms. Urooj Chaudhary and Ms. Esha Sharma, Advs.

versus

THE COMMISSIONER, DGGI ADJUDICATION, CGST. & ORS. .....Respondents

Through: Mr. Atul Tripathi, SSC with Mr. Shubham Mishra and Mr. Akshay Sagar, Advs.

CNR No. DLHC010725072025

\+ W.P.(C) 14747/2025, CM APPL. 60515/2025 and CM APPL. 60516/2025

RAJNISH JAIN .....Petitioner

Through: Mr. Abhishek Garg & Mr. Yash Gaiha, Advs.

versus

JOINT COMMISSIONER ADJUDICATION CGST DELHI

NORTH & ORS. .....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav and Mr. Naman Choula, Advs.

CNR No. DLHC010725082025

\+ W.P.(C) 14748/2025, CM APPL. 60517/2025 and CM APPL. 60518/2025

AVDHESH MITTAL .....Petitioner

Through: Mr. Abhishek Garg & Mr. Yash Gaiha, Advs.

versus

JOINT COMMISSIONER ADJUDICATION CGST DELHI NORTH & ORS. .....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav and Mr. Naman Choula, Advs.

CNR No. DLHC010726162025

\+ W.P.(C) 14757/2025, CM APPL. 60736/2025 and CM APPL. 60737/2025

SANJIV KADIAN .....Petitioner

Through: Mr. Abhishek Garg & Mr. Yash Gaiha, Advs.

versus

JOINT COMMISSIONER ADJUDICATION CGST DELHI NORTH & ORS. .....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav and Mr. Naman Choula, Advs.

CNR No. DLHC010726702025

\+ W.P.(C) 14794/2025, CM APPL. 60821/2025 and CM APPL. 60822/2025

AMIT GUPTA .....Petitioner

Through: Mr. Abhishek Garg & Mr. Yash Gaiha, Advs.

versus

JOINT COMMISSIONER ADJUDICATION CGST DELHI NORTH & ORS. .....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav and Mr.

Naman Choula, Advs.

\# **CNR No. DLHC010862892025**

\+ W.P.(C) 16821/2025 and CM APPL. 69126/2025

NARESH GOEL .....Petitioner

Through: Mr. Akhil Krishan Maggu, Mr Vikas Sareen, Mr. Alok Kumar Pandey, Mr. Kunal Prakash, Ms. Oshin Maggu, Mr. Aryan Nagpal, Mr. Harish Pal, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Ravi Kant Srivastava, Senior Panel Counsel with Mr. Robert Laishram, Adv. for UOI. Ms. Anushree Narain, SSC with Mr. Apurv Yadav and Mr. Naman Choula, Advs.

\# **CNR No. DLHC010227122025**

\+ W.P.(C) 5193/2025 and CM APPL. 23619/2025

ANIL KUMAR MISRA .....Petitioner

Through: Mr. Sandeep Chilana, Mr. Devansh Garg, Mr. Priyojeet Chatterjee and Ms. Khushi Chaurasia, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Vedansh Anand, SPC with Mr. Nipun Jain, GP for UOI and Mr. Bhagvan Swarup Shukla, CGSC with Ms Saumya Srivastav Adv

Mr. Shubham Tyagi, SSC-CBIC with Ms. Navruti Ojha, Adv.

\# **CNR No. DLHC010251262025**

\+ W.P.(C) 5643/2025 and CM APPL. 25699/2025

PARAG GARG .....Petitioner

Through: Mr. Chinmaya Seth, Ms. Palak Mathur, Mr. Karanveer Singh, Mr. Rupesh Gutpa, Advs.

versus

THE COMMON ADJUDICATING AUTHORITY ADDITIONAL COMMISSIONER OF CENTRAL TAX, CGST DELHI WEST AND ANR .....Respondents

Through: Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.

\# **CNR No. DLHC010260622025**

\+ W.P.(C) 5795/2025 and CM APPL. 26396/2025

VARUN KHANNA .....Petitioner

Through: Mr. Naveen Malhotra and Mr. Ritvik Malhotra, Advs.

versus

ADDITIONAL COMMISSIONER CGST NEW DELHI 110066 AND ORS .....Respondents

Through: Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.
Mr. Aditya Singla, SSC.

\# **CNR No. DLHC010279592025**

\+ W.P.(C) 6062/2025

M S ATLANTIC INTERNATIONAL TRADING PVT LTD & ORS. .....Petitioners

Through: Ms. Priyadarshi Manish and Ms. Anjali Jha Manish, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Tanvi Nigam, SPC for R-1/UOI.

\# **CNR No. DLHC010321212025**

\+ W.P.(C) 6862/2025 and CM APPL. 31095/2025

MADHAV AGARWAL .....Petitioner

Through: Mr. Sandeep Chilana, Mr. Devansh Garg, Mr. Priyojeet Chatterjee, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Vedansh Anand, SPC with Mr. Nipun Jain, GP for UOI.

Mr. Shubham Tyagi, SSC-CBIC with Ms. Navruti Ojha, Adv.

\# **CNR No. DLHC010321712025**

\+ W.P.(C) 6913/2025 and CM APPL. 31279/2025

ABHIMANYU SHARMA .....Petitioner

Through: Mr. Priyojeet Chatterjee, Mr. Sandeep Chilana, Mr. Devansh Garg, Ms. Khushi Chaurasia, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Shubham Tyagi, SSC-CBIC with Ms. Navruti Ojha, Adv.
Mr. Himanshu Pathak, SPC along with Mr. Mohit Gupta Adv.

\# **CNR No. DLHC010441592025**

\+ W.P.(C) 9864/2025, CM APPL. 41182/2025 and CM APPL. 57139/2026

PARAG GARG .....Petitioner

Through: Mr. Chinmaya Seth, Ms. Palak Mathur, Mr. Karanveer Singh, Mr. Rupesh Gutpa, Advs.

versus

DEPUTY DIRECTOR, DGGI, DZU AND ANR. .....Respondents

Through: Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.

\# **CNR No. DLHC010050562026**

\+ W.P.(C) 1964/2026 and CM APPL. 9577/2026

PARAG GARG .....Petitioner

Through: Mr. Chinmaya Seth, Ms. Palak Mathur, Mr. Karanveer Singh, Mr. Rupesh Gutpa, Advs.

versus

ADDITIONAL COMMISSIONER, ADJUDICATION, CGST DELHI WEST AND ANR. .....Respondents

Through: Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.

\# **CNR No. DLHC011079542025**

\+ W.P.(C) 53/2026, CM APPL. 287/2026, CM APPL. 288/2026 and CM APPL. 289/2026

PARAG GARG .....Petitioner

Through: Mr. Chinmaya Seth, Ms. Palak Mathur, Mr. Karanveer Singh, Mr. Rupesh Gutpa, Advs.

versus

ADDITIONAL COMMISSIONER AND ANR .....Respondents

Through: Mr. Vedansh Anand, SPC with Mr. Nipun Jain, GP for UOI.
Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.

\# **CNR No. DLHC010011252026**

\+ W.P.(C) 573/2026 and CM APPL. 2854/2026

PARAG GARG .....Petitioner

Through: Mr. Chinmaya Seth, Ms. Palak Mathur, Mr. Karanveer Singh, Mr. Rupesh Gutpa, Advs.

versus

ADDITIONAL COMMISSIONER CGST DELHI WEST AND ANR. .....Respondents

Through: Mr. Vedansh Anand, SPC with Mr. Nipun Jain, GP for UOI.
Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE BHARAT PARASHAR

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present batch of Petitions have been filed assailing various Show Cause Notices (SCNs) and consequential Orders-in-Original (OIO), wherein the Petitioners have been fastened with a personal liability in form of a penalty under Section 122 (1A) of the Central Goods and Services Act, 2017[1].

2. Admittedly, there exists a statutory alternative remedy of Appeal under Section 107 of the Act of 2017. However, since the present Petitions raises a substantial question of law, we deem it appropriate to entertain the Petitions and adjudicate the questions raised before us by way of the present judgment.

3. The principal questions that arise for consideration in the present batch of Petitions are as follows:

i. Whether it is permissible to order recovery of penalty under Section 122(1A) of the Act of 2017 against a non-taxable person?

ii. whether the penalty as envisaged under Section 122(1A) of the Act of 2017 applies prospectively to offences committed after 01.01.2021, the date on which the provision came into effect?

4. Learned counsel representing the Petitioners have filed a common written submission in W.P.(C) 5193/2025, W.P.(C) 6862/2025 and W.P.(C) 6913/2025. Accordingly, for the purpose of

[1] hereinafter referred to as 'Act of 2017'

adjudicating the controversy arising in the present batch, the aforesaid Petitions shall be treated as the lead cases.

BRIEF BACKGROUND:

5. Pithily put, the present Petitions arise out of a common SCN dated 27.07.2023, subsequent to which the Adjudicating Authority(AA) by way of a common OIO dated 22.01.2025 passed under Section 74 of the Act of 2017 against M/s Worlds Window Impex India Private Limited[2], confirmed a demand on the allegation that the Company had engaged in circular trading and had irregularly availed Input Tax Credit (ITC) amounting to Rs. 24,99,88,069/- through invoices allegedly issued without actual supply of goods.

6. Besides confirming the demand and penalty against the Company, the AA also imposed separate personal penalties of Rs. 24,99,88,069/- each upon the three Petitioners under Section 122(1A) of the Act of 2017, along with a penalty of Rs.25,000/- each under Section 125 of the Act of 2017, on the ground that they had served as directors of the Company at different points in time.

7. Aggrieved by the imposition of personal penalties under Sections 122(1A) and 125 of the Act of 2017, the Petitioners have preferred the present Petitions challenging the legality and validity of the impugned OIO insofar as it pertains to them.

SUBMISSIONS ON BEHALF OF THE PARTIES:

8. Learned counsel representing the Petitioner has made the

[2] hereinafter referred to as 'the Company'

following submissions:

8.1 It is the case of the Petitioners that neither the SCN nor the OIO attributes any specific act, omission, or role to them in the alleged fraudulent transactions, and the SCN merely called upon them to show cause as to why penalty should not be imposed under Section 122(1A) of the Act of 2017, without setting out any allegations against them individually.

8.2 Additionally, it is also the case of the Petitioners that Mr. Madhav Agarwal and Mr. Abhimanyu Sharma were appointed as directors to the Company only in August 2020, after the period during which the alleged transactions took place, while Mr. Anil Kumar Misra had resigned as director on 07.08.2020. According to the Petitioners, they were employee-directors, were neither promoters nor shareholders of the Company, and no finding has been recorded that they were beneficiaries of the alleged transactions.

8.3 The principal submission of learned counsel is that Section 122(1A) of the Act of 2017 is a new and independent penal provision introduced by Section 126 of the Finance Act, 2020 with effect from 01.01.2021. It was argued that the legislative history, including the recommendations of the 38th GST Council Meeting, demonstrates that the provision was enacted to fasten penal liability upon the actual beneficiaries or masterminds of fraudulent ITC transactions, in addition to the taxable person availing or passing on such credit.

8.4 It was further submitted that neither the Finance Bill, 2020 nor the Notes on Clauses conferred retrospective operation upon Section 122(1A), whereas several other provisions of the Finance Act, 2020 were expressly made retrospective from 01.07.2017. The Legislature, despite notifying Section 122(1A) and other amendments through the same notification, consciously withheld retrospective effect from Section 122(1A), thereby evincing a clear legislative intent that the provision would operate only prospectively from 01.01.2021.

8.5 Relying upon ***CIT, New Delhi v. Vatika Township Pvt. Ltd.***[3], it was contended that where the Legislature prescribes a specific date for commencement of a penal provision, the tax administration cannot apply it to transactions preceding its enforcement.

8.6 In addition to the aforestated, with respect to the application of the Section 122(1A) of the Act of 2017, it has been argued that the provision having come into force only on 01.01.2021, could not be invoked in respect of transactions undertaken prior thereto, as such retrospective application would offend Article 20(1) of the Constitution. Reliance was placed upon ***CCE, Ahmedabad v. Orient Fabrics (P) Ltd.***[4], and ***Ritesh Agarwal and Anr. v. SEBI and Ors.***[5]**,** to contend that a penal liability which was not in existence on the date of the alleged act could not be retrospectively imposed merely because the provision formed part of a fiscal statute. It was further submitted

[3] (2015) 1 SCC 1
[4] (2004) 1 SCC 597
[5] (2008) 8 SCC 205

that the issue stood directly considered in ***Amit Manilal Haria and Ors. v. Joint Commissioner, CGST and Central Excise and Anr.***[6], wherein Section 122(1A) was held inapplicable to acts preceding 01.01.2021.

8.7 It was contended that, in the present case, the alleged transactions/availment pertained to the period from 01.07.2017 to 31.03.2019, or at the highest up to 30.08.2020, with no alleged availment continuing after 01.01.2021. Consequently, the subsequent issuance of the SCN and the OIO could not retrospectively create a penal liability.

8.8 Learned counsel also sought to distinguish ***Bhupender Kumar v. Additional Commissioner (Adjudication), CGST and Ors.***[7]***,*** on the ground that the decision proceeded on the finding of a continuing process, whereas no such continuing availment was alleged in the present case.

8.9 Learned counsel further submitted that, in any event, the Company's statutory GST returns establish that no outward supplies were made, and no ITC was availed after 01.01.2021. Consequently, there was no transaction after the commencement of Section 122(1A) to which the provision could be applied.

8.10 It was also argued that the jurisdictional requirements for invocation of Section 122(1A) of the Act of 2017 are wholly absent. The provision applies only where the person proceeded against has retained the benefit of the impugned transaction and

[6] 2026 SCC OnLine Bom 1510
[7] 2025 SCC Online Delhi 4848

the transaction was undertaken at such person's instance. Neither the SCN nor the OIO alleges or establishes that any of the Petitioners retained any benefit, directed the transactions, or acted as the beneficiary or mastermind behind the alleged availment of ITC. The Petitioners, it was submitted, were merely employee-directors and neither promoters nor shareholders of the Company.

8.11 It was also contended that the impugned SCN and OIO are violative of the principles of natural justice, as they contain no specific allegations regarding the individual role, participation or culpability of any Petitioner. It was submitted that the AA proceeded solely on the basis of their designation as directors and failed to consider their replies and submissions, rendering the OIO a non-speaking order suffering from non-application of mind.

8.12 Lastly, it was submitted that the AA has imposed penalties equal to the entire alleged inadmissible ITC not only upon the Company but also separately upon each of the three Petitioners under Section 122(1A), resulting in multiple penalties arising out of the same alleged transaction. Such simultaneous imposition, without establishing an independent statutory basis or individual culpability for each Petitioner, was argued to be arbitrary, disproportionate and contrary to the scheme of the Act of 2017.

9. *Per contra*, learned counsel representing the Respondent has made the following submissions:

9.1 At the outset, it has been argued that the applicability of Section 122(1A) of the CGST Act to the facts of a particular case, including the correctness of the penalty imposed thereunder, falls within the jurisdiction of the adjudicating and appellate authorities constituted under the Act. Since no challenge has been raised to the constitutional validity of Section 122(1A) of the Act of 2017, the Petitioner ought to avail the statutory remedies under Sections 73/74, 107, 108 and 111 of the Act of 2017. Reliance was placed on ***Mafatlal Industries Ltd. And Ors. v. Union of India and Ors.***[8].

9.2 It was further submitted that the present case involves, at best, an alleged erroneous exercise of jurisdiction and not a want of jurisdiction. Relying on ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka and Ors.***[9], it was contended that such errors are amenable to correction in the statutory appellate hierarchy and do not warrant exercise of writ jurisdiction so as to bypass the efficacious alternative remedy.

9.3 Learned counsel argued that Section 122(1A) of the Act of 2017 does not operate retrospectively merely because the conduct to which it applies may have commenced prior to its introduction. The underlying acts, which are fraudulent availment or passing on of ITC and issuance or use of invoices without

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[8] (1997) 5 SCC 536
[9] (2020) 13 SCC 308

corresponding supply, were already prohibited under the Act of 2017.

9.4 Section 122(1A) of the Act of 2017 merely prescribes a specific penal consequence for such contraventions and does not impair any vested right of the taxpayer. Reliance was placed on ***Union of India v. Madan Gopal Kabra*[10]*, Shanti Conductors (P) Ltd. and Anr. v. Assam SEB and Ors.*[11]**, and ***Zile Singh v. State of Haryana and Ors.*[12]**, to argue that a provision is not retrospective merely because some facts antecedent to its enactment are relevant to its operation; the determinative consideration is whether it affects completed transactions, vested rights or imposes a new disability in respect of past conduct.

9.5 In regard to the aforestated, it had been argued that the Petitioners had no vested right to commit or remain free from the statutory consequences of a contravention of the Act of 2017. Section 122(1A) was introduced to address an existing statutory mischief and to prescribe the consequence for conduct already prohibited under the Act of 2017.

9.6 It is argued, that in any event, whether the Petitioner actually committed the alleged contraventions is a disputed question of fact requiring appreciation of evidence, which cannot appropriately be adjudicated in writ jurisdiction. Reliance was placed on ***Orissa Agro Industries Corporation Ltd. and Ors. v.***

[10] AIR 1954 SC 158
[11] (2019) 19 SCC 529
[12] (2004) 8 SCC 1

Bharati Industries and Ors[13], to contend that disputed questions of fact ought ordinarily to be left to the statutory adjudicatory process.

9.7 Controverting the application of Article 20(1) of the Constitution, it had been argued that Section 122(1A) does not attract the prohibition contained under the aforesaid Article, since the penalty thereunder is a civil/fiscal consequence of a statutory contravention and does not amount to punishment for a criminal offence. The underlying conduct was already proscribed under the Act of 2017, and Section 122(1A) merely provides for the fiscal consequence of such infraction. Reliance was placed on ***SEBI v. Ajay Agarwal***[14], wherein the Supreme Court, while considering an adjudicatory penalty, distinguished such proceedings from criminal prosecution and held that the protection under Article 20(1) is not attracted to such civil penalties.

9.8 It was, therefore, submitted that the subsequent prescription of penalty under Section 122(1A) does not amount to creation of an ex post facto offence or punishment within the meaning of Article 20(1). Accordingly, it was contended that the challenge based on the constitutional proscription against ex post facto laws is misconceived.

9.9 Learned counsel submitted that the Petitioner is not entitled to discretionary relief under Article 226, particularly

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[13] (2005) 12 SCC 725
[14] (2010) 3 SCC 765

when the allegations concern fraudulent availment of ITC and the factual question of the person responsible for such availment requires examination on the basis of evidence. Reliance was placed on the decision of this Court in ***Gurudas Mallik Thakur v. Commissioner of Goods and Service Tax***[15], , wherein it was held that questions concerning responsibility for availment of ITC and the applicability of Section 122(1A) are essentially factual and ought to be canvassed before the statutory appellate authority.

9.10 It was further submitted that a person invoking the extraordinary and equitable jurisdiction under Article 226 must make full and candid disclosure of all material facts. Reliance was placed on ***K.D. Sharma v. SAIL and Ors.***[16], ***Ramjas Foundation and Anr. v. Union of India and Ors.***[17] and ***Prestige Lights Ltd. v. SBI***[18], to contend that suppression or distortion of material facts disentitles a litigant to discretionary relief. In the absence of complete disclosure regarding the Petitioner's alleged involvement in the disputed ITC transactions, the writ petition, it was argued, ought not to be entertained.

9.11 Learned counsel further argued that Section 122(1A) of the Act of 2017 ought to be construed purposively so as to prevent a person from deriving or retaining benefit from an act prohibited by law. Reliance was placed on ***Maxwell on the***

[15] 2025:DHC:2957-DB
[16] (2008) 12 SCC 481
[17] (2010) 14 SCC 38
[18] (2007) 8 SCC 449

Interpretation of Statutes **and** ***R v. Andrewes***[19], to contend that the benefits flowing from an illegal or wrongful act can legitimately be interdicted.

9.12 Lastly, it was argued that the principle of purposive interpretation applies equally to fiscal legislation, particularly where the provision is remedial in nature. Reliance was placed on ***Eera v. State (NCT of Delhi) and Anr.***[20] and ***Allied Motors (P) Ltd. v. CIT, Delhi***[21], It was argued that Section 122(1A), read in the context of the statutory scheme governing fraudulent availment and passing on of ITC, should therefore be interpreted in a manner which advances the legislative purpose and suppresses the mischief sought to be remedied.

<u>ANALYSIS AND FINDINGS</u>:

10. Before proceeding to consider the rival contentions and express our views thereon, which shall govern the determination of the personal liability sought to be fastened upon the Petitioners, we deem it appropriate to first reproduce the relevant provisions of the Act of 2017, which shall form the foundation for our ensuing analysis. The relevant provisions are as follows:

> ***122. Penalty for certain offences.***—*(1) Where a taxable person who—*
>
> *(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;*
>
> *(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;*
>
> *(iii) collects any amount as tax but fails to pay the same to the*

[19] [2022] UKSC 24
[20] (2017) 15 SCC 133
[21] (1997) 3 SCC 472

Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub - section (1) of Section 51, or deducts an amount which is less than the amount required to be deducted under the said subsection, or where he fails to pay to the Government under subsection (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of subsection (1) of Section 52, or collects an amount which is less than the amount required to be collected under the said subsection or where he fails to pay to the Government the amount collected as tax under sub-section (3) of Section 52;

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of Section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;

(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act, he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not collected under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

[(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.]

[(1-B) [Any electronic commerce operator, who is liable to collect tax at source under Section 52,]—

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by

a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of Section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act, shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under Section 10, whichever is higher.]

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. Of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand

rupees or the tax due from such person, whichever is higher.

(3) Any person who—

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.

132. Punishment for certain offences.—*(1) [Whoever commits, or causes to commit and retain the benefits arising out of, any of the*

following offences], namely:—

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

[(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;]

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);"

11. Notably, the two issues concerning the applicability and effect of Section 122(1A) of the Act of 2017, as identified in paragraph no.3

hereinabove, are not matters arising for consideration for the first time before Court. These questions have already been considered by various High Courts, including this Court, the Bombay High Court and the Gauhati High Court. Therefore, it is appropriate to briefly notice the views expressed by the Courts in the decisions rendered on these issues.

12. The Bombay High Court in ***Bharat Parihar v State of Maharashtra and Ors.***[22], while examining the interplay between Sections 83 and 122(1A) of the Act of 2017, noticed the deliberate use of the distinct expressions 'taxable person' and 'any person', and held that the two expressions could not be construed as referring to the same category of persons. It was reasoned that if only taxable persons could be caught, then anyone who benefits from a fraud but lives outside the state, or isn't registered under GST, would escape entirely, which couldn't have been the lawmakers' intention. In view thereof, it was held that 'any person' in Section 122(1A) of the Act of 2017 is wide enough to include people who are not themselves taxable persons.

13. The Bombay High Court in ***Shantanu Sanjay Hundekari v. Union of India***[23], taking an opposite view from one expressed in ***Bharat Parihar*** *(Supra)*, held that Section 122(1A) of the Act of 2017 ordinarily concerns a taxable person who retains the benefit of a transaction covered by Section 122(1)(i), (ii), (vii), or (ix), and at whose instance the transaction is conducted. Dealing with the facts of the case, it was held that the employees cannot be made liable without

[22] [2025] 142 GSTR 164 (Bom)
[23] (2024) 132 GSTR 346 (Bom)

material establishing personal retention of benefit and personal involvement in conducting the transaction. Vicarious liability is not attracted merely because the alleged tax liability belongs to the company.

14. Thereafter, the Bombay High Court again in its judgment in ***Amit Manilal Haria*** *(Supra)*, following the reasoning of ***Shantanu Sanjay Hundekari*** *(Supra)*, while stressing upon the twin requirement contemplated under Section 122(1A), held that employees who are not shown to be taxable persons, and against whom there is no finding that they retained the benefit or caused the transactions to be conducted, cannot be penalised under Section 122(1A) of the Act of 2017. In addition, the Court with respect to the temporal applicability of Section 122 (1A) held that, the provision was inserted w.e.f. 01.01.2021 and since the period under the SCN therein spanned from July 2017 to January, 2021 (partly pre-dating the provision), there could not have been any retrospective application of any penalty provision. The Court expressly invoked Article 20(1) of the Constitution and observed that a person could not be penalised under the law/provision which was not in force for the period in which such alleged acts are stated to have been committed. Accordingly, it held the SCN and the consequential order could not be sustained for the pre 01.01.2021 period, independent of the finding pertaining to taxable person.

15. This Court in ***Gurudas Mallik*** *(Supra)*, while dealing with two directors of a company on whom penalty under Section 122(1A) had been imposed alongside the company, its promoter, and its CEO, examined Sections 2(84), 83, 122(1) and 122(1A) of the Act of 2017

and held that the statute makes a clear distinction between the taxable person and any person. The Court expressly adopted the reasoning of ***Bharat Parihar*** *(Supra)*, to hold that the purpose of Section 122 (1A) is to hold accountable persons who are responsible for creating bogus invoices, fraudulently availing ITC without actual receipt of goods or services or distributing ITC in violation of Section 20 of the Act of 2017. Since companies act through their management, liability may extend to persons who retain the benefit of such transactions.

16. This Court in particular distinguished ***Amit Manilal Haria*** *(Supra)* and the subsequent ***SLP (C) No. 55427/2024*** titled ***Union of India v. Shantanu Sanjay Hundekari & Anr.*** filed against the judgment of ***Shantanu Sanjay Hundekari*** *(Supra)*, on the footing that the Petitioners therein were employees, and the Order in ***Amit Manilal Haria*** *(Supra)* was merely an interim order. Further, while observing that the Supreme Court had expressly kept the legal questions open rather than deciding it, the Court declined to follow the narrower view taken by the Bombay High Court as binding on facts involving directors with an active managerial role.

17. Subsequently, this Court in ***Bhupender Kumar*** *(Supra)*, while dealing with the temporal application of Section 122(1A) held that the same is to be considered with reference to the date of the SCN, which was issued on 08.03.2024, when the provision was already in force. Therefore, the provision could apply even to fraudulent transactions occurring before its enactment. Further, it was also held that the fraudulent availment of ITC appeared to be a continuous process rather than a one-time act.

18. Finally, the Gauhati High Court in its judgment dated 08.06.2026 titled ***Mayank Bansal v The Union of India and 5 Ors***[24], with respect to the scope of expression any person under Section 122 (1A) of the Act of 2017, expressly adopted the reasoning provided by this Court in ***Gurudas Mallik Thakur*** *(Supra)* and rejected the Bombay High Court's view in ***Shantanu Sanjay Hundekari*** *(Supra)* and ***Amit Manilal Haria*** *(Supra)*. The Court held that the expression 'any person' under Section 122(1A) is distinct from 'taxable person' and 'registered person' and includes individuals responsible for, and retaining the benefit of, fraudulent transactions undertaken through a juridical entity. Rejecting the narrower view taken by the Bombay High Court, the Court observed that a company, Limited Liability Partnership (LLP), partnership firm, or other juridical person, being an inanimate 'taxable person' can only act through natural persons, and as such restricting Section 122(1A) to the taxable person would defeat its purpose, because it would fail to reach the individuals who actually orchestrate the fraud through the corporate/firm vehicle.

19. With respect to the temporal application of Section 122(1A) of the Act of 2017, the Court held that the said provision does not create a new offence or violation, but merely identifies the person liable for penalty in respect of violations already contemplated under Section 122(1) of the Act of 2017. Accordingly, its application does not constitute retrospective imposition of a penal provision. Relying on ***Jawala Ram and Ors. v. State of Pepsu (now Punjab) and Ors.***[25], the Court further held that Article 20(1) of the Constitution applies to

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[24] 2026:GAU-AS:8028
[25] 1961 SCC OnLine SC 47

offences and punishments of a criminal nature and not to every civil penalty.

20. On the aforesaid reasoning, the Court was of the view that Section 122(1A) being complementary to Section 122(1) may be invoked where it was in force on the date of issuance of the SCN. Thus, following the principle laid down in ***Bhupender Kumar*** *(Supra)*, the Court upheld its application to transactions commencing from 2017-18, notwithstanding that the provision came into force subsequently.

21. Having noticed the divergent views expressed by the various High Courts, we shall now proceed to examine, on an independent consideration of the matter, the scope and meaning of the expression 'any person' and the temporal applicability of Section 122(1A) of the Act of 2017.

In re: Issue i

22. Before examining the rival contentions on the first issue, it is necessary to notice the statutory scheme and, in particular, the conditions which must necessarily be satisfied before liability under Section 122(1A) of the Act of 2017 can be attracted. A plain reading of Section 122(1A) makes it evident that the provision operates only where two conditions are cumulatively satisfied: *first*, that the person concerned has retained the benefit of a transaction covered by clauses (i), (ii), (vii) or (ix) of sub-section (1) of Section 122; and *second*, that such transaction has been conducted at his instance.

23. It follows from the above that these two conditions being

conjunctive and not disjunctive, must be independently established before the liability contemplated under Section 122(1A) of the Act of 2017 can be fastened upon an individual. To clarify it further, the enquiry under Section 122 (1A) does not arise in isolation, rather it presupposes the establishment of a contravention falling within clauses (i), (ii), (vii) or (ix) of Section 122(1), namely, supply of goods or services without issuance of an invoice, issuance of an invoice without supply, wrongful availment or utilisation of input tax credit, or wrongful distribution of input tax credit. It is only upon such contravention being established against the taxable person that the further enquiry arises as to who retained the benefit of such transaction and at whose instance the transaction was conducted.

24. At this stage, it is also relevant to notice the manner in which the Legislature has consciously employed different expressions in the sub-sections of Section 122. Sub-section (1) refers to a 'taxable person', a term defined under Section 2(107) of the Act of 2017, to mean a person who is registered or liable to be registered under Section 22 or Section 24. In contrast, sub-section (1A), with which we are presently concerned, employs the expression 'any person'. Sub-section (1-B), dealing with electronic commerce operators, is confined to a specific category of registered intermediaries. In turn, sub-section (2) uses the expression 'any registered person', which is defined under Section 2(94) to mean a person registered under Section 25, other than a person having a Unique Identity Number. Sub-section (3), once again, employs the expression 'any person'.

25. The aforesaid distinction becomes even more apparent when Section 2(84) of the Act of 2017 is noticed. The expression 'person'

therein, has been defined in the widest terms and includes an individual, a Hindu Undivided Family (HUF), a company, a firm, a LLP, an association of persons, a body corporate, a co-operative society, a local authority, the Government, a society, a trust and every artificial juridical person not falling within the preceding categories.

26. This deliberate and repeated variation in language, within the same Section, cannot be treated as a matter of legislative accident and must be read together. The Legislature while enacting different sub-sections of the very same provision, in the same breath, has consciously employed different expressions, being, 'taxable person' in sub-section (1), 'any person' in sub-sections (1A) and (3), and 'any registered person' in sub-section (2).

27. It is a settled principle of interpretation that where the Legislature has deliberately used different expressions in the same statutory scheme, each expression must ordinarily be given its distinct meaning. As such, to construe 'any person' in Section 122(1A) as meaning nothing more than a 'taxable person' would, in substance, amount to reading into the provision words which the Legislature consciously chose not to employ.

28. Such a construction would also defeat the object of Section 122(1A) of the Act of 2017. Fraudulent ITC transactions are often structured through fictitious or shell entities created in the names of persons having little or no connection with the underlying business, a peon, driver, domestic help, or even a person whose identity documents have been misused, while the actual orchestration of the transactions and retention of the financial benefit rests with persons

operating behind such entities.

29. In such a scenario, if the expression 'any person' in Section 122(1A) were to be confined only to the 'taxable person', *i.e.*, the entity or individual in whose name the GST registration stands, the consequence would be that the very person whose identity may have been misused could be proceeded against, while the actual mastermind and beneficiary, who may never have been registered under the GST regime, would escape the provision. Such a construction would defeat rather than advance the object of the provision.

30. The aforesaid position stands further reinforced by the legislative history of Section 122(1A) of the Act of 2017. The provision was inserted by the Finance Act, 2020 with effect from 01.01.2021, pursuant to the recommendation of the 38th GST Council Meeting held on 18.12.2019, specifically to address the menace of fake invoicing and to fasten liability upon the real beneficiaries of such fraudulent transactions, over and above the taxable person in whose name the registration exists. Therefore, the intent, was plainly to enlarge, and not to restrict, the class of persons who could be proceeded against.

31. It is in this statutory and legislative setting that the divergent judicial views placed before us fall for consideration. The Bombay High Court in ***Bharat Parihar*** *(Supra)*, while examining the interplay between Section 83 and Section 122(1A) of the Act of 2017, noticed that the two expressions 'taxable person' and 'any person' are used contra-distinctively, and held that 'any person' in Section 122(1A) would include a non-taxable person. We are in respectful agreement

with this reasoning, for the reasons already indicated above.

32. However, this Court is unable to persuade itself to the contrary reasoning adopted by the Bombay High Court in ***Shantanu Sanjay Hundekari*** *(Supra)* and ***Amit Manilal Haria*** *(Supra)*. A company, a LLP, a partnership firm, or any other juridical person recognised under Section 2(84) is, by its very nature, incapable of acting except through natural persons who manage and control its affairs. If sub-section (1A) is confined only to the 'taxable person', it would in most cases stand confined to an artificial entity that can never, on its own, retain a benefit or direct a transaction, thereby rendering the provision otiose in precisely those cases of corporate or organised fraud which it was intended to address.

33. We are also unable to reconcile this narrower construction with the fact that sub-section (3) of Section 122, dealing with aiding, abetting and similar ancillary conduct, already uses the expression 'any person' without any suggestion that it is confined to a taxable person; there is no principled basis to read the identical expression differently within sub-sections of the very same Section.

34. We find the wider view we have adopted to be consistent with and reinforced by the judgment of this Court in ***Gurudas Mallik*** *(Supra)*, where it was held that the statute makes a clear and deliberate distinction between 'taxable person' and 'any person', and that the purpose of Section 122(1A) of the Act of 2017 is to hold accountable those who retain the benefit of transactions conducted through an inanimate corporate vehicle.

35. We are also in respectful agreement with the subsequent

judgment of the Gauhati High Court in ***Mayank Bansal*** *(Supra)*, which expressly adopted the reasoning of this Court in ***Gurudas Mallik*** *(Supra)* and declined to follow the narrower view taken in ***Shantanu Sanjay Hundekari*** *(Supra)* and ***Amit Manilal Haria*** *(Supra)*, for substantially the same reasons this Court has recorded above.

36. For completeness, it may be noted that the Supreme Court, while dismissing the SLP in ***Shantanu Sanjay Hundekari*** *(Supra)*, did so on the facts of that case, without affirming the Bombay High Court's interpretation of 'any person', which question was expressly left open. Thus, the said order does not preclude the view taken herein.

37. Accordingly, this Court holds that the expression 'any person' occurring in Section 122(1A) of the Act of 2017 is not confined to a 'taxable person' as defined under Section 2(107), but extends to every person, whether or not registered or liable to be registered under the Act of 2017, who satisfies the twin requirements contemplated under Section 122 (1A) of the Act of 2017.

In re: Issue (ii)

38. We now turn to the second issue, namely, whether Section 122(1A) of the Act of 2017 applies only prospectively to transactions occurring on or after 01.01.2021, the date on which the provision was brought into force.

39. At the outset, it is pertinent to note the close statutory parallel between Sections 122 and 132 of the Act of 2017. The contraventions contemplated under clauses (i), (ii), (vii) and (ix) of Section 122(1)

substantially correspond to the offences enumerated in clauses (a), (b), (c) and (e) of Section 132(1) respectively, relating, *inter alia*, to supply without invoice, issuance of invoices without supply, and wrongful availment or utilisation of input tax credit. Thus, substantially the same class of fraudulent transactions may attract penalty under Section 122 and, where the prescribed monetary threshold is crossed, prosecution under Section 132 of the Act of 2017.

40. The statutory parallel assumes greater significance when the amendments to both provisions, brought into force with effect from 01.01.2021, are noticed. Section 122 was amended by insertion of sub-section (1A), making liable 'any person' who retains the benefit of the specified transaction and at whose instance such transaction is conducted. Simultaneously, the opening words of Section 132(1) were amended from '*Whoever commits any of the following offences*' to '*Whoever commits, or causes to commit and retains the benefit arising out of, any of the following offences*'. Thus, the two provisions came to employ substantially corresponding expressions for identifying the person upon whom the consequences of the fraudulent transaction may fall.

41. Prior to the said amendment, a dichotomy existed between the two provisions, arising from two distinct gaps. The expression '*whoever commits*' in the unamended Section 132 was wide as to the class of persons covered, it was not confined, for instance, to a person holding the status of a taxable person, but narrow as to the role required, in that it extended only to a person who himself committed the offence, and not to one who merely caused it to be committed and

retained its benefit.

42. Conversely, the unamended Section 122 of the Act of 2017 was narrow as to the class of persons covered, fastening liability only upon the taxable person in respect of the specified contraventions, so that a person who caused the transaction to be undertaken and retained its benefit, without himself being the taxable person, fell outside its sweep. The simultaneous amendment of Section 122 by insertion of sub-section (1A) and of Section 132(1) was evidently intended to remove this dichotomy and bring the civil and criminal consequences into closer statutory alignment.

43. Sections 122(1A) and 132 of the Act of 2017 nevertheless remain distinct in the nature of the consequence each imposes. While the former is a monetary penalty, the latter creates offences which, upon the statutory requirements being satisfied, may result in prosecution and imprisonment, graded with reference to the amount involved. Where the amount of tax evaded, or input tax credit wrongly availed or utilised, or refund wrongly taken exceeds Rs. 5 crores, imprisonment may extend to five years with fine; where it exceeds Rs. 2 crores but does not exceed Rs. 5 crores, imprisonment may extend to three years with fine; and where it exceeds Rs. 1 crore but does not exceed Rs. 2 crores, imprisonment may extend to one year with fine.

44. This graded criminal consequence under Section 132 unquestionably attracts the constitutional protection under Article 20(1) of the Constitution, which prohibits the imposition of a penalty greater than that prescribed by the law in force at the time of commission of the act. On the view we have taken, this protection

confines the operation of Section 132 to conduct occurring on or after 01.01.2021. It would be incongruous to hold that Section 132 is so confined, while the corresponding monetary penalty under Section 122(1A) of the Act of 2017, arising from substantially the same conduct and introduced through the same legislative exercise, is treated as available for conduct predating that amendment. In the absence of clear words to that effect, we are unable to attribute such an intention to the Legislature.

45. The monetary penalty envisaged under Section 122(1A), though civil in form and unlike Section 132, which creates an offence punishable with imprisonment, is nevertheless penal in consequence and is imposed for specified contraventions. Its applicability must, therefore, bear a nexus with the date of the underlying act or transaction. The subsequent issuance of a SCN cannot alter the date on which the alleged contravention was committed.

46. The contrary view that the temporal applicability of Section 122(1A) is to be determined by the date of issuance of the SCN, rather than the date of the underlying transaction, does not commend acceptance. A SCN may be issued either promptly or after a considerable lapse of time. To make the applicability of a penal provision dependent upon the date of such notice would mean that identical transactions could attract different legal consequences solely by reason of the time at which the Department initiates proceedings. Such an interpretation would impermissibly make the operation of a penal provision contingent upon a subsequent administrative act.

47. This conclusion is also consistent with and reinforced by the

constitutional protection under Article 20(1) of the Constitution, discussed above. The mere fact that Section 122(1A) forms part of a provision imposing civil penalties cannot, by itself, warrant retrospective application where the consequence is penal in character and the provision was not in force when the underlying transaction occurred.

48. Therefore, the legislative scheme, when viewed as a whole, indicates that the amendment was intended to govern conduct falling within its sweep from the date on which the amended provision came into force. The fact that proceedings in respect of such conduct may be initiated subsequently cannot enlarge the temporal operation of the provision.

49. Accordingly, it is held that the applicability of Section 122(1A) must be determined with reference to the date of the underlying act or transaction, and not the date of issuance of the SCN. Consequently, only transactions or acts occurring on or after 01.01.2021, subject to satisfaction of the statutory twin conditions under Section 122(1A) as construed under Issue (i) above, can attract the penalty contemplated thereunder.

50. In regard to the aforestated, we have also considered the judgment of this Court in ***Bhupender Kumar*** *(Supra)* as well as the judgment of the Gauhati High Court in ***Mayank Bansal*** *(Supra)*, both of which held that the applicability of Section 122(1A) is to be tested with reference to the date of the SCN, and that a continuing fraudulent scheme spanning the cut-off date would attract the provision in its entirety. As regards ***Bhupender Kumar*** *(Supra)*, in particular, it is

evident from a perusal of the judgment that the attention of the Division Bench therein, does not appear to have been drawn to Article 20 of the Constitution and the observations appear to have been obiter observations, made in the course of relegating the parties to alternative statutory remedy. With the greatest respect, for the reasons set out above, we are unable to adopt this reasoning as a general proposition governing the temporal applicability of a penal provision of this nature.

51. Instead, we are in respectful agreement with the view expressed by the Bombay High Court in ***Amit Manilal Haria*** *(Supra)*, where it was held, invoking Article 20(1) of the Constitution, that a person cannot be penalised under a provision that was not in force at the time the alleged act was committed, and there could be no retrospective application of Section 122(1A) to the period prior to 01.01.2021. We adopt this reasoning on the question of temporal applicability alone, while, as recorded under Issue (i) above, respectfully declining to follow the same judgment insofar as it confines the expression 'any person' to a 'taxable person'.

Re: Objection as to Maintainability/Alternative Remedy

52. Learned counsel for the Respondents had urged, relying upon ***Mafatlal Industries Ltd.*** *(Supra)* and ***Embassy Property Developments Pvt. Ltd.*** *(Supra)*, that the Petitioners ought to be relegated to the alternative and efficacious remedy of appeal under Section 107 of the Act of 2017, and the present petitions, at best, raise questions of erroneous exercise of jurisdiction rather than want of jurisdiction. We are unable to accept this submission as a bar to the

exercise of our jurisdiction under Article 226 in the present batch.

53. As noticed at the outset, the present Petitions raise substantial and recurring questions of law concerning the interpretation and temporal applicability of Section 122(1A) of the Act of 2017, upon which divergent views have been expressed by this Court, the Bombay High Court and the Gauhati High Court. The resultant uncertainty warranted an authoritative determination of the questions of law. In such circumstances, the existence of an alternative statutory remedy under Section 107 would not, in our considered view, preclude this Court from exercising its discretionary jurisdiction, particularly where the questions raised are purely legal and of general application. The determination herein would, thereafter, govern the consideration of the individual cases by the competent statutory authorities.

54. However, we make it clear that our consideration is confined strictly to the two questions of law framed hereinabove. We have expressed no opinion on the factual question as to whether any particular Petitioner has, in fact, retained the benefit of the transaction or caused the same to be conducted at his instance; whether the transaction in question occurred before or after 01.01.2021; or whether the allegations against any individual Petitioner satisfy the twin requirements of Section 122(1A) of the Act of 2017, as construed by us, are questions involving appreciation of facts and evidence. Accordingly, they are left open for determination by the Appellate Authority under Section 107 of the Act of 2017, in accordance with the law declared in this judgment.

CONCLUSION:

55. In view of the foregoing discussion, we answer the questions framed in paragraph no.3 as follows:

i. the expression ‘any person’ occurring in Section 122(1A) of the Act of 2017 is not confined to a ‘taxable person’, and includes any person, whether or not registered or liable to be registered, who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or (ix) of Section 122(1), and at whose instance such transaction is conducted.

ii. Section 122(1A) of the Act of 2017 applies prospectively and is attracted only in respect of transactions or acts committed on or after 01.01.2021, irrespective of the date on which the Show Cause Notice is issued.

56. Having answered the questions of law as above, the Petitioners are at liberty to file statutory appeals under Section 107 of the Act of 2017 against the respective impugned Orders-in-Original.

57. The Appellate Authority shall determine, in light of the observations made hereunder, as to whether the facts of each case satisfy the requirements of Section 122(1A) of the Act of 2017 as construed above, and whether the transactions attributed to each Petitioner fall within the period on or after 01.01.2021.

58. The Appeals, if filed within a period of 4 weeks from the date of judgment, shall not be dismissed on the ground of limitation and shall be considered on merits.

59. In view of the aforesaid terms, the present Petitions, along with the pending applications, are disposed of, with liberty to approach the Appellate Authority.

ANIL KSHETARPAL, J.

BHARAT PARASHAR, J.

SEPTEMBER 29, 2026
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