THE ORACLE

MANGALURU BRANCH (SIRC) E-NEWSLETTER

VOLUME 02 | ISSUE 06| JULY- AUGUST 2025 | MANGALURU

JULY 2025

TABLE OF CONTENTS

Upcoming Events in August 2025

Seminar on Taxation of Trusts & other issues under the Income Tax Act

Independence Day

CHAIRMAN'S MESSAGE

CA. Prashanth Pai K.

Chairman- ICAI Mangaluru Branch

Dear Members,

I am glad to bring your notice that, July month has been a truly rewarding month for our branch, thanks to your unwavering support and active participation in all seminars organised by us. We successfully conducted all our planned programs, further strengthening our commitment to professional growth and community service.

As planned we have organized two impactful Career Guidance Programs—one at Alvas Educational Institutions, Moodabidre on 10th July and another at Excel PU College, Guruvayanakere on 27th July 2025. The overwhelming response from students has encouraged us to plan more such initiatives in the coming months.

We also took a meaningful step towards environmental sustainability by joining hands with SICASA for a Plantation Drive at Seva Bharathi Infosys Foundation School, Montepadavu on 26th July 2025, where over 50 saplings were planted. Such initiatives reflect our shared responsibility towards society and nature.

The Annual General Meeting (AGM) was held on 27th July 2025 at ICAI Bhavan, Padil, where key matters, including the adoption of financial statements, were discussed. Your active engagement in these processes is deeply appreciated.

Considering the extended due dates for IT filings, the Managing Committee has decided to pause seminars until 15th September 2025 to allow members to focus on their professional commitments. However, the seminar on "Income Tax Implications on Trusts & Assorted Issues in Income Tax Act" on 2nd August and Independence Day Celebrations on 15th August, will proceed as scheduled.

As we navigate this busy season, I extend my best wishes to all of you for a smooth and successful ITR filing period. Your expertise and dedication not only uphold the integrity of our profession but also significantly contribute to the nation's progress through taxation.

Let me conclude with an inspiring thought:

"Success is not just about achieving greatness but about inspiring others to achieve it with you."

Warm regards,
CA Prashanth Pai K
Chairman,
Mangalore Branch of ICAI

From the Editor's Desk
CA. B Krishnananda Pai

Dear Esteemed Members,
Warm greetings from the Mangaluru Branch of SIRC of ICAI!

July has always been a special month for our fraternity, and this year was no exception. We began the month by celebrating CA Day on July 1—a moment to reflect on the proud legacy of our profession. Over the decades, Chartered Accountants have stood at the forefront of financial stewardship, governance, and policy advocacy. Our collective contribution to nation-building, whether in public service, industry, or practice, remains both inspiring and humbling.

This month, our profession also mourned the passing of CA T. N. Manoharan, Past President of ICAI and a towering figure in the accounting world. His distinguished career was marked by exceptional leadership, deep technical expertise, and an unwavering commitment to ethics. Beyond his professional accomplishments, he was admired for his humility, mentorship, and service to the community. His contributions have left an indelible mark on our profession, and his legacy will continue to guide future generations of Chartered Accountants.

The month also brought the CA Examination results, a turning point for many aspiring professionals. Heartfelt congratulations to those who have earned the designation of "Chartered Accountant" and now embark on a journey of service and responsibility.

From a professional standpoint, July marked the start of the second quarter of the financial year—an opportune time to review work plans, assess client deliverables, and ensure compliance calendars are on track. With regulatory frameworks evolving rapidly, staying updated is not optional but essential. Recent GST clarifications, changes in TDS provisions, and MCA updates require our attention to ensure accuracy in advisory and execution.

Sports too added vibrancy to the month. The India–England Test series entered its decisive stages, offering cricket lovers sessions of classic red-ball competition—complete with nail-biting spells and memorable batting displays.

This edition of the E-Bulletin once again carries valuable contributions from our members—articles that showcase technical expertise, practical insights, and thoughtful perspectives. I thank each contributor for enriching this platform and encourage more members to come forward with their writings.

As we move ahead, let us remain steadfast in upholding the values of our profession—integrity, independence, and excellence—while continuing to adapt to the ever-changing business landscape.

Wishing you all a purposeful and progressive August!

Articles

CA. Ritesh Arora

Amritsar

1. Whether refund of unutilized ITC can be claimed on account of closure of business despite it not being covered under Section 54(3) of the CGST Act?

Yes, the Hon'ble Sikkim High Court in SICPA India Private Limited and Another v. Union of India and Others [W.P.(C) No. 54 of 2023, decided on 10.06.2025 | 2025 (6) TMI 834 – SIKKIM HIGH COURT] held that there is no express prohibition in Section 49(6) read with Section 54 of the CGST Act against allowing refund of unutilized ITC upon closure of business, and disallowing the same would amount to unjust retention of tax without authority of law. The Hon'ble Court allowed refund of ₹4.37 crore ITC accumulated on account of business discontinuance. The petitioners had discontinued their security ink manufacturing operations in Sikkim during 2019–20 and claimed refund of unutilized ITC lying in their Electronic Credit Ledger under Section 49(6) read with Section 54. The department rejected the claim, stating that refund on closure of business is not an eligible category under Section

54(3), which permits refund only in cases of (i) zero-rated supplies without payment of tax, and (ii) inverted duty structure. The Appellate Authority also upheld this view. The petitioners contended that while Section 54(3) carves out specific refund scenarios, Section 49(6) read with the main provision of Section 54 allows refund of any balance remaining after payment of dues, and such right cannot be denied merely because closure is not listed in the proviso to Section 54(3). They relied on the Karnataka High Court's decision in Slovak India Trading Co. Pvt. Ltd. MANU/KA/0709/2006, which permitted refund of CENVAT credit upon business closure. The High Court held that there exists no express bar under Section 49(6) or Section 54 against such refund, and the statute does not permit retention of tax amounts without express legal authority. It further held that Section 49(6) acts as an enabling provision, and the limitations under the proviso to Section 54(3) should not be interpreted to curtail legitimate refunds due under Section 49(6). Rejecting the department's objection on alternate remedy, the Court invoked Article 226 to prevent undue hardship and held that the petitioners were entitled to refund of the unutilized ITC. Accordingly, the Court set aside the appellate order dated 22.03.2023 and allowed the writ petition, directing the department to process the refund.

Author's Comments

A closer look at the statutory scheme of the CGST Act raises concerns about this decision's long-term sustainability.

Section 49(6) does provide that the balance in the electronic credit ledger may be refunded in accordance with Section 54. But this phrase—"in accordance with Section 54"—is critical. Section 54(3) begins with a negative phrase: "No refund of unutilised input tax credit shall be allowed except…", and then restricts refund to two specific scenarios: (i) zero-rated supplies made without payment of tax, and (ii) accumulation due to an inverted duty structure. Closure of business is not one of them. Further, Section 54(9) reinforces this limitation by mandating that no refund shall be granted otherwise than under sub-section (8), and Section 54(8)(b) again ties refund of unutilised ITC back to the conditions under sub-section (3). So, reading the statute holistically, refund of unutilised ITC on account of business closure—however fair it may seem—does not appear to be legally permitted under the current framework.

The Hon'ble Court's interpretation that Section 54(3) is not a prohibitory clause but only a specific enabler (i.e., "permissive" rather than "restrictive") may not withstand scrutiny, especially in light of

the Supreme Court's ruling in VKC Footsteps India Pvt. Ltd. (2021(9)TMI 626- SUPREME COURT), where a strict construction of refund provisions was upheld. Importantly, the High Court has also not addressed Sections 18(4) and 29(5) read with Rule 44, which require reversal and lapse of ITC upon cancellation of registration. That statutory scheme was designed to prevent refund in such closure situations. Therefore, refund of unutilised ITC on business closure, however justified in fairness—remains legally tenuous.

2.Whether parallel proceedings by both Central and State GST authorities for the same cause and period are permissible under the CGST Act?

No, the Hon'ble Himachal Pradesh High Court in Shivalik International v. Joint Commissioner of State Tax & Ors. [CWP No. 7606 of 2025, decided on 06.06.2025 | 2025 (6) TMI 746] held that once proceedings under Section 67 of the CGST/HPGST Act were already initiated by the Central GST Commissioner, the State GST authorities could not initiate parallel proceedings for the same cause and period. The Court clarified that only the initially empowered authority should proceed, while the other may assist but cannot independently prosecute the case.

In this case, the petitioner challenged the jurisdiction of the State GST authorities to issue summons under Section 70 and initiate action under Section 74(5), when similar proceedings under Section 67 had already been initiated by the Central GST authorities. Despite the prior initiation of action by the Central Commissioner, the State authorities proceeded to conduct raids, sealed the premises, and blocked ITC—effectively duplicating proceedings for the same set of facts and financial year.

The High Court found that such parallel proceedings violate the scheme of the CGST Act, which envisages coordination between Central and State authorities, not simultaneous duplication. It held

that once proceedings are initiated by one authority, jurisdiction vests with that authority alone, and the other can only assist, not act independently. Accordingly, the Court directed that only the Central GST Commissioner would continue the proceedings, while the State GST officers may assist but not independently initiate or pursue action. The Court also allowed the petitioner to seek de-sealing of premises before the competent officer and directed the State to hand over charge to the Central authority to enable further lawful action.

Author's Comments

Section 6(2)(b) of the CGST Act aims to prevent duplicative adjudication and protect taxpayers from facing parallel proceedings for the same subject matter. However, the bar is not absolute. Its applicability hinges on whether both proceedings are based on the same cause of action, facts, and period.

In the author's considered view, this decision—though beneficial for the taxpayer—is based on an overbroad reading of Section 6(2)(b). In the present case, Central GST authorities were conducting an investigation under Section 67, while the State GST authorities had already concluded investigation and issued DRC-01A under Section 74, presumably based on independent findings. These are two different stages of enforcement, and unless both proceedings stem from identical allegations or contraventions, they may not necessarily violate the bar under Section 6(2)(b).

Importantly, Section 6(2)(b) bars initiation of fresh proceedings by one authority only when the other has already initiated proceedings on the same subject matter. Therefore:

1.The "Same Subject Matter" Test must be satisfied—i.e., same facts, tax period, and nature of default.

2.Mere overlap in financial years or parties involved does not automatically trigger the bar—the legal grounds and evidentiary basis must also be identical.

In this context, the author believes that the two proceedings—inspection by CGST and issuance of DRC-01A post proceedings u/s 67 by SGST—were not inherently duplicative, and hence Section 6(2)(b) was not strictly violated. The more appropriate application of this provision would have been to bar the CGST authorities from issuing a second SCN on the same cause already addressed by the SGST department—not from continuing an independent investigation under Section 67.

Unfortunately, this defensive nuance appears to have been missed by the Department's counsel, resulting in an adverse ruling due to premature challenge.

3. Whether an assessment order passed in the name of a deceased person, without issuing notice to the legal heir, is valid under GST law?

No, the Hon'ble Madras High Court in Sahaya Kapil Bosco v. Deputy State Tax Officer (ST), Nagercoil Rural Assessment Circle [W.P.(MD) No. 15393 of 2025, decided on 09.06.2025 | 2025 (6) TMI 1154 – MADRAS HIGH COURT] held that an assessment order passed in the name of a deceased assessee is null and void, and liable to be set aside where the legal heir was not given an opportunity to reply to the show cause notice.

In this case, the petitioner was the son and legal heir of Late Shri M. John Bosco, a registered person under GST who passed away on 06.05.2021. Despite the assessee's death, the department proceeded to pass an assessment order dated 20.08.2024 for the tax period April 2019 to March 2020 in the name of the deceased person, without issuing notice to the petitioner or any other legal representative. The petitioner approached the High Court seeking one opportunity to reply to the show cause notice that preceded the impugned order and expressed willingness to cooperate in the proceedings.

The Court found merit in the petitioner's submission and held that since the impugned order had been passed against a dead person, and the petitioner, being the son of the deceased, may have an interest in the business, the assessment could not be sustained. Accordingly, the Hon'ble Court set aside the impugned order and remanded the matter back to the respondent to pass fresh orders after affording an opportunity to the petitioner to reply to the show cause notice. The petitioner was directed to file his reply within 30 days, and the department was instructed to conclude the proceedings within three months.

Author's Comments

This case exemplifies a classic lapse in procedural awareness and strategic pleading before constitutional courts. The petitioner approached the Hon'ble High Court seeking remand for fresh adjudication, rather than challenging the very foundation and jurisdiction of the impugned assessment order. In the author's view, this was a missed opportunity to secure final relief by urging the court to quash the proceedings as non-est, considering that the assessment order was passed in the name of a deceased person without notice to any legal heir.

As a matter of settled law, any proceedings initiated or continued against a dead person are void ab initio. Under Order XXII Rule 1 of the Code of Civil Procedure, 1908, the death of a party renders the proceedings unsustainable if the right to sue does not survive. Similarly, Section 169 of the CGST Act, 2017—which governs service of notice—presumes that communication must be made to a living and legally competent person. Any notice or order passed in the name of a deceased person is a jurisdictional nullity.

Moreover, Section 93 of the CGST Act, 2017, which provides for recovery of tax dues from the estate of a deceased person, only applies where such liability has been determined while the person was still alive. In this case, no such pre-existing determination existed, and hence Section 93 cannot be invoked to justify posthumous proceedings.

Unlike the Income-tax Act, which under Section 159(2)(b) expressly permits initiation or continuation of proceedings against legal representatives, the CGST Act contains no such enabling provision. Therefore, in the absence of legislative support, initiation of fresh proceedings against legal heirs is wholly illegal.

From a litigation strategy standpoint, the better course would have been to seek quashing of the proceedings entirely, citing lack of jurisdiction, absence of proper notice, and legal non-existence of the assessee. The Hon'ble Supreme Court in CIT v. Scindia Steam Navigation Co. Ltd. [1961 AIR SC 1633] clarified that mandamus lies only when specific reliefs have been demanded and denied—which again highlights the importance of framing precise and well-thought-out reliefs while invoking writ jurisdiction.

4. Whether an assessment order passed in the name of a deceased person, without issuing notice to the legal heir, is valid under GST law?

No, the Hon'ble Delhi High Court in the case of M/s K-Nxt Logisticx Private Limited v. Union of India and Anr., [W.P. (C) 3713/2025, decided on 15.05.2025, Citation: 2025 (5) TMI 1436 - DELHI HIGH COURT] held that the department cannot withhold refund solely based on its internal opinion under Section 54(11) of the CGST Act, in the absence of any appeal or pending legal proceeding against the order of the Appellate Authority. In this case, the petitioner, engaged in freight forwarding services, had filed a refund claim for unutilized ITC for January 2023, which was initially rejected by the adjudicating authority. However, the Appellate Authority allowed the refund vide order dated 16.01.2024. Despite this, the department withheld the refund by invoking Section 54(11), citing possible revenue impact. The petitioner approached the High Court seeking release of refund with interest. The Court observed that Section 54(11) can only be invoked where there is an ongoing appeal or legal proceeding and where the Commissioner forms an opinion, after hearing the assessee, that the refund may adversely impact revenue due to malfeasance. The Court emphasized that such an opinion cannot exist in a vacuum and must be supported by a pending challenge to the refund-sanctioning order. Citing earlier precedents, including Shalender Kumar v. CGST Delhi West, the Court ruled that without any filed appeal or stay on the appellate order, the department is bound to grant the refund and cannot withhold it merely by asserting its intent to file an appeal. Accordingly, the Court directed the department to release the refund along with statutory interest under Section 56 within two months, clarifying that any future appeal, if filed, would not affect this direction unless stayed by a competent authority.

Author's Comments:

This judgment reiterates a vital legal safeguard in refund jurisprudence under GST: Section 54(11) cannot be invoked arbitrarily or based on departmental apprehensions alone. The statutory mechanism under Section 54(11) is not a carte blanche to the department to withhold a refund indefinitely. It mandates strict preconditions:

1. There must be an appeal or other proceeding pending;
2. The Commissioner must form an opinion that granting refund may adversely impact revenue, and that too due to malfeasance or fraud; and
3. Opportunity of hearing must be afforded to the assessee.

In the present case, the absence of any pending appeal or stay against the Appellate Authority's refund-allowing order renders the invocation of Section 54(11) wholly without jurisdiction. The Delhi High Court rightly held that departmental opinion cannot exist in a vacuum—it must be predicated on an actual contest to the refund order, such as an appeal or legal proceeding.

Furthermore, once an appellate authority passes a reasoned and final order granting refund, and the same is not stayed or reversed by a higher forum, it attains finality for the department. Intention to file an appeal or internal noting cannot override such finality.

5. Whether seizure of goods in transit without issuance of notice under Section 129(3) and without recording clear reasons in the seizure memo violates the CGST Act and principles of natural justice?

Yes, the Hon'ble Andhra Pradesh High Court in M/s Srinivas Traders v. The Assistant Commissioner of State Tax & Others, [W.P. Nos. 10881, 10883, 10885, 10961 & 10964 of 2025, decided on 07.05.2025, Citation: 2025 (5) TMI 1675 - ANDHRA PRADESH HIGH COURT] held that seizure of goods without issuing a notice under Section 129(3) of the CGST Act and without providing legible reasons in the seizure memo is contrary to law and directed the authorities to follow the due process before taking action under Section 130. In this case, goods of the petitioner were intercepted and seized during transit, and the seizure memos were mere printed formats with a checkbox marked, devoid of specific or legible reasons for the seizure. The petitioner contended that such seizure without meaningful reasons and without issuance of notice under Section 129(3) rendered it impossible to submit a proper explanation. Furthermore, instead of initiating proceedings under Section 129, the department had directly invoked Section 130 without completing the valuation and determination process mandated within seven days. The Government Pleader failed to produce any Section 129 notice, and the notices on record were only under Section 130. The Hon'ble Court found this approach violative of statutory safeguards under the CGST Act and relied on the Supreme Court's ruling in Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405 to assert that reasons cannot be supplemented after the action is taken. The Court directed the authorities to immediately issue Section 129(3) notice, fix liability within three days thereafter after granting hearing, and release the goods under Section 129(1). Proceedings under Section 130 were held impermissible until due process under Section 129 was completed. The Court also emphasized the need for training tax officers in lawful seizure procedures and directed a copy of the judgment be sent to the Commissioner of Commercial Taxes for appropriate action.

Author's Comments:

This decision reinforces the foundational legal principle that no tax, interest, or penalty can be levied without issuance of a proper show cause notice. Under the GST law, issuance of SCN in Form MOV-07 under Section 129(3) is a mandatory statutory prerequisite before any demand can be imposed for goods detained in transit. This SCN must be self-explanatory, intelligible, and disclose specific reasons—mere ticking of boxes or use of printed formats does not meet the test of legality. A vague or non-speaking notice robs the taxpayer of their right to respond meaningfully, thus violating principles of natural justice.

Moreover, the substitution of the opening words of Section 130 vide the Finance Act, 2021, now makes it contingent upon initiation of proceedings under another provision, such as Section 67 (inspection/search/seizure) or Section 129 (detention/seizure during transit). Section 130 cannot operate in isolation. Therefore, where there is no valid initiation or conclusion of proceedings under Section 129, the seizure itself becomes unlawful, and any confiscation proceedings under Section 130 built upon such seizure are also legally tainted. In GST jurisprudence, seizure is a necessary precondition for lawful confiscation—without lawful seizure, confiscation has no legal legs to stand on.

Critically, while the Court rightly held the proceedings to be procedurally defective, it still granted liberty to the department to issue a fresh SCN, thereby curing a fatal lapse and allowing the revenue to correct its illegal action. In the author's considered opinion, this undermines the sanctity of due process. A proceeding that fails at the threshold of legality—such as one without SCN or lawful seizure—ought to be given finality (quietus), not a chance of resurrection. Such reliefs only prolong litigation and place the burden of departmental lapses unfairly on the taxpayer.

6. Whether rejection of appeal merely for manual filing, despite demerger and technical impediments, is valid under GST law?

No, the Hon'ble Calcutta High Court in Ultratech Cement Limited v. Commissioner (Appeals), CGST & CE, Siliguri [WPA 137 of 2025, decided on 14.05.2025, Citation: 2025 (5) TMI 1729 - CALCUTTA HIGH COURT] held that such a rejection without appreciating the demerger and factual matrix is unsustainable, and remanded the matter for fresh adjudication by a different officer. The petitioner, Ultratech Cement, had acquired the cement business of M/s Century Textiles & Industries Ltd. under

under a demerger sanctioned by NCLT effective from 01.10.2019, and obtained its own GST registration accordingly. However, despite this legal transition, audit and show-cause proceedings for the FY 2017-18 to 2019-20 were initiated in the name of Century Textiles, culminating in an adjudication order dated 15.12.2023 also passed in that name. The said order was never uploaded on the portal of Ultratech Cement. Due to this, the petitioner was compelled to file the appeal manually with the mandatory pre-deposit. The Appellate Authority, without considering these circumstances or the fact that the order was never served digitally, summarily rejected the appeal merely because it was manually filed, relying on Rule 108 of the CGST/WBGST Rules. The department conceded the demerger and admitted that proceedings should have been against Ultratech Cement. Taking note of the situation, the Hon'ble Court directed that the matter be remanded back for adjudication by a different appellate officer and clarified that all orders including the show-cause notice and adjudication order shall be treated as issued to Ultratech Cement, with directions to upload all documents on the correct portal. The writ petition was accordingly disposed of.

Author's Comments:

The judgment reflects judicial pragmatism in recognizing genuine technical and transitional difficulties caused by corporate restructuring. However, from a strategic and legal standpoint, the petitioner missed a vital opportunity to challenge the jurisdiction and legality of the proceedings at the threshold.

Proceedings initiated against a non-existent entity—here, Century Textiles & Industries Ltd., post-demerger—are not merely procedural irregularities but jurisdictional nullities. The legal position is well-settled that any action initiated against a company that has ceased to exist due to amalgamation, merger, or demerger is void ab initio. This doctrine flows from a long line of precedents, including the Supreme Court's decision in Principal Commissioner v. Maruti Suzuki India Ltd. [(2020) 4 SCC 245], where it was categorically held that issuance of a notice to a non-existent entity is a nullity and cannot be cured by subsequent participation in proceedings.

In GST, Section 87 of the CGST Act, 2017 clearly provides that the transferee (amalgamated/demerged entity) is liable for the dues of the transferor entity. However, this liability arises only when proceedings are initiated properly against the transferee entity, not otherwise. In this case, the failure to serve notice and pass orders in the name of Ultratech Cement—which had legally

stepped into the shoes of Century Textiles—amounted to a fundamental defect in jurisdiction.

Moreover, under Section 169 of the CGST Act, service of notice or order must be effective and legal. A notice or order uploaded on the wrong portal or against the wrong GSTIN does not constitute valid service. Such an omission robs the taxpayer of an opportunity to respond and violates principles of natural justice.

The High Court's decision to remand the matter is commendable in terms of procedural fairness. Yet, in the author's considered opinion, a more effective strategy would have been to seek quashing of the entire adjudication process as void, on the ground of lack of jurisdiction due to non-service of valid notice on the correct legal entity. Accepting a remand often prolongs litigation, gives the department a chance to correct fatal errors, and fails to grant the finality a taxpayer rightly deserves when legal process is violated at inception.

7. Can ITC be denied to the purchaser merely because the supplier failed to deposit the tax with the government, despite the purchaser having paid tax through banking channels and submitted all supporting documents?

No, the Hon'ble Allahabad High Court in M/s R.T. Infotech vs. Additional Commissioner Grade 2 and 2 Others, [Writ Tax No. 1330 of 2022, decided on 30.05.2025, citation: 2025 (6) TMI 116 - ALLAHABAD HIGH COURT], held that denial of ITC solely on the ground of supplier's default, despite payment through proper banking channels, is unsustainable in law. The petitioner, a registered supplier and authorized user of M/s Bharti Airtel Ltd.'s services, had purchased recharge coupons against seven tax invoices for the FY 2017–18. ITC of ₹28.52 lakhs was claimed based on these invoices, with CGST and SGST components of ₹14.26 lakhs each duly paid through RTGS. A discrepancy was later pointed

out through an ASMT-10 notice under, which the petitioner responded to via ASMT-11, explaining that the invoices pertained to Bharti Airtel and that full payment had been made. Despite this, a SCN under Section 73 was issued on the ground that ITC was wrongly claimed under Section 16(2)(c), arguing that the supplier failed to deposit the tax. The petitioner contended that proceedings should instead be initiated against Bharti Airtel Ltd. and not him. The adjudication resulted in demand of ITC reversal, penalty, and interest. The appellate authority affirmed the order. The High Court, however, found merit in the petitioner's case, noting that all payments were made through banking channels and there was evidence that proceedings had already been initiated against the defaulting supplier. The Court observed that a purchasing dealer cannot be expected to compel the supplier to file returns or deposit tax, and failure by the supplier should not result in denial of ITC to the purchaser. Citing the Supreme Court's decision in Suncraft Energy Pvt. Ltd. [2023 (12) TMI 739 - SC ORDER] and the Madras High Court's ruling in D.Y. Beathel Enterprises [2021 (3) TMI 1020 - MADRAS HIGH COURT] , 2022 (58) G.S.T.L. 269 (Mad.), the Court held that simultaneous action must be taken against the supplier. The impugned orders were thus quashed, and the matter remanded back for reconsideration with a direction to pass a fresh speaking order after hearing all stakeholders within two months.

Author's Comments:

While this judgment of the Allahabad High Court has been widely celebrated, a closer legal scrutiny reveals that it does not grant any conclusive relief to the taxpayer but merely remands the matter for reconsideration, leaving the threat of denial of ITC still alive. This case is emblematic of systemic failure—both in investigative rigor and procedural discipline—where the entire SCN was premised on assumptions without concrete findings or disclosure of departmental action against the defaulting supplier. In such circumstances, before proceeding with the reversal of ITC, the department is duty-bound to furnish the following essential information to the taxpayer:

1. Nature and quantum of demand raised against the supplier;
2. Return filing and tax payment history of the supplier from the date of registration;
3. Actions taken under Section 79 in cases where GSTR-1 was filed but GSTR-3B was not;
4. Status of proceedings under Section 73/74 against such supplier;

5. Appeal status of any concluded adjudication;

6. Recovery proceedings initiated under Sections 83 and 93, if any;

7. Copies of all relevant documents forming the basis of the above actions.

In the absence of disclosure of this material information, the demand becomes vague, speculative, and contrary to principles of natural justice. The remand may offer temporary respite, but unless SCNs are contested on these jurisdictional and procedural grounds from the outset, relief on merits may remain elusive. This case thus underscores the need for robust litigation strategy grounded in due process challenges rather than relying solely on sympathetic judicial interpretation.

8. Whether service of notices only through GST portal without exploring alternative modes under Section 169 of the CGST Act justifies ex parte adjudication?

No, the Hon'ble Madras High Court in Tvl. Fashion Falls Fabrics vs. Assistant Commissioner (ST), Tiruppur [W.P. No. 20245 of 2025, decided on 06.06.2025 | 2025 (6) TMI 923 – MADRAS HIGH COURT] held that though service through the GST portal is statutorily valid, exclusive reliance on the portal without resorting to alternative modes under Section 169(1)—especially in cases of non-response, renders the adjudication process ineffective and contrary to the principles of natural justice. The Court set aside the ex parte order and remanded the matter for fresh adjudication.

In this case, the petitioner challenged an ex parte adjudication order dated 17.02.2025 passed under DRC-07 for FY 2020–21, which was issued after multiple show cause notices and reminders were uploaded only on the GST portal. The petitioner contended that he was unaware of the proceedings due to limited digital literacy and had relied on a consultant who failed to monitor the portal.

No notices were served by any alternative mode such as Registered Post with Acknowledgement Due (RPAD), despite the absence of any response from the petitioner. The petitioner expressed readiness to deposit 10% of the disputed tax and requested an opportunity to present his defense.

The High Court observed that while uploading notices on the portal is a valid mode of service, it becomes a mere formality when the taxpayer does not respond and the officer fails to consider other modes of service prescribed under Section 169(1). The Hon'ble Court emphasized that fulfilling only the technical formality of notice service without ensuring effective communication defeats the purpose of adjudication and leads to avoidable litigation. It held that the adjudicating authority ought to have sent notices through RPAD or other valid modes once repeated non-response was noticed.

Accordingly, the Court set aside the impugned order subject to the petitioner depositing 10% of the disputed tax within four weeks. Upon compliance, the matter was remanded for fresh consideration after giving due opportunity, including a 14-day notice for personal hearing, and passing a reasoned order in accordance with law.

Author's Comments

Section 169 of the CGST Act lays down as many as 14 distinct modes for service of any notice, order, or communication. This wide range of options isn't incidental—it underscores the legislative intent that the most appropriate and effective mode must be adopted, depending on the facts and circumstances of the particular taxpayer.

Serving a notice through a mode that is least likely to reach the Noticee defeats the very purpose of the law. The primary object of any notice is to "set the law in motion" by informing the taxpayer of the allegations and giving them an opportunity to respond. Therefore, if the Proper Officer chooses a method that is unlikely to reach the taxpayer—especially when there are indications of non-receipt or non-response—it amounts to a failure to "put the taxpayer at notice" and violates the due process of law.

Service of notice is not a mere procedural formality; it must be real, effective, and result in actual knowledge to the recipient. The mode selected should be one that ensures prompt and reliable delivery of the notice.

This principle was also affirmed by the Hon'ble Madras High Court in Sakthi Steel Trading v. Assistant Commissioner (ST) [2024(2) TMI 357- MADRAS HIGH COURT], where the Court held that if the

assessee failed to respond to a notice sent via email, it was incumbent upon the GST authorities to serve the same through at least one more alternate mode. The absence of such additional service, especially in the face of silence from the taxpayer, rendered the order unsustainable and warranted remand.

9. Whether a second adjudication order can be sustained under GST when the same issue has already been concluded in favour of the taxpayer by a prior order?

No, the Hon'ble Kerala High Court in M/s Winter Wood Designers & Contractors India Pvt. Ltd. v. State Tax Officer & Ors. [WP(C) No. 9086 of 2025, decided on 09.06.2025 | 2025 (6) TMI 1251 – KERALA HIGH COURT] held that once a show cause proceeding is concluded by a speaking order accepting the taxpayer's explanation, a second order on the same subject matter by another officer is impermissible and constitutes an error apparent on record which ought to be rectified under Section 161 of the CGST Act. The petitioner received two show cause notices pertaining to the same discrepancies in assessment for FY 2017–18. The first SCN culminated in Order dated 08.12.2023 (Ext. P7), wherein proceedings were dropped after considering the taxpayer's reply. However, a second SCN was also issued by another officer on the very discrepancy, culminating in a contradictory adjudication order dated 30.12.2023 (Ext. P8), confirming the demand. The petitioner immediately pointed out the error through an email dated 01.02.2024 (Ext. P9) and subsequent representations. While the authority acknowledged the duplication, it rejected the rectification request via Ext. P14 on the ground that no application was uploaded on the GST portal within the six-month time limit under Section 161. The Hon'ble Court held that the power of rectification under Section 161

is not restricted to applications filed through the portal but can also be exercised suo-motu by the officer if an error apparent on record comes to light. Since the department admitted that the same issue had been adjudicated twice with conflicting conclusions, and the petitioner had raised the matter within the statutory timeline, the non-exercise of rectification powers merely on procedural grounds was unsustainable. The Court observed that Ext. P8 (demand order) could not survive when Ext. P7 (order dropping proceedings) had already attained finality, and the passing of two contradictory orders amounted to a manifest error on record. Accordingly, the Court quashed both Ext. P8 and Ext. P14, restoring the matter as concluded by Ext. P7.

Author's Comments

Once a proceeding has attained finality, the department cannot re-litigate the same cause of action merely through a different officer or route. GST law does not permit a second bite at the cherry unless there is fresh investigative material or a different cause of action—and none was present here.

In this case, the first adjudicating authority had already applied its mind, considered the reply, and dropped proceedings through a speaking order. The second officer, perhaps unaware or careless, proceeded to issue a fresh SCN and pass an order on the same subject matter. This is not just a procedural lapse—it goes to the root of jurisdiction and legality.

More importantly, once the error was flagged by the taxpayer within the statutory timeframe, and the department itself admitted the duplication, the rectification should have been carried out without insisting on technicalities like uploading a fresh application on the portal. Proviso 2 to Section 161 clearly states that where the error is evident and admitted, rectification must follow. The Hon'ble Court rightly held that suo-motu powers of rectification exist independent of procedural formalities.

10. Whether a second adjudication order can be sustained under GST when the same issue has already been concluded in favour of the taxpayer by a prior order?

No, the Hon'ble Allahabad High Court in Bharat Mint & Allied Chemicals v. State of U.P. and Another [Writ Tax No. 2527 of 2025, decided on 30.05.2025 | 2025 (6) TMI 1243 – ALLAHABAD HIGH COURT] held that a notice under Section 74 of the CGST/UPGST Act cannot be sustained when there is no allegation of fraud, wilful misstatement, or suppression of facts. In this case, the petitioner was initially issued a Show Cause Notice under Section 73 covering ten issues. The taxpayer submitted a detailed reply. The adjudicating authority, in the Section 73(9) order dated 20.02.2025, accepted the explanation for several issues but stated that further investigation was needed for points 1, 6, 8, and 10. Instead of completing the inquiry under Section 73, the officer issued a fresh SCN under Section 74 dated 25.02.2025 covering the same issues, without any specific allegation of fraud, suppression, or wilful misstatement. The petitioner challenged the jurisdictional validity of this second SCN.

The High Court noted that the language of the SCN under Section 74 lacked the necessary allegations required to invoke the provision—namely, fraud or suppression. The Court relied on its earlier decision in M/s Vadilal Enterprises Ltd. v. State of U.P 2025 (6) TMI 1149 - ALLAHABAD HIGH COURT. where it was held that a mere reference to unresolved issues or lack of time to verify earlier replies is not a sufficient ground to invoke Section 74. Since the notice did not contain the statutory ingredients justifying invocation of Section 74, and the officer had already exercised jurisdiction under Section 73 for the same issues, the subsequent SCN under Section 74 was declared without

jurisdiction. The notice was quashed with liberty to initiate fresh proceedings in accordance with law, if warranted.

Author's Comments

Section 74 is not a fallback or substitute for incomplete adjudication under Section 73. The law draws a clear distinction between the two sections—Section 74 is reserved for fraud, wilful misstatement, or suppression, while Section 73 governs all other cases of tax shortfall or wrong availment.

In this case, the department initially acted under Section 73, acknowledged the taxpayer's replies for most issues, but for a few residual ones, instead of completing the same proceedings, it chose to switch gears and issue a fresh SCN under Section 74—without any new facts or fresh material, and without alleging fraud or suppression. That's a clear jurisdictional overreach.

The Hon'ble Court rightly emphasized that unless the statutory ingredients for invoking Section 74 are explicitly alleged and factually supported, such action is non est in law. The mere administrative difficulty or time constraints in verifying responses under Section 73 cannot justify a shift to a harsher provision like Section 74.

For invoking Section 74 of CGST Act, 2017 where evasion of tax is alleged,
it implies: (i) non-payment of tax, (ii) coupled with knowledge of liability, (iii)
while indulging in active concealment of information designed to render
detection difficult and (iv) deriving gains from this misadventure. In the absence of these special circumstances, jurisdiction under Section 74 cannot be invoked.

Also worth noting is the support from Section 75(2) and CBIC Circular 185/17/2022-GST dated 27.12.2022, which allow a downgrade from Section 74 to 73 when ingredients of fraud are not made out. In the same breath, this provision cannot be read to mean that proceedings can also be upgraded from Section 73 to 74.

11. Whether penalty under Section 129(1)(a) can be levied on goods meant for zero-rated export supply where no tax is payable on such supply?

No, the Hon'ble Gujarat High Court in case of Marcowagon Retail Pvt. Ltd. & Anr. v. Union of India & Ors.[2025:GUJHC:27848 – Gujarat High Court – R/Special Civil Application Nos. 2234 & 2236 of 2025, decided on 24.04.2025, 2025 (6) TMI 1236 - GUJARAT HIGH COURT] held that in absence of any tax payable on Zero rated supplies, such supplies are considered akin to exempt supplies for tax payable as a nil rate and penalty of Rs.25,000/- to be imposed. The petitioners, engaged in exports to UAE, purchased goods from Gurugram via a sister concern with the intent of export. The goods were detained, and penalty was imposed under Section 129(1)(a) of the CGST Act, treating the transaction as taxable. The Hon'ble Court, after examining the GST framework, held that zero-rated supplies under Section 16(1) of the IGST Act are treated as inter-State supplies but are not subject to tax liability, even though tax may be leviable. The Court clarified that zero-rated supplies cannot be equated with exempt supplies, as exporters are entitled to input tax credit and refund mechanisms under Sections 54(3), Rule 89, and Rule 96 of the CGST Rules. Since the goods were meant for export and tax was not payable, the penalty imposed at 200% of tax was unjustified. The Court modified the impugned order dated 19.11.2024 passed in Form GST MOV-09 and reduced the penalty to ₹25,000/-, directing the release of the bank guarantee. However, costs of ₹10,000/- per petition were imposed for suppression of relevant facts regarding the routing of orders through sister concerns, which was later sought to be amended.

Author's Comments:

This ruling brings much-needed clarity to an increasingly litigated area—levy of penalty under Section 129(1)(a) in cases involving zero-rated export supplies. The key issue often raised by taxpayers is that when no tax is payable on the supply, imposition of a penalty calculated at 200% of such "non-existent tax" is not only harsh but legally unsustainable.

While it is true that zero-rated supplies are not exempt in the strict sense—since they permit refund of input tax credit—they nonetheless carry a net tax liability of nil in many practical cases. This raises a fundamental interpretational issue: Can penalty be imposed when the tax payable itself is zero? The Court rightly distinguished zero-rated from exempt supplies but held that where tax is not payable, a reduced penalty of ₹25,000 suffices.

Importantly, provisions of section 129 of the CGST Act do not require authorities to establish mens rea (intent to evade). However, absence of requirement of mens rea cannot automatically justify the highest possible penalty, echoing the view of the Hon'ble Calcutta High Court in Asian Switch Gear [MAT No. 32 of 2023, 2023(12)TMI 236 - CALCUTTA HIGH COURT], which relied on Saw Pipes Ltd [2023 (4) TMI 761 - SUPREME COURT] . and Shri Ram Mutual Fund [2006 (5) TMI 191 - SUPREME COURT]. In effect, the principle emerging is that discretion must be judicially exercised, even in strict liability regimes.

12. Can goods be denied release under Section 129(1)(a) merely because the supplier disclaimed the tax invoice, even though the consignee produced valid documents?

Yes. The Hon'ble Calcutta High Court in case of Sandip Kumar Pandey & Anr. vs. Assistant Commissioner of State Tax, Bureau of Investigation (South Bengal), Asansole Unit & Ors. [2025 (5) TMI 1604 – Calcutta High Court, WPA 9544 of 2025, decided on 07.05.2025] held that since the petitioner is unable to establish ownership over the goods, provisional release cannot be allowed u/s 129(1)(a) and the petitioner must pursue remedy u/s 107. The petitioner, a registered taxpayer based in Delhi, had procured goods from M/s Ghosh Enterprises in Kolkata, supported by a tax invoice dated July 20, 2024, and an e-way bill dated July 21, 2024. While the goods were being transported to Delhi, they were intercepted in Asansole and detained. An order under Section 129(3) was issued in the name of the driver. The petitioner filed a writ petition and was allowed to apply for release under Section 129(1)(a). However, the department rejected the application, citing that the alleged supplier, Siddhartha Ghosh, denied having issued the invoice or being registered under GST. As a result, the release was permitted only under Section 129(1)(b) upon payment of 50% of the value of the goods as penalty. The petitioner argued that the tax invoice in his name was sufficient proof of ownership and relied on a binding CBIC Circular dated 31.12.2018 and the unreported decision in Surojit Das MAT 279 of 2023. The Court noted that ordinarily a tax invoice would suffice to prove ownership, but in this case, since the purported supplier had come forward to deny the invoice and existence of any business, the benefit of the circular could not be extended. The Court held that the petitioner had not been given an opportunity to confront the supplier's statement and must be allowed to establish ownership before the appellate authority. The Court accordingly directed that if the petitioner files an appeal within 4 weeks, it should be decided on merits within 16 weeks, and the petitioner should be allowed to cross-examine the supplier whose statement was relied upon to reject ownership.

Author's Comments:

This decision underscores a nuanced yet critical interpretation of Section 129(1)(a) in cases involving denial of invoice authenticity by the supplier. The GST framework, particularly Rule 138A read with Sections 68 and 129, mandates that where valid documents like a tax invoice and e-way bill are produced and there is no discrepancy in the description of goods, the authority has no jurisdiction to doubt the transaction unless it is shown to be fraudulent or non-genuine through cogent material.

In the present case, the department relied solely on a post-detention disclaimer from the supplier to conclude that the invoice was bogus—without affording the petitioner an opportunity to rebut such

statement or lead evidence of ownership. This approach is legally suspect.

Further, if the department believed the transaction was entirely fictitious and the supplier non-existent, it ought to have invoked proceedings under Section 130 (confiscation) instead of continuing under Section 129. The statutory scheme does not permit an arbitrary switch from clause (a) to (b) merely to impose harsher consequences, especially in absence of foundational allegations of intent to evade tax.

Moreover, Section 75(7) acts as a statutory limitation on altering the demand beyond what was proposed. The officer, having initiated proceedings under 129(1)(a), could not have unilaterally converted the action to 129(1)(b) without fresh show cause proceedings. This fundamental procedural error, if timely argued, would have severely undermined the department's case.

From a strategic standpoint, the taxpayer failed to assert jurisdictional objections and procedural infirmities before the High Court, instead relying on factual contentions.

Author's Comments:

This decision underscores a nuanced yet critical interpretation of Section 129(1)(a) in cases involving denial of invoice authenticity by the supplier. The GST framework, particularly Rule 138A read with Sections 68 and 129, mandates that where valid documents like a tax invoice and e-way bill are produced and there is no discrepancy in the description of goods, the authority has no jurisdiction to doubt the transaction unless it is shown to be fraudulent or non-genuine through cogent material.

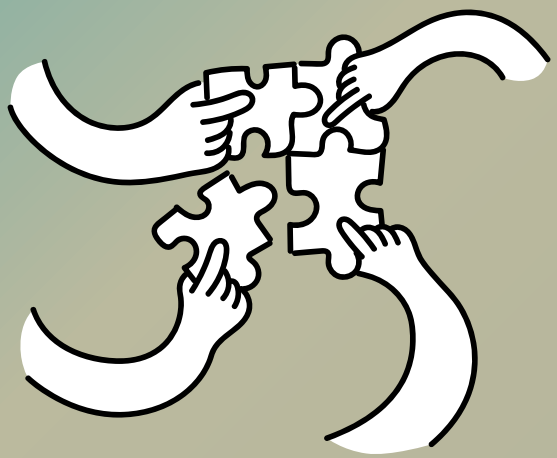
In the present case, the department relied solely on a post-detention disclaimer from the supplier to conclude that the invoice was bogus—without affording the petitioner an opportunity to rebut such such statement or lead evidence of ownership. This approach is legally suspect.

Further, if the department believed the transaction was entirely fictitious and the supplier non-existent, it ought to have invoked proceedings under Section 130 (confiscation) instead of continuing under Section 129. The statutory scheme does not permit an arbitrary switch from clause (a) to (b) merely to impose harsher consequences, especially in absence of foundational allegations of intent to evade tax.

Moreover, Section 75(7) acts as a statutory limitation on altering the demand beyond what was

proposed. The officer, having initiated proceedings under 129(1)(a), could not have unilaterally converted the action to 129(1)(b) without fresh show cause proceedings. This fundamental procedural error, if timely argued, would have severely undermined the department's case.

From a strategic standpoint, the taxpayer failed to assert jurisdictional objections and procedural infirmities before the High Court, instead relying on factual contentions.



THE MONTH GONE BY - JULY 2025

Chartered Accountants Day Celebrations - 1st July 2025

THE MONTH GONE BY - JULY 2025

TDS Outreach Program

4TH July 2025

THE MONTH GONE BY - JULY 2025

Career Guidance Program at Alvas Institutions by CA Sumanth Bhat and CA Upendra Shenoy on 09TH July 2025

THE MONTH GONE BY - JULY 2025

World Youth Skills Day

15th July 2025

THE MONTH GONE BY - JULY 2025

One Day Seminar on Income Tax and Company Law Compliance

19TH July 2025

THE MONTH GONE BY - JULY 2025

Career Guidance Program at Excel P U College, Guruvayankere, Belthangady by **CA** Akashdeep Pai and **CA** Upendra Shenoy on 28TH July 2025

THE MONTH GONE BY - JULY 2025

Annual General Meeting
28TH July 2025

EDITORIAL BOARD

CA. Prashanth Pai K

CA. B Krishnananda Pai

The Managing Committee of Mangalore Branch of SIRC of ICAI invites articles, write-ups and other similar materials in the areas of Accounting, Taxation or any other subject of professional interest for publishing in its E-Bulletin. The articles submitted for consideration of publication should be of 2000-4000 words typed. Soft copy of the article, along with the author's photograph may be sent to mangaluru@icai.org .

Feedback on this e-bulletin can be sent to the editorial team at mangaluru@icai.org .

Committee Members

CA. Daniel Marsh Pereira | CA. Mamta Rao | CA. Balasubramanya N |
CA. Bantwal Nithin Baliga | CA. Gaurav R Hegde