

GAHC010109182025



2026:GAU-AS:8028

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/24/2026**

MAYANK BANSAL  
(PARTNER - QUANTUM INFRATECH  
ASSAM)  
ADDRESS HAVING RESIDENCE AT 2ND FLOOR  
HOUSE NO. 33  
BY-LANE NO. 4  
TARUN NAGAR  
GUWAHATI  
ASSAM- 781005

VERSUS

THE UNION OF INDIA AND 5 ORS.  
THROUGH THE SECRETARY  
DEPARTMENT OF REVENUE  
MINISTRY OF FINANCE  
NORTH BLOCK  
NEW DELHI - 110001

2:STATE OF ASSAM  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM  
FINANCE AND TAXATION DEPARTMENT  
GROUND FLOOR  
F BLOCK  
JANATA BHAWAN  
DISPUR  
GUWAHATI-781006

3:DEPUTY DIRECTOR  
DGGI GUWAHATI ZONAL UNIT  
H.N. 77  
RUPKONWAR JYOTI PRASAD AGARWAL ROAD

OPP. SRIMANTA SANKARDEVA KALAKSHETRA  
P.O.- PANJABARI  
GUWAHATI-781037

4:ASSISTANT COMMISSIONER  
CGST AND CENTRAL EXCISE  
GUWAHATI DIVISION-II  
GST BHAWAN  
KEDAR ROAD  
FANCY BAZAAR  
GUWAHATI-781001

5:ADDITIONAL COMMISSIONER (APPEALS)  
CGST  
CENTRAL EXCISE AND CUSTOMS  
3RD FLOOR  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001

6:COMMISSIONER  
CGST  
CENTRAL EXCISE AND CUSTOMS  
3RD FLOOR  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001

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Advocate for : MR. A M BARUAH  
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/25/2026

NADAR HUSSAIN  
(PARTNER QUANTUM INFRATECH)  
ASSAM ADDRESS HAVING RESIDENCE AT FLAT NO-701  
FLOOR NO-7  
BLOCK-D  
SPANISH GARDEN  
R G BARUAH ROAD  
GUWAHATI-781023

VERSUS

THE UNION OF INDIA AND 5 ORS.  
THROUGH THE SECRETARY  
DEPARTMENT OF REVENUE  
MINISTRY OF FINANCE  
NORTH BLOCK  
NEW DELHI - 110001

2:STATE OF ASSAM  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM  
FINANCE AND TAXATION DEPARTMENT  
GROUND FLOOR  
F BLOCK  
JANATA BHAWAN  
DISPUR  
GUWAHATI-781006.

3:DEPUTY DIRECTOR

DGGI GUWAHATI ZONAL UNIT  
H.N . 77  
RUPKHOWAR JYOTI PRASAD AGARWAL ROAD  
OPP. SRIMANTA SANKARDEVA KALAKHETRA  
P.O. PANJABARI  
GUWAHATI-781037.

4:ASSISTANT COMMISSIONER

CGST AND CENTRAL EXCISE  
GUWAHATI DIVISION-II  
GST BHAWAN  
KEDAR ROAD  
FANCY BAZAAR  
GUWAHATI-781001.

5:ADDITIONAL COMMISSIONER (APEALS)

CGST  
CENTRAL EXCISE AND CUSTOMS  
3RD FLOOR  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001.

6:COMMISSIONER

CGST  
CENTRAL EXCISE AND CUSTOMS 3RD FLOOR  
GST BHAVAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001.  
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**BEFORE**  
**HON'BLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner(s) : Mr. B. Raichandani, Advocate

For the Respondent(s) : Mr. S. C. Keyal, Senior Advocate, CGST  
: Mr. K. Jain, Advocate

- Date on which Judgment was reserved : **12.05.2026**
- Date of Pronouncement of Judgment : **08.06.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : N/A
- Whether the full Judgment has been Pronounced : Yes

**JUDGMENT AND ORDER (CAV)**

Heard Mr. B. Raichandani, the learned counsel appearing on behalf of the Writ Petitioners in both the writ petitions. I have also heard Mr. S. C. Keyal, the learned Senior counsel assisted by Mr. K. Jain, the learned counsel appearing on behalf of the Respondents.

**PRELUDE:**

2. In both the writ petitions, the Petitioners have assailed the common Order-in-Original dated 04.02.2025 as well as the Order-in-Appeal dated 26.08.2025 whereby in exercise of powers under Section 122(1A) of the Central Goods and Service Tax Act, 2017, (for short, the Act of 2017), the Petitioners in both the writ petitions have been respectively imposed a penalty equivalent to the tax evaded by M/S Quantum Infratech, which is a partnership firm wherein both the Petitioners are partners.

3. The Petitioners herein have an alternative and efficacious remedy to file Appeal under Section 112 of the Act of 2017. However, the Petitioners have approached this Court by challenging the Order-in-Original dated 04.02.2025 as well as the Order-in-Appeal dated 26.08.2025 primarily on two jurisdictional issues, which were-

(a) The penalty in terms of Section 122(1A) of the Act of 2017 can be imposed only upon the taxable person i.e. M/S Quantum Infratech and not the Petitioners who are only partners of the said firm. The basis of the said contention are the judgments of the learned Division Bench of the Bombay High Court in the case of ***Amit Manilal Haria and Others Vs. Joint Commissioner, CGST and***

***Central Excise and Another reported in 2026 SCC OnLine Bom 1510 and Shantanu Sanjay Hundekari Vs. Union of India and Others reported in 2024 SCC OnLine, Bom 929.***

(b) The second jurisdictional issue is that Section 122(1A) of the Act of 2017 was given effect to w.e.f. 01.01.2021 and as such, for the periods prior to 01.01.2021 even assuming, there can be imposition of penalty under Section 122(1A) of the Act of 2017, the Respondent Authorities could not have imposed penalty for the period prior to coming into force of Section 122(1A) of the Act of 2017. In that regard, the Petitioners relied upon the judgment of the Learned Division Bench of the Bombay High Court in ***Amit Manilal Haria (supra)***.

4. It is relevant at this stage to take note of that M/S Quantum Infratech, the Partnership Firm wherein the Petitioners are partners had filed a separate writ petition challenging the Order-in-Original dated 04.02.2025 and Order-in-Appeal dated 26.08.2025 which was registered and numbered as WP(C) No.20/2026. In the said writ petition, the jurisdictional issue which was raised is as to whether, it is permissible for the Proper Officer to issue a consolidated Show Cause Notice in terms of Section 74 of the Act of 2017 and thereupon to pass a consolidated order for various financial years.

5. This Court vide a separate judgment today i.e. 08.06.2026 opined that it is permissible for the Proper Officer to issue a consolidated Show Cause Notice for various financial years in terms with Section 74(1) of the Act of 2017 provided the same is permissible in terms of Section 74(2) of the said Act of 2017. This Court also opined in the said judgment that it is permissible for the Proper Officer to pass a consolidated order for different financial years in terms of Section 74(9) of the said Act of 2017 provided the same is in consonance with Section 74(10) of the said Act of 2017. This Court had also opined that the doctrine of severability would duly apply thereby excising from the purview of the said Show Cause Notice those financial years which were barred for determination of tax and similarly excising those financial years which are barred in the consolidated order for determination of tax.

This Court in the said separate judgment after deciding the jurisdictional issue granted liberty to M/S Quantum Infratech to file an appeal within 30 days from the date of the said judgment in terms of Section 112 of the Act of 2017 and further directed that till the Appeal is taken up for consideration by the Appellate Tribunal, the interim order so passed in the said writ proceedings shall continue, subject to filing the Appeal within 30 (thirty) days

from the date of the said judgment.

6. The above perspective is relevant inasmuch as if the questions which have been urged in the instant proceedings by the Petitioners are allowed in their favour, then the Order-in-Original dated 04.02.2025 as well as the Order-in-Appeal dated 26.08.2025, qua the Petitioners in the instant proceedings can be interfered with. However, in the circumstances, the jurisdictional questions which have been urged in the instant proceedings are decided against the Petitioners, this Court has to grant the liberty to the Petitioners to approach the Appellate Tribunal. The reason for such course of action is on the ground that if in terms of the liberty so granted to the Partnership Firm of the Petitioners herein, the appeal is preferred before the Appellate Tribunal and thereupon the Appellate Tribunal interferes with the demand so made in the Order-in-Original dated 04.02.2025 which have been confirmed by the Order-in-Appeal dated 26.08.2025, then the imposition of the penalty, qua the Petitioners in the instant proceedings, would be impacted.

7. In the backdrop of the above, the facts which led to the filing of both the writ petitions are narrated herein under:

**CONSPECTUS OF FACTS:**

8. The Petitioners in both the writ petitions are admittedly the partners of a partnership firm in the name and style of M/S Quantum Infratech which is engaged in the business of construction of residential buildings. A Show Cause Notice was issued on 03.08.2024 to M/S Quantum Infratech, the Petitioners in both the writ petitions and one Smti Dejjina Begum under Section 74(1) read with Section 122(1A) and Section 122(3)(a) of the Act of 2017. The said Show Cause proceedings were initiated on the basis of investigation being carried out against M/S Quantum Infratech and its partners i.e. the Petitioners herein as well as the Accountant of the M/S Quantum Infratech. During the course of investigation, it was alleged that materials were found that there were evasion of GST on supply of construction of residential complex to landowners; under revert charge against the supply of service by way of transfer of development rights; on account of availment of ineligible ITC during the period from July, 2017 to March, 2023, etc.

9. In the said Show Cause Notice, the Proper Officer made specific allegations against the Petitioners in both the writ petitions

at paragraph 9.6 and 9.7 which being relevant are reproduced hereunder.

**“9.6 Offences committed by Shri Mayank Bansal (Noticee No.2), partner of M/s Quantum Infratech GSTIN 18AAAFQ3262E1ZH (Noticee No.1) and Penalty:** Further, Shri Mayank Bansal (Noticee No 2), being the partner of the Noticee No.1 has concerned himself with the supply of services, which he knows or has reasons to believe are in contravention of any provisions of the Act or the rule made thereunder and thus appears to be person who himself involved in offences specified above at para 9.1 to 9.4. He was liable to declare the actual turnover and deposit/pay GST accordingly by filing statutory GST return. Thus, he was well aware about the facts of omission and commission in evasion of GST. However, he failed to act in accordance to the provisions of CGST Act, 2017. He also failed to furnish the records/documents including Customer-wise ledger account of income/outward supply sought vide summons under Section 70 of the CGST Act, 2017 issued on 30-08-2023 and 01-11-2023 by raising objection to the proceeding vide letter dated 11-09-2023 and 09-11-2023 which appears to be the afterthought and deliberate attempt to hinder the process of investigation and to hide the omission and commission done while reflecting the tax liabilities. Thus, he also found involved in the offences as described in Section 122(1)(i), Section 122(1)(xv), Section 122(1)(xvii) of the CGST Act, 2017 as much as that they have suppressed the turnover and supplied service without issue of any invoices as they collected undisclosed amount in cash from their customers for supply of service for which they have not issued any documents including invoices or receipt vouchers or any other documents disclosing such particulars of receipt and as such have not declared such amount by filing GST returns. Thus Shri Mayank Bansal (Noticee No.2) appears to have concerned himself in retaining the benefits of transaction performed by supply of taxable service without issuance of any Tax invoice and at whose instances such transaction is conducted and as such rendering himself liable for penalty under

*the provision of Section 122(1A) of CGST Act, 2017 read with similar provision under Assam GST Act, 2017, which is quoted as under:-*

**Quote** *Section 122(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.*

**Unquote.**

**9.7 Offences committed by Shri Nadar Hussain (Noticee No.3), partner of M/s Quantum Infratech GSTIN 18AAAFQ3262E1ZH (Noticee No.1) and Penalty:** *Further, Shri Nadar Hussain (Noticee No.3), being the partner of the Noticee No.1 has concerned himself with the supply of services, which he knows or has reasons to believe are in contravention of any provisions of the Act or the rule made thereunder and thus appears to be person who himself involved in offences specified above at para 9.1 to 9.4. He was liable to declare the actual turnover and deposit/pay GST accordingly by filing statutory GST return. Thus, he was well aware about the facts of omission and commission in evasion of GST. However, he failed to act in accordance to the provisions of CGST Act, 2017. He also failed to furnish the records/documents including Customer-wise ledger account of income/outward supply sought vide summons under Section 70 of the CGST Act, 2017 issued on 30-08-2023 and 01-11-2023 by raising objection to the proceeding vide letter dated 11-09-2023 and 09-11-2023 which appears to be the afterthought and deliberate attempt to hinder the process of investigation and to hide the omission and commission done while reflecting the tax liabilities. Thus, he also found involved in the offences as described in Section 122(1)(i), Section 122(1)(xv), Section 122(1)(xvii) of the CGST Act, 2017 as much as that they have suppressed the turnover and supplied service without issue of any invoices as they collected undisclosed amount in cash from their customers for supply of service for which they have not issued*

*any documents including invoices or receipt vouchers or any other documents disclosing such particulars of receipt and as such have not declared such amount by filing GST returns. Thus Shri Nadar Hussain (Noticee No.3) appears to have concerned himself in retaining the benefits of transaction performed by supply of taxable service without issuance of any Tax invoice and at whose instances such transaction is conducted and as such rendering himself liable for penalty under the provision of Section 122(1A) of CGST Act, 2017 read with similar provision under Assam GST Act, 2017.”*

10. In the said Show Cause Notice dated 03.08.2024, the Petitioners in both the petitions were show caused as to why penalty under Section 122(1A) of the Act of 2017 read with the Assam Goods and Services Tax Act, 2017 (for short 'the Assam Act') should not be imposed upon them for acts of involvement in evasion of GST and committing offence as mentioned in Paragraph Nos. 9.6 and 9.7 of the said notice.

11. It is an admitted fact as would be seen from the materials on record that the Petitioners herein did not submit any reply to the allegations contained in Paragraph Nos. 9.6 and 9.7 of the Show Cause Notice. Be that as it may, the Petitioners as well as the authorized representative of M/S Quantum Infratech appeared for personal hearing and pursuant thereto, the Order-in-Original dated 04.02.2025 was passed whereby the Proper Officer, amongst others, categorically came to the opinion that both the Petitioners

failed to act in accordance with the provisions of the Act of 2017 and were found involved in offences as described in Section 122(1) (i), 122(1)(xv), Section 122(1)(xvii) of the Act of 2017. It was also opined in the Order-in-Original that both the Petitioners collected undisclosed amounts in cash from their customers for supply of service for which they did not issue any documents including invoices or receipt vouchers or any other documents disclosing such particulars of receipts and have concerned themselves in retaining the benefits of the transaction performed by supply of taxable service without issuance of any tax invoice. It was also opined that it was at the instance of both the Petitioners such transactions were conducted, and as such they were liable for penalty under Section 122(1A) of the Act of 2017 read with similar provisions under the Assam Act.

12. The resultant effect was that both the Petitioners have been imposed with penalty under Section 122(1A) to the extent of the evaded tax.

13. Being aggrieved, M/S Quantum Infratech filed 6 (six) Appeals against the Order-in-Original dated 04.02.2025 and the Petitioners herein filed individual Appeals before the Appellate Authority.

14. The 8 (eight) appeals were taken up together for adjudication by the Appellate Authority and vide the Order-in-Appeal dated 26.08.2025, all the appeals were dismissed, thereby confirming to the Order-in-Original dated 04.02.2025 passed by the Adjudicating Authority. It is under such circumstances both the writ petitions were filed before this Court.

15. The learned Coordinate Bench of this Court vide an order dated 07.01.2026 issued notice in both the writ petitions and further directed that no coercive actions be taken in pursuance to the orders passed by the Respondent Authorities against the writ petitioners. The interim order thereupon had been extended from time to time.

**SUBMISSIONS MADE ON BEHALF OF THE LEARNED COUNSELS FOR THE PARTIES:**

16. Mr. B. Raichandani, the learned counsel appearing on behalf of the Petitioners submitted that the transactions covered by Clause (i), (ii), (vii) and (ix) of Sub-Section (1) of Section 122 of the Act of 2017 can only be committed by the taxable person, and therefore, no other person other than the taxable person can be imposed the penalty in terms with Section 122(1A) of the Act of 2017. The

learned counsel submitted that in the instant case, the taxable person is M/S Quantum Infratech and therefore the imposition of penalty upon the Petitioners under Section 122(A) of the Act of 2017 was beyond the powers conferred upon the Proper Officer to do so and as such, the impugned Order-in-Original dated 04.02.2025 as well as impugned Order-in-Appeal dated 26.08.2025, insofar as penalty have been imposed upon the Petitioners are required to be interfered with. In that regard, he has referred to the judgments of the learned Division Bench of the Bombay High Court in the case of ***Shantanu Sanjay Hundekari (supra)*** and ***Amit Manilal Haria (supra)*** and submitted that the learned Division Bench of the Bombay High Court had categorically held in both the judgments that the penalty in terms of Section 122(1A) of the Act of 2017 has necessarily to be imposed upon the taxable person inasmuch as the contravention can only be committed by the taxable person. The learned counsel referred to Paragraph Nos. 22 and 23 of the judgment of the learned Division Bench of the Bombay High Court in the case of ***Amit Manilal Haria (supra)*** to substantiate his submissions.

17. The learned counsel further submitted that the judgment in the case of ***Amit Manilal Haria (supra)*** is based upon the judgment of the Bombay High Court in the case of ***Shantanu Sanjay***

**Hundekari (supra)** and the revenue had preferred an appeal before the Supreme Court challenging the judgment in the case of **Shantanu Sanjay Hundekari (supra)**. The Supreme Court vide an order dated 24.01.2025 in the case of **Union of India Vs. Shantanu Sanjay Hundekari reported in 2025 SCC OnLine SC 1358** dismissed the said Special Leave Petition. The learned counsel therefore submitted that applying the said law laid down by the learned Division Bench of the Bombay High Court in **Shantanu Sanjay Hundekari (supra)** as regards the interpretation to Section 122(1A) of the Act of 2017, the Petitioners herein being not the taxable person, they could not have been imposed penalty in terms with Section 122(1A) of the Act of 2017.

18. The learned counsel for the Petitioners further submitted that a perusal of the Show Cause Notice dated 03.08.2024, the Order-in-Original dated 04.02.2025 as well as the Order-in-Appeal dated 26.08.2025 show that in respect to the period from 2017-18 to 2022-23, the proceedings were initiated and concluded. He submitted that Section 122(1A) of the Act of 2017 was inserted by the Finance Act, 2020 w.e.f 01.01.2021 and therefore, for the periods prior to 01.01.2021, no penalty could have been imposed under Section 122(1A) of the Act of 2017 upon the Petitioners even assuming for argument sake though not admitting that penalty

under Section 122(1A) of the Act of 2017 can be imposed upon the Petitioners. In that regard, the learned counsel further referred to the judgment of the learned Division Bench of the Bombay High Court in the case of ***Amit Manilal Haria (supra)*** wherein this specific issue was taken into consideration and it was held that a person cannot be penalized under the law/provision which was not in force for the period in which such alleged act are stated to have been committed. Paragraph Nos. 29 and 30 of the said judgment was relied upon.

19. Mr. S. C. Keyal, the learned Senior counsel appearing on behalf of the Respondents submitted that a perusal of Section 122 of the Act of 2017 would show that the Legislature imposed penalty under Sub-Section (1) of Section 122 of the Act of 2017 upon the taxable person whereas the Legislature in Sub-Section (1A) and (3) of Section 122 of the Act of 2017 have referred to "any person". The learned Senior counsel further submitted that Sub-Section (2) of Section 122 of the Act of 2017 refers to a "registered person" and not a "taxable person" or "any person". The learned Senior counsel therefore submitted that when the Legislature had specifically differentiated in Section 122 of the Act of 2017, the different types of persons, namely the "taxable person", "any person", "registered person", to arrive at a conclusion that the term

“any person” mentioned in Section 122(1A) of the Act of 2017 would mean the “taxable person” would not only be contrary to the Act of 2017 but would also amount to rewriting the provision of Sub-Section (1A) of Section 122 of the Act of 2017.

20. The learned Senior counsel further submitted that Section 2 of the Act of 2017 provides various definitions. The term “person” is defined in Section 2(84) of the Act of 2017. Section 2(94) of the Act of 2017 defines the term “registered person” whereas Section 2(107) defines the term “taxable person”. He therefore submitted that when the Act of 2017 specifically defines the various types of persons, i.e. “person”, “registered person” and “taxable person” and uses the same in Section 122 of the Act of 2017 separately, the opinion of the learned Division Bench of the Bombay High Court rendered in the case of ***Shantanu Sanjay Hundekari (supra)*** and ***Amit Manilal Haria (supra)*** cannot be said to be the correct law laid down. In that regard, the learned Senior counsel also submitted that in the case of ***Gurudas Mallik Thakur and Another Vs. Commissioner of Goods and Service Tax and Another reported in 2025 SCC Online Del 3108***, the Delhi High Court had categorically dealt with this issue and held that Section 122(1A) of the Act of 2017 refers to such person who retains the benefit of the transaction.

21. The learned Senior counsel also submitted that insofar as the contention so made by the learned counsel appearing on behalf of the Petitioners that Section 122(1A) of the Act of 2017 have been retrospectively applied, the learned Senior counsel referring to the judgment of the Delhi High Court in the case of ***Bhupender Kumar Vs. Additional Commissioner Adjudication, CGST Delhi North and Others reported in 2025 SCC OnLine Del 4848*** submitted that Section 122(1A) of the Act of 2017 shall implicate such individuals who may be involved in such fraudulent transactions and the said law cannot be set at naught by holding the same to be not retrospectively applicable to transactions which took place prior to the date when the law was enacted. The learned Senior counsel submitted that what is required is on the day when the show cause notice was issued, the provision of Section 122(1A) of the Act of 2017 was in place.

**ANALYSIS AND DETERMINATION:**

22. The points for determination in the present proceedings are:-

- (i) Whether the Petitioners in both the writ petitions who are admittedly partners of M/S Quantum Infratech (the taxable person) can be imposed penalty under Section 122(1A) of the Act of 2017?

- (ii) In the circumstance, the point for determination No.(i) is decided against the Petitioners, whether the provisions of Section 122(1A) of the Act of 2017 can be applied for the period prior to 01.01.2021 which is the date of coming into force of Section 122(1A) of the Act of 2017?

**FIRST POINT FOR DETERMINATION:**

23. Section 122 of the Act of 2017 being relevant is reproduced herein under:

***“122. Penalty for certain offences***

*(1) Where a taxable person who—*

- (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;*
- (ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;*
- (iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*

- (iv) *collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*
- (v) *fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;*
- (vi) *fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;*
- (vii) *takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;*
- (viii) *fraudulently obtains refund of tax under this Act;*
- (ix) *takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*
- (x) *falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;*
- (xi) *is liable to be registered under this Act but fails to obtain registration*

- (xii) *furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;*
- (xiii) *obstructs or prevents any officer in discharge of his duties under this Act;*
- (xiv) *transports any taxable goods without the cover of documents as may be specified in this behalf;*
- (xv) *suppresses his turnover leading to evasion of tax under this Act;*
- (xvi) *fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;*
- (xvii) *fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;*
- (xviii) *supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;*
- (xix) *issues any invoice or document by using the registration number of another registered person;*
- (xx) *tampers with, or destroys any material evidence or document;*
- (xxi) *disposes off or tampers with any goods that have been detained, seized, or attached under this Act,*

*he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.*

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

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

*(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;*

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

*(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,*

*shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.]*

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

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

(b) *for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.*

(3) *Any person who—*

(a) *aids or abets any of the offences specified in clauses (i) to (xxi) of subsection (1);*

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

(c) *receives or is in any way concerned with the supply of, or in any*

*other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;*

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

*(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account,*

*shall be liable to a penalty which may extend to twenty-five thousand rupees."*

24. This Court also finds it relevant to take note of the definition of the terms "person", "taxable person" and "registered person". The term "person" has been defined in Section 2(84) of the Act of 2017. The said Sub-Section (84) of Section 2 of the Act of 2017 being relevant is reproduced herein under:

*“(84) "person" includes—*

*(a) an individual;*

*(b) a Hindu Undivided Family;*

*(c) a company;*

- (d) *a firm;*
- (e) *a Limited Liability Partnership;*
- (f) *an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
- (g) *any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);*
- (h) *any body corporate incorporated by or under the laws of a country outside India;*
- (i) *a co-operative society registered under any law relating to co-operative societies;*
- (j) *a local authority;*
- (k) *Central Government or a State Government;*
- (l) *society as defined under the Societies Registration Act, 1860 (21 of 1860);*
- (m) *trust; and*
- (n) *every artificial juridical person, not falling within any of the above;”*

25. From a perusal of the above quoted Sub-Section, it would

show that the term "person" includes various entities including an individual. One can say it to be the genus of different types of persons.

26. Section 2(107) defines the term "taxable person". The said definition being relevant is reproduced herein under:

*"2(107) "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;"*

27. A perusal of the above definition would show that a taxable person is a person who is registered or liable to be registered under Section 22 or Section 24 of the Act of 2017. In other words, the person who makes a taxable supply of goods or services or both with an aggregate turnover of a particular amount. The taxable person is a species of the term "person" who is registered or liable to be registered under the Act of 2017.

28. Section 2(94) defines the term "registered person" and the said definition being relevant is reproduced herein under:

*"2(94) "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;"*

The "registered person" would be a sub-species of a "taxable

person”.

29. Therefore, a conjoint reading of Sections 2(84), 2(107) and 2(94) of the Act of 2017 would show that “person” would include various entities whereas a “taxable person” is a person who is liable to be registered under Section 22 or 24 of the Act of 2017 and includes a registered person whereas a “registered person” is a person who is registered under Section 25 of the Act of 2017.

In the backdrop of the above, let this Court analyze Section 122 of the Act of 2017.

30. Sub-Section (1) of Section 122 of the Act of 2017 specifically refers to “taxable person” and further stipulates the penalties that can be imposed upon the “taxable person” who commits various violations or omits to carry out certain requirements as mentioned in Clauses (i) to (xxi) of Section 122(1) of the Act of 2017.

31. Sub-Section (1A) of Section 122 of the Act of 2017 however comes into play in respect to transactions covered under Clauses (i), (ii), (vii) and (ix) of Sub-Section (1) of Section 122 of the Act of 2017. The said Sub-Section (1A) of Section 122 of the Act of 2017 refers to “any person”. A further perusal of Sub-Section (1A) of Section 122 of the Act of 2017 further qualifies the term “any

person” who would come within the ambit of Sub-Section (1A) of Section 122 of the Act of 2017. There is twin requirement to come within the scope of Sub-Section (1A) of Section 122 of the Act of 2017. They are:

(a) the person who retain the benefit of the transactions covered under clauses (i), (ii), (vii) and (iv) of Sub-Section (1) of Section 122 of the Act of 2017; and

(b) it is at the instance of that person such transaction was conducted.

32. Another aspect which is of relevance is the person to be identified to come within the scope of Section 122(1A) of the Act of 2017 is upon the adjudication carried out under Section 122(1) in respect to a taxable person who had committed the violations as stipulated in Clauses (i), (ii) (vii) and (ix) of Section 122(1) of the Act of 2017.

33. Let this Court further proceed on the analysis of Section 122 of the Act of 2017. Sub-Section (2) of Section 122 of the Act of 2017 categorically refers to the term “any registered person” whereas Sub-Section (3) of Section 122 of the Act of 2017 refers to “any person”.

34. The above analysis of Section 122 of the Act of 2017 and more particularly Sub-Sections (1), (1A), (2) and (3) of Section 122 would show that the Legislature had identified which "person" would be liable for the penalty. The Legislature in the opinion of this Court having analyzed the requirement and with specific intent inserted Sub-Section (1A) after Sub-Section (1) of Section 122 of the Act of 2017. The Legislature could have inserted or merged the contents of Sub-Section (1A) of Section 122 with Sub-Section (3) of Section 122 of the Act of 2017. But it appears from the legislative intent that Sub-Section (1A) was inserted after Sub-Section (1) specifically to deal with the person who retained the benefits of a transaction and at whose instance such transaction was conducted by the taxable person. At the cost of repetition, a taxable person includes a person who is liable to be registered or a person who is registered. In that process Sub-Section (1A) of Section 122 of the Act of 2017 envelops both a registered person as well as a person who is liable to be registered.

35. Let this Court now take the submission of the learned counsel for the Petitioners that the taxable person can only commit the violations stipulated in Clauses (i), (ii), (vii) and (ix) of Section 122(1) of the Act of 2017 and this contention had been upheld by the learned Division Bench of the Bombay High Court in ***Shantanu***

***Sanjay Hundekari (supra)*** and ***Amit Manilal Haria (supra)***.

36. It is the opinion of this Court that the said submission is misconceived. In fact, the said submission is too narrow an interpretation to the provision of Section 122 of the Act of 2017 and more particularly taking into consideration the definition of "person", "taxable person" and "registered person". True, if the taxable person is the sole proprietor or an individual who solely is responsible for the commission of the violations contained in Clauses (i), (ii), (vii) and (ix) of Section 122(1) of the Act of 2017, then the taxable person would be the person as mentioned in Sub-Section (1A) of Section 122 of the Act of 2017. But let this Court take the example of a Company, LLP, Partnership Firm, or any juridical person which is the taxable person. Can the Company, LLP, Partnership Firm or any juridical person on its own without the involvement of a natural person commit the violations as mentioned in clauses (i), (ii), (vii) and (ix) of Section 122(1) of the Act of 2017. The answer would be a simple "No".

37. Therefore with great respect, this Court cannot agree with the proposition of law laid down by the learned Division Bench of the Bombay High Court in ***Shantanu Sanjay Hundekari (supra)*** and ***Amit Manilal Haria (supra)***. It is the opinion of this Court that the

proposition of law laid down by the learned Division Bench of the Bombay High Court in ***Shantanu Sanjay Hundekari (supra)*** and ***Amit Manilal Haria (supra)*** if accepted, it would render the provision of Sub-Section (1A) of Section 122 of the Act of 2017 otiose and nugatory.

38. The opinion herein rendered by this Court finds support from the observation of the learned Division Bench of the Delhi High Court in the ***Gurudas Mallik Thakur (supra)***. Paragraphs 27 and 29 of the said judgment are reproduced hereunder:

*“27. The purpose of section 122(1A) of the CGST Act is clearly to make persons who may be responsible for having created bogus invoices and having utilised ITC without the receipt of goods and services and for distributing ITC in contravention of section 20 of the CGST Act. It can be seen that the manner in which companies function is that there is a management who would be taking the decisions on behalf of taxable persons. These companies being inanimate, the responsibility has, by the wisdom of the Legislature, been fixed under section 122(1A) of the CGST Act upon any person who retains the benefits of a transaction.*

*29. Such activities would have a greater financial impact on society in general and the economy in particular, therefore section 122(1A) of the CGST Act has been enacted to also make such persons liable under these circumstances.”*

39. In the backdrop of the above, it is relevant to take note of that the Petitioners herein in both the writ petitions in spite of the allegations contained at Paragraph Nos. 9.6 and 9.7 of the Show Cause Notice dated 03.08.2024 did not submit any reply denying to

those allegations. The Order-in-Original dated 04.02.2025 points out that it is at the instance of the Petitioners herein that transactions were committed by M/S Quantum Infratech and the Petitioners herein have retained the benefit of the transactions.

40. The findings of the Proper Officer at Paragraphs 20.6 and 20.7 of the Order-in-Original dated 04.02.2025 have been affirmed by the Appellate Authority in the Order-in-Appeal and more particularly, paragraph 21(J).

41. Under such circumstances, it is therefore the opinion of this Court that in view of the two conditions being satisfied by the fact finding authority that the Petitioners herein have retained the benefit of the transactions covered under Clause (i) and Clause (vii) of Sub-Section (1) of Section 122 of the Act of 2017 and at their instance, such transactions were conducted, the Petitioners herein would come within the ambit of Section 122(1A) of the Act of 2017 and would be liable to the penalty.

42. The above therefore answers the first point for determination.

**SECOND POINT FOR DETERMINATION:**

43. For deciding the present point for determination, this Court

finds it relevant to take note of how the learned Division Bench of the Bombay High Court as well as the Delhi High Court dealt with the issue as to the applicability of Section 122(1A) of the Act of 2017 which came into operation w.e.f. 01.01.2021. The learned Division Bench of the Bombay High Court in the case of ***Amit Manilal Haria (supra)*** observed at Paragraph Nos. 29 and 30 as herein under:

**“29.** *The other contention as urged on behalf of the petitioners is that the competent authority did not have jurisdiction to retrospectively apply the provisions of sub-section (1A) of section 122 which came to be incorporated in the CGST Act by Act No. 12 of 2020 with effect from January 1, 2021. Admittedly, the period in question, subject matter of the show-cause notice is the period from July 2017 to July 2023. Thus, according to the petitioners, the period from July 2017 to January 1, 2021 is the period, when such penal provision was not in existence. Thus, there could not have been any retrospective application of any penalty provision. The law in this regard is well-settled including considering the clear provision of article 20(1) of the Constitution which reads thus:*

*“20. Protection in respect of conviction for offences.—(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*

*(2)....” (emphasis [ Here printed in italics.] supplied)*

**30.** *Thus, a person cannot be penalised under the law/provision which was not in force for the period in which such alleged acts are stated to have been*

*committed. There could not have been any retrospective application of section 122(1A) of the CGST Act in issuing the impugned show-cause notice for the period July 2017 to January 1, 2021, and for such reason also the impugned order-in-original insofar as such period is concerned, cannot be sustained."*

44. From the above quoted paragraphs, it would be seen that the learned Division Bench of the Bombay High Court held that as the Show Cause Notice was for the period from July, 2017 to July, 2023, and the period from July, 2017 to 1<sup>st</sup> January, 2021 is the period when Section 122(1A) of the Act of 2017 was not in existence, there could not have been any retrospective application of any penalty provision. The learned Division Bench of the Bombay High Court arrived at the said opinion on the basis of Article 20(1) of the Constitution which stipulates that no person shall be convicted of any **offence** except for violation of law in force at the time of commission of the act charged as an **offence**, nor the person be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the **offence**.

45. On the other hand, the learned Division Bench of the Delhi High Court in the case of **Bhupender Kumar (supra)** observed at paragraph Nos.24 and 25 as herein under:

- “24.** *In so far as the retrospective application of Section 122(1A) of CGST Act is concerned, the same would be governed by the date of the SCN. The SCN was issued on 8<sup>th</sup> March, 2024. The law has been clearly amended to also implicate such individuals who may be involved in such fraudulent transactions and the said law cannot be set at naught by holding the same to not be retrospectively applicable to transactions which took place prior to the date when the law was enacted. On the day when the SCN was issued, the provision Section 122 (1A) was in place.*
- 25.** *The manner in which fraudulent ITC has been availed would also show that it was a continuous process and not a one time act of the parties involved. Under such circumstances Section 122(1A) of the CGST Act was clearly applicable.”*

46. The above quoted paragraphs would show that the learned Division Bench of the Delhi High Court observed that retrospective application of Section 122(1A) of the Act of 2017 would be governed by the date of the Show Cause Notice. In that case, the Show Cause Notice was issued on 08.03.2024 and as on that date, the law clearly implicated such individuals who may be involved in such fraudulent transactions and the said law cannot be set at naught by holding the same to not be retrospectively applicable to transactions which took place prior to the date when the law was enacted. It was also observed that the date when the Show Cause Notice was issued, the provisions of Section 122(1A) of the Act of 2017 was in place. The learned Division Bench of the Delhi High Court had also observed that the manner in which the fraudulent

ITC had been availed would also show that it was a continuous process and not a one time act of the parties involved for which Section 122(1A) of the Act of 2017 was clearly applicable.

47. At this stage, this Court also finds it relevant to note that in the case of ***Mukesh Kumar Garg Vs. Union of India and Others*** reported in ***2025 SCC OnLine Del 3324***, two questions arose for consideration before the learned Division Bench of the Delhi High Court. One was as to whether the penalty under Section 122(1A) of the Act of 2017 could have been imposed upon any person other than the "taxable person" and the second, on the retrospective application of Section 122(1A) of the Act of 2017. The learned Division Bench of the Delhi High Court was not inclined to entertain the instant writ petition on those two issues and granted liberty to the Petitioner therein to avail remedies under Section 107 of the Act of 2017. A Special Leave to Appeal was filed before the Supreme Court which was registered and numbered as Special Leave to Appeal (Civil) No.18178/2025. The said Appeal is presently pending. The Supreme Court vide an order dated 04.08.2025 granted leave and passed an order of stay on the recovery of the amount subject to deposit of 25% of the demand before the GST Department. The said order dated 04.08.2025 being relevant is reproduced herein under:

- “1. *Two primary contentions have been raised. First, Section 122(1) of the Central Goods and Services Tax Act, 2017 (for short 'the Act') would not be applicable to the petitioner as he is a non-taxable person. Secondly, the provisions of Section 122 (1A) of the Act which came into force w.e.f. 01.01.2021 cannot be applied retrospectively for the Assessment Years 2017- 2020.*
  
2. *Leave granted.*
  
3. *In the meanwhile, there shall be stay on the recovery of the amount directed to be deposited provided the appellant deposits 25% of the demand before the GST Department either through Electronic Ledger or through Cash Ledger.”*

48. In the backdrop of the above, let this Court now consider as to whether Section 122(1A) of the Act of 2017 can be applied retrospectively or whether there is any requirement to apply Section 122(1A) of the Act of 2017 retrospectively.

49. Section 122(1A) of the Act of 2017 applies to person who-

(a) retains the benefit of a transaction covered under Clauses (i), (ii), (vii) or (ix) of Sub-Section (1) of Section 122 of the Act of 2017; and

(b) at whose instance such transaction was conducted.

50. A perusal of Section 122(1A) of the Act of 2017 would show that the penalty is sought to be imposed on account of violation of Clauses (i), (ii), (vii) and (ix) upon the person at whose instance such violation occurred and the person had retained the benefits out of the said transaction. Section 122(1) of the Act of 2017 had been there since the date when the Act of 2017 came into force. Therefore Section 122(1A) of the Act of 2017 do not create any independent violation nor does it enlarges the violations contemplated under Section 122(1) of the Act of 2017. The legislative intent behind Section 122(1A) of the Act of 2017 is solely to identify the person at whose instance the violations took place and if the person had retained the benefits, the person would be liable to a penalty as mentioned therein.

51. This Court further finds it relevant to observe this that the term "retains benefits of a transaction covered under Clauses (i), (ii), (vii) & (ix) of Sub-Section (1)" clearly indicates that the penalty is relatable to the violations referred to in the Clauses (i), (ii), (vii) and (ix) of Sub-Section (1) of Section 122 which was in existence since the inception of the Act of 2017 and as such, there being no new violations created by Section 122(1A) of the Act of 2017, there is no question of the said Sub-Section to be applied retrospectively.

52. This Court also finds it relevant to take note of Section 132 of the Act of 2017. It is of importance to note that opening words of Section 132(1) of the Act of 2017 was amended w.e.f 01.01.2021. The opening words of Section 132(1) reads as:

*“Whoever commits, or causes to commit and retains the benefit arising out of, any of the following offences, namely ....”*

Prior to the amendment, the opening words of Section 132(1) of the Act of 2017 read as follows:

*“Whoever commits any of the following offences...”*

The offences have been clearly mentioned in Clauses (a), (b), (c), (d), (e), (f), (h) (i) & (l) of Section 132(1) of the Act of the Act of 2017 and the punishments have been mentioned in Clauses (i) to (iv) of Section 132(1) of the Act of 2017.

Therefore Section 132 specifically refers to offences. However Section 122 refers to penalties for the violations mentioned in Clauses (i) to (xxi) of Section 122(1) of the Act of 2017. The question therefore arises as to whether Section 122(1A) of the Act of 2017 even if for argument sake is required to be applied retrospectively, would it violate Article 20(1) of the Constitution as

was held by the learned Division Bench of the Bombay High Court in ***Amit Manilal Haria (supra)***. In the of opinion of this Court, with great respect, the learned Division Bench of the Bombay High Court failed to take note of the difference between an offence and penalty in respect to a civil adjudication while applying Article 20(1) of the Constitution. This difference would be apparent from the law laid down by the Constitution Bench of the Supreme Court in the case of ***Jawala Ram and Others Vs. State of Pepsu reported in 1961 SCC OnLine SC 47***. Paragraphs 6, 7, 8, 9 & 10 being relevant are quoted hereunder:

*“6. The main contention raised by Mr Naunit Lal before us in support of the present appeal is that Section 3 and Section 4 of the Pepsu Sirhind Canal and Western Jumna Canal Rules (Enforcement and Validation) Act 4 of 1954 are unconstitutional being in contravention of Article 20(1) of the Constitution. Other points that he wanted to urge were (i) that the provisions of Rules 32 and 33 do not apply to the facts of the present case, and (ii) that the notice served before the levy was made was not sufficient. As however it appeared clear to us that neither of these points was taken before the High Court we have not given him permission to raise these points before us, in the circumstances of this case. Another point that Rules 32 and 33 are beyond the scope of the rule-making provisions of the Act was mentioned by the learned counsel but was later abandoned.*

*7. The only point for our consideration therefore is whether Section 3 and Section 4 of the Pepsu Sirhind Canal and Western Jumna Canal Rules (Enforcement and Validation) Act, 1954, infringes the provisions of Article*

*20(1) of the Constitution. Article 20(1) provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is argued on behalf of the appellants that the application by these sections of rules allowing the imposition of special rates which have been imposed under the provisions of Rules 32 and 33 of the Pepsu Sirhind Canal Rules, which could not have been imposed at the time the water was used is bad, as thereby the appellants have been subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*

**8.** *This argument is based on the assumption that the use of water by the appellants was an "offence" and that the imposition of an enhanced water charge under Rules 32 and 33 read with Section 31 of the Canal Act for such use was "a penalty" for such an "offence". This assumption is clearly wrong. "Offence" as was pointed out by this Court in Maqbool Hussain case where Article 20(2) of the Constitution came up for consideration has not been defined in the Constitution. So under Article 367 which provides that General Clauses Act, 1897 shall apply for the interpretation of the Constitution the word "offence" in the several clauses of Article 20 must be understood to convey the meaning given to it in Section 3(37) of the General Clauses Act. That section defines an "offence" to mean an act or omission made punishable by any law for the time being in force.*

**9.** *Punishment is the mode by which the State enforces its laws forbidding the doing of something, or omission to do something. Punishment may take different forms. It may be a mere reprimand; it may be a fine; it may be whipping; it may be imprisonment — simple or rigorous; it may even extend to death. But whatever the form, punishment is always co-related to a law of the*

*State forbidding the doing or the omission to do something. Unless such a law exists, there is no question of any act or omission being made "punishable". Have we in the present case any law forbidding the unauthorised user of the water which Section 31 of the Canal Act provides will be charged at rates that may be prescribed by rules? Quite clearly, there is none. In providing for a change to be made for use of water at rates that may be prescribed by rules the legislature is not prohibiting the use of water. The word "unauthorised use" in the section does not import any idea of prohibition. The intention of the law clearly is to obtain payment for water used; and the fact that the rates prescribed may be high cannot alter this position.*

**10.** *We are therefore of opinion that the use of the water by the petitioners was not an "offence" and the order for levy of special rates for user thereof was not the imposition of a penalty for an offence. When the Sub-Divisional Canal Officer or the Canal Commissioner was dealing with the matter they had to decide whether these petitioners had used water in an unauthorised manner and if so at what rates they should be charged for such use. In doing this, they were not trying anybody for any offence; and the fact that special rates were imposed did not deprive these rates of their essential character of a charge for water used and did not convert them into any penalty for the commission of an offence. There is therefore no scope here for the application of the provisions of Article 20(1) of the Constitution."*

53. Let this Court analyze the issue from another angle. From a perusal of Sections 122(1) and 122(1A) of the Act of 2017, it would show that Section 122(1A) of the Act of 2017 is complementary to Section 122(1) of the Act of 2017. Section 122(1A) of the Act of 2017 would not spring into action and until violations of Clauses

(i), (ii), (vii) and (ix) of Section 122(1) of the Act of 2017 by the taxable person is adjudicated upon. Under such circumstances, the question of applying Section 122(1A) of the Act of 2017 retrospectively or not does not arise. It is however clarified that when the Show Cause Notice was issued, Section 122(1A) of the Act of 2017 should be in operation. This Court duly agrees with the observations of the Delhi High Court in the case of ***Bhupender Kumar (supra)***.

54. Accordingly this Court decides the second point for determination opining that the application of Section 122(1A) of the Act of 2017 in the case of Petitioners do not call for interference.

55. The above therefore answers the second point for determination.

56. In the previous segments of the instant judgment, this Court had categorically observed that if the jurisdictional issues raised are decided against the Petitioners, this Court would have to permit the Petitioners to avail remedies under Section 112 of the Act of 2017 inasmuch as this Court has permitted the firm namely M/S Quantum Infratech in the separate judgment and order dated

08.06.2026 rendered in WP(C) No.2922/2025 to approach the Appellate Tribunal.

57. This Court finds it relevant to clarify that this Court had only decided the jurisdictional issues and not on the quantum of penalty against the Petitioners. The questions whether the Petitioners retained the benefits of the transaction as well as whether it was at the instance of the Petitioners, such transactions were carried are kept open which the Petitioners can challenge before the Appellate Tribunal, if so advised. The observations made in the present judgment to the effect that the Petitioners retained the benefits of the transactions and at the instance of the Petitioners, the transactions were carried out were on the basis of the finding of facts arrived at in the Order-in-Original as well as in the Order-in-Appeal.

**CONCLUSION:**

58. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

- (i) In terms with Section 122(1A) of the Act of 2017, penalty can be imposed upon the Petitioners unless and until the findings

of facts arrived at by the Proper Officer in the Order-in-Original dated 04.02.2025 as well as by the Appellate Authority in the Order-in-Appeal dated 26.08.2025 qua the Petitioners are interfered with by the Appellate Tribunal.

- (ii) Section 122(1A) of the Act of 2017 would be applicable against the Petitioners for any transactions covered under Clauses (i), (ii), (vii) and (ix) of Sub-Section (1) of Section 122 of the Act of 2017 even for the period prior to coming into effect of Section 122(1A) of the Act of 2017.
- (iii) The Petitioners herein are granted liberty to file respective Appeal before the Appellate Tribunal within a period of 30 days from today, and if such Appeal is filed within the said period, the Appellate Tribunal shall consider the said Appeal(s) on its merits without insisting on the question of limitation.
- (iv) This Court further observes and directs that if the Appeal(s) is/are filed within the time permitted in the preceding clause, the interim orders so passed in the respective writ proceedings to the effect that no coercive measures should be taken against the Petitioners shall continue till the stay

application are taken up for consideration by the Appellate Tribunal.

(v) There shall be no orders as to cost.

**JUDGE**

**Comparing Assistant**