



Input Tax Credit and Litigation for genuine recipient

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What is a Jurisdictional Fact



Absence of Jurisdictional Fact

A "jurisdictional fact" is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.-Arun Kumar & Others vs Union Of India & Ors on 15 September, 2006 AIR ONLINE 2006 SC 636

Absence of Jurisdictional Fact

21. Stated simply, the fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'. If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act. It is also well settled that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.-Carona Ltd vs M/S Parvathy Swaminathan & Sons on 5 October, 2007 2007 AIR SCW 6546

Summary of Judgements on absence of Jurisdictional Fact

- The fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'.
- If the jurisdictional fact does not exist, the court, authority or officer cannot act.
- Thus, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the Court or Tribunal has power to decide adjudicatory facts or facts in issue.
- No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it
- No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly

**Proper
Officer for
Levy of
Penalty
Under
Section 122
and 125**



Section 122-(1) Where a taxable person who-

Section 123-If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, *the proper officer may direct*

Section 124-If any person required to furnish any information or return under section 151,-

Section 125-Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

Section 127-*Where the proper officer is of the view Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 1[or section 74A] or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.*

Persons who are not liable to pay tax under Sections 73/74 of the CGST Act may very well be liable for penalties as described in the twenty-one sub-sections of Section 122(1) and under sub-sections 122(2) and 122(3)

Section 122 of the CGST Act, 2017 specifically deals with 'offences' and therefore the same has to be read with Section 134 of the CGST Act. Hence, he argues that penalty for such offences would have to be imposed by the criminal courts and cannot be adjudicated by the proper officer. To support his arguments he submits that unless there is determination of tax under Section 73 and Section 74 of the CGST Act, no penal provision can be invoked under Section 122 of the CGST Act as there is a requirement for a predicate offence of tax evasion before any penal action can be taken under Section 122. Upon a reading of Section 2(107) of the CGST Act, it is clear that a taxable person means a person who is registered or liable to be registered under Section 22 and Section 24 of the CGST Act. Upon perusal of Section 22 and Section 24, it is clear that persons liable for registration would include persons who are exclusively in the supply of goods even if the same are exempted. Section 24, in fact provides for compulsory registration in certain cases. Accordingly, since the petitioner is registered under the CGST Act, he would fall under the definition of taxable person as mentioned in the very opening sentence of Section 122 of the CGST Act. The argument that one would have to be first taxed under Sections 73/74 and only thereafter penalty can be imposed is fallacious in nature and is accordingly rejected. Under the present GST regime, persons who are not liable to pay tax under Sections 73/74 of the CGST Act may very well be liable for penalties as described in the twenty-one sub-sections of Section 122(1) and under sub-sections 122(2) and 122(3).- **[2025] 175 taxmann.com 22 (Allahabad) Patanjali Ayurved Ltd. v. Union of India**

Proper officer/adjudicating officer has the power to adjudicate on the penalty provision provided under Section 122 of the CGST Act

Powers under Section 74 of the CGST Act are undoubtedly exercised by a proper officer. Explanation 1(ii) to Section 74 of the CGST Act clearly indicates that it is the proper officer who initiates the proceedings under Sections 73 and 74 is also the person who is initiating the proceedings under Sections 122 and 125 as the explanation provides for proceedings against the persons liable to pay penalty under Sections 122 and 125 are deemed to be concluded when the proceedings against the main person charged under Sections 73 and 74 are concluded- [2025] 175 taxmann.com 22 (Allahabad) Patanjali Ayurved Ltd. v. Union of India

Proper officer/adjudicating officer has the power to adjudicate on the penalty provision provided under Section 122 of the CGST Act

s. Furthermore, Rule 142(5) provides that the summary of the order under Sections 52/62/63/64/73/76/122/123/124/125/127/129/130 shall be uploaded electronically in form GST DRC-07, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned. The above clearly indicates the intention of the legislature that the proper officer is required to issue show cause and thereafter adjudicate and pass order under Section 122 of the CGST Act and nothing further remains in doubt. The arguments placed by Mr. Datar with regard to the above issue, though very eloquently presented do not seem to hold any water when one looks at the entire scheme of the Act as indicated above. **In light of the same, one may conclude that a proper officer/adjudicating officer has the power to adjudicate on the penalty provision provided under Section 122 of the CGST Act- [2025] 175 taxmann.com 22 (Allahabad) Patanjali Ayurved Ltd. v. Union of India**

Who is the Proper officer for levy of Penalty U/Sec 122 and 125

- On a bare reading Section 122 and 125, it is obvious that unlike Section 123 and 129, there is no mention of proper officer to levy penalty and these sections only mention penalty amount for the offences.
- It is only Rule 142(1) which refers to the proper officer and provides that he shall serve, along with the notice issued section 122 or section 125, a summary thereof electronically in FORM GST DRC-01.
- Reference when made to Circular No. 3/3/2017-GST, Dated 05-07-2017 also does not throw any light as there is no mention of Section 122 in that Circular.
- The first is reference to Section 127 wherein Assistant or Deputy Commissioner Tax is considered as the proper officer. Can it be considered that reference to Section 127 covers Section 122 and 125 as well. This cannot be a case, because when we refer Rule 142(1), it contains reference to Section 122, Section 125 and Section 127 separately. Therefore all these sections shall be construed separately.

Who is the Proper officer for levy of Penalty U/Sec 122 and 125

- Also, one more interesting aspect which further makes the matter murkier, is that Circular No. 3/3/2017-GST Dated 05-07-2017 makes Superintendent of Central Tax as the proper officer for Sub-rule (1), (2), (3) and (7) of Rule 142. Now Rule 142(1) provides for issuance of notice under section 52 or section 73 or section 74 or section 74A or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 but then interestingly there is a separate authorisation for Section 73, 74, 76, 123, 127, 129 and 130 in Circular No. 3/3/2017-GST Dated 05-07-2017.
 - a) Since 122 and 125 does not make any reference to the proper officer unlike other sections, therefore whoever officer is seized of any of the proceedings under the Statute, he can levy penalty under Section 122 and 125 in those proceedings on being satisfied that offence leviable to penalty under those sections has been committed and interestingly, there is no monetary prescribed for this unlike for Section 73 and 74, or
 - b) We have to draw analogy from reference of Section 127 in Circular No 3/3/2017 Dated 05-07-2017 or
 - c) We have to draw analogy from reference to Rule 142(1) of CGST Rules in Circular No 3/3/2017 Dated 05-07-2017.

Who is the Proper officer for levy of Penalty U/Sec 122 and 125

		vi. Sub-rule (2) of Rule 140			
3.	Deputy or Assistant Commissioner of Central Tax	<p>i. Sub-sections (5), (6), (7) and (10) of Section 54</p> <p>ii. Sub-sections (1), (2) and (3) of Section 60</p> <p>iii. Section 63</p> <p>iv. Sub-section (1) of Section 64</p> <p>v. Sub-section (6) of Section 65</p> <p>¹ [***]</p> <p>vii. Sub-sections (2), (3), (6) and (8) of Section 76</p> <p>viii. Sub-section (1) of Section 79 ix. Section 123 x Section 127</p> <p>ix. Section 123</p> <p>x. Section 127</p> <p>xi. Sub-section (3) of Section 129</p> <p>xii. Sub- sections (6) and (7) of Section 130</p> <p>xiii. Sub- section (1) of Section 142</p> <p>xiv. Sub-rule (2) of Rule 82</p> <p>xv. Sub-rule (4) of Rule 86</p>			<p>xvi. Explanation to Rule 86</p> <p>xvii. Sub-rule (11) of Rule 87</p> <p>xviii. Explanation 2 to Rule 87</p> <p>xix. Sub-rules (2) and (3) of Rule 90</p> <p>xx. Sub-rules (2) and (3) of Rule 91</p> <p>xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92</p> <p>xxii. Explanation to Rule 93</p> <p>xxiii. Rule 94</p> <p>xxiv. Sub-rule (6) of Rule 96</p> <p>xxv. Sub-rule (2) of Rule 97</p> <p>xxvi. Sub-rules (2), (3), (4), (5) and (7) of Rule 98</p> <p>xxvii. Sub-rule (2) of Rule 100</p> <p>xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101</p> <p>xxix. Rule 143</p> <p>xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144</p> <p>xxxi. Sub-rules (1) and (2) of Rule 145</p> <p>xxxii. Rule 146</p> <p>xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147</p> <p>xxxiv. Sub-rules(1),(2) and (3) of Rule 151</p> <p>xxxv. Rule 152</p> <p>xxxvi. Rule 153</p> <p>xxxvii. Rule 155</p> <p>xxxviii. Rule 156</p>

Who is the Proper officer for levy of Penalty U/Sec 122-Circular no. 254 Dated 27.10.2025

Table-I

<i>S. No.</i>	<i>Designation of the officer</i>	<i>Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder</i>
(1)	(2)	(3)
1.	a. Additional or Joint Commissioner of Central Tax, b. Deputy or Assistant Commissioner of Central Tax, c. Superintendent of Central Tax	i. Sub-sections (1), (2), (3), (6), (7), (8), (9) and (10) of Section 74 A. ii. Section 122. iii. Rule 142(1A) of the CGST Rules, 2017.

Proper Officer for issue of Draft Audit Report



Who is the Proper officer to issue Draft Audit Report

- Rule 101(4) of the CGST Rules, 2017 provides that the the proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

3.	Deputy or Assistant Commissioner of Central Tax	<p>vi. Sub-rule (2) of Rule 140</p> <p>i. Sub-sections (5), (6), (7) and (10) of Section 54</p> <p>ii. Sub-sections (1), (2) and (3) of Section 60</p> <p>iii. Section 63</p> <p>iv. Sub-section (1) of Section 64</p> <p>v. Sub-section (6) of Section 65</p> <p>¹ [***]</p> <p>vii. Sub-sections (2), (3), (6) and (8) of Section 76</p> <p>viii. Sub-section (1) of Section 79 ix. Section 123 x Section 127</p> <p>ix. Section 123</p> <p>x. Section 127</p> <p>xi. Sub-section (3) of Section 129</p> <p>xii. Sub- sections (6) and (7) of Section 130</p> <p>xiii. Sub- section (1) of Section 142</p> <p>xiv. Sub-rule (2) of Rule 82</p> <p>xv. Sub-rule (4) of Rule 86</p>	<p>xvi. Explanation to Rule 86</p> <p>xvii. Sub-rule (11) of Rule 87</p> <p>xviii. Explanation 2 to Rule 87</p> <p>xix. Sub-rules (2) and (3) of Rule 90</p> <p>xx. Sub-rules (2) and (3) of Rule 91</p> <p>xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92</p> <p>xxii. Explanation to Rule 93</p> <p>xxiii. Rule 94</p> <p>xxiv. Sub-rule (6) of Rule 96</p> <p>xxv. Sub-rule (2) of Rule 97</p> <p>xxvi. Sub-rules (2), (3), (4), (5) and (7) of Rule 98</p> <p>xxvii. Sub-rule (2) of Rule 100</p> <p>xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101</p> <p>xxix. Rule 143</p> <p>xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144</p> <p>xxxi. Sub-rules (1) and (2) of Rule 145</p> <p>xxxii. Rule 146</p> <p>xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147</p> <p>xxxiv. Sub-rules(1),(2) and (3) of Rule 151</p> <p>xxxv. Rule 152</p> <p>xxxvi. Rule 153</p> <p>xxxvii. Rule 155</p> <p>xxxviii. Rule 156</p>
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**Proper Officer for
Determination of
Tax in case a
person is ineligible
for composition
scheme**



Who is the Proper officer to decide ineligibility of composition scheme and determination of liability

Withdrawal from Composition Scheme- Rule 6(4)-Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 or has contravened the provisions of the Act or provisions of this Chapter, he may issue a notice to such person in FORM GST CMP-05 to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under section 10 shall not be denied.

Rule 6(5)-Upon receipt of the reply to the show cause notice issued under sub-rule (4) from the registered person in FORM GST CMP-06, the proper officer shall issue an order in FORM GST CMP-07 within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.

Proceedings for Determination of Tax in case a taxpayer is ineligible for Composition Scheme-Section 10(5)-If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) 11 or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 14[or section 74A] shall, mutatis mutandis , apply for determination of tax and penalty.

CIRCULAR NO. 1/1/2017, DATED 26-6-2017

SECTION 3, READ WITH SECTION 2(91), OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND SECTION 20 OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017- OFFICERS UNDER THIS ACT - NOTIFIED PROPER OFFICER - PROPER OFFICER FOR PROVISIONS RELATING TO REGISTRATION AND COMPOSITION LEVY UNDER THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 OR THE RULES MADE THEREUNDER

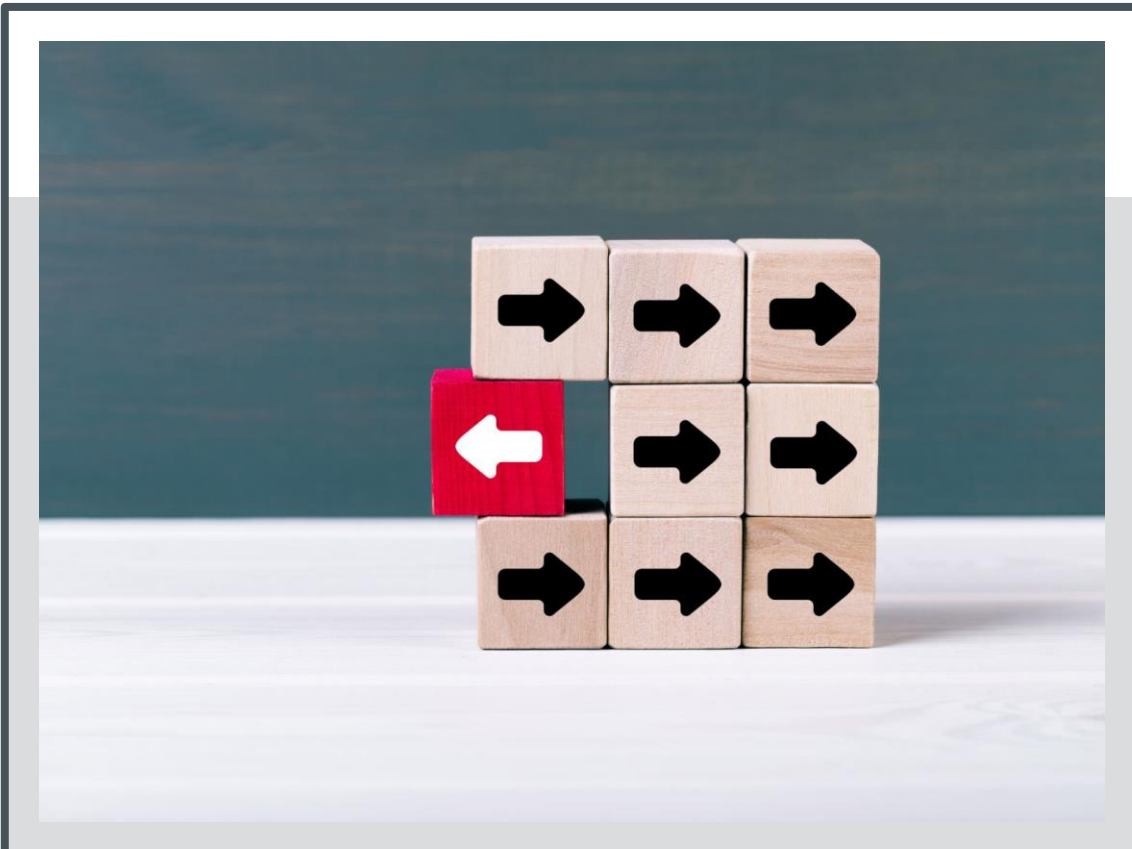
CIRCULAR NO. 1/1/2017, DATED 26-6-2017
[AS AMENDED BY [CIRCULAR NO. 223/17/2024-GST, DATED 10-7-2024](#)]

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the Act) read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and subject to sub-section (2) of section 5 of the said Act, the Board, hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the said Act or the rules made thereunder mentioned in the corresponding entry in Column (3) of the said Table:—

¹ Table

Serial Number	Designation of the Officer	Functions under section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	Assistant or Deputy Commissioners of Central Tax and Assistant or Deputy Directors of Central Tax	i. Sub-section (5) of section 10
2.	Superintendent of Central Tax	i. Sub-section (8) of section 25 ii. Proviso to sub-section (1) of section 27 iii. Section 28 iv. Section 29 v. Section 30 vi. Rule 6 vii. Rule 9 viii. Rule 10 ix. Rule 12 x. Rule 16 xi. Rule 17 xii. Rule 19

WHETHER ITC IS A VESTED RIGHT OR CONCESSION



Article 300A

No person shall be deprived of his property save by the authority of law.

WHETHER ITC IS A VESTED RIGHT OR CONCESSION

Godrej and Boyce Mfg. Co. Pvt. Ltd. and Others versus Commissioner of Sales Tax and Others, (1992) 3 SCC 624

We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of setoff is itself a boon or a concession.

Jayam and Company versus Assistant Commissioner and Another, (2016) 15 SCC 125

It is a trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the “dealers” to get the benefit of ITC but it is a concession granted by virtue of Section 19

Karnataka Value Added Tax Act, 2013 in State of Karnataka versus M.K. Agro Tech.(P) Ltd., (2017) 16 SCC 210:-

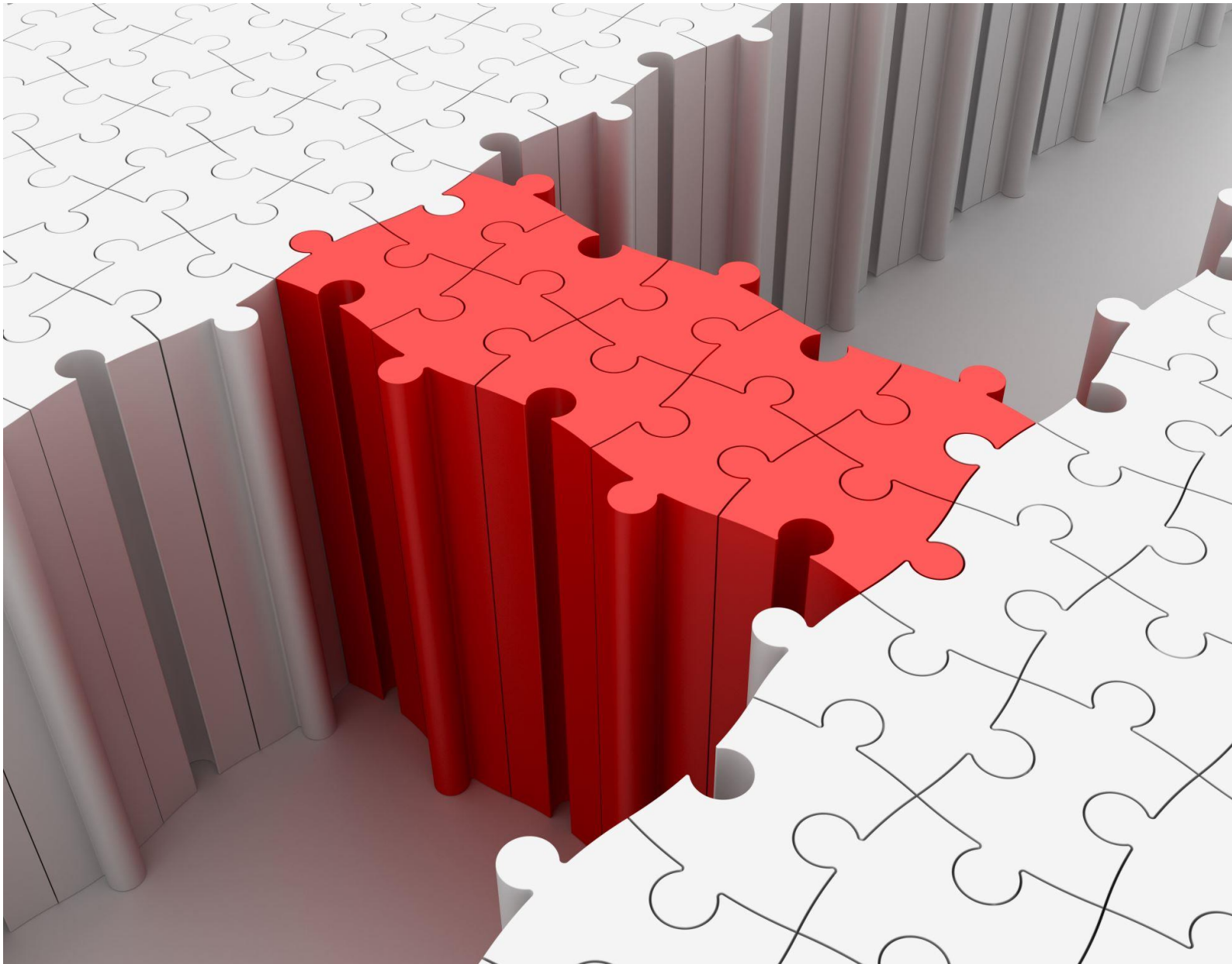
Keeping in view this objective, the legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the legislature and the courts are not to tinker with the same.

Ald Automotive Pvt Ltd vs The Commercial Tax Officer And Ors ... on 12 October, 2018:-

The input credit is in nature of benefit/concession extended to dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the Statute.

Eicher Motors Ltd. And Anr vs Union Of India And Ors. Etc on 28 January, 1999 (SC) :- Thus the assessee became entitled to take the credit of the input instantaneously once the input is received in the factory on the basis of the existing Scheme.

Collector Of Central Excise, Pune ... vs Dai Ichi Karkaria Ltd. Etc. Etc on 11 August, 1999 (SC):- It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof.



Burden of Proof

Section 59. Self-assessment and Section-155-Burden of Proof

Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

What does Bhartiya Sakshya Adhinyam says

Section-104 of Bhartiya Sakshya Adhinyam-Burden to Prove

104. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

- (a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.
- (b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts

What does Bhartiya Sakshya Adhiniyam says

105. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore, the burden of proof is on A.

(b) A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies. If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore, the burden of proof is on B.

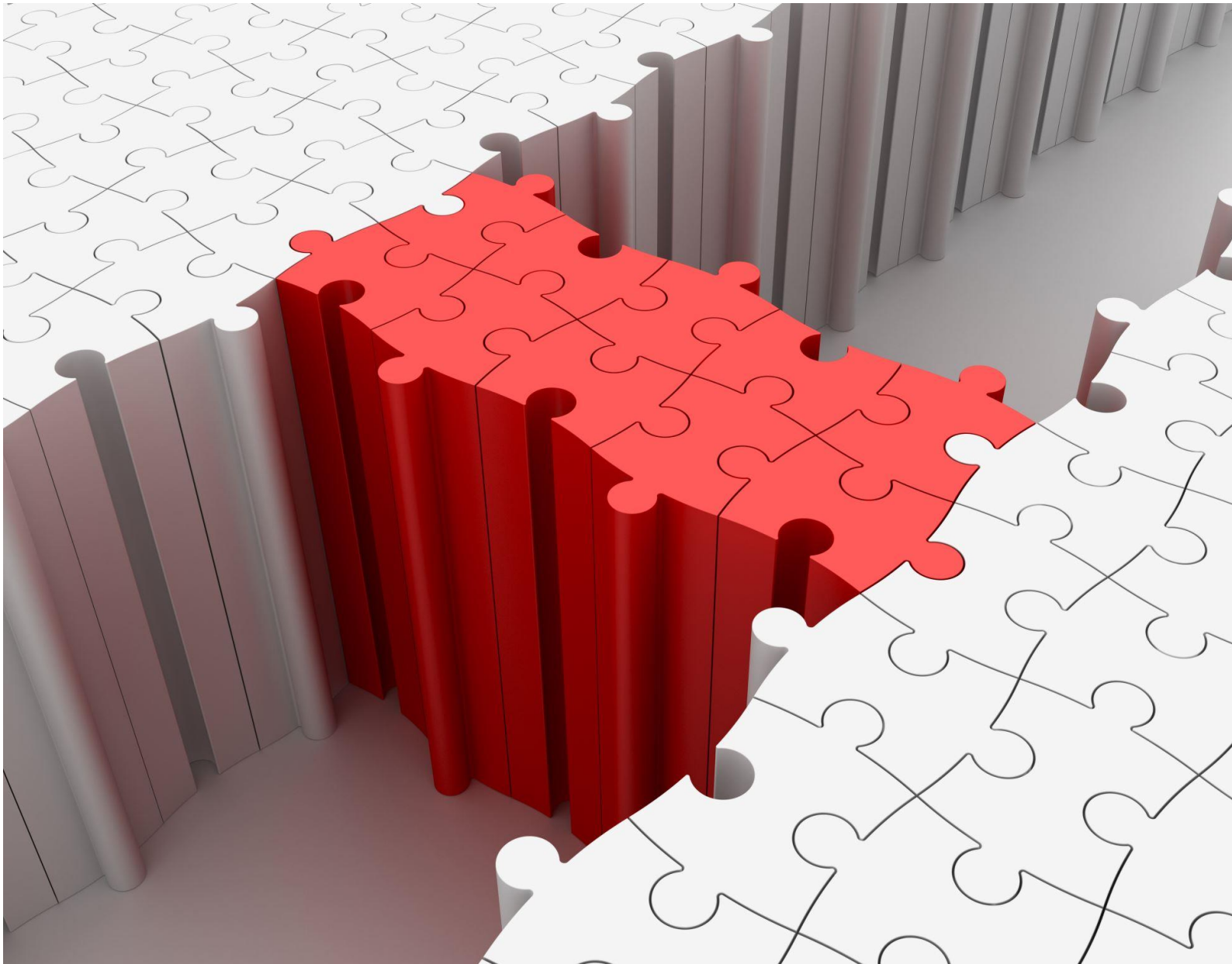
Mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden

The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by

- A) furnishing the name and address of the selling dealer,
- B) Details of the vehicle which has delivered the goods,
- C) Payment of freight charges,
- D) Acknowledgement of taking delivery of goods,
- E) Tax invoices and payment particulars etc.

The aforesaid information would be in addition to tax invoices, particulars of payment etc.

In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. **At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003.-The State Of Karnataka vs M/S. Ecom Gill Coffee Trading Private ... on 13 March, 2023**



ITC to
Genuine
Purchaser

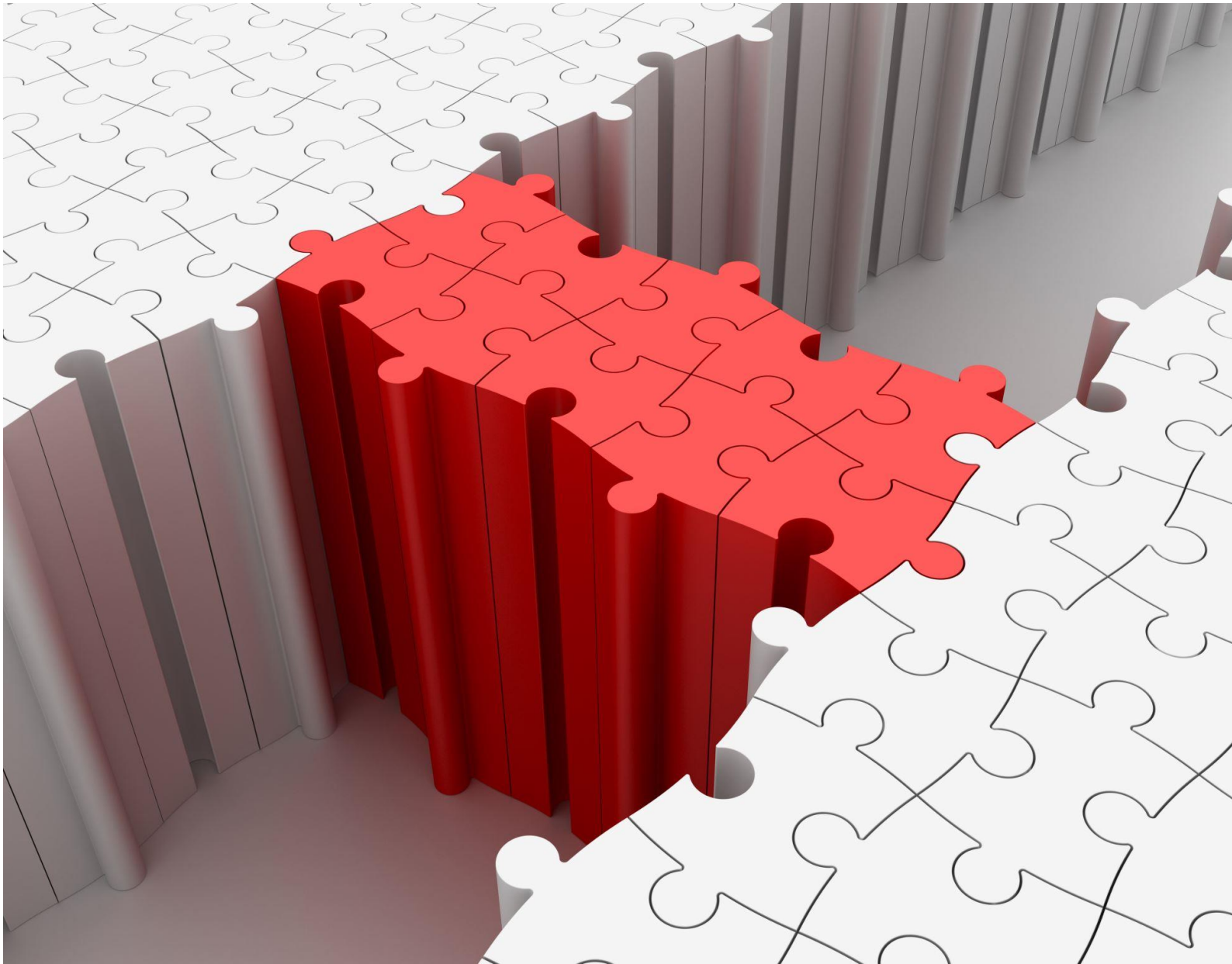
Department would have to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC

Supreme Court dismissed the Revenue's appeal against the Delhi HC ruling which allowed the benefit of VAT ITC even if tax not paid by the seller.

The High Court held that in the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would have to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC.

The Apex Court held that *"In light thereof, as we find that there is no dispute regarding the selling dealer being registered on the date of transaction and neither the transactions nor invoices in questions have been doubted, based on any inquiry into their veracity, we do not find a good reason to interfere with the order of the High Court directing for grant of ITC benefit after due verification. The appeals lack merit and are, accordingly, dismissed."*

The Commissioner Trade And Tax Delhi Vers M/S Shanti Kiran India (P) Ltd. - Supreme Court 2025



Building
up a
foundation
of a case

Cases for ITC Denial

- **Registration cancelled from a retrospective date**
 - a) Merely Stating that registration cancelled from a retrospective date
 - b) Non-existent Supplier
 - c) Supplier filed GSTR-1 but did not file GSTR-3B
 - d) Supplier neither filed GSTR-1 and nor file GSTR-3B
 - e) Supplier availed Bogus ITC
 - f) No movement of the Goods
- **What happens if on the same ground registration is cancelled from a prospective date**

Mode of Enquiry in case of Retrospective Cancellation-Diamond Beverages (P.) Ltd. vs. Assistant Commissioner of CGST & CX [2023] 157 taxmann.com 479 (Calcutta)

Brief about the Proceedings-Appellants were issued a SCN intimating certain discrepancies. Appellants, submitted their reply placing necessary information. After receipt of reply, in which assessee had pointed out that relevant details have not been furnished, another notice enclosing the relevant details was issued. Thereafter appellants submitted their reply. Subsequently, authority issued Pre-SCN in DRC-01A in which the earlier discrepancies were reiterated and appellants were advised to pay the tax failing which, it was stated that SCN will be issued U/Sec 73(1). Appellants submitted their reply to Pre-SCN and on perusal of which Court stated that it was a detailed reply giving all factual details and also placing reliance on certain decisions of the Court as well as Hon'ble Supreme Court. Appellants sought for opportunity of hearing.

What Petitioner requested in reply to Pre-SCN-Appellants requested authority to investigate at supplier's end for allegation of retrospective cancellation of supplier's registration and allegations, where suppliers filed returns for concerned financial year.

Observation of the Court about what was required to be done by the authority on such request-The Court stated that what was required to be done the authority, was to examine reply given in the **Pre-SCN** and considering the nature of allegations in Pre-SCN, it goes without saying that authority had to investigate or inquire into the matter by taking note of relevant details at the supplier's end. If that was not done, true facts would not emerge and consequently, issuance of any SCN will be a fait accompli.

Mode of Enquiry in case of Retrospective Cancellation-Diamond Beverages (P.) Ltd. vs. Assistant Commissioner of CGST & CX [2023] 157 taxmann.com 479 (Calcutta)

Observation of the Court about whether such investigation was done by the Authority- Court observed that in the instant case, the authority did not any such investigation and proceeded to issue impugned SCN under section 73(1) on Dt 16-08-2023. Observation of the Court about whether SCN discussed the contention of the Petitioner-Court observed that in the impugned SCN, except extracting the reply given by appellants, authority did not deal with contentions, which were placed by appellants in reply to Pre-SCN. Thus, this was sufficient to hold that impugned SCN was issued without due application of mind.

Reliance by Petitioner on decision in Suncraft Energy Private Limited and subsequent dismissal of SLP - Court observed that appellant placed reliance on decision in Suncraft Energy Private Limited and submitted that facts dealt in said case were identical. It was also submitted that SLP filed before the Hon'ble Supreme Court was dismissed.

Mode of Enquiry in case of Retrospective Cancellation-Diamond Beverages (P.) Ltd. vs. Assistant Commissioner of CGST & CX [2023] 157 taxmann.com 479 (Calcutta)

Observation by the Court as no investigation was conducted and issuance of SCN by non-application of mind- Court thus observed that be as it may, it was satisfied that since impugned SCN was issued without due application of mind and without considering reply to Pre-SCN and without conducting any investigation at the supplier's end, SCN would call for interference. Matter remanded back by the Court-For the above reasons, appeal was allowed and consequently, writ petition was allowed and impugned SCN was set aside and matter was remanded back to adjudicating authority to stage of Pre-SCN Dt 31-03-2023.

What was required to be done by Officer before taking decision whether or not SCN was to be issued U/Sec 73-The Court directed the adjudicating authority to first inquire/investigate into the matter from supplier's end, collect necessary information, afford an opportunity to appellants to put forth further submission on such information and thereafter afford an opportunity of personal hearing and then proceed to take a decision as to whether SCN under section 73(1) was to be issued or otherwise.

Denial of ITC basis upon information received from Intelligence Unit-Do's and Dont's-Safecon Lifescience (P.) Ltd. vs. Additional Commissioner Grade 2 [2025] 179 taxmann.com 12 (Allahabad)[09-09-2025]

- **Facts of the Case**
- **Notice issued on the basis of Information received about the supplier-** Notice under section 74 was issued on the basis of information being received from the office of Pr. Chief Commissioner, Central Intelligence Unit, Central Excise & Central Tax Vadodara Zone that supplier from whom purchases were made has wrongly been shown and on the said premise proceedings were initiated.
- **Petitioner submitted detailed reply and with all evidences of movement and payment-** Petitioner submitted its reply on all points including actual movement of goods, payment of tax through banking channel as well as filing of return of both petitioner and supplier.
- **Observation of the Court**
- **No weightage given to reply by the taxpayer by the assessing authority or by the appellate authority-** No weightage to the reply filed by the taxpayer in the order passed by the assessing authority and nor was any material brought to rebut the same while rejecting appeal.
- **Order passed by the Appellate authority with closed eyes basis upon the information received-** Order of the first appellate authority was passed only on the basis of the information sent by office of the Pr. Chief Commissioner with closed eyes.

Denial of ITC basis upon information received from Intelligence Unit-Do's and Dont's-Safecon Lifescience (P.) Ltd. vs. Additional Commissioner Grade 2 [2025] 179 taxmann.com 12 (Allahabad)[09-09-2025]

- Reliance placed by the Court
- **Instruction Dated 13.12.2023**-When government noticed that under the garb of Section 74 of the Act various dealers are being harassed, issued a circular dated 13.12.2023 where it has specifically been stated that proceedings under section 74 of the Act can be initiated if there is a fraud or wilful mis-statement or suppression of fact to evade payment of tax and not otherwise.
- **Khurja Scrap Trading Company v. Additional Commissioner Grade-2 (Appeal) [2025] 178 taxmann.com 48 (All)**- The principle laid down in this decision was that when the transaction took place, selling dealer was duly registered, had also uploaded GSTR - 1/1FF/GSTR 3-B and was registered when transaction took place, therefore no adverse view should have been taken against the petitioner. Therefore, in the present case, court observed that record shows that neither any finding with regard to fraud has been noticed nor mis-statement nor suppression of fact has been recorded at any stage.
- **Continental Foundation Joint Venture v. CCE 2007taxmann.com532(SC)**-Suppression, wilful misstatement, fraud, collusion
- Apex Court had an occasion to consider meaning 'suppression', 'wilful misstatement' and observed that since expression 'suppression' has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion", therefore, it has to be construed strictly.

Denial of ITC basis upon information received from Intelligence Unit-Do's and Dont's-Safecon Lifescience (P.) Ltd. vs. Additional Commissioner Grade 2 [2025] 179 taxmann.com 12 (Allahabad)[09-09-2025]

- **Meaning of suppression**-Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of act.
- **Meaning of Wilful misstatement**-An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.
- **Meaning of Fraud and collusion**-It is evident that the intent to evade duty is built into these very words.
- **Scope of 'contravention of any of the provisions of this Act or Rules'**- These words are qualified by the immediately following words 'with intent to evade payment of duty.
- **Intent to evade in suppression and wilful mis-statement**- Mis-statement or suppression of facts are qualified by the word 'wilful', which means with intent to evade duty. There cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Mis-statement of fact must be wilful.
- Thus, court in the present case, concluded that incorrect statement, unless made with the knowledge that it was not correct, will not be a ground of wilful misstatement or suppression and no inference can be drawn if full information was disclosed without intent to evade payment of tax.

Denial of ITC basis upon information received from Intelligence Unit-Do's and Dont's-Safecon Lifescience (P.) Ltd. vs. Additional Commissioner Grade 2 [2025] 179 taxmann.com 12 (Allahabad)[09-09-2025]

- Shortcomings of the proceedings by the Department
- No relied upon documents provided- Neither Report nor material used against the petitioner was provided to the petitioner.
- **What should have been the process in confirming the demand over the taxpayer-** The information sent by the Central Intelligence Unit must be verified by the authority before using the same against the registered dealer. It is the duty of the officers to verify facts with all angles before being used against the registered dealer.
- **No verification of the details of the supplier-** The record shows that the allegations were made against the supplier from whom purchases were made, that its registration was cancelled earlier. However, no finding was recorded that the supplier who sold the goods in question to the petitioner was involved in any irregularity, alleged parties which supplied goods to the supplier was the only sale made to it and record does not confirm that the supplier made sale only to the petitioner.
- **Proceedings under section 74 of the Act cannot be justified, once actual movement of goods as well as payment of tax proved by the petitioner to which no rebuttal is brought on record-** Vital material brought on record by the taxpayer were neither disbelieved/ reversed nor any cogent material rebutting the same was brought on record. Once actual movement of goods as well as payment of tax was proved to which no rebuttal was brought on record at any stage, proceedings under section 74 cannot be justified.
- **What has not been done in the case in hand by the authorities-** Authorities have neither recorded any findings of fraud nor wilful misstatement nor suppression of fact to evade payment of tax, therefore, proceedings under section 74 out not to have been initiated.
- Held by the Court-In view of the above, the impugned order was held to be non-sustainable.

Basis of inference drawn for concluding that the supply was incorrectly shown by the supplier for passing irregular credit

6. Copy of the said communication dated 13.06.2025 issued by DGGI, Raipur Zonal Unit has also been annexed to the written instructions. Relevant to the issue, paragraph nos. 2 and 3 thereof read as below:

"2. During the course of investigation, M/s Maa Kamakhaya Trading, Surguja (GSTIN:22FRAPR2468R1Z5) was found to be non-operational at its registered premise.

3. Further, it was revealed that M/s Maa Kamakhaya Trading, Surguja had passed on fraudulent Input Tax Credit (ITC) without supply of any goods on the basis of bogus invoices issued to different tax payers. The details of such the recipient firms (falling under Uttar Pradesh State GST) are enclosed as Annexure - 'A'."

It was held that

13. Reliance placed by learned Standing Counsel on the 'Reason' as mentioned in the Electronic Credit Ledger, namely, "Supplier found nonfunctioning", does not fulfill the requirement of Rule 86A(1) of the Rules. To the extent it does not reflect any application of mind to reach that conclusion, though it may be true that the respondent no.2 had received intimation dated 13.06.2025 from the DGGI, Raipur Zonal Unit, perusal of that communication (as extracted above) only reflects a generic/non-specific conclusion drawn by that authority.

14. Clearly, the investigation by DGGI, Raipur Zonal Unit, would be ex-parte against the petitioner. In any case, no order appears to have been passed in the case of M/s Maa Kamakhaya Trading, Sarguja, or the present petitioner as may support the inference drawn by respondent no.2, that the said supplier had reflected bogus transactions in favour of the petitioner.

15. When the Rules require recording of 'reasons to believe', 'in writing', there must not only exist material that may give rise to the belief necessary to be recorded by respondent.2 but that the reasons must spring from material on record/leading to the belief. It necessarily involves application of mind by the competent authority, here respondent no.2, to the facts brought before it.-[2025] 180 taxmann.com 342 (Allahabad) HIGH COURT OF ALLAHABAD Pilcon Infrastructure (P). Ltd. v. State of U.P

Ingredients for Section 74 to be invoked to be satisfied by the notice and in absence of the same, it is an absence of jurisdictional fact

Mandatory issue of SC-In other words, the show cause notice itself must make it clear whether the assessee is being charged with fraud, or suppression or wilful misstatement. It is quite possible that one or all the three elements could be present. It is not enough to merely impute the offending the conduct to the assessee. The show cause notice itself must disclose the entire material on which the proper officer has arrived at such a conclusion. In the very nature of things, the inference can only be a tentative one.

Reliance was placed on the

- a) Decision in by Hon'ble Supreme Court in the decision *Tamil Nadu Housing Board v. CCE* 1994 taxmann.com 267 (SC)/1994 74 ELT 9 (SC) held that in case the provision provides for extension of limitation period, it has to be construed strictly.
- b) In *Raj Bahadur Narain Sing Sugar Mills Ltd v. UOI* (1997) 6 SCC 81), the Hon'ble Supreme Court while construing Rule 10 of the Central Excise Rules, 1944 held that the party to whom a show cause notice is issued must be made aware that the allegation against him is of collusion or wilfulness statement or suppression of fact and that it is a requirement of natural justice.
- c) The Allahabad High Court in *Safecon Lifescience Private Limited v. Additional Commissioner Grade 2* [2025] 179 taxmann.com 12 (Allahabad)/2025 (9) TMI 919 held that proceedings under Section 74 of the Act could not have been initiated against the petitioner since the authorities have neither recorded any findings of fraud nor wilful misstatement nor suppression of fact to evade payment of tax.
- d) The Hon'ble Supreme Court in *CCE & Customs v. Reliance Industries Ltd.* (2023) 20 SCC 368 held as follows : "14..... since the expression "suppression of facts" is used in the company of terms such as fraud, collusion and wilful misstatement, it cannot therefore refer to an act of mere omission, and must be interpreted as referring to a deliberate act of nondisclosure aimed at evading duty, that is to say, an element of intentional action must be present.

Held-The court observed that in the case on hand, the show cause notice does not allege that the assessee was guilty of fraud, wilful misstatement or suppression of facts. When that is not even the case of the proper officer, Section 74 could not have been invoked. Presence of one or all the three elements is a sine qua non for taking action under Section 74 of the Act. It is not necessary that the statutory language must be reproduced. If one can cull out their presence by a overall reading of the show cause notice and the impugned order, the requirement of the section can still be said to be satisfied. In other words, both the show cause notice as well as the impugned order must indicate the offending conduct of the assessee.-**Neeyamo Enterprise Solutions (P.) Ltd. vs. Commercial Tax Officer [2025] 180**

No matter to be remanded in case of absence of Jurisdictional fact

15. I am again not persuaded by this submission. When an order passed by the authority is bad in law, it has to be quashed. The order may be set aside either for non-adherence to procedural formalities or on account of the absence of the jurisdictional facts.

Violation of Principle of Natural Justice-Matter may be remanded-Executive orders are often set aside on the ground of violation of principles of natural justice. The statute would provide for issuance of notice. But without issuing such notice, an adverse order would be passed. When such orders are set aside, the writ court has to remand the matter. The authority has to be given liberty to proceed afresh.

Absence of Jurisdictional Fact-But when jurisdictional facts are absent, the order has to be set aside and the court will have to stop at that. The presence of the jurisdictional fact alone confers power on the authority to initiate action and proceed in the matter. Their absence would completely undermine the very foundation itself. In such cases, the question of making a remand does not arise at all.

Pre-requisites of Matter for remand-An order of remand cannot be made mechanically. When the issue goes to the root of the matter touching on the jurisdictional aspect and the issue is answered in favour of the assessee, the writ court will not be justified in remanding the matter.- **Neeyamo Enterprise Solutions (P.) Ltd. vs. Commercial Tax Officer [2025] 180 taxmann.com 480 (Madras)[11-11-2025]**

Pre-determined Mind Set

Section 74(1) of the Act talks about specifying the sum payable by the assessee in the show cause notice. In the case on hand, the authority has used the word "**determined**". There is a ocean of difference between specifying something and determining something. The word "determined" found in the show cause notice cannot be construed as "**specified**". Public orders made by public authorities are meant to have public effect and are intended to affect the acts and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself (vide Commissioner of Police v. Gordhandas Bhanji 1951 SCC OnLine SC 70. **The show cause notices in this case by employing the expression "determination" betray the element of pre-determination on the part of the authority. 17.** Since the show cause notices as well as the impugned orders themselves do not charge the writ petitioner with fraud or wilful misstatement or suppression of facts to evade tax, they stand quashed. Section 74 of the Act could not have been invoked against the petitioner. If the authority can proceed against the petitioner under any other provision such as Section 73 of the Act, he or she is at liberty to do so. - **.-Neeyamo Enterprise Solutions (P.) Ltd. vs. Commercial Tax Officer [2025] 180 taxmann.com 480 (Madras)[11-11-2025]**

Duty of the authorities to verify the said information as to whether at the time of transactions, the firm was in existence or not

Observed- The court observed that It is not in dispute that the petitioner is a registered dealer having GST Registration No.ZD090421000805R for the purchase of Iron Scrap etc. For the period of August, 2018, two purchases were made by the petitioner to which due e-way bills were generated and the payments were shown to be made through banking channels. However, thereafter, the proceedings under Section 74 of the GST Act were initiated against the petitioner on the ground that the registration of the supplier was cancelled subsequent to the transactions in questions while the purchases were disclosed from a non-existing dealer. It is also not in dispute that the supplier filed its return in the forms of GSTR-01 and GSTR-3B. Moreover, it is also not in dispute that without making payment of due taxes, GSTR-3B cannot be generated. Once the tax was paid by the petitioner in the forms of GSTR-01 and GSTR-3B, no adverse inference can be drawn against the petitioner on the premise that the registration of the dealer from whom the purchases were shown to be made, was cancelled subsequently.

Held-Therefore, it was held that

- a) it was the duty of the authorities to verify the said information as to whether at the time of transactions, the firm was in existence or not, and therefore, without verifying the same, the authorities ought not to have initiated the proceedings against the petitioner only on the borrowed information as the petitioner discharged its preliminary duty by making the payment of due taxes through banking channels.
- b) Further, it is not the case of the revenue that the vehicle used for transportation was not found registered and therefore, the initiation of proceedings against the petitioner cannot be said to be justified and are liable to be quashed by this Court.

In view of the above facts as stated, the impugned orders were held to be non-sustainable in the eyes of law-[2025] 180 taxmann.com 163 (Allahabad) HIGH COURT OF ALLAHABAD Singhal Iron Traders v. Additional Commissioner

Circular No. 171/03/2022-GST

**Clarification on various
issues relating to
applicability of demand
and penalty provisions
under the Central Goods
and Services Tax Act,
2017 in respect of
transactions involving
fake invoices–Reg**



Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices-

Query-In case where a registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both?

Regarding Applicability of Section 73/74-Since there is only been an issuance of tax invoice by the registered person ‘A’ to registered person ‘B’ without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of “supply”, as defined under section 7 of the CGST Act. **As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against ‘A’ for the said transaction, and accordingly, no demand and recovery is required to be made against ‘A’ under the provisions of section 73 or section 74 of CGST Act in respect of the same.** Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against ‘A’ in respect of the said transaction.

Applicability of Section 122-The registered person ‘A’ shall, however, be liable for **penal action under section 122 (1)(ii)** of the CGST Act for issuing tax invoices without actual supply of goods or services or both

Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices-

Query-A registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by ‘A’, for payment of his tax liability in respect of his said outward supplies.

Regarding Applicability of Section 74-Since the registered person ‘B’ has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, **he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.**

Applicability of Section 122-Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against ‘B’ under section 74 of CGST Act, **no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on ‘B’ under any other provisions of CGST Act, including under section 122.**

Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices-

Query-A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both.

Regarding Applicability of Section 74-In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. **Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.**

Applicability of Section 122-However, in such cases, 'B' shall be liable for penal action both under section **122(1)(ii) and section 122(1)(vii)** of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.

Penalty for certain offences.- Section 122 (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;

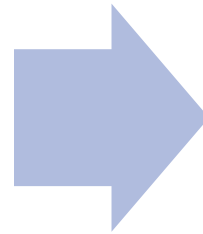
Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices-

The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. **Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section.** It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.

Situation-1-Levy of Penalty U/Sec 122(1)(ii)

Rs 100 is the inward supply and Rs 100 is the outward supply. Question involved if entire outward is challenged then either the goods should in stock or evidence should be brought on record of goods being sold without invoice

Receives goods
with proper
Invoice

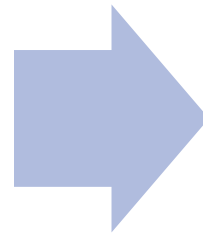


Issues invoice
without supply
of Goods

Situation-2-Recovery Provisions of ITC Under Section 74

Rs 100 is the inward supply and Rs 100 is the outward supply. Question involved is how the outward supply were made if the entire inward has been challenged

Receives
Invoice without
supply of goods

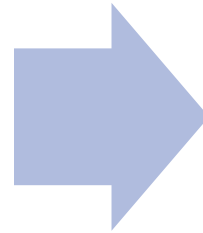


Issues invoice
with supply of
Goods

Situation-3-Levy of Penalty for wrongful availment of ITC and for Issue of Invoice without supply of goods

Rs 100 is the inward supply and Rs 100 is the outward supply and for both invoices were issued without underlying supply

**Receives
Invoice without
supply of goods**



**Issues invoice
without supply
of Goods**

One may explain this by way of the following example:

- a) A sells goods to B, for a sum of Rs. 100 along with input tax credit of Rs.18. A however issues a tax invoice for a sum for a sum of Rs. 200 along with GST of Rs. 36.
- b) B thereafter supplies goods to C for a sum of Rs. 50 along with proper tax invoice.
- c) B further issues tax invoice with Rs. 50 to D without supply of any goods. In the said invoice, B passes on Rs.9 as GST.
- d) B further supplies goods worth Rs.100 to E but issues tax invoice for a sum of Rs.150 alongwith GST for the same.

- a. In the above example, A would be liable for issuance of fake invoices for the sum of Rs. 100 along with GST that has been passed on. So, A would be liable under Section 122(1)(ii) and B would be liable under Section 74 for improper utilization of ITC.**
- b. With regard to transaction between B and C, no offence has been committed by either B or C as tax invoice is for the amount of goods supplied by B to C as B has supplied goods to C and issued invoice for the same amount.**
- c. When B issues fake invoices of Rs.50 with Rs.9 as GST to D without any supply of goods, B would be liable under Section 122(1) (ii) for issuance of fake invoices and D would be liable under Section 74 for improper utilization of ITC without receiving goods.**
- d. With regard to transaction between B and E, B has supplied goods of 100 and shows the supplies of 150, therefore, B is liable for issuance of fake invoices without supply of goods worth Rs.50 and therefore penalty would be imposed under Section 122(1)(ii) and E would be liable under Section 74 for utilization of ITC worth Rs.9 without receipt of goods.**

Some relevant excerpt from [2025] 175 taxmann.com 22 (Allahabad) Patanjali Ayurved Ltd. v. Union of India

h. The department while deciding on the issue of proceedings under Section 74 of the CGST Act for the unit of the petitioner situated at Uttarakhand has taken into consideration the product wise books of accounts of the petitioner showing details of purchased and sold quantities of the goods during the impugned period wherein it was observed by the department that for all the commodities, the quantities sold were always more than the quantities purchased from the suppliers, thereby making the observation that all the ITC which was availed in the impugned goods was further passed on by the petitioner. The department, with regard to show cause notice issued under Section 74 of the CGST Act, has decided to exonerate the petitioner's unit situated at Uttarakhand on various other grounds such as:

- i.** Show cause notice did not specify consignment of particular suppliers as fake, therefore, in absence of any physical verification report of particular stocks and the said irregular ITC cannot be attributed to a particular supplier in absence of which a demand of differential ITC is not legally sustainable.
- ii.** All goods received from the suppliers have been accounted for by the petitioner and supplied in payment of GST thereby implying the passing on irregular ITC and the department has relied on a circular no. 171/03/2022-GST dated July 6, 2022 wherein it was clarified that proceedings under Section 74 cannot be initiated against taxpayers, if it has merely passed on irregular ITC on the outward supply and only penalty under Section 122 of the CGST Act, if any, could be imposed.
- iii.** There is no any shortage and mismatch in stock of packing materials and the actual physical quantity of stocks in addition to the raw materials available. Furthermore, there is no adverse remark on any shortage or excess of stock packing materials found at the premises of the petitioner.

Some relevant excerpt from [2025] 175 taxmann.com 22 (Allahabad)
Patanjali Ayurved Ltd. v. Union of India

- i. This is not a case of receiving supplies from a nonexistent suppliers as if this would have been the case, the department ought to have cancelled the registration of such fake firms and blocked the ITC immediately.
- ii. Show cause notice has placed reliance on third party data like RTO records which is not in conformity with the mandatory procedure prescribed under Section 145 of the CGST Act, which requires a certificate to authenticate the documents which are to be relied upon in departmental proceedings thereby making the said evidence as inadmissible.
- iii. On the issue of transportation, it was observed that it is not a requirement under the law that the vehicles should take only a fixed toll route and any route may be chosen to reach a destination.
- iv. Upon a request of cross examination by the petitioner, of persons on whose testimony reliance was placed upon in the show cause notice, all the suppliers have clearly declared on affidavit that they have made supplies to the petitioner based on genuine business transactions



Adv (CA) (DR) ARPIT HALDIA