India Tax Konnect

July 2025

KPMG. Make the Difference.

a. Decisions – Domestic Tax

Applying the 'purpose test', incentive provided for promoting industrialisation held to be capital receipt; disbursal mechanism not relevant: Bombay High Court[1]

Facts of the case[2]

In 1983, the Government of Maharashtra introduced an incentive scheme to promote industrialisation in the notified backward areas by granting sales tax exemption or deferral of sales tax for a specified period (the Scheme).

Eligibility for the Scheme was determined based on the quantum of fixed capital investment made for setting up a new industrial unit.

During the year under consideration, the taxpayer commenced operations at a new industrial unit located in the notified backward area and opted for sales tax exemption under the Scheme. The taxpayer was entitled to an incentive amounting to 90 percent of the fixed capital investment (the incentive).

The taxpayer claimed that the incentive was a capital receipt, not taxable under the Income-tax Act, 1961 (the Act), as it was granted to encourage industrial development. However, the Revenue rejected the claim and treated the same as a revenue receipt liable to tax.

Revenue's contention

The grant of incentive was conditional upon commencement of production, indicating its linkage with the production activity rather than capital investment.

Since the sales-tax liability arose only on production and sale of the products, the Scheme's object was to enhance profitability and not to incentivise setting-up of industrial unit.

The incentive under the Scheme was provided in the form of sales-tax exemption and thus, taxable as revenue receipt.

Cited various judicial precedents to support the view that incentives provided in connection with production are taxable as revenue receipts[3].

High Court's decision

The High Court ruled in favour of the taxpayer, holding that the incentive received pursuant to the Scheme was a capital receipt and not chargeable to tax under the Act. Key observations include:

Reaffirmed that the 'purpose test' is the decisive criterion in determining whether an incentive/ subsidy is a capital or revenue receipt, and not the form or timing of its disbursal.

[1] *Bajaj Auto Limited* v. *DCIT* (ITA No. 505 of 2003)

[2] In this note, we have not covered the facts and contentions related to ITA Appeal No.156 of 2003 filed by the Revenue as the two appeals (clubbed together) involved the same issue.

[3] *Sahney Steel & Press Works Ltd.* v. *CIT* [1997] 228 ITR 253 (SC); *CIT* v. *P.J. Chemicals Ltd.* [1994] 210 ITR 830 (SC); *CIT* v. *Chhindwara Fuels* [2000] 245 ITR 9 (Calcutta)

Contd….

Relied on the various Supreme Court decisions[4] and reiterated the following guiding principles related to the 'purpose test':

- Incentives provided for setting up an industrial unit or for expansion of an existing unit are capital receipts.
- Incentives given for enabling the recipient run business more profitably are revenue receipts.
- The form or mechanism through which the incentive is disbursed is irrelevant.
- Even if actual payment/ grant of the incentive is linked to production or sale activity after completion of construction of the industrial unit, the receipt remains capital in nature if the underlying purpose is to promote industrialisation.

In the instant case, the incentive was granted to the taxpayer for setting up a new industrial unit in the notified backward area. The incentive was not aimed at helping the taxpayer save the amount of sales-tax payable by it, with a view to earn higher profits.

The manner of provision of incentive by adjusting the same against the sales-tax liability post-production (instead of actual payment of incentive) was merely a form or mechanism of disbursal, and the same had absolutely no relevance for determining the 'purpose' for which the incentive was provided.

[4] *Sahney Steel (supra); CIT* v. *Ponni Sugars & Chemicals Ltd.* [2008] 306 ITR 392 (SC*); CIT* v. *Chaphalkar Brothers Pune* [2018] 400 ITR 279 (SC)

Unabsorbed depreciation of amalgamating companies allowed to be added to WDV of block of assets of amalgamated company: Bombay High Court[5]

Facts of the case

Two Indian companies (the amalgamating companies) were amalgamated with the taxpayer (the amalgamated company) with effect from 1 April 1990. The scheme of amalgamation was approved by the Bombay High Court[6] and the amalgamating companies were dissolved without undergoing winding-up process.

At the time of amalgamation, the amalgamating companies had unabsorbed depreciation (UAD) which they could not carry forward as they ceased to exist post amalgamation.

While computing its taxable business income, the taxpayer added the UAD of the amalgamating companies to the written down value (WDV) of its block of assets and claimed depreciation thereon under the Act[7].

The Revenue rejected the claim arguing that (a) the taxpayer was not entitled to carry forward UAD of the amalgamating companies as the prescribed conditions were not fulfilled[8]; and (b) Under the deeming provision of the Act[9], UAD is considered 'actually allowed' in the hands of the amalgamating company and therefore cannot be added to the WDV by the taxpayer for claiming the depreciation again on that amount.

[5] *Technova Imaging Systems Limited* v. *DCIT* (ITA No. 405 of 2003)
[6] Order dated 13 November 1991
[7] Section 32 read with Explanation 2 to Section 43(6)(c)(ii)
[8] Section 72A as applicable for financial year 1990-91
[9] Explanation 3 to section 43(6)(c)(ii)

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Relevant provisions of the Act

Carry forward of UAD

UAD pertaining to a financial year can be carried forward and added to the amount of depreciation allowance for the subsequent financial years (general provisions)[10].

However, in case of amalgamation, as per the provisions applicable during the financial year under consideration, amalgamated company was permitted to carry forward accumulated losses and UAD of the amalgamating company subject to the fulfilment of prescribed conditions.

Computation of WDV for amalgamated company

In the context of amalgamation, the actual cost of block of assets for the amalgamated company is the WDV of the block of assets as in the hands of the amalgamating company for the immediately preceding financial year, reduced by the amount of depreciation 'actually allowed' for that financial year[11].

Further, there is a deeming provision which provides that any depreciation allowance carried forward (as per general provisions) shall be deemed to be depreciation 'actually allowed.'

High Court's decision

The High Court ruled in favour of the taxpayer and allowed UAD of the amalgamating companies to be added to the WDV of the block of assets of the taxpayer.

[10] Section 32(2)
[11] Explanation 2 to section 43(6)(c)(ii)

Key observations of the High Court include:

No carry forward of UAD was claimed by the taxpayer as admittedly the prescribed conditions were not satisfied in the instant case.

The deeming provision applies only when UAD is carried forward by a company that continues to exist. Since the amalgamating companies ceased to exist post-amalgamation, there was no question of carry forward of depreciation, and hence, the deeming provision was not attracted in the instant case[12].

In the case of amalgamation, only the depreciation 'actually allowed' to the amalgamating companies has to be reduced for calculating WDV in the hands of the amalgamated company and not unabsorbed amounts[13].

The phrase 'actually allowed' means actually taken into account or granted and given effect to, in contrast to any allowance on notional basis[14].

As UAD was not 'actually allowed' in the hands of the amalgamating companies, it could not be reduced while computing WDV of such assets.

Time limit prescribed by CBDT guidelines for filing compounding application *ultra vires* the Act and is invalid: Madras High Court[15]

Facts of the case

The taxpayer, an individual, failed to file his income tax return (ITR) for financial year 2012-13.

[12] *CIT* v. *Hindustan Petroleum Corporation Ltd.* [1991] (187 ITR 1) (Bombay)
[13] *EID Parry (India) Ltd* v. *DCIT* [2013] 256 CTR 104 (Madras).
[14] *Madeva Upendra Sinai* v. *Union of India & Ors.* [1975] 98 ITR 209 (SC)
[15] *Moorthy Elumalai* v. *The Central Board of Direct Taxes/ CCIT/ DCIT* (WP No. 23086 of 2024) (Madras)

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Consequently, the Revenue initiated prosecution proceedings against the taxpayer under the Act[16], by filing a complaint before the Economic Offences Court on 27 July 2016[17].

The taxpayer submitted a compounding application under the Act[18] on 15 September 2023. However, the Revenue rejected the application, citing that it was filed beyond the 36-months limitation period prescribed under the CBDT's compounding guidelines[19].

Aggrieved by the rejection, the taxpayer filed a writ petition challenging the validity of the time limit imposed by the CBDT.

Relevant provisions

Any offence under Chapter XXII of the Act may be compounded by the prescribed authority, either before or after the institution of prosecution proceedings[20]. However, the Act does not prescribe any statutory time limit for filing compounding applications.

The CBDT's compounding guidelines provide that where a prosecution complaint has already been filed in the court of law for the prescribed offence, the compounding application should be filed within 36 months from the end of the month in which the complaint was filed[21].

Taxpayer's contention

Since the Act does not specify any time limit for filing compounding applications, any administrative guidelines issued by the CBDT prescribing such a time limit are contrary to the Act and thus, not valid. In this regard, the taxpayer relied on Madras High Court decision in the case of *Jayshree*[22].

The right to seek compounding of an offence under the Act cannot be taken away from the taxpayer, pending prosecution proceedings for the same offence.

High Court's decision

The High Court, relying on its earlier decision in the case of *Jayshree*, held that the CBDT lacks the authority to prescribe a time limit for filing compounding applications in the absence of such a provision in the Act. The Court remanded the matter to the Revenue to reconsider the taxpayer's compounding application on merits. Key observations of the High Court include:

The CBDT is empowered to issue circulars, directions, instructions etc. for the purposes of proper implementation of the Act. Such directives must be within the scope of the Act.

The legislative intent behind compounding is to permit compounding of offences either before or after the institution of the prosecution proceedings, without any time limitation. The CBDT cannot impose a time limit, contrary to the object of the said provisions.

[16] Section 276CC
[17] The complaint was pending on the date of Bombay High Court's decision against the writ petition filed by the taxpayer
[18] Section 279(2)
[19] Guidelines for Compounding of Offences under the Income-tax Act, 1961 (F.No. 285/08/2014-IT (Inv.-V)/196 dated 16 September 2022)
[20] Section 279(2)
[21] Clause 7(ii) read with clause 9 of the CBDT's compounding guidelines

[22] *Jayshree* v. *CBDT & Ors*. [2024] 464 ITR 81 (Madras)

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Receipts from sale of carbon credits are capital receipts not chargeable to tax: Ahmedabad Tribunal[23]

Facts of the case[24]

The taxpayer was engaged in business of renewable energy generation.

In the ITR filed for the relevant year, the taxpayer claimed the benefit of tax holiday for income earned from solar power generation[25], which also included proceeds from the sale of Renewable Energy Credits (RECs).

However, the Revenue denied the benefit related to sale of RECs, arguing that such income was not directly related to power generation business and should be treated as a taxable revenue receipt.

The year under consideration was financial year 2016-17 i.e., prior to the introduction of the provision[26] w.e.f. 1 April 2017 which provides that the income from the transfer of carbon credits is taxable at the rate of ten per cent.

Taxpayer's contentions

The income from sale of RECs was not taxable as business income as it constituted a capital receipt.

The sale of RECs is essentially an entitlement received for contributing to environmental conservation and is not a direct business activity. Therefore, the receipts from such sale is not taxable under the Act[27].

Even if RECs income was considered as a revenue receipt, it would still be eligible for tax holiday under the Act as it arose from the core business activity of power generation[28].

The provisions relating to taxability of income from the transfer of carbon credits were introduced w.e.f. 1 April 2017 and were not applicable retrospectively.

Tribunal's decision

The Tribunal, relying on the decision in the case of *Satia Industries*[29], held that the income from sale of RECs constitutes a capital receipt and was, therefore, not taxable under the Act. It further affirmed that the provisions relating to taxation of carbon credits under the Act were not applicable for the year under consideration.

Carbon credits are an offshoot from environmental concern and not from business operations. These credits are entitlements received to improve world atmosphere by reducing gas emissions and such entitlements should be regarded as 'capital receipt.'

Carbon credits are not earned by producing or selling any product, by-product or rendering any services for carrying on the business but are accretion of capital and hence, income earned from sale of these cannot be taxed as 'revenue receipt'.

The amount received for sale of carbon credits has no element of profit or gain and thus, not taxable under any head of income.

[23] *Mayur Dyechem Intermediates LLP v. DCIT (I.T.A. No.231/Ahd/2023)*[21] Other grounds of appeal are not covered in this note
[24] Other grounds of appeal are not covered in this note
[25] Section 80-IA
[26] Section 115BBG
[27] *PCIT* v. *Gujarat Flurochemicals Ltd*. [2023] 459 ITR 242 (Gujarat); *CIT* v. *My Home Power Ltd*. [2014] 365 ITR 82 (Andhra Pradesh; *CIT* v. *Subhash Kabini Power Corporation Ltd.* [2016] 385 ITR 592 (Karnataka)
[28] *CIT* v. *Meghalaya Steels Ltd.* [2016] 383 ITR 217 (SC)
[29] *Satia Industries Ltd.* v. *NFAC* [2023] 106 ITR(T) 550 (Amritsar Tribunal)

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Monetary gifts received on marriage occasion are exempt from tax, even if credited later: Mumbai Tribunal[30]

Facts of the case

The taxpayer, an individual, received monetary gifts (by way of cheque) on the occasion of his marriage from his first cousin (Donor 1) and a family-friend based out of Singapore (Donor 2).

Gift deeds were duly executed between the taxpayer and the respective donors.

The gifted amounts were credited to the taxpayer's bank account within 10 to 15 days following the marriage date.

As per the Act[31], a sum of money received, without consideration, is taxable as 'income from other sources.' However, the provision is not applicable if the money is received on the occasion of marriage.

Accordingly, the taxpayer did not offer the monetary gifts to tax.

However, the Revenue treated these monetary gifts as taxable under the Act, arguing that these were not received on the occasion of marriage but were sham transactions undertaken to avoid tax.

Revenue's contentions

Gifted amounts were credited to taxpayer's bank account after the marriage date.

Donor 1 lacked sufficient funds in his bank account on the date of gift. He received funds in his bank account from different sources (including taxpayer's grandfather), just prior to the date of cheque clearance. The money was transferred back to the taxpayer's grandfather subsequently.

The transaction with Donor 1 was a sham transaction, and the taxpayer was used as a *benami* in the transaction between Donor 1 and taxpayer's grandfather for building the latter's capital, without incidence of tax.

The monetary gift received from Donor 2 was not a marriage gift but an export advance as mentioned on the bank certificate.

Tribunal's decision

The Tribunal ruled in favour of the taxpayer and held that money received by the taxpayer on the occasion of his marriage was not chargeable to tax under the Act.

The expression 'on the occasion of marriage' should not be interpreted narrowly. To qualify for the non-taxability, there should be a link between the marriage and the gift i.e., the marriage should be the immediate reason for the gift. The time gap between the date of marriage and of cheque clearance does not negate the intent and occasion of the gift.

The taxpayer submitted documentary evidence to support that both donors had sufficient financial capacity to make the gifts to the taxpayer. Even the taxpayer's grandfather had his own capital of INR 19 crores and there was no need to route the transaction for the purpose of building his capital.

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[30] *Dhruv Sanjay. Gupta* v *JCIT* (ITA No. 5749/ MUM/ 2024)
[31] Proviso to section 56(2)(vii), applicable in financial year 2012-13

The corrected bank certificate validated that the gift received from Donor 2 was for marriage occasion.

The Revenue's allegations and conclusions were based on conjectures and surmises, without disproving the corroborative documentary evidence placed on record.

b. Circular/ Notification/ Order

Government notifies protocol amending India-Oman tax treaty; Principal Purpose Test introduced

The Government of India has notified a Protocol amending the Double Taxation Avoidance Agreement between India and the Sultanate of Oman (tax treaty)[32]. The Protocol entered into force on 28 May 2025, being the date of receipt of later of the notifications of completion of legal formalities by both countries.

Key amendments

- Preamble has been modified to strengthen anti-abuse provisions by explicitly targeting treaty-shopping and tax avoidance arrangements.
- The term 'competent authority' has been defined[33].
- Tie-breaker rule to determine the residential status of a non-individual person having dual residency has been modified[34]. Prior to amendment, such person was deemed to be a resident of the Contracting State in which its place of effective management was situated.

  Post amendment, the competent authorities of both the Contracting States shall determine the residential status of such person by mutual agreement, having regard to its place of effective management, place of incorporation and any other relevant factors.
- Article on 'Associated Enterprise'[35] amended to provide for corresponding adjustments in transfer pricing cases.
- Tax rate on royalties[36] and technical fees[37] has been reduced from 15 percent to 10 percent.
- Tax sparing clause under the article on 'Avoidance of Double Taxation'[38] has been omitted.
- New article relating to 'Non-discrimination'[39] and 'Assistance in collection of taxes'[40] has been incorporated in the tax treaty. These are worded broadly similar to the corresponding article in the OECD Model Tax Convention, 2017 (OECD MC 2017), with a few differences.

[32] Notification S.O. 2858(E) [NO. 69/2025/F. NO. 501/6/1991-FTD-II] dated 25 June 2025
[33] Article 3
[34] Article 4(3)
[35] Article 10(2)
[36] Article 13
[37] Article 14
[38] Article 25
[39] Article 25A
[40] Article 27A

Contd….

Direct Tax

- The existing provisions relating to ‘Mutual Acceptance Procedure’[41] and ‘Exchange of Information’[42] have been modified to be largely aligned with the corresponding articles in OECD MC 2017, with a few differences.

- Principal Purpose Test (PPT) has been introduced to deny tax treaty benefits if obtaining that benefit was one of the principal purposes of entering into an arrangement or transaction[43]. This article is worded similar to the PPT provisions contained in the Multilateral Instrument (MLI).

Effective date

For India: Income derived in any financial year beginning on or after 1 April following the date of entry into force.

[41] Article 26
[42] Article 27
[43] Article 27B

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a. High Court decisions

Refund can be withheld only if appeal or other proceeding by the department is pending in respect of such refund[44]

The petitioner had filed refund claims which were rejected by the adjudicating authority. However, the appellate authority later allowed the refund. Accordingly, petitioner re-filed the refund claims. However, the Commissioner withheld the refund, citing reasons of protection of revenue interests under section 54(11) of the CGST Act, 2017 as he was intending to file an appeal. Aggrieved by the withholding of refund, the petitioner approached the Delhi High Court.

The petitioner's contentions were that section 54(11) of the CGST Act, 2017 can be invoked only when the refund order is subject matter of a proceeding which is pending in appeal. The appellate authority's order has not been challenged or set aside by any forum and thus, it still stands. Thus, section 54(11) of the CGST Act, 2017 cannot be invoked here.

Against this, the department argued that they intend to file an appeal against the Order-in-Appeal. However, since there is no appellate tribunal as on date, the appeal has not been filed.

Considering this background, the Delhi High Court observed that in terms of section 54(11) of the CGST Act, 2017, refund can be withheld on the satisfaction of the following two conditions:

1. when an order directing a refund is subject matter of a proceeding which is pending either in appeal or any other proceeding under the Act; and
2. thereafter the Commissioner gives an opinion that the grant of refund is likely to adversely affect the revenue.

The Court further observed that the department's opinion under section 54(11) of the CGST Act, 2017 alone cannot be the ground for holding back refund. In the absence of any pending appeal or proceeding challenging the order of the appellate Authority, section 54(11) of the CGST Act, 2017 cannot be invoked to hold back the refund. Accordingly, the refund shall be processed along with interest. However, the department is still free to challenge the appellate authority's order.

Foreign Inward Remittance Certificates (FIRCs) not required for the netted off amount in case of refunds where foreign currency received after netting-off against payables[45]

The petitioner filed refund of unutilized input tax credit (ITC) on account of export of services to its group entities (amounting to INR ~1.82 cr). The petitioner followed a common clearing system approved by the Reserve Bank of India (RBI) to net-off the consideration receivable from its group entities against the payables in foreign currency, monthly, on a pan-India level. Their Exchange Earners Foreign Currency (EEFC) bank account also reflected the net amount received by the petitioner on a PAN-India level. The amount was certified by an independent Chartered Accountant (CA) post verification of the monthly receivable and payable ledgers and was submitted to RBI every month. The FIRCs also reflected the said net amount.

The petitioner submitted the above documents (RBI approval, CA certificates furnished to the RBI, EEFC bank statement and FIRCs for the net amount) along with the refund claim. During the personal hearing, the petitioner also submitted a

[44] *Shalender Kumar [(2025) 30 Centax 56 (Del)]*

[45] *Kuehne Plus Nagel Private Limited [2025-VIL-644-GUJ]*

Contd….

CA certificate providing details of the foreign currency received against export of services from Gujarat along with a reconciliation of the forex receivable and payable for pan-India level for the refund period.

However, the refund claim was rejected by the adjudicating and appellate authorities on the ground of non-submission of FIRCs in terms of circular 125/44/2019-GST dated 18 November 2019 (GST circular). Aggrieved by the refund rejection, the petitioner approached the Gujarat High Court.

The petitioner contended that section 2(6)(iv) of the IGST Act, 2017 requires the receipt of payment in foreign currency, which was substantiated by the documents submitted. Refund cannot be denied only on the procedural ground of non-submission of FIRCs corresponding to the invoice value of export of services. If entire consideration was received first and then a part of it was remitted outside India, the respondents would not have any objections as the FIRCs in such cases would have been received. However, in case of receipt of net foreign exchange, the authorities should consider the CA Certificate certifying the receipt of the net amount.

Against this, the respondent's contentions were that Annexure A to the GST circular requires submission of Bank Realisation Certificate (BRC)/FIRC copies for this refund. Further, the reliance placed on the CA Certificate was rightly rejected.

In light of this, the Gujarat High Court observed that in terms of the judgement of the Supreme Court in the case of *Mangal Textile Mills Private Limited*[46], a CA certificate is required to be considered by the authority as an authentic document. Accordingly, the authorities are bound to consider the CA certificate in this case.

The petitioner has received foreign exchange for the export of the services and therefore, only on the ground of non-submission of FIRCs as required by the circular, rejection of refund was not justified. Accordingly, the order is set aside and authorities are directed to process the refund claim by accepting the CA certificate for receipt of net foreign exchange, without insisting for FIRCs.

Even if proceedings under section 74 of the CGST Act, 2017 are dropped, penalty can be imposed under section 122 of the CGST Act, 2017[47]

The petitioner was issued a Show Cause Notice (SCN) in April 2024, under sections 74 and 122 of the CGST Act, 2017 alleging wrong availment of ITC, circular trading, and fake invoicing without actual supply of goods. The petitioner filed writ petition to quash the SCN. An interim stay was granted in October 2024 on penal proceedings under section 122 of the CGST Act, 2017 and the petitioner was asked to file a reply.

Subsequently, the department in January 2025 adjudicated the SCN and dropped proceedings under section 74 of the CGST Act, 2017, but levied penalty of INR ~273 crore under section 122(1)(ii) and (vii) of the CGST Act, 2017. Petitioner approached the High Court to quash the penalty imposed under section 122 of the CGST Act, 2017.

The petitioner's contentions were:

<u>Section 122 of the CGST Act, 2017 can be levied only in criminal offences</u>

- Section 122 of the CGST Act, 2017 deals with 'offences' and should therefore be treated as criminal in nature, requiring adjudication by a criminal court rather than a GST officer primarily on following grounds:

[46] *2010-VIL-112-SC-CE*

[47] *Patanjali Ayurved Ltd [TS-467-HC(ALL)-2025-GST]*

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Indirect Tax

- Penalty under section 122 of the CGST Act, 2017 must follow a determination of tax liability under sections 73/74 of the CGST Act, 2017, because it presupposes a predicate offence of tax evasion.
- The term ‘offence’ and references to ‘wilful misstatement’ and ‘suppression of facts’ imply the need for *mens rea*, which necessitates criminal trial.
- Several clauses under section 122 of the CGST Act, 2017 mirror those in section 132 of the CGST Act, 2017 (which deals with criminal punishment), suggesting that penalties under section 122 of the CGST Act, 2017 should also be subject to criminal trial.
- The use of terms like ‘aiding and abetting’ in section 122(3) of the CGST Act, 2017 is typical of criminal statutes, reinforcing the argument for criminal adjudication.
- The notes on clauses for section 122 of the CGST Act, 2017 describe it as listing ‘offences’ which must be interpreted in line with criminal law definitions.

<u>Absence of ‘Proper Officer’ reference under section 122 of the CGST Act, 2017</u>

- Section 122 of the CGST Act, 2017 does not mention a ‘proper officer’ unlike other civil penalty provisions. This implies that it was not meant to be adjudicated administratively.
- Imposing penalties for offences through departmental adjudication violates the constitutional principle of separation of powers, which reserves criminal trials for judicial courts.

<u>Explanation (ii) to section 74(1) of the CGST Act, 2017 :</u>

- Once proceedings under section 74 of the CGST Act, 2017 are dropped, related proceedings under section 122 of the CGST Act, 2017 should also abate, especially if they arise from the same facts.

Against this, the respondent’s contentions were:

- Section 122 of the CGST Act, 2017 imposes civil, not criminal liability. Section 122 of the CGST Act, 2017 is designed to deter tax evasion and protect revenue. It is not meant to punish in a criminal sense.
- Penalties under section 122 of the CGST Act, 2017 are for specific contraventions like issuing invoices without actual supply or availing ITC without receipt of goods, which are distinct from the tax determination proceeding under section 74 of the CGST Act, 2017. Hence, proceedings under section 122 of the CGST Act, 2017 are not contingent upon the outcomes of proceedings under sections 73/74 of the CGST Act, 2017.
- While some clauses in section 122 of the CGST Act, 2017 involve intent, others do not. *Mens rea* is not a prerequisite for imposing civil penalties under tax law.
- The absence of the term ‘proper officer’ in section 122 of the CGST Act, 2017 does not imply criminal jurisdiction. Many penalty provisions in the CGST Act do not refer to proper officer but are still adjudicated administratively.
- The standard of proof under section 122 of the CGST Act, 2017 is ‘preponderance of probability’ unlike criminal trials under section 132 of the CGST Act, 2017 which require proof ‘beyond reasonable doubt’.

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Indirect Tax

- Explanation 1(i) to section 74 of the CGST Act, 2017 excludes section 132 of the CGST Act, 2017 (criminal prosecution) but includes section 122 of the CGST Act, 2017, confirming that section 122 of the CGST Act, 2017 is civil in nature.
- Rule 142 of the CGST Rules, 2017 and Explanation 1(ii) to section 74 of the CGST Act, 2017 confirms that the proper officer who adjudicates section 74 of the CGST Act, 2017 can also adjudicate section 122 of the CGST Act, 2017.
- Dropping proceedings under section 74 of the CGST Act, 2017 against the main person does not automatically abate proceedings under section 122 of the CGST Act, 2017, especially when the offences are distinct.

The Allahabad High Court observed as follows:

Meaning of ‘offence’ and ‘penalty’

- 'Offence' is broadly defined as a violation of law, which can range from minor infractions to serious crimes. It includes any act or omission punishable by law, not necessarily criminal.
- ‘Penalty’ is a broad term that can refer to civil or criminal consequences depending on context.
- Penalty in tax law is typically civil, aimed at deterrence and revenue protection.
- Supreme Court precedents affirm that penalties for tax delinquency are civil obligations, not criminal punishments.

Interpretation of Statutes

- Citing various Supreme Court judgements, the court pens down salient rules for interpretation of taxing statutes:
- Tax statutes must be interpreted strictly. There is no room for equity, intendment, or assumptions.
- Courts must proceed on the assumption that the legislature intended what it said. They cannot presume a mistake or supply omissions.
- Three-Part Structure of Tax Laws is:
  a) a charging provision to ascertain the subject upon whom tax is to be imposed;
  b) a machinery provision for assessment or quantification of the tax, interest, and penalty to be imposed; and
  c) provisions for recovery of tax, interest and penalty assessed in the previous stage.
- Courts should read all provisions together to harmonize the statute and avoid absurd or unworkable outcomes.
- Interpretations that render a provision unworkable or defeat its purpose should be avoided.
- Courts must not apply equitable principles to tax statutes. Only the express language of the law governs.
- The court is the sole authority to interpret what Parliament meant, based on the statute’s language and permissible aids.

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- Words like ‘penalty’ and ‘offence’ must be interpreted in the context of the statute, not in isolation.

Penalty In Tax Delinquency Cases

- Penalties in tax law are civil in nature, even if they involve *mens rea*.
- *Mens rea* is essential for criminal prosecution but not for civil penalties.
- Courts have consistently held that penalty provisions in tax statutes are remedial and coercive, not punitive.
- There can be both civil and criminal liabilities under the same statute, depending on the nature of the contravention.
- Citing the principles laid down by the Supreme Court in various precedents, the court held that, penalties under tax laws can be imposed even if there’s no *mens rea*, depending on how the law is written. Some violations are serious and do require intent, while others are procedural and do not.

Against the argument of the petitioner & Conclusion

- Persons who are not liable to pay tax under sections 73/74 of the CGST Act, 2017 may still be liable for penalties as under section 122 of the CGST Act, 2017.
- Rule 142 of the CGST Rules, 2017 and Explanation 1(ii) to section 74 of the CGST Act, 2017 clearly empower proper officers to adjudicate penalties under section 122 of the CGST Act, 2017. Provisional attachment under
- Section 83 of the CGST Act, 2017 and electronic issuance of notices and orders under rule 142 of the CGST Rules, 2017 further confirm the administrative nature of proceedings under section 122 of the CGST Act, 2017.
- If tax demand under section 74 of the CGST Act, 2017 is dropped the person may still be liable under section 122 of the CGST Act, 2017 for separate contraventions like issuing fake invoices. Thus, proceedings under section 122 of the CGST Act, 2017 can continue independently.
- Accordingly, the court dismissed the writ petition directing authorities to continue proceedings under section 122 of the CGST Act, 2017.

b. Circular/ Notification/ Order

Reviewing authority, Revisional Authority and Appellate Authority in respect of orders passed by Common Adjudicating Authority (CAA) for show cause notices (SCNs) issued by Directorate General of GST Intelligence (DGGI)[48]

By virtue of Notification No. 02/2017 dated 19 June 2017, Joint/Additional Commissioners (JC/AC) posted in specified Commissionerates have been designated as CAA in respect of SCNs issued by DGGI. However, it did not specify the authorities related to review, revision, and appeals for the Orders-in - Original (OIO) passed by CAA.

[48] Circular No. 250/07/2025-GST dated 24 June 2025

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Indirect Tax

This circular clarifies the same as follows:

Scenario	Authority
Review/ revision under sections 107/108 of the CGST Act, 2017 respectively	Principal Commissioner/Commissioner of Central Tax under whom the CAA is posted
Appeal under section 107 of the CGST Act, 2017	Commissioner (Appeals) corresponding to the territorial jurisdiction of the Principal Commissioner/ Commissioner of Central Tax, under whom the said CAA is posted
Department's Representation in Appeals	Principal Commissioner/Commissioner of Central Tax of such Commissionerate under whom the CAA is posted

The reviewing or revisional authority before proceeding to decide on the OIO passed by the CAA may seek comments on the OIO from the concerned DGGI authorities.

Contd….

Foreign Exchange Management Act

The RBI grants extension for Foreign Liabilities and Assets (FLA) Return submission.

The RBI extended due date for submission of the annual FLA Return from 15 July 2025 to 31 July 2025 for the financial year ending 31 March 2025.

The RBI includes new exemption for Export of Offshore Support Vessels

The RBI *vide* notification[49] now permits export of tugs or tugboats, dredgers and vessels used for providing offshore support services without providing export declaration provided these will be reimported into India post completion of their use overseas.

[49] Notification No. FEMA 23(R)/(6)/2025-RBI dated 4 July 2025

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Orwell 6th Floor, Unit-3, Survey
No 83/1, Plot No 2, Raidurg,
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S Plot No. DC-II, Lal Kothi District
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