

Mastermind Or Mere Employee? Navigating the Boundaries of Penalty Jurisdiction Under Section 122(1A) of the CGST Act, 2017



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1. Introduction

The insertion of **Section 122(1A)** into the Central Goods and Services Tax Act, 2017 by the Finance Act, 2021, with effect from **01st January 2022**, marked a decisive legislative shift in the architecture of GST enforcement, one which, for the first time, extended the long arm of penal liability beyond the registered taxable person and reached into the internal hierarchy of corporate and business structures to fasten individual accountability upon those who "**cause**" the commission of specified offences and "**retain the benefit**" therefrom. The provision was, by all legislative accounts, a necessary and welcome corrective step on account of the menace of fake invoicing networks orchestrated by masterminds and beneficial owners who operated with impunity from behind the protective veil of registered entities. Yet, as is so frequently the case with broadly worded penal provisions, the cure appears to be worse than the disease, as the tax administrators across the country have invoked Section 122(1A) with an indiscriminate sweep across the board. It is this conundrum i.e., the collision between a legitimate legislative purpose and its illegitimate overreach in execution, that this article seeks to examine, with particular attention to the defences available to individuals who stand wrongly implicated under the provision.

In this backdrop, the decision of the Hon'ble Bombay High Court in *Amit Manilal Haria & Ors. v. The Joint Commissioner, CGST and Central Excise* [2026] 184 taxmann.com 119/114 GST 606/107 GSTL 113 (Bombay) assumes considerable importance. The Court has delivered another progressive and legally significant ruling on the foundational issue of whether a person can be held vicariously liable to penalty merely by being an employee of a company. The answer is an emphatic and unequivocal **NO**.

2. The Statutory Framework and Its Importance in the GST Penal Architecture

Section 122(1A) of the CGST Act, 2017 operates as a **derivative** penal mechanism as it draws its life from the predicate offences enumerated in Section 122(1), which are, by their express terms, acts attributable to a **taxable person**. Clauses (i), (ii), (vii) and (ix) of Section 122(1) in its very nature are offences which only a registered taxable person can commit. The reach of Section 122(1A) into the territory of non-registered individuals must, therefore, always be understood through this statutory lens.

The importance of this provision in the GST penal architecture cannot be overstated. Prior to its insertion, the Revenue faced a significant enforcement lacuna: where a company or registered entity was the instrument of fraud, its beneficial owners and masterminds operating through nominees, directors-in-name, or shell structures could not be personally reached by the penal provisions of the CGST Act. Section 122(1A) was crafted to close this gap. The **38th Meeting of the GST Council**, held on 18th December 2019, had specifically proposed the insertion of the sub-

section to address cases of fake invoicing a menace that had by then assumed alarming proportions in the GST system.

3. Factual Background of the present case

The petition under Article 226 of the Constitution of India challenged an order-in-original confirming an exorbitant demand of penalty of **Rs. 133 Cr each** proposed under a Show Cause Notice issued to the Petitioners in their capacities as the **Chief Financial Officer, Chief Executive Officer and Director**, and **Joint Managing Director** in main proceedings against one *M/s. Shemaroo Entertainment Limited* being the taxable person.

The genesis of the dispute was a search action initiated under **Section 67(2)** of the CGST Act, 2017 by the CGST department. Summons were issued, statements were recorded, and arrests were made. A Show Cause Notice was ultimately issued to the Main Noticee, with the Petitioners named as co-noticees, proposing to impose penalty under **Section 122(1A)** of the CGST Act. The demand proposed in the SCN was subsequently confirmed in an order-in-original, against which the present writ petition was filed.

4. Submissions on Behalf of the Petitioners

The Petitioners advanced the following principal grounds in challenge. **First**, being unregistered individuals, they do not qualify as "taxable persons" under Section 2(107) of the CGST Act, and Section 122(1A) applicable only to taxable persons and not to every "person" under Section 2(84) could not be invoked against them, rendering the Show Cause Notices and the consequent order-in-original without jurisdiction. **Second**, the impugned order sought personal recovery of approximately Rs. 400 crore from salaried employees when the company's underlying disputed tax liability was only around Rs. 70 crore a penalty nearly six times the tax demand, submitted to be arbitrary and violative of the constitutional principle of proportionality. **Third**, Section 122(1A) having come into force only on 1st January 2021, its invocation for prior period was unconstitutional and directly barred by Article 20(1) of the Constitution. **Fourth**, reliance was placed on *Shantanu Sanjay Hundekari v. Union of India* [2024] 161 taxmann.com 27/105 GST 429/89 GSTL 62 (Bombay), affirmed by the Hon'ble Supreme Court upon dismissal of the Revenue's Special Leave Petition, wherein personal penalties on employees for their employer's tax disputes were held impermissible being a binding precedent. **Fifth** and finally, Section 122(1A) being derivative and conditional in operation, it cannot be invoked without a prior valid determination under Section 122(1), and the impugned order having failed to establish this foundational precondition was *void ab initio*.

5. Submissions on Behalf of the Respondent Revenue

The Revenue contended that Section 122(1A) was correctly invoked, as it was in force on the date of the Show Cause Notice and, by its express use of the words "**any person**", applies to a wider class than merely registered taxable persons including non-taxable persons. It was further submitted that the Petitioners, by virtue of their senior positions as JMD, CEO and Director, and CFO, were not mere employees but were actively controlling and managing the company, and that the conspiracy to defraud the Revenue was planned and executed at their instance, as evidenced by their recorded statements. The decision in *Shantanu Sanjay Hundekari (supra)* was sought to be distinguished on the ground that the Petitioner therein held no management role, whereas the present Petitioners occupied positions of control and were the directing minds behind the impugned transactions.

6. Discussion and Findings of the High Court

(a) *The Two-Fold Requirement Under Section 122(1A)*

The Court commenced its analysis with a careful textual examination of Section 122(1A). The provision stipulates that any person who **retains the benefit** of a transaction covered under clauses (i), (ii), (vii) or (ix) of Section 122(1), **and** at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or ITC availed of or passed on. The Court identified this as a **two-fold conjunctive requirement**: the person must both **retain the benefit** of the impugned transaction, and the transaction must have been conducted **at his instance**. Unless both limbs are independently established, the jurisdictional foundation for invoking Section 122(1A) is simply absent.

(b) The Statutory Gateway: Section 122(1A) Reads Through Section 122(1)

The Court further observed that Section 122(1A) is not a free-standing provision capable of independent operation. It is expressly triggered by, and must be read conjointly with, clauses (i), (ii), (vii) and (ix) of Section 122(1). Each of these clauses describes a violation that is, by its very nature, attributable only to a **taxable person** i.e., one who supplies goods or services, issues invoices, avails Input Tax Credit, and participates in the GST supply chain as a registered entity. The Court reasoned that when Section 122(1A) uses the words "**any person**", those words must be understood in the context of a "**taxable person**", since Section 122(1) itself applies exclusively to taxable persons. To read "**any person**" in Section 122(1A) as extending beyond this context would render it impossible to give coherent effect to the predicate clauses of Section 122(1), a result inconsistent with settled principles of statutory construction. This interpretation reflects the legislative design of the provision as a **derivative liability mechanism**, not an independent penal provision.

(c) Employees Cannot Be Held Liable in the Absence of Retained Benefit

Applying these principles to the facts, the Court held that the Petitioners being the CFO, CEO and Director, and JMD were merely employees of the company and could not be held liable under Section 122(1A) in the **absence of any material** establishing that they had retained the benefit of the transactions covered under clauses (i), (ii), (vii) or (ix) of Section 122(1). In the absence of contrary material and findings, the jurisdictional requirement of Section 122(1A) could not be said to have been satisfied.

(d) Reaffirmation of *Shantanu Sanjay Hundekari*

The Court found its own earlier decision in *Shantanu Sanjay Hundekari (supra)* to be squarely applicable on all fours to the facts of the present case. The Court in *Hundekari* had, after examining the rival contentions, held that the absence of retention of personal benefit by the employee-Petitioners was fatal to the invocation of Section 122(1A). The Revenue's challenge to *Hundekari* before the Supreme Court was dismissed, lending it the force of a judicially affirmed precedent.

(e) Retrospective Application Barred by Article 20(1)

On the separate ground of retrospective application, the Court upheld the Petitioners' contention that Section 122(1A) was incorporated into the CGST Act with effect from **1st January 2021**, therefore the invocation of Section 122(1A) for an anterior period was a patent exercise in retrospective penalisation, impermissible under **Article 20(1)** of the Constitution.

(f) The Result: Show Cause Notice and Order-in-Original Quashed

As a consequence of the aforesaid findings, the Show Cause Notices and the consequent order-in-original passed against the Petitioners were illegal and without jurisdiction, and were accordingly set aside.

7. Conclusion

The decision in *Amit Manil Haria* is a timely and principled intervention in what has become one of the most pressing enforcement controversies of the GST era. Section 122(1A) was never designed as a blunt instrument to be deployed against every officer and employee whose name appears in a company's hierarchy. The Court's reaffirmation of the two-fold conjunctive test provides practitioners with a clear and workable standard to contest overreaching SCNs. Further, its insistence that "any person" in Section 122(1A) must be read in the context of a "taxable person" under Section 122(1) is textually rigorous and constitutionally sound and its categorical rejection of retrospective penalisation for the pre-2021 period is a reminder that even in the most complex fiscal enforcement matters, the Constitution remains the **Grundnorm**.

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