IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.10.2025
	07.11.2025
	28.11.2025
	05.12.2025
	18.12.2025
Pronounced On	02.01.2026

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.27029, 27032, 27036, 32599, 19967, 34352, 34357, 35186 of 2023, W.P.Nos.3540, 3567, 3570, 3572, 3902, 15690, 3915, 3916, 3966, 23356, 30854, 9867 of 2024 and W.P.Nos.9988, 28786, 38007, 42416, 46522, 47726 and 48941 of 2025

and

W.M.P.Nos.26455, 26457, 26460, 26461,26469, 26471, 26473, 32182, 32183, 19319, 19321, 34255, 34256, 34257, 34258, 34263, 34264, 34265, 34266, 35170, 35173 of 2023, 3802, 3803, 3827, 3829, 3833, 3836, 3842, 3844, 4228, 4229, 10881, 10882, 10883, 17098, 17099, 4232, 4236, 4233, 4234, 4282, 4285, 25514, 33447 of 2024 and 11195, 32261, 42437, 42440, 47431, 47437, 47439, 51901, 51902, 53274, 53275, 54670 and 54673 of 2025

W.P.No.27029 of 2023

Ms.Kandan Hardware Mart,
Represented by its Proprietor
E.Palani ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Park Town Assessment Circle,
Chennai – 600 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned order dated 26.12.2022 passed in GSTIN: 33AAIPP3315R1ZC/2017-2018 and the consequential order dated 12.05.2023 in GSTIN: 33AAIPP3315R1ZC/2017-2018 passed by the Respondent and quash the same as passed in violation of principles of natural justice and contrary to law and further direct the Respondent to rework the late fee in the light of Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.P.Rajkumar
For Respondent : Mrs.K.Vasanthamala
Government Advocate

W.P.No.27032 of 2023

M/s.Kandan Hardware Mart,
Represented by its Proprietor
E.Palani ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Park Town Assessment Circle,
Chennai – 600 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of

India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned order dated 26.12.2022 passed in GSTIN: 33AAIPP3315R1ZC/2018-2019 by the Respondent and quash the same as passed in violation of principles of natural justice and contrary to law and further direct the Respondent to rework the late fee in the light of Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mrs.K.Vasanthamala
Government Advocate

W.P.No.27036 of 2023

M/s.Kandan Hardware Mart,
Represented by its Proprietor
E.Palani ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Park Town Assessment Circle,
Chennai – 600 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned order dated 27.12.2022 passed in GSTIN: 33AAIPP3315R1ZC/2019-2020 and consequential impugned Show Cause Notice dated 15.02.2023 and the impugned summary of the Show Cause Notice dated 15.02.2023 both issued by the Respondent in Reference No.ZD330223069999W and quash all the impugned proceedings as passed/issued in violation of principles of natural justice

and contrary to law and further direct the Respondent to rework the late fee in the light of Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mrs.K.Vasanthamala
Government Advocate

W.P.No.32599 of 2023

M/s.Sharmila Plastics,
Represented by its Proprietor
Durai Raman ... Petitioner

Vs.

The Assistant Commissioner (ST),
Dharmapuri. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned order dated 09.06.2023 passed by the Respondent in GSTIN: 33CABPD9901L1ZT/2023-2024 and quash the same as passed in violation of Principles of Natural Justice and contrary to law and further direct the Respondent to rework the Late Fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.C.Harsharaj
Special Government Pleader

W.P.No.19967 of 2023

M/s.Agni Enterprises,
Represented by its Proprietor
S.Babu ... Petitioner

Vs.

The Assistant Commissioner (ST),
Villupuram I Assessment Circle,
Collectorate Campus,
Commercial Taxes Buildings,
Villupuram. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the impugned order dated 18.05.2023 passed by the Respondent in GSTIN: 33AHLPB3828P1Z3/2019-2020 and quash the same as passed in violation of principles of Natural Justice and contrary to law and further direct the Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.P.Rajkumar

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

W.P.No.34352 of 2023

Jothi Super Stores,
Represented by its Proprietor
Devasagayam John Kingsley ... Petitioner

Vs.

1.State Tax Officer,
Hosur (North)-II,
Commercial Taxes Building,
Second Floor, Hosur – 635 109.

2.Deputy Commissioner (ST)(FAC),
Krishnagiri.

3.HDFC Bank,
Plot No.42/2, KTR Tower,
Krishnagiri Byepass Road,
Hosur, Tamil Nadu – 635 109. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the order dated 08.02.2023 in Order No.01-33ATYPJ0408J1ZJ-2017-2018 issued by the 1st Respondent and consequential Recovery Notice dated 18.10.2023 in GSTIN33ATYPJ0408J1ZJ/2023/A3 issued by 2nd Respondent and quash the same.

For Petitioner : Mr.Adithya Redddy

For Respondents :
For R1 and R2 : Mr.V.Prashanth Kiran
Government Advocate

W.P.No.34357 of 2023

Jothi Super Stores,
Represented by its Proprietor
Devasagayam John Kingsley ... Petitioner

Vs.

1.State Tax Officer,
Hosur (North)-II,
Commercial Taxes Building,
Second Floor, Hosur – 635 109.

2.Deputy Commissioner (ST)(FAC),
Krishnagiri.

3.HDFC Bank,
Plot No.42/2, KTR Tower,
Krishnagiri Byepass Road,
Hosur, Tamil Nadu – 635 109. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the order dated 08.02.2023 in Order No.01-33ATYPJ0408J1ZJ-2019-2020 issued by the 1st Respondent and consequential Recovery Notice dated 18.10.2023 in GSTIN33ATYPJ0408J1ZJ/2023/A3 issued by 2nd Respondent and quash the same.

For Petitioner : Mr.Adithya Redddy

For Respondents :
For R1 and R2 : Mr.V.Prashanth Kiran
Government Advocate

W.P.No.35186 of 2023

Sri Athma Agency,
Represented by its Proprietor
G.Tamilarasan ... Petitioner

Vs.

The Deputy State Tax Officer,
Harur Assessment Circle,

Dharmapuri. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned order dated 28.02.2023 passed by the Respondent in GSTIN: 33AONPT2723A1Z7/2019-2020 and quash the same as passed in violation of Principles of Natural Justice and contrary to law and further direct the Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.C.Harsharaj
Special Government Pleader

W.P.No.3540 of 2024

Tvl.Mariyadhas Furniture and Electronics,
Represented by its Proprietor,
G.Anthoniraja ... Petitioner

Vs.

1.The State Tax Officer,
Harur.

2.Central Board of Indirect Taxes and Customs,
J 684+843, North Block,
Central Secretariat,
New Delhi – 110 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the

records of the Impugned Order dated 13.01.2024 passed by the First Respondent in GSTIN: 33BCVPA2715C1Z2/2018-2019 and quash the same as passed in violation of Principles of Natural Justice and contrary to law and further direct the First Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.B.Raveendran

For Respondents :
For R1 : Mrs.K.Vasanthamala
Government Advocate

W.P.No.3567 of 2024

Tvl.Kumar Medicals,
Represented by its Proprietor
K.Mohankumar ... Petitioner

Vs.

1.The State Tax Officer,
Harur.

2.Central Board of Indirect Taxes and Customs,
J 684+843, North Block,
Central Secretariat,
New Delhi – 110 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order dated 13.01.2024 passed by the First Respondent in GSTIN: 33ALKPM8813C1Z8/2018-2019 and quash the

same as passed in violation of Principles of Natural Justice and contrary to law and further direct the First Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.B.Raveendran

For Respondents :
For R1 : Mr.T.N.C.Kaushik
Additional Government Pleader

W.P.No.3570 of 2024

Tvl.J.T.Star Coconuts,
Represented by its Proprietor
Kodamanda Patty Yakoob Sahib Javer ... Petitioner

Vs.

1.The State Tax Officer,
Harur.

2.Central Board of Indirect Taxes and Customs,
J 684+843, North Block,
Central Secretariat,
New Delhi – 110 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order dated 13.01.2024 passed by the First Respondent in GSTIN: 33ALVPJ4999B1ZN/2018-2019 and quash the same as passed in violation of Principles of Natural Justice and contrary to law and further direct the First Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of

Finance (Department of Revenue), Government of India.

For Petitioner : Mr.B.Raveendran

For Respondents :
For R1 : Mr.T.N.C.Kaushik
Additional Government Pleader

W.P.No.3572 of 2024

Tvl.K.Kannan Contractor,
Represented by its Proprietor
K.Kannan ... Petitioner

Vs.

1.The State Tax Officer,
Harur.

2.Central Board of Indirect Taxes and Customs,
J 684+843, North Block,
Central Secretariat,
New Delhi – 110 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order dated 13.01.2024 passed by the First Respondent in GSTIN: 33AFPPK7111J1ZE/2018-2019 and quash the same as passed in violation of Principles of Natural Justice and contrary to law and further direct the First Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.B.Raveendran

For Respondents :
For R1 : Mr.T.N.C.Kaushik
Additional Government Pleader

W.P.No.3902 of 2024

Tvl.MEK Indane Gas Service,
Represented by its Partner
B.Prakash ... Petitioner

Vs.

1.The State Tax Officer,
Harur.

2.Central Board of Indirect Taxes and Customs,
J 684+843, North Block,
Central Secretariat,
New Delhi – 110 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order dated 13.01.2024 passed by the First Respondent in GSTIN: 33ABEFM2698B1ZF/2018-2019 and quash the same as passed in violation of Principles of Natural Justice and contrary to law and further direct the First Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.B.Raveendran

For Respondents :
For R1 : Mr.V.Prashanth Kiran
Additional Government Pleader

W.P.No.15690 of 2024

M/s.Metalex Steel Agency,

Represented by its Partner
Mohammed Rafeeq ... Petitioner

Vs.

The State Tax Officer,
Cholavaram Assessment Circle,
Room No.108, 1st Floor,
Integrated C.T.Buildings,
Chennai – 600 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order dated 30.12.2023 passed by the Respondent in GSTIN: 33ABAFM5212D1ZZ and the summary of the order in Form GST DRC-07 dated 30.12.2023 issued in Reference No: ZD331223275295H and quash the same as passed in violation of Principles of Natural Justice and contrary to law and further direct the Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

W.P.No.3915 of 2024

Tvl.Sivakumar Agencies,
Represented by its Proprietor
K.Sivakumar ... Petitioner

Vs.

1.The Deputy State Tax Officer-1,
Harur.

2.Central Board of Indirect Taxes and Customs,
J 684+843, North Block,
Central Secretariat,
New Delhi – 110 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order dated 22.01.2024 passed by the First Respondent in GSTIN: 33CXNPS2931J2Z2/2020-2021 and quash the same as passed in violation of Principles of Natural Justice and contrary to law and further direct the Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.P.Rajkumar

For Respondents :
For R1 : Mr.V.Prashanth Kiran
Government Advocate

W.P.No.3916 of 2024

Tvl.S.Sivakumar Contractor and
Sival Electricals,
Represented by its Proprietor
S.Sivakumar ... Petitioner

Vs.

1.The State Tax Officer,
Harur.

2.Central Board of Indirect Taxes and Customs,

J 684+843, North Block,
Central Secretariat,
New Delhi – 110 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order dated 13.01.2024 passed by the First Respondent in GSTIN: 33BNIIPS6435E1ZY/2018-2019 and quash the same as passed in violation of Principles of Natural Justice and contrary to law and further direct the Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.P.Rajkumar

For Respondents :
For R1 : Mr.V.Prashanth Kiran
Government Advocate

W.P.No.3966 of 2024

Tvl.Shri Hanuman Indane Gramin Vitrak,
Represented by its Proprietor
I.Gandhi ... Petitioner

Vs.

1.The State Tax Officer,
Harur.
2.Central Board of Indirect Taxes and Customs,
J 684+843, North Block,
Central Secretariat,
New Delhi – 110 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order dated 13.01.2024 passed by the First Respondent in GSTIN: 33ACFFS3290M1ZT/2018-2019 and quash the same as passed in violation of Principles of Natural Justice and contrary to law and further direct the First Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.B.Raveendran

For Respondents :
For R1 : Mr.V.Prashanth Kiran
Government Advocate

W.P.No.23356 of 2024

M/s.Bhakkiya Associates,
Represented by its Proprietor
S.Venkatesan ... Petitioner

Vs.

1.The State Tax Officer,
Palacode.

2.Central Board of Indirect Taxes and Customs,
J 684+843, North Block,
Central Secretariat,
New Delhi – 110 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the First Respondent in 33AACFB7829C1ZT/2017-2018 and

quash the proceeding dated 18.03.2024 passed therein as passed in violation of Principles of Natural Justice and contrary to law and further direct the First Respondent to rework the late fee in light of the Notification No.07/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Government of India.

For Petitioner : Mr.B.Raveendran

For Respondents :
For R1 : Mrs.K.Vasanthamala
Government Advocate

W.P.No.30854 of 2024

Ramadoss Nithyanantham,
Sole Proprietor of Sri Annamalayar Agency ... Petitioner

Vs.

The State Tax Officer,
Ponneri Assessment Circle,
Room No.106,
Integrated Commercial Taxes Building (North Division),
Elephant Gate Bridge Road,
Vepery, Chennai – 600 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records leading to the issuance of Assessment Order bearing Reference GSTIN: 33APPPN9095Q1ZP/2017-2018 dated 03.11.2023 passed by the Respondent herein and quash the same, and further direct the Respondent to re-compute the late fee payable under Section 47 in accordance with Notification No.7/2023-Central Tax dated 31.03.2023

issued by CBIC under CGST Act and G.O (Ms) No.39 of 2023 dated 05.04.2023 issued by the State of Tamil Nadu under TNGST Act.

For Petitioner : Ms.S.P.Sri Harini

For Respondent : Mrs.K.Vasanthamala
Government Advocate

W.P.No.9867 of 2024

Guru Traders,
Represented by its Partner
Gurunathan ... Petitioner

Vs.

1.Superintendent of GST and Central Excise,
Tiruvannamalai Range,
No.26/42, 2nd Floor,
Gopal Pillaiyarkoil Street,
Thiruvannamalai – 606 601.

2.Assistant Commissioner of GST and Central Excise,
Villupuram Division,
Chennai Outer Commissionerate,
Old Telephone Exchange Building,
BSNL Campus,
Hospital Road,
Villupuram – 605 602.

3.The Branch Manager,
State Bank of India,
71/C Veerappan Street,
Polur, Tiruvannamalai – 606 803. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the Impugned Order dated 28.02.2023 in Order-in-Original No.05/2023-GST (SUPDT) issued by the 1st Respondent and consequential Recovery Notice dated 13.03.2024 in Form GST DRC-13 issued by the

2nd Respondent and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondents :
For R1 and R2 : Mr.Mohanamurali
Senior Standing Counsel

W.P.No.9988 of 2025

S.Rathinasamy Chettiar Sons
Sri Nataraja Vilas Jewellery Hall,
A Registered Partnership Firm,
Represented by its Partner
R.Thirunavukkarasu ... Petitioner

Vs.

State Tax Officer,
Chidambaram-1 Assessment Circle,
Chidambaram. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records leading to the passing of the Order No: 33ACEFS4988H1ZQ/2019-2020 dated 30.08.2024 passed by the Respondent herein and to quash the same, and to consequently direct the Respondent to extend the benefit of the Amnesty Notification No.7/2023-Central Tax dated 31.03.2023 issued by the Central Board of Indirect Taxes and Customs and GO [MS] No.39 of 2023 dated 05.04.2023 issued by Government of Tamil Nadu to the Petitioner herein for the purpose of computation of late fee.

For Petitioner : Ms.N.Umayaparvathi

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

W.P.No.28786 of 2025

M/s.Mercy Electricals,
Represented by its Partner
D.Maruthanayagam ... Petitioner

Vs.

The State Tax Officer,
Hosur North-2,
Commercial Taxes Building,
Second Floor, Hosur – 636 705. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Respondent in Form GST DRC-08 dated 29.03.2025 and quash the same and further direct the Respondent to grant the benefit of statutory notification declared by the Government in Notification No.7/2023 dated 31.03.2023 issued under Section 128 of the GST Act by granting waiver of late fee recoverable under Section 47 of the Act.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mrs.K.Vasanthamala
Government Advocate

W.P.No.38007 of 2025

Tvl.Standard Eco Chem,
Represented by its Proprietor
Mohammed Shuaib ... Petitioner

Vs.

1.The Assistant Commissioner (ST) Audit-II,

Office of the Joint Commissioner (ST),
Vellore Division, No.4, Bharathiyar Salai,
Fort Round Road, Vellore – 632 001.

2.The Commercial Tax Officer,
Pandit Jawaharlal Nehru Road,
Court Complex, Vaniyambadi – 635 751.

3.The State Tax Officer,
Office of the Assistant Commissioner (ST),
Pandit Jawaharlal Nehru Road,
Court Complex, Vaniyambadi – 635 751. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order DRC 07 dated 29.08.2024 issued in Reference No.ZD3308242806917 by the 2nd Respondent for the year 2019-2020 and quash the same and further direct the Respondent to re-compute the late fee payable under Section 47 by extending the benefit given in Notification No.07/2023-Central Tax dated 31.03.2023 issued by CBIC under CGST Act and G.O. (Ms) No.39 of 2023 dated 05.04.2023 issued by the State of Tamil Nadu under TNGST Act.

For Petitioner : Mr.G.Derrick Sam

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

W.P.No.42416 of 2025

R.S.Graphics,
Through its Partner
Valsala Balakrishnan Sridharan ... Petitioner

Vs.

1.The Assistant Commissioner (State Tax),
Avadi Assessment Circle,
Integrated Building for Commercial
Taxes Department,
Thiruvallur Division, No.32,
Elephant Gate Bridge Road,
Vepery, Chennai – 600 003.

2.The Deputy Commissioner (ST),
Avadi Zone, Chennai – 03.

3.The Commercial Tax Department,
Government of Tamil Nadu,
Through its Commissioner,
Chepauk, Chennai – 600 005.

4.Standard Chartered Bank,
19, Rajaji Salai,
Chennai – 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent pertaining to the impugned order dated 17.08.2024 vide Ref.No.GSTIN/33AAAFR5227L1Z8/2019-2020 and quash the same as being arbitrary, illegal, disproportionate, and barred by limitation, and consequently direct the 2nd Respondent to forthwith remove the lien marked on the bank account and fixed deposits held by the Petitioner in Bank Account No.42705563975 with the 4th Respondent, and to refund the sum of Rs.6,37,536/- already appropriated pursuant to the impugned proceedings.

For Petitioner : Mr.S.Shoaib Fazil

For Respondents :
For R1 to R3 : Mr.C.Harsharaj
Special Government Pleader

W.P.No.46522 of 2025

M/s.Zero Discharge Technologies (P) Ltd.,
Represented by its Head of Accounts and Finance
M.Prakash ... Petitioner

Vs.

The State Tax Officer,
Kuniyamuthur Circle,
Coimbatore. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the Respondent in GSTIN: 33AAACZ9069R1ZE/2017-2018 and quash the proceeding dated 29.12.2023 passed therein.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

W.P.No.47726 of 2025

Tvl.Velmurugan Silks,
Represented by its Proprietor ... Petitioner

Vs.

Assistant Commissioner (ST),
Mettur Assessment Circle,
Salem – II Division. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of

India, for issuance of a Writ of Certiorari, to call for the records relating to the impugned order in Reference No.ZD331223280933G dated 30.12.2023 passed by the Respondent and quash the same.

For Petitioner : Mr.T.Ramesh

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

W.P.No.48941 of 2025

Shri.Viswanathan Srinivasagupta,
Proprietor of M/s.Sri Vari Agencies ... Petitioner

Vs.

The Commercial Tax Officer,
Gugai Circle,
Integrated Commercial Taxes Building,
No.17, Pitchards Road,
Hasthampatty,
Salem – 7. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order dated 28.12.2022 in GSTIN 33BZWPS5289K1Z8/2019-2020 and summary of the order in Form GST DRC-07 having Reference No.ZD3312221108602 dated 28.12.2022 for the Financial Year 2019-2020 issued by the Respondent and quash the same.

For Petitioner : Mrs.S.Yogalakshmi

For Respondent : Mr.C.Harsharaj
Special Government Pleader

COMMON ORDER

By this Common Order, all these Writ Petitions are being disposed of.

2. In these Writ Petitions, the respective Petitioners have challenged the levy of "Late Fee" under Section 47 of the respective GST Enactments and / or "Penalty" under Section 125 of the respective GST Enactments or both.

3. The details of the impugned Assessment Orders and Show Cause Notices impugned in these Writ Petitions are as follows:-

Table-1

Sl. No.	W.P.No.	Tax Period	Show Cause Notice (DRC-01)	Impugned Order
1.	27029 of 2023	2017-2018	11.02.2022	26.12.2022 (Penalty)
			14.02.2023	12.05.2023 (Late Fee)
2.	34352 of 2023	2017-2018	10.12.2022	08.02.2023
3.	15690 of 2024	2017-2018	30.08.2023	30.12.2023
4.	23356 of 2024	2017-2018	20.01.2023	18.03.2024

5.	30854 of 2024	2017-2018	14.02.2023	03.11.2023
6.	46522 of 2025	2017-2018	29.09.2023	29.12.2023
7.	47726 of 2025	2017-2018	24.03.2023	30.12.2023
8.	27032 of 2023	2018-2019	02.11.2022	26.12.2022
9.	3540 of 2024	2018-2019	25.01.2023	13.01.2024
10.	3567 of 2024	2018-2019	25.01.2023	13.01.2024
11.	3570 of 2024	2018-2019	25.01.2023	13.01.2024
12.	3572 of 2024	2018-2019	25.01.2023	13.01.2024
13.	3902 of 2024	2018-2019	25.01.2023	13.01.2024
14.	3916 of 2024	2018-2019	25.01.2023	13.01.2024
15.	3966 of 2024	2018-2019	25.01.2023	13.01.2024
16.	9867 of 2024	2018-2019	28.03.2022	28.02.2023
		2019-2020	28.03.2022	28.02.2023
17.	27036 of 2023	2019-2020	08.11.2022	27.12.2022
18.	32599 of 2023	2019-2020	02.01.2023	09.06.2023
19.	19967 of 2023	2019-2020	19.01.2023	18.05.2023
20.	34357 of 2023	2019-2020	10.12.2022	08.02.2023
21.	35186 of 2023	2019-2020	08.11.2022	28.02.2023
22.	9988 of 2025	2019-2020	27.04.2023	30.08.2024
23.	28786 of 2025	2019-2020	27.02.2024	29.03.2025
24.	38007 of 2025	2019-2020	27.05.2024	29.08.2024
25.	42416 of 2025	2019-2020	11.05.2024	17.08.2024
26.	48941 of 2025	2019-2020	22.11.2022	28.12.2022

27.	3915 of 2024	2020-2021	09.12.2022	22.01.2024

4. As per **Section 47(1)** of the respective GST Enactments, a Registered Person who fails to furnish the details of outward supplies as is contemplated under **Section 37** of the said Enactment i.e. **GSTR-1** or returns required under **Section 39** i.e. **GSTR-3B** or under **Section 45** i.e., **GSTR-10** or under **Section 52** i.e., **GSTR-8** of the said Enactment by the "due date", they are bound to pay a “Late Fee” of Rs.100/- for every date during which such failure continues subject to a maximum of Rs.5,000/-.

5. Under Section 47(2) of the respective GST Enactments, a Registered Person who fails to furnish the "**Annual Return**" in **GSTR-9** required under **Section 44** by the "due date", is liable to pay a “Late Fee” of One Hundred Rupees (Rs.100/-) for every day during which such failure continues subject to a maximum of an amount calculated at a quarter percent of the turnover in the State or the Union Territory.

6. The “due date” for filing "**Annual Return**" in **GSTR-9** is prescribed under Rule 80 of the respective GST Rules. For the sake of clarity, Rule 80 of the respective GST Rules which are *pari-materia* to each other is reproduced below:-

> ***80. Annual return. –***
> *(1) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year as specified under section 44 electronically in Form GSTR-9 on or before the end of such financial year the common portal either directly or through a Facilitation Centre notified by the Commissioner:*
>
> *Provided that a person paying tax under section 10 shall furnish the annual return in Form GSTR-9-A.*
>
> *(1-A) Notwithstanding anything contained in sub-rule (1), for the financial year 2020-2021 the said annual return shall be furnished on or before the twenty-eighth day of February, 2022.]*
>
> *(1-B) Notwithstanding anything contained in sub-rule (1), for the financial year 2022-2023, the said annual return shall be furnished on or before the tenth day of January, 2024 for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.*
>
> *(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish*

annual statement referred to in sub-section (5) of the said section in Form GSTR-9-B.

(3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in Form GSTR-9-C along with the annual return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.]

(3-A) Notwithstanding anything contained in sub-rule (3), for the financial year 2020-2021 the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the twenty-eighth day of February, 2022.

(3-B) Notwithstanding anything contained in sub-rule (3), for the financial year 2022-2023, the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the tenth day of January, 2024 for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.

7. However, by **Notification No.7/2023-Central Tax** dated **31.03.2023** issued under Section 128 of the respective CGST Act and

under the corresponding State Notification vide G.O.(Ms) No.39 dated 05.04.2023, "Late Fee" payable under Section 47(2) of the respective GST Enactments has been reduced. Following table gives the snapshot of position:-

Table-2

Sl. No.	***Class of registered person***	***Amount***
(1)	(2)	(3)
1.	*Registered persons having an aggregate turnover of* ***upto five crore rupees*** *in the relevant financial year*	***Twenty-five rupees per day****, subject to a maximum of an amount calculated at* ***0.02 percent of turnover*** *in the State or Union territory.*
2.	*Registered persons having an aggregate turnover of* ***more than five crores rupees and up to twenty crore rupees*** *in the relevant financial year.*	***Fifty rupees per day****, subject to a maximum of an amount calculated at* ***0.02 per cent of turnover*** *in the State or Union territory*

8. By *Proviso* to these **Notification No.7/2023-Central Tax** dated **31.03.2023**, the total amount of the "Late Fee" under Section 47(2) of the said Enactment was fixed at **Rupees Ten Thousand** (Rs.10,000/-)

each under the respective GST Enactments for those Registered Persons who had:-

i. failed to furnish the return under Section 44 of the said Enactment by the due date for the **Financial Years 2017-18, 2018-19, 2019-20, 2020-21**, or **2021-22**; and

ii. filed such returns between **1st day of April, 2023** and **30th day of June, 2023**.

9. *Proviso* to **Notification No.7/2023-Central Tax dated 31.03.2023** is reproduced below for the sake of convenience:-

> ***Provided that*** *for the registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the* ***1st day of April, 2023 to the 30th day of June, 2023****, the total amount of late fee under section 47 of the said Act payable in respect of the said return,* ***shall stand waived which is in excess of ten thousand rupees.***

10. **Notification No.7/2023-Central Tax** dated **31.03.2023** was later amended by **Notification No.25/2023-Central Tax** dated **17.07.2023,** whereby, the time for filing such "Annual Returns" was extended till **31.08.2023.** Similar Notification was also issued in the

State of Tamil Nadu vide G.O.(Ms) No.39 dated 05.04.2023. Text of the said **Notification No.25/2023-Central Tax** dated **17.07.2023** is reproduced below:-

> *G.S.R.....(E).-- In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 07/2023– Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 250(E), dated the 31st March, 2023, namely: —*
>
> *In the said notification, **in the proviso**, for the words, letter and figure "**30th day of June, 2023" the words, letter and figure "31st day of August, 2023"** shall be substituted.*
>
> *2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.*

11. This concession made under **Notification No.7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023** and the corresponding State Notification vide G.O.(Ms) No. 39 dated 05.04.2023 has been confined only to those Registered Persons who filed such Annual Returns between **01.04.2023**

and **31.08.2023** for the **Financial Years 2017-18, 2018-19, 2019-20, 2020-21, or 2021-22** alone.

12. This concession made under **Notification No.7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023** and the corresponding State Notification vide G.O.(Ms) No. 39 dated 05.04.2023 has been confined only to those Registered Persons who filed such Annual Returns between **01.04.2023** and **31.08.2023** for the **Financial Years 2017-18, 2018-19, 2019-20, 2020-21, or 2021-22** alone.

13. Precursor to these Notifications is the deliberation of the GST Council in its 49th Meeting held on **18.02.2023** in Agenda No.4(iv). Text of the relevant discussion and deliberation in the said Meeting in Agenda No.4(iv) are reproduced below:-

> "***Agenda Item 4(iv): Rationalisation of late fee for FORM GSTR-9 and amnesty for non-filters of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10***
>
> *5.4 The Principal Commissioner, GST Policy Wing stated that while the late fee for delayed filing of* ***FORM GSTR-1, FORM GSTR-3B, FORM GSTR-4*** *and* ***FORM GSTR-7*** *has already been rationalized from June 2021 onwards, based on the recommendations of the Council, however, the late fee for delayed filing of*

annual return in FORM GSTR-9 has not been rationalized as yet. Requests have been received from various stake holders as well as tax administrations for rationalization of late fee for delayed filing of annual returns. He further stated that requests have also been received from taxpayers as well as tax administrations to provide an amnesty scheme for waiver/ reduction of late fee for non-filers of ***FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10.***

5.4.1 He stated that the same was deliberated by the Law Committee and the Law Committee has recommended that late fee for delayed filing of annual return may be rationalized for the taxpayers having aggregate turnover upto Rs. 20 crore in a financial year. He informed that the Law Committee has recommended two slabs. First slab for Registered persons having an aggregate turnover of upto Rs. 5 crore in the said financial year, for which the recommendation is to reduce the existing late fee of Rs 100/- + Rs 100/- (CGST & SGST respectively) per day, subject to maximum of 0.25% of the turnover, to Rs 25/- per day, subject to a maximum of an amount calculated at 0.02 percent of the turnover in the State or Union territory, under CGST Act with similar late fee under SGST Act. The second slab for Registered persons having an aggregate turnover of more than Rs. 5 crore and upto Rs. 20 crore in a financial year, for which late fee has been proposed to be reduced to Rs 50/- per day subject to a maximum of an amount calculated at 0.02 percent of the turnover in the State or Union territory, under CGST Act with similar late fee under SGST Act. He stated that as per the slabs provided, maximum late fee for delayed filing of annual return would be Rs 20,000/- for the taxpayer with aggregate turnover of Rs 5 crore and would be Rs 80,000/- for the taxpayer with aggregate turnover of Rs 20 crore.

5.4.2 He further stated that Law Committee has also recommended one time Amnesty Scheme for non-filers of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10 as per the Agenda. He informed that Amnesty Schemes for non-filers of FORM GSTR-1 and FORM GSTR-3B were brought a number of times in the past. In respect of non-filers of FORM GSTR-4, amnesty schemes have been brought twice, but was not brought out last time, when amnesty scheme was brought out for FORM GSTR-1 and FORM GSTR-3B. ***He stated that no such amnesty schemes have been brought out yet for non-filers of FORM GSTR-9 and FORM GSTR-10.***

5.4.3 ***He also mentioned that waiver/ reduction of late fee under the proposed Amnesty scheme would be applicable only if the said returns are filed during a specified period of three months, as proposed in the Agenda.*** *He further stated that the specified time period for the proposed amnesty scheme may be finally decided, if approved by the GST Council, on the basis ofpreparedness of the GSTN portal for the implementation of the scheme and after consultation with GSTN.*

5.4.4 The Hon'ble Member from Rajasthan thanked Law Committee for providing the Amnesty scheme for FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10 and stated that Rajasthan Government has taken an initiative in its Budget 2023-24 to provide Amnesty scheme in respect of FORM GSTR - 1 and FORM GSTR -3B and has waived off the share of state for the late fee, which will be borne by the state. He stated that this will ensure greater return filing and would eliminate the hurdles. He suggested that the proposed Amnesty scheme for non-filers should be extended to FORM GSTR-1 and FORM GSTR-3B also, considering the condition of the MSMEs.

5.4.5 The Principal Commissioner. GST Policy Wing mentioned that this was deliberated by the Law Committee in detail and it was observed that the Amnesty schemes for non-filers of FORM GSTR-I and FORM GSTR-3B have been brought out a number of times. Law Committee took a view that there is no need for an amnesty scheme again for non-filers of FORM GSTR-I and FORM GSTR-3B, as the filing for both these Returns has now been systematically improved and stabilized.

5.4.6 The Hon'ble Chairperson clarified that irrespective of the emulate worthiness of the different practices followed by different States, the GST Council cannot advise any State to follow any practice followed by a particular State. She further stated that if any State finds any other State practices appealing and fit for its functioning, then the State has the autonomy to independently implement such practices. Further, the Hon'ble Chairperson, as Union Finance Minister informed that in the Finance Budget 2023-24, the MSME Sector has been substantially taken care of and various measures have been taken for the MSME Sector. She further stated that number of provisions had been provided in the Budget 2023-24 for the benefit of MSMEs, including the provision that if any payment due to a micro or small enterprises is not paid by the PSUs within the time limit as specified, then they will not be able to claim offset within that financial year. Legal provisions have been made where all PSUs under Centre have been instructed to clear the payments due to MSMEs within the due 45 days for claiming the offset for that year. However, such instructions are not applicable for PSUs under State. She further stated that this provision has been brought out to promote timely payments to MSMEs. She clarified that both the Centre and States are taking substantial measures to protect and promote the MSMEs in best possible way.

5.4.7 Hon'ble Member from Tamil Nadu expressed his apprehension regarding reduction on the cap of late fee from 0.25% to 0.02% which would be a huge drop by cutting it to almost 90% and whether such steep reduction would act as a deterrence for delayed filing of annual return in FORM GSTR-9. He queried whether capping the late fee at an amount of Rs 80,000/- could be deterrent for a taxpayer having an aggregate turnover of Rs 20 crore. He stated once the penalty becomes stagnant to a certain amount, then it would not matter to the taxpayer for delaying the filing of return after that point of time, and thus, it would not act as a deterrent for non-filing of the Return. He mentioned that it needs to be seen whether it would be rational to reduce the capping of 0.25% to 0.02% in one step to facilitate trade or would there be any negative impact of reducing the upper limit. He also stated that the upper limit should be such that it is a deterrent for delayed filing of the return to keep the system intact. He further suggested that instead of going to 0.04% (0.02% + 0.02%) from 0.5% (0.25% +0.25%) in the one go, it would be more rational to reduce it to 0.1%.

5.4.8 The Secretary then stated that the setting up of upper limit is open for discussion and clarified that earlier the upper limit was 0.5% (0.25% + 0.25%) of the turnover and the recommended upper limit is 0.04% (0.02% + 0.02%) of the turnover. He further emphasized that the upper limit is on the turnover and not the profit and it was felt by the Law Committee that the 0.5% of the turnover is high, thus, it was recommended by the Law Committee to reduce the upper limit to 0.04% but it could be reconsidered by the Council.

5.4.9 Hon'ble Member from Maharashtra welcomed the reduced upper limit and stated that it could be accepted

as it is only for the late fee and not interest. He supported the recommendation of the Law Committee and stated that when we are promoting ease of doing business, then giving such relief for late filing would not hamper anything and a very high late fee should not be insisted upon.

5.4.10 Hon'ble Minister from Haryana supported the Law Committee recommendations and stated that there are already various penalties for other returns and the reduced upper limit of Rs 20000/- for Rs 5 crore turnover would be more than enough as late fee for GSTR9.

The Council agreed with the said recommendations of the Law Committee along with the draft Notifications. Council also recommended that the date for amnesty scheme may be finalized based on preparedness of the portal."

14. The GST Council, while recommending for issuance of the above Notification towards amnesty for "Late Fee" payable under Section 47(2) of the respective GST Enactments under Section 128 of the respective GST Enactments for the **Financial Years 2017-18, 2018-19, 2019-20, 2020-21, or 2021-22**, has not considered the plight of the Registered Persons who filed the returns before the cut-off date i.e., between **1st April 2023** and **31stAugust 2023** mentioned in **Notification**

No.7/2023-Central Tax dated **31.03.2023**, as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023**.

15. The GST Council, while recommending for issuance of the above Notification towards amnesty for "Late Fee" payable under Section 47(2) of the respective GST Enactments under Section 128 of the respective GST Enactments for the **Financial Years 2017-18, 2018-19, 2019-20, 2020-21, or 2021-22**, has not considered the plight of the Registered Persons who filed the returns before the cut-off date i.e., between **1st April 2023** and **31stAugust 2023** mentioned in **Notification No.7/2023-Central Tax** dated **31.03.2023**, as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023**.

16. The Amnesty in the above Notification is silent regarding the predicament of those "Registered Persons" who have filed "Annual Returns" before these cut-off dates in the above Notifications.

17. Thus, in some of the Writ Petitions, the Petitioners who have filed the "Annual Returns" within the time prescribed under **Notification No. 7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023** have

challenged imposition of "General Penalty" under Section 125 of the respective GST Enactments. Details of these Petitioners who have challenged imposition of "General Penalty" under Section 125 of the respective GST Enactments are as under:-

Table-3

PETITIONERS WHO HAVE CHALLENGED GENERAL PENALTY

No.	Writ Petition	Assessment Year	Date of filing of Annual Return	Late fee under Section 47	Penalty under Section 125
1.	3540 of 2024	2018-2019	30.06.2023	20,000/- (10,000/- each)	50,000/- (25,000/- each)
2.	3567 of 2024	2018-2019	27.06.2023	20,000/- (10,000/- each)	50,000/- (25,000/- each for CGST and SGST) 50,000/- for IGST
3.	3570 of 2024	2018-2019	28.06.2023	20,000/- (10,000/- each)	50,000/- (25,000/- each for CGST and SGST) 50,000/- for IGST
4.	3902 of 2024	2018-2019	27.06.2023	20,000/-	50,000/-

				(10,000/- each)	(25,000/- each for CGST and SGST) 50,000/- for IGST
5.	3966 of 2024	2018-2019	05.06.2023	20,000/- (10,000/- each)	50,000/- (25,000/- each for CGST and SGST) 50,000/- for IGST

18. The Writ Petitioners in **Table-3** have been given benefit of the above Notifications. However, they have been imposed with "General Penalty" under Section 125 of the Act. They, therefore, challenge the same, primarily in line with the reasoning adopted by this Court in **Tvl.Jainsons Castors and Industrial Products, Represented by its Authorized Representatives, Chennai** Vs. **The Assistant Commissioner (ST), Nandanam, Chennai** vide order dated 04.02.2025 inW.P.No.36614 of 2024.

19. The challenge to the "General Penalty" by these Petitioners is that there is no scope for levying such "Penalty" over and above the "Late Fee", as the "Late Fee" itself is penal in nature. Some of the Petitioners who have been imposed with higher "Late Fee" are claiming concession under the above Notification though they have either filed the "Annual Return" before the cut-off date or thereafter.

20. The contentions of the Petitioners in **Table-3**, is that once a "Late Fee" has been levied under Section 47 of the respective GST Enactments read with the above Notification, while the "General Penalty" under Section 125 of the respective GST Enactments cannot be imposed on the Petitioners.

21. While interpreting Section 47 and Section 125 of the respective GST Enactments, this Court vide its Order dated 04.02.2025 in W.P.No.36614 of 2024 ["**Tvl.Jainsons Castors and Industrial Products, Represented by its Authorized Representatives, Chennai** Vs. **The Assistant Commissioner (ST), Nandanam, Chennai**" authored by **Justice.Krishnan Ramasamy]**, held as under:-

> "*A reading of the above would show that in the event no penalty is separately provided in this act, general penalty would apply. In the present case, penalty was imposed in the form of late fee in terms of Section 47 of the Act. Therefore, general penalty of Rs.50,000/- towards CGST and SGST is not correct and the same is set aside. As far as late fee is concerned, the same is confirmed.*"

22. There, the Petitioner had delayed in filing "Annual Returns" in GSTR-9. Therefore, the Court did not find any fault in the Show Cause Notice issued by Respondent therein under Section 47 read with Section 73 of the Act for imposition of "Late Fee". There, the Respondent had also imposed both "Late Fee" under Section 47 of the respective GST Enactments and also "Penalty" under Section 125 of the respective GST Enactments. It is in this background, the Court held as above. The Court, however, held that the Respondent was entitled to initiate proceedings for non-filing of "Annual Returns".

23. Rest of the Petitioners have been imposed either or both with "Late Fee" imposed under Section 47 and / or "Penalty" under Section 125 of the respective GST Enactments as detailed below:-

Table-4A

No.	Writ Petition	Assessment Year	Date of filing of Annual Return	Late Fee under Section 47	Penalty under Section 125
1.	27029 of 2023 *	2017-2018	03.09.2022	***1,88,200/- (94,100/- each)**	***50,000/- (25,000/- each)**
2.	34352 of 2023	2017-2018	07.12.2022	**1,15,258/- (57,629 each)**	**25,000/- (12,500/- each)**
3.	15690 of 2024 #	2017-2018	27.10.2022	**1,98,600/- (99,300/- each)**	**50,000/- (25,000/- each)** **# Show Cause Notice only issued.**
4.	46522 of 2025	2017-2018	13.03.2023	**2,27,400/- (1,13,700/- each)**	**50,000/- (25,000/- each)**
5.	27032 of 2023 **$**	2018-2019	26.12.2022	1,43,800/- (71,900/- each) **$ (No order for late fee was issued and amount said to have been recovered from the Petitioner)**	**50,000/- (25,000/- each)**
6.	3572 of 2024	2018-2019	01.02.2023	**1,50,800/-**	**50,000/-**

				(75,400/- each)	**(25,000/- each for CGST and SGST)** **50,000/- for IGST**
7.	3916 of 2024	2018-2019	25.01.2023	**1,50,800/- (75,400/- each)**	**50,000/- (25,000/- each)**
8.	27036 of 2023	2019-2020	19.11.2022	**1,19,600/- (59,800/- each)**	**50,000/- (25,000/- each)**
9.	32599 of 2023	2019-2020	31.01.2023	**1,33,400/- (66,700/- each)**	**50,000/- (25,000/- each)**
10.	34357 of 2023	2019-2020	07.12.2022	**3,06,078/- (1,53,039/- each)**	**25,000/- (12,500/- each)**
11.	35186 of 2023	2019-2020	22.11.2022	**1,21,600/- (60,800/- each)**	**50,000/- (25,000/- each)**
12.	9988 of 2025	2019-2020	27.11.2022	**1,21,000/- (60,500/- each)**	**50,000/- (25,000/- each)**
13.	28786 of 2025	2019-2020	13.01.2023	**1,18,480/- (59,240/- each)**	**5,000/- (2,500/- each)**
14.	42416 of 2025	2019-2020	30.11.2022	**11,08,490/- (5,54,245/- each)**	**50,000/- (25,000/- each)**

**** Separate orders for Late Fee under Section 47 and for Penalty under Section 125 of the respective GST***

enactments as in Sl.No.1 to Table-1.

 # Intimation Notice in DRC-01A dated 17.08.2022 and Show Cause Notice in DRC-01 dated 30.08.2023 were issued for imposing General Penalty under Section 125 of the respective GST enactments.

$ In W.P.No. 27032 of 2023, the Petitioner has challenged General Penalty of Rs.50,000/- (25,000/- each) vide order dated 26.12.2022. It has been stated in the affidavit that a sum of 1,43,800/- (71,900/- each) was recovered for Late Fee.

Table – 4B

No.	Writ Petition	Assessment Year	Date of filing of Annual Return	Late Fee under Section 47	Penalty under Section 125
1.	23356 of 2024	2017-2018	31.01.2023	2,18,600/- (1,09,300/- each)[20,000/- (10,000/- each) already paid.] Remaining **1,98,600/- (99,300/- each)**	**Nil**
2.	30854 of 2024	2017-2018	13.01.2023	**2,14,600/- (1,07,300/- each)**	**Nil**
3.	47726 of 2025	2017-2018	02.02.2023	**2,85,600/- (1,42,800/- each)**	**Nil**
4.	19967 of 2023	2019-2020	26.10.2022	**1,14,600/- (57,300/- each)**	**Nil**
5.	* 9867 of 2024	2018-2019	* 15.06.2023	1,17,038/- (58,519/- each)	**Nil**
		2019-2020	26.12.2021	**54,000/-**	**Nil**

				(27,000/- each)	
6.	38007 of 2025	2019-2020	27.03.2023	**1,45,000/- (72,500/- each)**	**Nil**
7.	48941 of 2025	2019-2020	04.01.2023	**1,27,400/- (63,700/- each)**	**Nil**

**** The Writ Petition challenges the very same order issued for the Assessment Years 2018-2019 and 2019-2020. The Petitioner had filed the Annual Return for the Assessment Year 2018-2019 within the cut-off date prescribed under the Amnesty Scheme.***

24. Details of those Writ Petitioners who had filed "Annual Returns" after the cut-off date under the above Notification, are as under:-

Table – 4C

No.	**Writ Petition**	**Assessment Year**	**Date of filing of Annual Return**	**Late Fee under Section 47**	**Penalty under Section 125**
1.	3915 of 2024 **	2020-2021	19.01.2024 **	**89,800/- (44,900/- each)**	**50,000/- (25,000/- each)**

***** Return filed after cut-off date under Amnesty Notification***

25. In all these cases, the Petitioners have filed the "Annual Returns" on the dates mentioned above and are claiming the benefit of

Notification No.7/2023-Central Tax dated **31.03.2023**, issued under Section 128 of the CGST Act, 2017 (Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) vide G.S.R.250(E) dated 31.03.2023) as amended by **Notification No. 25/2023-Central Tax** dated **17.07.2023**.

26. It is the case of these Petitioners in **Table-4** that they are also entitled for concession under **Notification No.7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023.**

27. The learned counsel for the Petitioners also relied on the following decisions of the Hon'ble High Court of Kerala and Himachal Pradesh, which have extended the benefit of Amnesty under **Notification No. 7/2023-Central Tax** dated **31.03.2023** even to those Registered Persons who filed returns before **01.04.2023**:-

i. Decision of the Hon'ble High Court of Kerala in **Anishia Chandrakanth** Vs. **Superintendent, Central Tax & Central Excise** (2024 SCC OnLine Ker 7632)

ii. Decision of the Hon'ble High Court of Kerala in **Thiruvalla Glass & Plywoods** Vs. **Superintendent, Central GST & Central Excise** [WP (C) No.42745 of 2024 decided on 31.01.2025.

iii. Decision of the Hon'ble High Court of Himachal Pradesh in **M/s.R.T.Pharma** Vs. **Union of India** [CWP No.4899 of 2023 decided on 21.12.2024]

28. The Petitioners have, indeed, taken a plea that no prejudice will be caused if the benefit of the aforesaid relaxation is extended to the Petitioners. On the other hand, it is the contention of the Respondents that waiver of "Late Fee" in excess of Rs.10,000/- in terms of the above **Notification No.7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023** and the corresponding State Notification will not inure to the Petitioners, as the Amnesty is confined only to those persons who had failed to file the "Annual Returns" in time for the aforesaid specified Financial Years and who furnished the "Annual Return" between **1st day of April, 2023** and **31st day of August, 2023**.

29. Mr.Adithya Reddy, the learned counsel for the Petitioner in Writ Petition Nos. 34352 and 34357 of 2023 and 9867 of 2024 has relied on the Judgment of the Hon'ble Supreme Court in **Deputy Transport Commissioner and Secretary and another** Vs.

M.B.Kishore, (2005) 11 SCC 541. In Paragraph No.6, the Hon'ble Supreme Court held as under:-

> ***6. We find from the Judgment of the High Court that even though there was no specific prayer, such a contention had been specifically taken in the petition. This contention was fully argued by both the parties. The High Court was thus right in concluding that no prejudice was being caused and that it can go into the question as to whether the demand for tax was under any authority of law.***

30. Mr.Adithya Reddy, the learned counsel for the Petitioner in Writ Petition Nos.34352 and 34357 of 2023 and 9867 of 2024 would submit that even if no prayer for declaration was sought for by these Petitioners, still they were entitled to the benefit of the aforesaid Notification and no prejudice is being caused as the Court can go into the question as to whether the demand for “Late Fee” was under any authority of law.

31. The Learned Counsel for the Respondent submitted that the taxpayers initially faced procedural challenges, particularly in filing returns within stipulated timeline. To address these issues, the

Government periodically issued relaxations through various Notifications.

32. It is submitted that as a final relief measure, **Notification No.07/2023-Central Tax** dated **31.03.2023** and corresponding State Notification vide G.O.(Ms) No.39 dated 05.04.2023 was issued. It provided a three-month window from **01.04.2023** to **30.06.2023** for filing pending GSTR-9 returns under **Section 44** of the GST Act and thus waived "Late Fee" in excess **Rs.10,000/-** each **CGST** and **SGST** respectively.

33. It is submitted that the main ingredients/conditions emanating from the plain reading of the Notification are as under:-

1. **The notification is purely prospective in nature.**
2. **The notification is applicable for a limited period of 3 months.**
3. **The notification is only applicable to non-filers who had not filed their returns as on the date of the notification and file the annual return within the date specified in the notification.**

34. In this connection, learned Special Government Pleader for the Respondents has placed reliance on the following decisions of the Courts:-

i. **Commissioner of Customs, Bangalore** Vs. **Spice Telecom**, **Bangalore**, (2006) 10 SCC 704.
ii. **Jay Mahakali Rolling Mills** Vs. **Union of India**, (2007) 12 SCC 198.
iii. **Commissioner of Customs (Import), Mumbai** Vs. **Dilip Kumar and Company and others**, (2018) 9 SCC 1.
iv. **Jalkal Vibhag Nagar Nigam and others** Vs. **Pradeshiya Industrial and Investment Corporation and another**, (2021) 20 SCC 657.
v. **Biswajit Das** Vs. **Union of India and others** in W.P.(C) No.9410 of 2014 dated 20.12.2018.
vi. **R.K.Garg and others** Vs. **Union of India and others**, (1981) 4 SCC 675.
vii. **Union of India and others** Vs. **M/s.Nitdip Texile Processors Private Limited and another** in Civil Appeal No.2960 of 2006 dated 03.11.2011.
viii. **Commissioner of Income Tax (Central) I, New Delhi** Vs. **Vatika Township Private Limited**, 2015 (1) SCC (1).
ix. **Dhanraj** Vs. **Vikram Singh and others** in Civil Appeal No.3117 of 2009 with Civil Appeal No.4071 of 2009 dated 10.05.2023.
x. **Union of India and others** Vs. **Manjurani Routray and others** in Civil Appeal No.2299 of 2010 dated 01.09.2023.

35. The specific case of the Respondent is that only such assessees who complied with the aforesaid conditions, alone are eligible for the benefit of the Notification.

36. It is submitted that the issue raised by the Petitioners concerns, is the core intent of the Notification, necessitating consideration of the legislative purpose behind its enactment. A reference was made to Paragraphs **5.4.2** and **5.4.3 (**cited *supra***)** in the **Minutes of the 49th GST Council Meeting** dated **18.02.2023**.

37. It is submitted that the said Minutes would clarify that the Notification's benefit is confined to a specific time limit, highlighting its prospective and restrictive nature. The defined compliance window clearly differentiates between two classes of non-filers, viz., one, those who filed before the Notification and another, those who filed within the prescribed three-month period. Since the statutory instrument creates this clear distinction, the benefit cannot be applied retrospectively. Therefore, the Notification's scope is limited to the taxpayers complying within the stipulated period.

38. It is submitted that the Minutes clearly indicate that the Notification targeted only non-filers existing at the time of its issue, excluding assessees who had already filed returns. If the intent was to reduce the "Late Fee" for those who filed GSTR-9 earlier, Section 47 of the Act would have been amended accordingly, and no separate Amnesty Scheme would have been required.

39. It is submitted that tax Notifications and their benefits fall within economic policy, warranting judicial self-restraint in reviewing such matters. It is submitted that a greater emphasis should be placed on the scheme's intent rather than rigid legal principles. The learned counsel for the Respondent placed heavy reliance on the Judgment of the Hon'ble Supreme Court emphasized this principle in **R.K.Garg** Vs. **Union of India,** (1981) 4 SCC 675.

40. It is submitted that assessees outside the scope of the Notification, cannot claim equal benefits as a matter of right. The distinction between non-filers based on the time of filing, does not violate Article 14, as it is founded on a valid objective to promote tax compliance by incentivizing taxpayers. In this connection, the learned

counsel for the Respondent relied on the judgment of the Hon'ble Supreme Court has reiterated this stance in **Union of India and others** Vs. **M/s Nitdip Textile Processors**.

41. It is submitted that the cardinal rule of statutory interpretation is a strict construction. When the language of a statute is clear, it must be given its plain, literal meaning without inferring any favourable interpretation. This principle has been consistently upheld by the Courts, including by the Constitutional Bench.

42. It is submitted that the Notification states, in express terms, that the benefit of waiver shall only apply to non-filers who file their returns between 01.04.2023 to 30.06.2023. Hence, it cannot be diluted and extended.

43. It is submitted that it is a settled principle canon of statutory interpretation that every law operates prospectively unless expressly stated otherwise. Once a law has been accepted and acted upon, any subsequent amendments or benefits arising therefrom, cannot be claimed retrospectively.

44. The learned counsel for the Respondent submitted that the **Hon'ble Supreme Court** should exercise restraint under Article 226 when the Petitioners seek to alter the Notification without challenging its *vires*. Hence, the Notification retains its presumption of validity, as no grounds for judicial intervention, are established.

45. **Notification No.7/2023-Central Tax** dated **31.03.2023** provides the benefit of the Amnesty Scheme to those assessees who had failed to file the "Annual Returns" under Section 44 of the Act by the due date for Financial Years **2017-18 to 2021-22**, but furnished the said returns between the period from **01.04.2023** to **30.06.2023**. This period was further extended from **30.06.2023** to **31.08.2023** by virtue of subsequent **Notification No.25/2023-Central Tax** dated **17.07.2023**.

46. The Petitioners, through a Writ of Certiorari, seek to quash the Orders passed under Section 47 of the Act. Their primary contention is that, having filed their "Annual Returns" before the issuance of the Amnesty Scheme, they are entitled to the benefit of the

reduced "Late Fee". They argue that the Amnesty Scheme should, therefore, be applied retrospectively to extend its benefit to them.

47. It is submitted that all the Writ Petitioners either faced Orders under Section 47 before or after the issuance of the Amnesty Scheme dated 31.03.2023, effective from 01.04.2023. However, none of the Petitioners filed their "Annual Returns" for the disputed years within the due date or during the Amnesty Scheme period, i.e., between 01.04.2023 and 31.08.2023. However, the Petitioners seek to extend the benefit of the Amnesty Scheme by altering the effective date of the Notification from 01.04.2023 to an earlier date.

48. This relief is sought before this Hon'ble Court without challenging the validity of the Notification itself through a writ of declaration or any other legal remedy. The pleadings of the Writ Petitioners lack any challenge to the validity or vires of the Notification. They also fail to justify as to why the benefit of the Notification should not be extend to the Petitioners who had already suffered an order before the Amnesty Scheme or outside its scope. No legal or factual basis has been provided for such an extension.

49. It is further submitted that the above cited Judgments establish that, without a challenge to the validity of a Statute or notification, the Court should not adopt an interpretation that renders it inoperative. As long as the Statute or Notification remains in force, it must be strictly construed. No retrospective effect can be attributed unless expressly provided within the Statute or Notification itself.

50. It is submitted that in W.P.No.35816 of 2023, pursuant to this Hon'ble Court's Order dated 18.12.2023, the Central Board of Indirect Taxes was impleaded only for the limited purpose of the relief sought, which remains a Writ of Certiorari to quash the order passed under Section 47 of the Act.

51. It is submitted that if the interpretation proposed by the Writ Petitioners is given by this Hon'ble Court to the Amnesty Scheme by giving it with retrospective effect, it may lead to situations where:

i) An assessee who suffers an adverse order would wait for an amnesty scheme, which may or may not be in pipeline, rather than complying with the adverse order or appealing against the said adverse order.

ii) Those diligent assesses who had complied with the adverse orders issued against them, in spite of either choosing to file an appeal under protest or to give a quietus to the litigation, may view such amnesty benefits being given to non-compliant assesses as unfair advantage provided to those non-compliant assesses and may choose to follow this infamous route to cripple the state's revenue.

iii) Those diligent assesses may start challenging the very same notification seeking for extension of the benefit to them thereby in effect, seeking for refund of the late fee and penalty paid in compliance with the adverse order suffered by them.

52. It is submitted that it was never the intention of the legislature to provide such a scenario. An analogy with Section 128A would reveal the same. 3rd *Proviso* to Section 128A restricts the benefit of the waiver of "Interest" and "Penalty" or both for demands raised under Section 73. In cases where "Interest" and "Penalty" has already been paid, no refund was proposed to be given to such assesses.

53. It is also submitted that however, if the interpretation sought to be given by the Petitioners in the instant case is granted by this Hon'ble Court, by giving a retrospective effect to the Amnesty Notification, this would open the pandora's box.

54. It is submitted that the GST Council issued **Notification No.7/2023-Central Tax** dated **31.03.2023** as a last-resort measure to help defaulting taxpayers by granting a three-month window to file pending "Annual Returns" under Section 44 of the respective GST Enactments. It provided a waiver of "Late Fees" exceeding Rs.10,000/- each (CGST and SGST) to encourage compliance. The Notification aimed to induce non-filers to submit overdue GSTR-9 returns. This amnesty specifically targeted taxpayers who had not filed "Annual Returns" for Financial Years 2017-18 to 2021-2022.

55. It is submitted that the GST Council's intention behind the "Amnesty Scheme" was to provide a limited window for non-filers to comply with Section 44 of the GST Act, not to reduce "Late fees for those who had already filed returns earlier".

56. It is submitted that the taxpayers who filed before the scheme had duly paid "Late Fees" as per the law then in force. The legislators aimed only to benefit non-filers, not past complied taxpayers. Hence, the amnesty was never intended to revise or refund "Late Fees" already paid.

57. It is submitted that taxpayers who had already faced orders under Section 47 could not have foreseen the later amnesty benefit and were presumed to have complied under the law then in force. They acted and settled their liabilities based on the existing provisions. The subsequent notification was not meant to alter their position. The defined compliance window clearly shows that lawmakers intended to extend benefit only for non-filers. Hence, prior filers were never within the scope of the Notification.

58. It is submitted that in the absence of a challenge to **Notification No.7/2023-Central Tax** dated **31.03.2023,** there is no question of extending the benefit of the said Notification as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023.**

59. That apart, it is submitted that the cut-off date specified in the respective Notifications extending the benefit to a particular category of Assessees, who has failed to file the returns under Section 44 of the respective GST Enactments for the Financial Year 2017-2018 to 2021-2022, but had furnished such returns between **1st of April 2023** and **31st**

August 2023 in terms of the above **Notification No.25/2023-Central Tax** dated **17.07.2023** alone were entitled to concessional Late Fee of Rs.10,000/- each (CGST and SGST) and not to those who had either filed the returns earlier before the aforesaid period or who have failed to file the returns within the period specified in the above Notification.

60. Having considered the arguments advanced by the learned counsel for the Petitioners and the learned Special Government Pleader for the Respondents, I shall first proceed to refer relevant provisions from the respective GST Acts and Rules.

61. As mentioned above, **"Late Fee"** is levied under Section 47 of the Respective GST Enactments.

62. In these cases, this Court is concerned with the **"Annual Returns"** which were filed belatedly for the Financial Years **2017-2018** to **2021-2022** detailed in **Table-3, Table-4A, Table-4B** and **Table -4C**.

63. Most of these cases, the Petitioners have filed the **"Annual Returns"** belatedly long after the time prescribed for filing such

"Annual Returns". They had already filed such **"Annual Returns"** before **Notification No.7/2023-Central Tax** dated **31.03.2023** was issued.

64. In some these cases, this Court is concerned with the delay in filing **"Annual Returns"** under Section 44(1) of the respective GST Enactments read with Rule 80(1) of the respective GST Rules and consequential imposition of **"Late Fee"** under Section 47(2) of the respective GST Enactments and imposition of **"General Penalty"** under Section 125 of the respective GST Enactments.

65. In some of these cases, this Court is concerned with imposition of **"Late Fee"** alone under Section 47(2) of the respective GST Enactments on account of such failure.

66. Section 47 of the respective GST Enactments have to be read in conjunction with Section 44 and Rule 80 of the respective GST Rules. Section 44, Section 47 of the respective GST Enactments and Rule 80 of the respective GST Rules are reproduced below:-

Table-5

Section 44. Annual Return	**Rule 80. Annual Return**	**Section 47. Levy of Late Fee**
(1)Every Registered Person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person **shall furnish an Annual Return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year**	**(1) Every Registered Person,** other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, **shall furnish an Annual Return for every financial year as specified under section 44 electronically in Form GSTR-9 on or before the end of such financial year the common portal either directly or through a Facilitation Centre notified by the Commissioner:** Provided that a person paying tax under section 10 shall furnish the Annual Return in Form	**(1)Any Registered Person** who fails to furnish the details of outward supplies required under **Section 37** or returns required under **Section 39** or **Section 45** or **Section 52** by the due date shall pay a late fee of **one hundred rupees** for every day during which such failure continues subject to a maximum amount of **five thousand rupees.** **(2)Any Registered Person who fails to furnish the return required under Section 44 by the due date shall be liable to pay a late fee of**

electronically, within such time and in such form and in such manner as may be prescribed: **Provided** that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of Registered Persons from filing Annual Return under this section: **Provided** further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General	GSTR-9-A. (1-A) Notwithstanding anything contained in sub-rule (1), for the financial year 2020-2021 the said Annual Return shall be furnished on or before the twenty-eighth day of February, 2022.] (1-B) Notwithstanding anything contained in sub-rule (1), for the financial year 2022-2023, the said Annual Return shall be furnished on or before the tenth day of January, 2024 for the Registered Persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu. (2) Every electronic commerce operator	**one hundred rupees for every day during which such failure continues subject to a maximum of an amount** calculated at a **quarter percent of his turnover** in the State or Union Territory.

of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force. (2) A Registered Person shall not be allowed to furnish an Annual Return under sub-section (1) for a financial year after the expiry of a period of **three years** from the due date of furnishing the said Annual Return: **Provided** that the Government may, on the recommendations of the Council, by notification, and subject to such conditions and restrictions as may be specified therein, allow a Registered Person	required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in Form GSTR-9-B. (3) Every Registered Person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in Form GSTR-9-C along with the Annual Return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, electronically	

or a class of Registered Persons to furnish an Annual Return for a financial year under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said Annual Return.	through the common portal either directly or through a Facilitation Centre notified by the Commissioner.] (3-A) Notwithstanding anything contained in sub-rule (3), for the financial year 2020-2021 the said self-certified reconciliation statement shall be furnished along with the said Annual Return on or before the twenty-eighth day of February, 2022. (3-B) Notwithstanding anything contained in sub-rule (3), for the financial year 2022-2023, the said self-certified reconciliation statement shall be furnished along with the said Annual Return on or before the tenth day of January, 2024 for the Registered Persons whose principal place of business is in the districts of Chennai, Tiruvallur,	

	Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.	

67. **"Late fee"** as mentioned earlier, is levied under Section 47(2) of the respective GST Enactments for failure to file an **"Annual Return"**, which is required to be filed under Section 44 of the respective GST Enactments read with Rule 80 of the respective GST Rules.

68. Under Section 44(1) of the respective GST Enactments, every Registered Person shall furnish an **"Annual Return"** which may include **a self-certified reconciliation statement**, reconciling the value of supplies declared in the return furnished for the Financial Year, with the Audited Annual Financial Statement for every Financial Year electronically, within such time and in such form and in such manner as may be prescribed. The time is prescribed under Rule 80 of the respective GST Rules.

69. Section 44(1) of the respective GST Enactments does not apply to the following persons, namely,

(i) an Input Service Distributor
(ii) a person paying tax under Section 51
(iii) a person paying tax under Section 52
(iv) a casual taxable person
(v) a non-resident taxable person

70. Section 44(2) of the respective GST Enactments, was inserted by Finance Act, 2023 (No.8 of 2023) dated 31.03.2023, with effect from 01.10.2023 vide **Notification No.28/2023-Central Tax**, dated **31.07.2023**.

71. Under Sub-Section (2) to Section 44 of the respective GST Enactments, a Registered Person shall not be allowed to furnish an **"Annual Return"** under Sub-Section (1) for a Financial year after the expiry of a period of **three years** from the due date of furnishing the said **"Annual Return"**.

72. Under Rule 80 of the respective GST Rules, every Registered Person other than those referred to therein, has to furnish the **"Annual**

Return" for every Financial Year as specified in Section 44 of the respective GST Enactments electronically in **Form GSTR-09** on or before **31st** day of **December** following the end of such Financial Year through a Common Portal either directly or through the Facilitation Centre notified by the Commissioner.

73. Rule 80 of the respective GST Rules was amended vide **Notification No.40/2021- Central Tax** dated **29.12.2021** (with effect from 29.12.2021) by virtue of which, Rule 80(1A) and Rule 80(3A) were inserted. Rule 80 of the respective GST Rules was further amended vide **Notification No.02/2024 – Central Tax** dated **05.01.2024** (with effect from 31.12.2023) by virtue of which, Rule 80(1B) and Rule 80(3B) were inserted.

74. Due dates for furnishing **"Annual Return"** in Form GSTR-9 for the respective Financial Years under Rule 80(1), 80(1-A), 80(1-B) of the respective GST Rules are detailed below:-

Table-6

Form GSTR - 9			
Rule	**Rule 80(1)**	**Rule 80(1A)**	**Rule 80(1B)**

		vide Notification No. 40/2021-Central Tax dated 29.12.2021	vide Notification No. 02/2024 – Central Tax dated 05.01.2024
Financial Year	Every Financial Year	2020-2021	2022-2023
Due date for filing Annual Return	**31th day of December** following the end of such financial year.	**28th day of February,2022. (28.02.2022)**	**10th day january, 2024. (10.01.2024)**
With effect from	**01.07.2017**	**29.12.2021**	**31.12.2023**

75. The due date for furnishing the **"Annual Return"** as per **Section 44** of the respective GST Enactments and **Rule 80(1)** of the respective GST Rules are summarized below:-

Table-7

Financial Year	**Tax Period**	**Due date under Rule 80(1)**	**Last due date under Section 44(2)**
2017-2018	01.07.2017 - 31.03.2018	31.12.2018	31.12.2021
2018-2019	01.04.2018 - 31.03.2019	31.12.2019	31.12.2022
2019-2020	01.04.2019 - 31.03.2020	31.12.2020	31.12.2023
2020-2021	01.04.2020 - 31.03.2021	31.12.2021	31.12.2024
2021-2022	01.04.2021 - 31.03.2022	31.12.2022	31.12.2025
2022-2023	01.04.2022 – 31.03.2023	31.12.2023	31.12.2026

76. Despite such extensions of due date for filing the **"Annual Returns"** in GSTR-9, still there were large scale delay in filing of the **"Annual Returns"** by the Registered Persons.

77. In this background, requests were received from the tax payers as well as tax administrators for Amnesty Scheme for reduction / waiver from payment of **"Late Fee"** payable under Section 47(2) of the respective GST Enactments for those non-filers of Form GSTR-04, GSTR-09 and GSTR-10.

78. As far as the persons who are exempted from filing the **"Annual Returns"** are concerned, a Notification has been issued *post facto* on 31.07.2023 vide a **Notification No.32/2023-Central Tax**. The text of the Notification reads as under:-

> "*In exercise of the powers conferred by the first proviso to section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby exempts the Registered Person whose aggregate turnover in the financial year **2022-23** is up to two crore rupees, from filing Annual Return for the said financial year."*

79. This was discussed by the **GST Council** in its **49th Meeting** held on **18.03.2023**. After deliberation, a decision was taken to accept the Draft Notification placed before the **49th Meeting** of thee **GST Council** that held on **18.03.2023**.

80. It is in this background, **Notification No.07/2023-CT** dated **31.03.2023** was issued for Financial Years **2017-2018 to 2021-2022**, the due date for filing **"Annual Return"** was prescribed between **01.04.2023** to **30.06.2023** together with a **"Late Fee"** of **Rs.10,000/-** under Section 47 of the respective GST Enactments. Simultaneously, same Notification was also issued by the State of Tamil Nadu vide **G.O.**

(Ms) No.39 dated **05.04.2023. Notification No.07/2023-Central Tax** dated **31.03.2023** was later amended by **Notification No.25/2023-Central Tax** dated **17.07.2023** whereby the last date for filing **"Annual Return"** under Section 44(1) of the respective GST Enactments was extended to **31.08.2023**.

81. Thus, the defaulters could file such **"Annual Returns"** between **1st day of April 2023** and **31st of August, 2023** for the Tax period between **2017-2018** and **2021-2022** on payment of concessional Late Fee of **Rs.10,000/-** each under the respective GST Enactments for these years.

82. In the background of the above, the point for consideration that arise for discussion, in these cases are as follows:-

i. Whether the Respondent(s) was / were justified in imposing both "**Late Fee**" under Section 47(2) and "**General Penalty**" under Section 125 of the respective GST Enactments on the Petitioners in **Table No.4**? If not, which of the two can be imposed?

ii. Whether the Petitioners in **Table No.3** who have been given the benefit of **Notification No.07/2023-CT** dated **31.03.2023** as amended vide **Notification No.25/2023-CT** dated **17.07.2023** can state that there was justification in imposing "**General Penalty**" under Section 125 of the respective GST enactments?

iii. Whether the Petitioners in**Table No.4A** and **Table No.4B** are justified in claiming the benefit of concession under **Notification No.07/2023-CT** dated **31.03.2023** as amended by **Notification No.25/2023-CT** dated **17.07.2023** and corresponding State Notifications even though they filed their Annual Return(s) in **Form GSTR-9** prior to the cut-off date specified in these **Notifications**?

(or)

Whether **Notification No.07/2023-CT** dated **31.03.2023** as amended by **Notification No.25/2023-CT** dated **17.07.2023** and corresponding **State Notifications** can be applied retrospectively?

iv. Whether the Petitioner in **W.P.No.3915 of 2025** as in **Table No.4C** who has filed the Annual Return only on 19.01.2024 can also claim the benefit of **Notification No.07/2023-CT** dated **31.03.2023** as amended by **Notification No.25/2023-CT** dated **17.07.2023**?

83. It has to be appreciated that is a subtle difference between **"Tax", "Fee"** and **"Penalty"**. Simultaneously, there is subtle difference between "Exemption" and "Waiver". Although, "Waiver" may have an element of "Exemption" and "Exemption" also has an element of "Waiver" under the respective GST Enactments, there is a fundamental difference between an "Exemption" and a 'Waiver" under the Scheme of the respective GST Enactments.

84. Section 11 of the respective GST Enactments gives the power to the Government to grant "Exemption". Section 128 of the respective GST Enactments gives the power to the Government to grant waiver from payment of **"Penalty"** and **"Fee"** or both.

85. Both Section 11 and Section 128 of the respective GST Enactments operate under different sphere. While former grants "Exemption" from payment of **"Tax"** while latter waiver from payment of **"Late Fee"** or **"Penalty"** through a **"Notification"** on the recommendation of the GST Council.

86. The power to grant "Exemption" or "Waiver" as the case may be under these two provisions are driven by altogether different considerations. Under Section 11(1) of the respective GST Enactments, "Exemption" is granted in the "Public Interest".

87. Such "Exemption" granted is either absolute by and / or subject to such conditions from payment of **"Tax"**, either wholly or in part with effect from such date as may be specified in a "Notification".

88. Under Section 11(2) of the respective GST Enactments, the Government can also issue a "Special Order" under circumstances of an exceptional nature from payment of tax. The "Special Order" under Section 11(2) of the respective GST Enactments is also to be driven by "Public Interest".

89. Under Sub-Section (3) to Section 11 of the respective GST Enactments, the Government may for the purpose of clarifying the scope or applicability of any Notification issued either under Sub-Section (1) or under Sub-Section (2) may insert an "Explanation" to such Notification or "Special Order" as the case be by a Notification at any time within one year of issuance of such "Notification" or "Special Order" and every such "Explanation" shall have the effect as if it had always been the part of first "Notification" or "Special Order" as the case may be.

90. However, under Section 128 of the respective GST Enactments, waiver from payment of **"Late Fee"** or **"Penalty"** under Sections 122, 123, 125 or Section 47 of these Enactments as the case may be are

guided only by mitigating circumstances on the recommendation of the GST Council.

91. Section 11 and Section 128 from the respective GST Enactments are extracted as under:-

Table-8

SECTION 11.	**SECTION 128.**
Power to grant exemption from tax.	**Power to waive penalty or fee or both.**
(1)Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, **exempt** generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the **tax leviable** thereon with effect from such date as may be specified in such notification. (2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of	The Government may, by notification, **waive in part or full,** any **penalty** referred to in section 122 or section 123 or section 125 or any **late fee** referred to in section 47 for such class of taxpayers and **under such mitigating circumstances as may be specified therein on the recommendations of the Council.**

the Council, by **special order** in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable. (3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be. **Explanation.** — For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the Registered Person supplying	

such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.	

92. A reading of Section 11 of CGST Act, 2017 makes it clear that it is similar to Section 5A of the Central Excise Act, 1944, Section 25(2) of the Customs Act, 1962 and Section 93(1) of the Finance Act, 1994.

93. Thus, there is not only the power to grant a "general exemption" but also to grant an "Exemption" for the payment of **"Tax"** on any goods or services or both by special order, when tax is leviable.

94. Rule 12 of the Central Excise Rules, 2002 and Section 70 of the Finance Act, 1994 dealt with the provisions relating to filing of Service Tax Returns. Various Provisions of the respective GST Enactments

relating to filing of **"Annual Returns"** read with the Provisions of respective GST Rules are inspired from these Provisions.

LATE FEE IN THESE INDIRECT TAX ENACTMENTS

95. As far as the payment of **"Late Fee"** under Section 47 of the respective GST Enactments with which these cases are concerned, it has to be seen from the perspective of the amendment brought to the Central Exercise Rules, 1944 and the Service Tax Rules, 1944.

LATE FEE UNDER SERVICE TAX RULES, 1994

96. Rule 7C of the Service Tax Rules, 1994 was inserted to the aforesaid Service Tax Rules by **Notification No.20/2007-Service Tax** dated **12.05.2007**. It came into effect on 12.05.2007.

97. By **Notification No.4/2008-Service Tax** dated **01.03.2008**, an amendment was made to Rule 7C of the Service Tax Rules, 1994, granting Central Excise Officers the power to reduce or waive the late-filing penalty for "nil" returns. Such a power does not exist in the context of GST. The power to effect "Waiver" and reducing of "Late Fee" is only with the Government on the recommendation of the GST Council.

98. Rule 7C of the Service Tax Rules, 1994, as it originally stood, read as under:-

> *"(7C). **Amount to be paid for delay in furnishing the prescribed return**:-*
>
> *Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, **for the period of delay of-***
>
> *(i) **fifteen days** from the date prescribed for submission of such return, an amount of **five hundred rupees**;*
>
> *(ii) **beyond fifteen days** but **not later than thirty days** from the date prescribed for submission of such return, an amount of **one thousand rupees**; and*
>
> *(iii) **beyond thirty days** from the date prescribed for submission of such return an amount of **one thousand rupees** plus **one hundred rupees for every day from the thirty first day till the date of furnishing the said return**:*
>
> ***Provided that** the total amount payable in terms of this rule, for delayed submission of return, shall not exceed the amount specified in section 70 of the Act: Provided further that where the assessee has paid the amount as prescribed under this rule for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.*
>
> ***Provided also that** where the gross amount of service tax payable is nil, the Central Excise officer officer*

may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty."

99. Rule 7C of the Service Tax Rules, 1994 was later re-numbered as Sub-Rule (1) thereof by **Notification No.19/2016-Service Tax** dated **01.03.2016**, with effect from 01.04.2016.

100. In the Central Excise Rules, 2002, Rule 12(6) was inserted vide **Notification No.08/2015-Central Excise (N.T.)** dated **01.03.2015**. Rule 12(6) states that where any return submitted by the assessee after due date as specified for every return or statements, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of one hundred rupees per day subject to a maximum of twenty thousand rupees for the period of delay in submission of each such return or statement.

101. A similar provision was also incorporated in the Income Tax Act, 1961 in Chapter XVII vide Finance Act, 2012 with effect from 01.07.2012. Subsequently, over the period of time, other provisions have also been incorporated for such Late Fee. They are as under:-

"**G. - Levy of fee in certain cases**

234E.Fee for default in furnishing statements.

234F.Fee for default in furnishing return of income."

102. In these cases, this Court is also concerned with the assessees who have previously filed belated returns and have been subject to **"Late Fee"** under Section 47(2) of the respective GST Enactments. They have challenged the impugned **"Late Fee"**, in the light of the Amnesty gave under **Notification No.7/2023-Central Tax** dated **31.03.2023**, as amended by **Notification No.25/2023-Central Tax**, dated **17.07.2023**, to those who had not filed **"Annual Returns"** but who are given an opportunity to file such **"Annual Returns"** between 01.04.2023 and 31.08.2023 and have been given waiver of **"Late Fee"** in excess of Rs.10,000/-.

103. The above Notification has been issued under Section 128 of CGST Act, 2017, and under the powers vested with the Government under Section 11 of CGST Act, 2017.

GST AND CONSTITUTION:

104.While the power to enact laws with respect to Goods and Services

Tax imposed by the Union Parliament and by the State Legislatures, is traceable to Article 246-A of the Constitution of India in Part XI, Chapter I-Legislative Relations.

105. Power of legislature on imposition of tax under the Constitution are traceable in Part XII of the Constitution, Chapter I-Finance. There is an emphatic declaration under Article 265 of the Constitution of India in the same part that no tax shall be levied or collected except by authority of law.

106. While examining the scope of the Article 279A of the Constitution of India in **Union of India** Vs. **Mohit Minerals Private Limited,** (2022) 10 SCC 700, in para 59 the Hon'ble Supreme Court observed that, if the GST Council was intended to be a decision-making authority whose recommendations transform to legislation, such a qualification would have been included in Articles 246-A or 279-A.

107. It further observed that neither does Article 279-A begin with a non-obstante clause nor does Article 246-A provide that the legislative

power is "subject to" Article 279-A. It also observed that the GST Council has plenary powers under Article 279-A(4)(h) where it could make recommendations on "any other matter" related to GST as the Council may decide and arrive at its recommendations through harmonized deliberation between the federal units as provided in Clause (6) of Article 279-A.

108. The Hon'ble Supreme Court also dispelled the notion that the recommendations of the GST Council can transform into legislation in and of themselves under Article 246-A and that would be far-fetched. It was further observed that the GST Council is a constitutional body which is entrusted with the duty to make recommendations on a wide range of areas concerning GST. In para (59), the Hon'ble Supreme Court observed as under:-

> ***59.*** *The GST Council which is a constitutional body is entrusted with the duty to make recommendations on a wide range of areas concerning GST. The GST Council has plenary powers under Article 279-A(4)(h) where it could make recommendations on "any other matter" related to GST as the Council may decide. The GST Council has to arrive at its recommendations through harmonised deliberation between the federal units as provided in clause (6) of Article 279-A. Unlike the other provisions of the Constitution which provide that recommendations shall be made to the President*

or the Governor, Article 279-A states that the recommendations shall be made to the "Union and the States". The recommendation of the GST Council made under Article 279-A is non-qualified. That is, there is no explanation on the value of such a recommendation. Yet the notion that the recommendations of the GST Council transform into legislation in and of themselves under Article 246-A would be far-fetched. If the GST Council was intended to be a decision-making authority whose recommendations transform to legislation, such a qualification would have been included in Articles 246-A or 279-A.

109. In Para 66, the Hon'ble Supreme Court while referring to Article 279-A in the context of IGST Act, 2017 and CGST Act, 2017 also observed that the recommendations of the GST Council are made binding on the Government when it exercises its power to notify secondary legislation to give effect to the Uniform Taxation System.

110. The Hon'ble Supreme Court also therefore observed that merely because a few of the recommendations of the GST Council are binding on the Government under the provisions of the CGST Act and the IGST Act, it cannot be argued that all of the GST Council's recommendations are binding.

111. Ultimately, it has summarised that even if it is Parliament that has enacted laws making the recommendations of the GST Council

binding on the Central Government for the purpose of notifying secondary legislations, it would not mean that all the recommendations of the GST Council made by virtue of its power under Article 279-A have a binding force on the legislature. Para (66) from the Judgment is extracted below:-

> ***66.*** *The provisions of the IGST Act and the CGST Act which provide that the Union Government is to act on the recommendations of the GST Council must be interpreted with reference to the purpose of the enactment, which is to create a uniform taxation system. The GST was introduced since different States could earlier provide different tax slabs and different exemptions. The recommendations of the GST Council are made binding on the Government when it exercises its power to notify secondary legislation to give effect to the uniform taxation system. The Council under Article 279-A has wide recommendatory powers on matters related to GST where it has the power to make recommendations on subject-matters that fall outside the purview of the rule-making power under the provisions of the IGST and the CGST Act. Merely because a few of the recommendations of the GST Council are binding on the Government under the provisions of the CGST Act and the IGST Act, it cannot be argued that all of the GST Council's recommendations are binding. As a matter of first principle, the provisions of the Constitution, which is the ground norm of the nation, cannot be interpreted based on the provisions of a primary legislation. It is only the provisions of a primary legislation that can be interpreted with reference to the Constitution. The legislature amends the*

Constitution by exercising its constituent power and legislates by exercising its legislative power. The constituent power of the legislature is of a higher constitutional order as compared to its legislative power. Even if it is Parliament that has enacted laws making the recommendations of the GST Council binding on the Central Government for the purpose of notifying secondary legislations, it would not mean that all the recommendations of the Council made by virtue of its power under Article 279-A have a binding force on the legislature.

POWER TO LEVY FEE AND THE CONSTITUTION

112. Power to levy **"Fees"** is traceable to **Entry 96 of List I, Entry 66 of List II** and **Entry 47 of List III** to the 7th Schedule to the Constitution of India. All of them read identically as "**Fees in respect of any of the matters in this list, but not including fees taken in any Court"**.

113. The expression "Fees from service rendered" is followed in both Article 110(2) and 199(2) of the Constitution of India.

114. Court Fees charged by all Courts except the Hon'ble Supreme Court are traceable to **Entry 3 to List-II** to the 7th Schedule to the Constitution of India. **Entry 3 to List-II** to the 7th Schedule to the Constitution of India reads "officers and servants of the High Court; procedure in rent and revenue courts; **fees taken in all courts except the Supreme Court**".

115. As far as levy and collection of Goods and Service Tax in the course under the Inter-State Trade or Commerce is concerned, it has been brought under the purview of Article 269-A in **Chapter I of Part XII** of the Constitution of India. To that effect, Integrated Goods and Service Tax Act, 2017 has been enacted for apportionment of tax and settlement of funds.

116. The question to be addressed is whether the **"Late Fee"** that is payable under Section 47 of the respective GST Enactments can be imposed on these Petitioners who have filed the "Annual Returns" either beyond the period prescribed under Rule 80 of the respective GST Rules and before the dates specified in **Notification No.7/2023-Central Tax** dated **31.03.2023**.

117. The Hon'ble High Court of Himachal Pradesh and Kerala while dealing with the similar cases, have held that there appears to be no justification in demanding **"Late Fee"** towards belated filing of Returns in GSTR-9C of those assesses who filed such returns before the cut-off date prescribed in **Notification No.7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023**.

118. In **Anishia Chandrakanth and others** Vs. **The Superintendent, Central Tax and Central Excise, Audit Circle-1 and others (09.04.2024-KERHC),** MANU/KE/1291/2024, the Kerala High Court, however held that the Petitioners therein who had filed **"Annual Returns"** before the cut-off date are not entitled to claim refund of the **"Late Fee"** which has already been paid by them over and above Rs.10,000/-.

119. Relevant portion from the said Judgment is reproduced below:-

> *24. As mentioned above GST council in 49th meeting in Agenda No.4(iv) agreed for rationalisation of late fee for delayed submission of GSTR-9 Annual Return and amnesty for non-filers of GSTR-9 among others*

accepting the recommendation of law committee. The late fee as well as its upper limit were thereby substantially reduced for two turnover slabs- i) up to Rs. Five Crores and ii) Rs. Five Crores to Rs. Twenty Crores as per notification No.7/2023 : MANU/CGST/0007/2023 dated 31.03.2023. One time Amnesty for non-filers of GSTR 9 is also given for the first time as per the same notification following the council recommendation. Late fee in excess of Rs.10,000/- stands waived and this amnesty covers five financial years 2017-2018 to 2021-2022. The period for submitting return under the amnesty was from 01.04.2023 to 31.08.2023 as noted above by the Notification No.25/2023 : MANU/CGST/0025/2023 dated 17.07.2023, issued in exercise of the powers conferred under Section 128 of the CGST / SGST Act.

25. *When the Government itself has waived late fee under the aforesaid two notifications Nos.7/2023 : MANU/CGST/0007/2023 dated 31.03.2023 and 25/2023 : MANU/CGST/0025/2023 dated 17.07.2023 in excess of Rs.10,000/-, in case of non-filers there appears to be no justification in continuing with the notices for non payment of late fee for belated GSTR 9C, that too filed by the taxpayers before 01.04.2023, the date on which one time amnesty commences.*

In view of the aforesaid discussion, I am of the view that notices are unjust and unsustainable to the extent it sought to collect late fee for delay in filing GSTR 9C. However, it is made clear that the petitioners will not be entitled to claim refund of the late fee which has already paid by them over and above Rs.10,000/-

With aforesaid directions, all these writ petitions stand allowed.

120. In **R.T. Pharma** Vs. **Union of India and Ors. (21.12.2024 – HPHC):** MANU/HP/3000/2024, the Himachal Pradesh High Court held

that the intention of the Government is not to harass the assessee, who come forward to file their return for the assessment years mentioned in the notification within the stipulated period implying the benefit would extend to the Petitioner as well, who filed the returns although belatedly on 13.03.2023, before the cut-off date mentioned in the above Notification.

121. It further held, it would be unjust to deny the benefit merely because the returns were filed prior to the issuance of the Amnesty Notification dated 31.03.2023 by confining the benefit of amnesty only to those who filed the return between 01.04.2023 and 30.06.2023. It is finally held that intention of the Government in issuing the aforesaid Notification was to encourage filing of returns. In Paragraphs 6 to 10, the Himachal Pradesh High Court held as under:-

> *6. It is evident that the intention of the Government is not to harass the assessee, who come forward to file their return for the assessment years mentioned in the notification within the stipulated period. Thus, it would imply that the benefit would extend to the petitioner as well, who filed the return although belatedly on 13.03.2023, which is before the cut off date mentioned in the above notification.*
>
> *7. It would be unjust to deny the benefit to the petitioner*

merely because the petitioner filed the return prior to the issuance of the amnesty notification dated 31.03.2023, confined to amnesty only to those who filed the return between 01.04.2023 and 30.06.2023.

8. The intention of the government in issuing the aforesaid notification was to encourage filing of returns. Therefore, this Court is of the view that the petitioner is entitled to the benefit of notification dated 31.03.2023.

9. Under these circumstances, the impugned order dated 30.11.2023 passed by respondent No. 3 and the show cause notice dated 22.08.2023 issued under Section 74 of the Act are set aside and the case is remanded back to the third respondent with a direction to pass fresh order on merit by extending the benefit of notification dated 31.03.2023 in accordance with law as expeditiously as possible preferably within three months from the receipt of the copy of this order.

10. The writ petition is allowed in the aforesaid terms. Pending application, if any, stands disposed of. No costs.

122. These decisions have not considered that there are subtle difference between **"Tax"**, **"Penalty"** and a **"Fee"**. Similarly, there are also subtle difference between an **"Exemption"** and a **"Waiver"**. In this regard, I shall delve into these differences by referring to few decisions of the Courts.

DIFFERENCE BETWEEN TAX AND FEE

123. In **Commissioner, Hindu Religious Endowments Vs. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,** (1954) 1 SCC 412, the Hon'ble Supreme Court was concerned with the issue as to whether "**Annual Contribution**" under Section 76 of the Madras Hindu Religious and Charitable Endowments Act, 1951 was a **'Fee'** or a **'Tax'**?

124. The above decision was rendered by a Bench consisting of 7 Judges of the Hon'ble Supreme Court. The Court did not deal with **"Fees"** or for that matter **"Penal Fee"** or **"Late Fee"** levied under Section 47(2) of the respective GST Enactments. There, the Court was concerned with **"Annual Contribution(s)"** under Section 76 of the Madras Hindu Religious and Charitable Endowments Act, 1951.

125. The above provision was challenged by the Respondent namely, one Lakshmindra Thirtha Swamiar of Sri Shirur Mutt who had earlier incurred huge expenses in connection with the affairs of said Mutt. Therefore, the Hindu Religious and Charitable and Endowments Board decided that in the interest of the administration of Mutt and its

endowment, a Scheme be settled. Therefore, a Draft Scheme along with a Notice was sent to the Respondent. The Respondent was called upon to submit his objections.

126. This was at the time when Madras Hindu Religious and Charitable Endowments Act, 1927 was still in force. However, during the pendency of the case before this Court (i.e., Madras High Court), Madras Hindu Religious and Charitable Endowments Act, 1927 was replaced with Madras Hindu Religious and Charitable Endowments Act, 1951.

127. Section 76 of the Madras Hindu Religious and Charitable Endowments Act, 1951 gave powers to the Government to collect **"Annual Contribution"** from every Religious Institution. It read as under:-

> *"**76. Religious institutions to pay an Annual Contribution to the Government**:-*
>
> *(1) In respect of the services rendered by the Government and their officers, every religious institution shall, from the income derived by it, pay to the Government annually such contribution not exceeding five per centum of its income as may be prescribed.*

(2) Every religious institution, the annual income of which, for the Fasli year immediately preceding as calculated for the purposes of the levy of contribution under sub-section (1), is not less than one thousand rupees, shall pay to the Government annually, for meeting the cost of auditing its accounts, such further sum not exceeding one-and-a-half per centum of its income as the Commissioner may determine.

(3) The annual payments referred to in sub-sections (1) and (2) shall be made, notwithstanding anything to the contrary contained in any scheme settled or deemed to be settled under this Act for the religious institution concerned.

(4) The Government shall pay the salaries, allowances, pensions and other beneficial remuneration of the Commissioner, Deputy Commissioners, Assistant Commissioners and other officers and servants (other than executive officers of religious institutions) employed for the purposes of this Act and the other expenses incurred for such purposes, including the expenses of Area Committees and the cost of auditing the accounts of religious institutions."

128. These were challenged before this Court by the Respondent. The argument of the Respondent was that the **"Annual Contribution"** as was contemplated under the above provision was **"Tax"** and therefore the State Legislature was not competent to legislate on the said subject.

129. The challenge was initially made before this Court stating that the aforesaid provision was *ultra vires* the Constitution and it was in conflict with the fundamental right of the Respondent guaranteed under Article 19(1)(f), Article 25, Article 26, Article 27 of the Constitution of India. Simultaneously, a challenge was also made to Section 76 of the Madras Hindu Religious and Charitable Endowments Act, 1951.

130. This Court issued a "**RULE NISI**" on the Petition which was made absolute. It prohibited the Commissioner of the Madras Hindu Religious and Charitable Endowments Board from proceeding further with the framing of the Scheme. This Court also held that the **"Annual Contribution"** under Section 76 of the Madras Hindu Religious and Charitable Endowments Act, 1951 falls within the mischief of Article 27 of the Constitution of India.

131. The Division Bench of this Court made the following observations:-

> *"To sum up, we hold that the following sections are ultra vires the State Legislature insofar as they relate to this Mutt: and what we say will also equally apply to other Mutts of a similar nature. The sections of the new Act are: Sections 18, 20, 21, 25(4), Section 26 [to the extent Section 25(4) is made applicable], Section 28 (though it sounds innocuous, it is liable to abuse as we have already pointed out earlier in the judgment),*

Section 29, sub-section (2) of Section 30, Section 31, Section 39(2), Section 42, Section 53 (because courts have ample powers to meet these contingencies), Section 54, sub-section (2) of Section 55, Section 56, sub-section (3) of Section 58, Sections 63 to 69 in Chapter VI, sub-section (2), (3) and (4) of Section 70, ***Section 76****, Section 89 and Section 99 (to the extent it gives the Government virtually complete control over the Matadhipati and Mutts).”*

132. Thus, the power to collect **“Annual Contribution”** under Section 76 of the Madras Hindu Religious and Charitable Endowments Act, 1951 was held *ultra vires* under the powers of the State Legislature to levy tax.

133. This decision of this Court was challenged before the Hon’ble Supreme Court. The Hon’ble Supreme Court held that **“Annual Contribution”** under Section 76 of the Madras Hindu Religious and Charitable Endowments Act, 1951 undoubtedly had some of the characteristics of **“Tax”** and impositions bears a close analogy to income tax.

134. The Hon’ble Supreme Court held that the money raised by levy of the contribution was not earmarked or specified for defraying the

expenses that the Government has to incur in performing the services and that all the collections were to go to the Consolidated Fund of the State and all the expenses were to be met not out of these collections, but out of the general revenues by a proper method of appropriation as is done in case of other government expenses.

135. The Hon'ble Supreme Court further held that there is a total absence of any co-relation between the expenses incurred by the Government and the amount raised contribution under the provision of Section 76 of the said Act. The Hon'ble Supreme Court thus held that this High Court was right in holding that the **"Annual Contribution"** levied under Section 76 was a **"Tax"** and not a **"Fee"** and consequently it was beyond the power of the State Legislature to enact the said provision. Relevant portion from the decision of the Hon'ble Supreme Court is extracted below:-

> ***50.*** *Section 76 of the Madras Act speaks definitely of the contribution being levied in respect to the services rendered by the Government; so far it has the appearance of fees. It is true that religious institutions do not want these services to be rendered to them and it may be that they do not consider the State interference to be a benefit at all. We agree, however, with the learned Attorney General that in the present day concept of a State, it cannot be said that services could be rendered by the State only at the request of*

those who require these services. If in the larger interest of the public, a State considers it desirable that some special service should be done for certain people, the people must accept these services, whether willing or not [Findlay Shirras, Science of Public Finance, Vol. I, 202] . It may be noticed, however, that the contribution that has been levied under Section 76 of the Act has been made to depend upon the capacity of the payer and not upon the quantum of benefit that is supposed to be conferred on any particular religious institution. Further the institutions which come under the lower income group and have income less than Rs 1000 annually, are excluded from the liability to pay the additional charges under sub-section (2) of the section. These are undoubtedly some of the characteristics of a "tax" and the imposition bears a close analogy to income tax. But the material fact which negatives the theory of fees in the present case is that the money raised by levy of the contribution is not earmarked or specified for defraying the expenses that the Government has to incur in performing the services. All the collections go to the consolidated fund of the State and all the expenses have to be met not out of these collections but out of the general revenues by a proper method of appropriation as is done in case of other government expenses. That in itself might not be conclusive, but in this case there is total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution under the provision of Section 76 and in these circumstances the theory of a return or counter-payment or quid pro quo cannot have any possible application to this case. In our opinion, ***therefore, the High Court was right in holding that the contribution levied under Section 76 is a tax and not a fee and consequently it was beyond the power of the State Legislature to enact this provision.***

136. In Paragraph No.51, the Hon'ble Supreme Court further observed Article 27 of the Constitution of India was not attracted and therefore held that Sections 21, 30(2), 31, 55, 56 and 63 to 69 of the said Act were the only sections which should be declared as invalid, and conflicting with the fundamental rights of the Respondent as Mathadhipati of the Math in question and Section 76(1) of the said Act is void as beyond the legislative competence of the Madras State Legislature.

137. While coming to the above conclusion, the Hon'ble Supreme Court brought out certain distinctions between a **"Tax"** and **"Fee".** The Hon'ble Supreme Court recognized the following features of a **"Tax":-**

a. Tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered;

b. Imposition of Tax is made for public purpose without reference to any special benefit to be conferred on the payer of the tax;

c. There is no element of **quid pro quo** between the taxpayer and the public authority;

d. Collection of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State;

e. Tax is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.

138. The Hon'ble Supreme Court made reference to the following cases in para 44:-

i. **Matthews** Vs. **Chicory Mktg. Board (Victoria), (1938) 60 CLR 263 at p. 276 (Aust)**

ii. **Lower Mainland Dairy Products Sales Adjustment Committee** Vs**. Crystal Dairy Ltd.,** 1933 AC 168 (PC)

iii. Findlay Shirras, Science of Public Finance, Vol. I, 203.

139. In para 45, the Hon'ble Supreme Court also made the following observations:-

> ***45.*** *Coming now to fees, a* ***"fee"*** *is generally defined to be* ***a charge for a special service rendered to individuals by some governmental agency****. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily,* ***the fees are uniform and no account is taken of the varying abilities of different recipients to pay*** *[Lutz, Public Finance, 215]. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.*

140. The Hon'ble Supreme Court also acknowledged that it is however not possible to formulate a definition that would be applicable to all kinds of **"Fees"**. The Hon'ble Supreme Court nevertheless summarized the legal position as follows:-

i. a fee is charged for a special service rendered to individuals by some governmental agency;

ii. Ordinarily, **the fees are uniform and no account is taken of the varying abilities of different recipients to pay;**

iii. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessee.

141. In para 46, the Hon'ble Supreme Court further observed that "The distinction between a **"Tax"** and a **"Fee"** lies primarily based on the fact that a **"Tax"** is levied as a part of a common burden, while a **"Fee"** is a payment for a special benefit or privilege"**.** Paragraphs 46 to 49 are reproduced below:-

> ***46.*** *As regards the* ***distinction between a tax and a fee****, it is argued in the first place on behalf of the respondent that a fee is something voluntary which a person has got to pay if he wants certain services from the Government; but there is no obligation on his part to seek such services and if he does not want the services, he can avoid the obligation. The example given is of a* ***licence fee****. If a man wants a licence that is entirely his own choice and then only he has to pay the fees, but not otherwise. We think that a careful examination*

will reveal that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and that it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees. It is difficult, we think, to conceive of a tax except, it be something like a ***poll tax****, the incidence of which falls on all persons within a State. The house tax has to be paid only by those who own houses, the land tax by those who possess lands, municipal taxes or rates will fall on those who have properties within a municipality. Persons, who do not have houses, lands or properties within municipalities, would not have to pay these taxes, but nevertheless these impositions come within the category of taxes and nobody can say that it is a choice of these people to own lands or houses or specified kinds of properties so that there is no compulsion on them to pay taxes at all.* ***Compulsion lies in the fact that payment is enforceable by law against a man in spite of his unwillingness or want of consent; and this element is present in taxes as well as in fees****. Of course, in some cases whether a man would come within the category of a service receiver may be a matter of his choice, but that by itself would not constitute a major test which can be taken as the criterion of this species of imposition.* ***The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest*** *[Findlay Shirras, Science of Public Finance, Vol. I, 202]. Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives. As Seligman says, it is the special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action [Seligman's Essays on Taxation, 409] .*

47. *If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be co-related to the expenses incurred by the Government in rendering the services.* ***As indicated in Article 110 of the Constitution, ordinarily there are two classes of cases where the Government imposes "fees" upon persons. In the first class of cases, the Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred.*** *A most common illustration of this type of cases is furnished by the* ***licence fees for motor vehicles****. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licences may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant [Ibid., 409] , and if the money paid by licence-holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot but be regarded as a tax.*

48. *In the other class of cases, the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered. If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax. There is really no generic difference between the tax and fees and as said by Seligman, the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes [Seligman's Essays on Taxation, 406] .*

49. *Our Constitution has, for legislative purposes, made a distinction between a tax and a fee and while there are various entries in the legislative lists with regard to various*

forms of taxes there is an entry at the end of each one of the three lists as regards fees which could be levied in respect of any of the matters that is included in it. The implication seems to be that fees have special reference to governmental action undertaken in respect to any of these matters.

142. The statement of law made in **Commissioner, Hindu Religious Endowments** Vs. **Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** referred to *supra*, regarding the attributes of a **"Tax"**, **"Fee"** has undergone a slight change over a period of time.

143. In **Automobile Transport Limited** Vs. **State of Rajasthan,** 1962 SCC OnLine SC 21, the Hon'ble Supreme Court equated **"Regulatory Charges"** with **"Compensatory Taxes"**. The Hon'ble Supreme Court took a view that the **"Compensatory Taxes"** constitute an exception to Article 301 of the Constitution of India.

144. The Court in **State of Himachal Pradesh** Vs. **Shivalik Agro Poly Products,** (2004) 8 SCC 556 noted that the consistent view now is that there is no generic difference between a "**Tax"** and a "**Fee"** as both are compulsory exactions of money by public authorities. The co-relationship between the levy and the services rendered should be one of general character and not of mathematical exactitude.

145. The Court also observed that Part XIII of the Indian Constitution was an amalgam between the Constitution of the United States of America and the Constitution of Australia which bring out the difference between **"Regulatory"** and **"Taxing Powers"** for concept of **"payment for revenue"** and concept of **"payment for regulation"**.

146. In para19, the Hon'ble Supreme Court held that "The taxes are compensatory taxes which instead of hindering trade, commerce and intercourse facilitate them by providing roads and maintaining the roads".

147. In para 19, the Hon'ble Supreme Court further held that "a working test for deciding whether a tax is compensatory or not, is to enquire whether the [trade is] having the use of certain facilities for the better conduct of [its] business and paying not patently much more than what is required for providing the facilities".

148. In para 21, the Hon'ble Supreme Court observed that "If a statute fixes a charge for a convenience or service provided by the State or an agency of the State, and imposes it upon those who choose to avail

themselves of the service or convenience, the freedom of trade and commerce may well be considered unimpaired."

149. The Constitution Bench of the Hon'ble Supreme Court in **Jindal Stainless Limited** Vs. **State of Haryana,** (2006) 7 SCC 241 further exacerbated the difference between exercise of **"Taxing"** and **"Regulatory Power"**, and observed as under:-

> ***Difference between exercise of Taxing and Regulatory Power***
>
> ***38.*** *In the generic sense, tax, toll, subsidies, etc. are manifestations of the exercise of the taxing power. The primary purpose of a taxing statute is the collection of revenue. On the other hand, regulation extends to administrative acts which produces regulative effects on trade and commerce. The difficulty arises because taxation is also used as a measure of regulation. There is a working test to decide whether the law impugned is the result of the exercise of regulatory power or whether it is the product of the exercise of the taxing power. If the impugned law seeks to control the conditions under which an activity like trade is to take place then such law is regulatory. Payment for regulation is different from payment for revenue. If the impugned taxing or non-taxing law chooses an activity, say, movement of trade and commerce as the criterion of its operation and if the effect of the operation of such a law is to impede the activity, then the law is a restriction under Article 301. However, if the law enacted is to enforce discipline or conduct under which the trade has to perform or if the payment is for regulation of conditions or incidents of trade or manufacture then the levy is regulatory. This is the way of reconciling the concept of compensatory tax with the scheme of Articles 301, 302 and 304. For example, for installation of pipeline carrying gas from*

Gujarat to Rajasthan, which passes through M.P., a fee charged to provide security to the pipeline will come in the category of manifestation of regulatory power. However, a tax levied on sale or purchase of gas which flows from that very pipe is a manifestation of exercise of the taxing power. This example indicates the difference between taxing and regulatory powers (see Essays in Taxation by Seligman).

150. The Hon'ble Supreme Court equated **"Compensatory Tax"** on par with **"Fee"**. The Hon'ble Supreme Court in **Jindal Stainless Limited** case referred to *supra* also took a note of the **"Compensatory Tax"** in **Automobile Transport Limited** Vs. **State of Rajasthan,** 1962 SCC OnLine SC 21 and observed as under:-

Generic concept of Compensatory Tax

Introduction

37. *The concept of* ***compensatory tax*** *is not there in the Constitution but is judicially evolved in Automobile Transport [(1963) 1 SCR 491 : AIR 1962 SC 1406] as a part of regulatory charge. Consequently, we have to go into concepts and doctrines of taxing powers vis-à-vis regulatory powers, particularly when the concept of compensatory tax was judicially crafted as an exception to Article 301 in* ***Automobile Transport*** *[(1963) 1 SCR 491 : AIR 1962 SC 1406] .*

41. *On the other hand, a* ***fee*** *is based on the "principle of equivalence". This principle is the converse of the "principle of ability" to pay. In the case of a fee or compensatory tax, the "principle of equivalence" applies. The basis of a fee or a compensatory tax is the same. The main basis of a fee or a compensatory tax is the quantifiable and measurable benefit. In the case of a tax, even if there is any benefit, the same is incidental to the government action and even if such benefit results from the*

government action, the same is not measurable. Under the principle of equivalence, as applicable to a fee or a compensatory tax, there is an indication of a quantifiable data, namely, a benefit which is measurable.

42. *A tax can be progressive. However, a fee or a compensatory tax has to be broadly proportional and not progressive. In the principle of equivalence, which is the foundation of a compensatory tax as well as a fee, the value of the quantifiable benefit is represented by the costs incurred in procuring the facility/services, which costs in turn become the basis of reimbursement/recompense for the provider of the services/facilities. Compensatory tax is based on the principle of "pay for the value". It is a sub-class of "a fee". From the point of view of the Government, a compensatory tax is a charge for offering trading facilities. It adds to the value of trade and commerce which does not happen in the case of a tax as such. A tax may be progressive or proportional to income, property, expenditure or any other test of ability or capacity (principle of ability). Taxes may be progressive rather than proportional. Compensatory taxes, like fees, are always proportional to benefits. They are based on the principle of equivalence. However, a compensatory tax is levied on an individual as a member of a class, whereas a fee is levied on an individual as such. If one keeps in mind the "principle of ability" vis-à-vis the "principle of equivalence", then the difference between a tax on one hand and a fee or a compensatory tax on the other hand can be easily spelt out. Ability or capacity to pay is measurable by property or rental value. Local rates are often charged according to the ability to pay. Reimbursement or recompenseare the closest equivalence to the cost incurred by the provider of the services/facilities. The theory of compensatory tax is that it rests upon the principle that if the Government by some positive action confers upon individual(s), a particular measurable advantage, it is only fair to the community at large that the beneficiary shall pay for it.* ***The basic difference between a tax on one hand and a fee/compensatory tax on the other hand is that the former is based on the concept of burden whereas compensatory tax/fee is based on the concept of recompense/reimbursement.*** *For a tax to be compensatory, there must be some link between the quantum of*

tax and the facility/services. Every benefit is measured in terms of cost which has to be reimbursed by compensatory tax or in the form of compensatory tax. In other words, compensatory tax is a recompense/reimbursement.

151. The Hon'ble Supreme Court also brought out the fine distinction between **"a Tax", "a Fee"** and **"a Compensatory Tax"** in paras 39 to 43. Same is reproduced below:-

> ***Difference between "a tax", "a fee" and "a Compensatory Tax"***
> *Parameters of Compensatory Tax*
>
> ***39.*** *As stated above, in order to lay down the parameters of a compensatory tax, we must know the concept of taxing power.*
>
> ***40.*** *Tax is levied as a part of common burden. The basis of a tax is the ability or the capacity of the taxpayer to pay. The principle behind the levy of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. In the case of a tax, a particular advantage, if it exists at all, is incidental to the State's action. It is assessed on certain elements of business, such as, manufacture, purchase, sale, consumption, use, capital, etc. but its payment is not a condition precedent. It is not a term or condition of a licence. A fee is generally a term of a licence. A tax is a payment where the special benefit, if any, is converted into common burden.*
>
> ***41. …..***
>
> ***42. …..***
>
> ***43.*** *In the context of Article 301, therefore, compensatory tax is a compulsory contribution levied broadly in proportion to the special benefits derived to defray the costs of regulation or to meet*

the outlay incurred for some special advantage to trade, commerce and intercourse. It may incidentally bring in net revenue to the Government but that circumstance is not an essential ingredient of compensatory tax.

152. The Hon'ble Supreme Court in **Jalkal Vibhag Nagar Nigam and others** Vs. **Pradeshiya Industrial and Investment Corporation and another,** (2021) 20 SCC 657, was rendered by a bench consisting of 3 Judges elucidated the distinction between a **"Tax"** and a "**Regulatory Fee".**

153. There, the Hon'ble Supreme Court in **Jalkal Vibhag Nagar Nigam** case referred to *supra*, held that the distinction between a **"Tax"** and a "**Fee"** has been substantially effaced in the development of our Constitutional Jurisprudence.

154. It held that, at one time, it was possible for Courts to assume that there is a distinction between a **"Tax"** and a **"Fee"**, while a **"Tax"** by nature was a compulsory exaction, a **"Fee"** was collected for a service rendered.

155. There, tax was imposed by the legislature under Section 52 of the Uttar Pradesh Water Supply and Sewerage Act, 1975 on the premises situated within the area of the Jal Sansthan (the appellant). The water tax was levied so long as the Jal Sansthan provided a stand post or water works within a stipulated radius of the premises through which water was made available to the public by the Jal Sansthan. Section 59 of the Uttar Pradesh Water Supply and Sewerage Act, 1975 provided for recovering of cost towards the cost of water supplied by the Jal Sansthan according to its volume or, in lieu thereof on a fixed sum.

156. The Hon'ble Supreme Court held that the tax under Section 52 of the Uttar Pradesh Water Supply and Sewerage Act, 1975 was a compulsory exaction and where the premises were connected with water supply, the tax was levied on the occupier of the premises.

157. The Hon'ble Supreme Court on the other hand further held that where the premises were not connected, the owner of the premises has to bear the tax. Under these circumstances, the Hon'ble Supreme Court held that the levy under Section 52(1) of the Uttar Pradesh Water Supply and Sewerage Act, 1975 was a **"Tax"** and not a **"Fee"**.

158. Moreover, as the law progressed, it has come to be recognized that there need not be any exact correlation between the expenditure which is incurred in providing a service and the amount which is realized by the State.

159. The distinction that while a **"Tax"** is a compulsory exaction, a **"Fee"** constitutes a voluntary payment for services rendered, does no longer hold good. As in the case of a **"Tax"**, so also in the case of a **"Fee"**, the exaction may not be truly of a voluntary nature. Similarly, the element of a service may or may not be totally present or absent in a given case in the context of a provision which imposes a **"Tax"** and **"Fee"**. The differences have been diluted over a period of time both judicially and in Statutes and the Rules made thereunder.

160. The above referred discussion in para 66 of the **Jalkal Vibhag Nagar Nigam** case referred to *supra* is extracted as under**:-**

> ***66.*** *In view of this consistent line of authority, it emerges that the practical and even constitutional, distinction between a tax and fee has been weathered down. As in the case of a tax, a fee may also involve a compulsory exaction. A fee may involve an element of compulsion and its proceeds may form a part of the Consolidated Fund. Similarly, the element of a quid pro quo is*

not necessarily absent in the case of every tax. In the present case, the tax has been imposed by the legislature in Section 52 on premises situated within the area of the Jal Sansthan. The proceeds of the tax are intended to constitute revenue available to the Jal Sansthan to carry out its mandatory obligations and functions under the statute of making water and sewerage facilities available in the area under its jurisdiction. The levy is imposed by virtue of the presence of the premises within the area of the jurisdiction of the JalSansthan. The water tax is levied so long as the Jal Sansthan has provided a standpost or waterworks within a stipulated radius of the premises through which water has been made available to the public by the Jal Sansthan. The levy of the tax does not depend upon the actual consumption of water by the owner or occupier upon whom the tax is levied. Unlike the charge under Section 59 which is towards the cost of water to be supplied by the Jal Sansthan according to its volume or, in lieu thereof on a fixed sum, the tax under Section 52 is a compulsory exaction. Where the premises are connected with water supply, the tax is levied on the occupier of the premises. On the other hand, where the premises are not so connected, it is the owner of the premises who bears the tax. The levy under Section 52(1) is hence a tax and not a fee. Moreover, for the reasons that we have indicated above, it is a tax on lands and buildings within the meaning of Entry 49 of List II.

161. Though the above observation in beginning of the paragraph 66 and conclusion of the paragraph 66 may appear to contradict with each other, the fact remains that a fine distinction between a **"Tax"** and a **"Fee"** has been recognized.

IMPOSITION OF PENALTY

162. The Hon'ble Supreme Court in **Hindustan Steel Limited** Vs. **State of Orissa**, (1969) 2 SCC 627 held that the **"Penalty"** will not also be imposed merely because it is lawful to do so and observed as follows as follows:-

> ***8.*** *Under the Act penalty may be imposed for failure to register as a dealer — Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out.*

163. The Hon'ble Supreme Court in **CIT** Vs. **Reliance Petroproducts Private Ltd**., (2010) 11 SCC 762, summarized the grounds for imposing **"Penalty"** under the Income Tax Act, 1961. It observed as under:-

> ***10.*** *Section 271(1)(c) is as under:*
> *"271. Failure to furnish returns, comply with notices, concealment of income, etc.—*
> *(1) If the Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that any person—*
>
> *(c) has concealed the particulars of his income or furnished inaccurate particulars of such income."*
>
> *A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the learned counsel for the Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in Section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars.*
>
> ***12.*** *Therefore, it is obvious that it must be shown that the conditions under Section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise.*

16. *However, it must be pointed out that in* ***Union of India v. Dharamendra Textile Processors*** *[(2008) 13 SCC 369] no fault was found with the reasoning in the decision* ***in Dilip N. Shroff v. CIT*** *[(2007) 6 SCC 329] where the Court explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in* ***Dilip N. Shroff v. CIT*** *[(2007) 6 SCC 329] to the effect that mens rea was an essential ingredient for the penalty under Section 271(1)(c) that the decision in* ***Dilip N. Shroff v. CIT*** *[(2007) 6 SCC 329] was overruled.*

17. *We are not concerned in the present case with mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:*

> *"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."*

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous.

18. *We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to inaccurate particulars.*

19. *It was tried to be suggested that Section 14-A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form part of the total income. It was, therefore, reiterated before us that the assessing officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that*

the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income.

20. *We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the assessing officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the legislature.*

164. It is evident that **"Compensatory Taxes"** are equated with **"Fee"** as there is an element of service. Within the kernel of **"Fee"**, there are **"Compensatory Fee"**, **"Regulatory Fee"** and **"Penal Fee"**. **"Late Fee"** is penal in nature and akin to a **"Penalty"** and therefore a **"Penal Fee"** although may not involve any discretion in the hands of the adjudicator whether to levy **"Late Fee"** or not. Requirements of *mens-rea* may be absent to attract such **"Late Fee"**, nevertheless **"Late Fee"** is penal in nature.

165. For the sake clarity, I shall group different kinds of **"Fees"** based on the judicially recognised distinction and feature.

FEE AND DIFFERENT KINDS OF FEE

166. Fees are generally charged for the services rendered. However, over a period of time, different kind of **"Fees"** have been recognized, as under namely:-

i. **Compensatory Fee**

ii. **Regulatory Fee (Also referred to as License Fee)**

iii. **Penal Fee**

167. As far as the "**License Fee**" or the "**Regulatory Fee"** is concerned, it is a **"Fee"** charged by the Government or an Authority to regulate an activity. Its purpose is not to earn fund for the Government but to supervise or monitor a particular sector or activity in Public Interest.

168. In para 36, the Hon'ble Supreme Court in **P.Kannadasan** Vs. **State of Tamil Nadu [(1996) 5 SCC 670]**, observed as under:-

> ***36.*** *The sixth contention of the learned counsel for the appellants-petitioners is premised upon the supposition that Parliament is bound to utilise the taxes realised under the impugned Act only for the purpose of regulation of mines and mineral*

development. It is on this supposition, it is argued, that inasmuch as the Union has not established that the impugned levy is required for the purpose of the said regulation and development, the imposition is incompetent. In our opinion, the very supposition is misplaced. What is levied under the impugned enactment is a tax/cess and not a fee. Even in the matter of fees, it is not necessary that element of quid pro quo should be established in each and every case, for it is well settled that fees can be both ***regulatory and compensatory*** *and that* ***in the case of regulatory fees, the element of quid pro quo is totally irrelevant.*** *(See Corpn. of Calcutta v. Liberty Cinema [AIR 1965 SC 1107 : (1965) 2 SCR 477] .) Taxes are raised for augmenting the general revenues of the State and not for any particular purpose — much less for rendering a particular service.*

169. The distinction between **"Regulatory Fees"** and a **"Compensatory Fees"** was made in **State of Tripura** Vs. **Sudhir Ranjan Nath**, (1997) 3 SCC 665. There, it was observed as under:-

> ***14.*** *We next take up the validity of the levy of application fee and licence fee of Rupees one thousand and Rupees two thousand respectively. In our opinion, the High Court was not right in holding that the said fee amounts to tax on the ground that it has not been proved to be compensatory in nature. In our opinion, the fee imposed by sub-rules (3) and (4) is a fee within the meaning of clause (c) of sub-section (2) of Section 41. It is regulatory fee and not compensatory fee. The distinction between* ***compensatory fee*** *and* ***regulatory fee*** *is well established by several decisions of this Court. Reference may be made to the decision of the Constitution Bench in Corpn. of Calcutta v. Liberty Cinema [(1965) 2 SCR 477 : AIR 1965 SC 1107] . It has been held in the said decision that the expression* ***"licence fee" does not necessarily mean a fee in lieu of services and that in the***

case of regulatory fees, no quid pro quo need be established*. The following observations may usefully be quoted:*

"*This contention is not really open to the respondent for Section 548 does not use the word 'fee'; it uses the words 'licence fee' and those words do not necessarily mean a fee in return for services. In fact in our Constitution fee for licence and fee for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of Article 110(2) and Article 199(2) where both the expressions are used indicating thereby that they are not the same. In George Walkem Shannonv. Lower Mainland Dairy Products Board [1938 AC 708 : AIR 1939 PC 36], it was observed (at pp. 721-722 of AC: at pp. 38-39 of AIR):*

'*if licences are granted, it appears to be no objection that fees should be charged in order either to defray the costs of administering the local regulation or to increase the general funds of the Province or for both purposes…. It cannot, as their Lordships think, be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue.'*

It would, therefore, appear that a provision for the imposition of a licence fee does not necessarily lead to the conclusion that the fee must be only for services rendered."

170. In **Vam Organic Chemicals Ltd.** Vs. **State of Uttar Pradesh** [(1997) 2 SCC 715, 726] (SCC at p.726), the Hon'ble Supreme Court observed that in the case of a **"Regulatory Fees"**, no *quid pro quo* was necessary but such fee should not be excessive. The Hon'ble Supreme Court observed as under:-

11. *The second part of the case relates to the question of quid pro quo between the services rendered by the State and the rate of fee charged. According to the petitioners/appellants, the fee charged*

was excessive and hence bad. The High Court pointed to the distinction between the regulatory fee and compensatory fee. It opined that the licence fee imposed for regulatory purposes may not carry with it any service rendered, but that such licence fee must be reasonable. Further, the High Court said, ***it would be appropriate to look to the expenditure which the State incurs for administering the regulation and if there is a broad co-relation between the expenditure which the State incurs and the fees charged, the fees could be sustained as reasonable.*** *It also referred to the counter-affidavit of the State to conclude that a good number of officers and employees are engaged in managing the laboratories besides the staff which is posted at the distilleries and so the rate of 7 paise per litre was in order.*

18. *The High Court in the impugned judgment has drawn a distinction between fees charged for licences, i.e., regulatory fees and the fees for services rendered as compensatory fees. The distinction pointed out by the High Court can be seen in clause (2) of Article 110:*

> *"110. (2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes."*

The High Court has quoted from this Court's decision in ***Corpn.of Calcutta v. Liberty Cinema*** *[AIR 1965 SC 1107 : (1965) 2 SCR 477], which was based on a Privy Council judgment in* ***George Walkem Shannon v. Lower Mainland Dairy Products Board*** *[1938 AC 708 : AIR 1939 PC 36] . This Court said in the* ***Corpn. of Calcutta v. Liberty Cinema*** *[AIR 1965 SC 1107 : (1965) 2 SCR 477] :*

> *"In fact, in our Constitution fee for licence and fee for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of Article 110(2) and Article 199(2) where both the expressions are used indicating thereby that they are not the same."*

The High Court has taken the view that in the case of regulatory fees, like the licence fees, existence of quid pro quo is not necessary although the fee imposed must not be, in the circumstances of the case, excessive. The High Court further held that keeping in view the quantum and nature of the work involved in supervising the process of denaturation and the consequent expenses incurred by the State, the fee of 7 paise per litre was reasonable and proper. We see no reason to differ with this view of the High Court.

171. In **Secunderabad Hyderabad Hotel Owners' Association and others** Vs. **Hyderabad Municipal Corporation, Hyderabad and another**, (1999) 2 SCC 274, the Hon'ble Supreme Court observed as under:-

> **9.** It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive.
>
> ***12.*** *In the present case, however, the* ***fees charged are not just for services rendered but they also have a large element of a regulatory fee levied for the purpose of monitoring the activity of the licensees to ensure that they comply with the terms and conditions of the licence.*** *Dealing with such regulatory fees, this Court in* ***Vam Organic Chemicals Ltd. v. State of U.P. [(1997) 2 SCC 715, 726]*** *(SCC at p. 726) observed that in the case of a regulatory fee, no quid pro quo was necessary but such fee should not be excessive. The same* ***distinction between regulatory and compensatory fees has been made in the case of P. Kannadasan***

v. State of T.N. [(1996) 5 SCC 670, *para 36] (SCC in para 36) as well as State of Tripura v. Sudhir Ranjan Nath [(1997) 3 SCC 665, 673] (SCC at p. 673).* **14.** In the present case, the Budget Estimate Rules are relied upon by the respondents in order to show that the fees are being utilised for regulatory services. The Hyderabad Municipal Corporation Budget Estimate Rules, 1968 under Rule 6 provide as follows:

> "6. *Sanctioning of the budget*.—The Council shall, after satisfying itself on the following points, sanction the budget ordinarily not later than the twentieth of February, each year with such modifications, as it may deem necessary:
>
> (*a*)***
>
> Provided that no part of the receipts under any fee or charge collected or recovered for performance of services such as slaughter-house fee, market fees and rents, buildings permit fees, layout fees, licence fee and the like shall be utilised or expended for purposes other than those for which the fees and rents are collected. Any amount remaining surplus or unexpended shall be invested in a reserve fund."

The fees, though credited in the common fund, are earmarked for the purposes for which they are collected. Clearly, therefore, the intention is to levy a fee which would be utilised for regulatory and compensatory purposes in the present case. The contention of the petitioners that this is a tax in the guise of a fee does not appear to be sustainable.

18. The petitioners had also contended that if this increased levy is viewed as a tax, then the provisions for imposing a tax under the Hyderabad Municipal Corporation Act, 1955 have not been complied with. Since we have come to a conclusion that the licence fee which is charged is a regulatory-cum-compensatory fee and it is not a tax, we are not examining this question since it is not necessary to view this levy as a tax.

172. The Hon'ble Supreme Court in **Delhi Race Club Limited** Vs. **Union of India**, (2012) 8 SCC 680, observed as under:-

> **47.** Thus, the licence fee levied in the present case, being regulatory in nature, the Government need not render some defined or specific services in return as long as the fee satisfies the limitation of being reasonable. We may reiterate here that the amount of licence fee charged from the appellant has not been challenged as being excessive. Thus, in light of the above observations relating to inspection and other provisions of the Act, we hold that the licence fee charged has a broad correlation with the object and purpose for which the Act and the 2001 Rules have been enacted.

173. The Hon'ble Supreme Court while dealing with the term **"Penalty"** under Section 23(1)(a) of the Foreign Exchange Regulation Act, 1973 in **Director of Enforcement** Vs. **M.C.T.M. Corporation Private Limited and others,** (1996) 2 SCC 471, observed as under:-

> ***7.*** *"Mens rea" is a state of mind. Under the criminal law, mens rea is considered as the "guilty intention" and unless it is found that the 'accused' had the guilty intention to commit the 'crime' he cannot be held 'guilty' of committing the crime. An 'offence' under Criminal Procedure Code and the General Clauses Act, 1897 is defined as any act or omission "made punishable by any law for the time being in force". The proceedings under Section 23(1)(a) of FERA, 1947 are 'adjudicatory' in nature and character and are not "criminal proceedings". The officers of the Enforcement Directorate and other administrative authorities are expressly empowered by the Act to 'adjudicate' only. Indeed they have to act 'judicially' and follow the rules of natural justice to the extent applicable but, they are not 'Judges' of the "Criminal Courts" trying an 'accused' for commission of an offence, as understood in the general context. They perform quasi-judicial functions and do not act as 'courts' but only as 'administrators' and 'adjudicators'. In the proceedings before them,*

they do not try 'an accused' for commission of "any crime" (not merely an offence) but determine the liability of the contravenor for the breach of his 'obligations' imposed under the Act. They impose 'penalty' for the breach of the "civil obligations" laid down under the Act and not impose any 'sentence' for the commission of an offence. The expression 'penalty' is a word of wide significance. Sometimes, it means recovery of an amount as a penal measure even in civil proceedings. An exaction which is not compensatory in character is also termed as a 'penalty'. When penalty is imposed by an adjudicating officer, it is done so in "adjudicatory proceedings" and not by way of fine as a result of 'prosecution' of an 'accused' for commission of an 'offence' in a criminal court. Therefore, merely because 'penalty' clause exists in Section 23(1)(a), the nature of the proceedings under that section is not changed from 'adjudicatory' to 'criminal' prosecution. An order made by an adjudicating authority under the Act is not that of conviction but of determination of the breach of the civil obligation by the offender.

8. *It is thus the breach of a "civil obligation" which attracts 'penalty' under Section 23(1)(a), FERA, 1947 and a finding that the delinquent has contravened the provisions of Section 10, FERA, 1947 that would immediately attract the levy of 'penalty' under Section 23, irrespective of the fact whether the contravention was made by the defaulter with any "guilty intention" or not. Therefore, unlike in a criminal case, where it is essential for the 'prosecution' to establish that the 'accused' had the necessary guilty intention or in other words the requisite "mens rea" to commit the alleged offence with which he is charged before recording his conviction, the obligation on the part of the Directorate of Enforcement, in cases of contravention of the provisions of Section 10 of FERA, would be discharged where it is shown that the "blameworthy conduct" of the delinquent had been established by wilful contravention by him of the provisions of Section 10, FERA, 1947. It is the delinquency of the defaulter itself which establishes his 'blameworthy' conduct, attracting the provisions of Section 23(1)(a) of FERA, 1947 without any further proof of the existence of "mens rea". Even after an adjudication by the authorities and levy of penalty under Section 23(1)(a) of FERA, 1947, the defaulter can still be tried and punished for the commission of an offence under the penal law, where the act of the defaulter also amounts to an offence under the penal law and the bar under Article 20(2) of the Constitution of India in such a case would not be*

attracted. The failure to pay the penalty by itself attracts 'prosecution' under Section 23-F and on conviction by the 'court' for the said offence imprisonment may follow.

12. *In Corpus Juris Secundum, Vol. 85, at p. 580, para 1023, it is stated thus:*

"*A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."*

13. *We are in agreement with the aforesaid view and in our opinion, what applies to "tax delinquency" equally holds good for the 'blameworthy' conduct for contravention of the provisions of FERA, 1947. We, therefore, hold that mens rea (as is understood in criminal law) is not an essential ingredient for holding a delinquent liable to pay penalty under Section 23(1)(a) of FERA, 1947 for contravention of the provisions of Section 10 of FERA, 1947 and that penalty is attracted under Section 23(1)(a) as soon as contravention of the statutory obligation contemplated by Section 10(1)(a) is established. The High Court apparently fell in error in treating the "blameworthy conduct" under the Act as equivalent to the commission of a "criminal offence", overlooking the position that the "blameworthy conduct" in the adjudicatory proceedings is established by proof only of the breach of a civil obligation under the Act, for which the defaulter is obliged to make amends by payment of the penalty imposed under Section 23(1)(a) of the Act irrespective of the fact whether he committed the breach with or without any guilty intention. Our answer to the first question formulated by us above is, therefore in the negative.*

174. As far as **"Penal Fee"** is concerned, the purpose is to instil a deterrent effect so that the targeted person does not violate the regulations. **"Late Fee"** is one such **"Fee"** intended for instilling deterrent effect. In this connection, a reference is made to the decision of the Hon'ble Supreme

Court in **Director of Enforcement** Vs. **M.C.T.M. Corporation Private Limited and others**, (1996) 2 SCC 471.

175. In light of the aforesaid discussion, it is evident that there is a distinction between the various types of **"Fees"**. Their legal characteristics can be summarised as follows:-

Table-9

COMPENSATORY FEE	REGULATORY FEE	PENAL FEE
A **Compensatory Fee** is a charge imposed by the State in return for some **specific service or measurable benefit** provided to the payer.	A **Regulatory Fee** is charged not as payment for a specific service rendered, but as a means of **controlling, supervising, or regulating an activity**.	A Penal Fee *(or Penalty)* is a **punitive monetary charge** imposed for misconduct, violation, or default.
It is imposed for Specific service or benefit conferred on the payer	It is imposed to **regulate or control an activity**	It is imposed for **punishment or deterrence**
The benefit is more direct and specific benefit to the individual or a class of individuals	The benefit is often a broader public good, such as safety, order, or monitoring of an activity.	No specific benefit for an individual or public as it is penal in nature.
"quid pro quo" is needed	**No quid pro quo or exact service delivery**	Money charged **without reference to**

	is needed	**any service rendered**
Not requiring exact mathematical equivalence, a reasonable relation to the actual or projected expenditure is essential.	A general or reasonable connection between the fee and the government's overall regulatory role is sufficient.	Often applied upon breach of a legal obligation.
(e.g., road maintenance from a toll).	(e.g., a license to run a shop).	(e.g., **late payment fees on credit cards or higher interest on overdue EMIs)**

176. In the background of the discussion, I am of the view that the **"Late Fee(s)"** collected / levied under Section 47(2) of the respective GST Enactments are liable to be held that **"Penal Fee(s)"**, having regard to the following distinguishing characteristics:-

a. A "Late Fee" is imposed only upon default, like a "Penalty".
b. It operates as a deterrent like a "Penalty".
c. It has **no quid pro quo** unlike a "Regulatory fee".
d. It increases with the **period of default** like a "Penalty".
e. It merely has a **Civil Consequences** like a "Penalty".
f. It is intended to ensure **discipline**, to promote **timely filing** and to enforce **future compliance.**

177. A **"Fee"** under a **"Tax"** statute becomes akin to a **"Penalty"** when it is imposed solely for breach of a statutory obligation cast under the statute.

It lacks *quid pro quo* to operate as a deterrent. It has a civil consequence like a **"Penalty"**. It may be disproportionate to any administrative cost. Notwithstanding its ostensible purpose, it has to be remembered that it is intended to ensure future compliance by a recalcitrant and deviant registrant or a tax payer. In that sense, **"Late Fee"** is not compensatory in nature.

FINAL CONCLUSION

178. It has to be borne in mind that the power to grant exemption from **"Tax"** is under Section 11 of the respective GST Enactments. It would also includes power to withdraw such exemption.

179. Similarly, the power to grant waiver from payment of **"Penalty"** and / or **"Fee"** (such as **"Late Fee"** as in this case) whether wholly or in part under Section 128 of the respective GST Enactments would also include the power to withdraw such waiver under the provisions of the respective GST Enactments. It may also includes a power, exercisable in the like manner and subject to the like sanction and condition (if any), to add to, amend, vary or rescind any (notifications), orders, rules or bye-laws so (issued).

180. This would be in consonance with Section 21 of the General Clauses Act, 1897 which is reproduced below:-

> "**21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules, or bye-laws**–
>
> Where, by any (Central Act) or Regulations, a power to (issue notifications) orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and condition (if any), to add to, amend, vary or rescind any (notifications), orders, rules or bye-laws so (issued)."

181. In **Cape Brandy Syndicate Vs. IRC,** (1921) 1 KB 64, Rowlatt J. observed as under:-

> *"In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

This view has been repeatedly followed by various High Courts and by the Hon'ble Supreme Court, particularly in the context of exemptions under Notification under various taxing statutes.

182. The power to grant "Exemption" under Section 11 of the respective GST Enactments is different from the power to grant "waiver" under Section 128 of the respective GST Enactments.

EXEMPTION NOTIFICATIONS ARE ISSUED IN PUBLIC INTEREST

183. Power to grant exemption from tax, generally either or absolutely is / are subject to such conditions as may be specified in the Notifications. These Notifications are issued in "Public Interest". Section 11 of the respective GST Enactments also uses similar expression. Notifications under Section 11 of the respective GST Enactments is / are also issued in "Public Interest".

WAIVER NOTIFICATION ISSUED UNDER MITIGATING CIRCUMSTANCES

184. Under Section 128 of the respective GST Enactments, the Government is empowered to waive in part or full, any **"Penalty"** referred to in Section 122 or Section 123 or Section 125 or any **"Late Fee"** referred to in Section 47 for such class of tax payers and under such mitigating circumstances as may be specified therein on the recommendations of the GST Council.

185. The decisions of the Courts including that of the Hon'ble Supreme Court rendered in the context of "Exemptions" cannot be borrowed and applied *stricto sensu* in the context of extensions / relaxations / waivers, Notification issued under Section 128 of the respective GST Enactments.

186. Section 11 of the respective GST Enactments which has been extracted above is *pari materia* with Section 25 of the Customs Act, 1962, Section 5 of the Central Excise Act, 1944 and Section 93 of the Finance Act, 1994. Thus, the decisions rendered in the context of exemptions granted under the provisions of the Central Excise Act, 1944, Finance Act, 1994 cannot be imported.

187. A reading of the text of the **Notification No.7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023** make it clear that waiver was intended to benefit only a class of Tax Registered Persons who failed to file "Annual Returns" under Section 44 of the respective GST Enactments read with Rule 80 of the respective GST Rules by the "due date" for the Financial Years 2017-2018 to 2021-2022.

188. They were therefore given one opportunity to furnish such "Annual Return" between **1st April 2023** and **31st August 2023** on payment of concessional "Late Fee" of Rs.10,000/- each under the respective GST Enactments.

189. Persons like the Petitioners herein who filed the belated returns either before the dates mentioned, as tabulated above or those Petitioners who filed their returns thereafter were not in the contemplation of either the Government or the GST Council when a decision was taken to issue **Notification No.7/2023-Central Tax** dated **31.03.2023** which was amended by **Notification No.25/2023-Central Tax** dated **17.07.2023** pursuant to deliberation in **49th GST Council Meeting** held on **18.03.2023**.

190. In **Tvl.Jainsons Casters and Industrial Products** referred to *supra* in W.P.No.36614 of 2024 rendered on **04.02.2025**, this Court held that there is no scope for imposing **"General Penalty"** under Section 125 of the respective GST Enactment once **"Late Fee"** under Section 47 has been levied under these Enactments. **"Late Fee"** though not described as a **"Penalty"** is penal in nature; and the imposition of **"Penalty"** consequence without any element of *mens rea* is unjustifiable. In my view, there is no scope for levying both on a Registered Person.

191. The Petitioners in **Table-3** [W.P.Nos.3540, 3567, 3570, 3902, 3966 of 2024] and the Petitioner in **Table-4B** [W.P.No.9867 of 2024] filed the **"Annual Returns"** under Section 44(1) of the respective GST Enactments within the time

specified in the **Notification No.7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central tax** dated **17.07.2023**.

192. They have therefore been imposed with a lighter **"Late Fee"** of Rs.10,000/- under each of the respective GST Enactments in terms of the above Notification.

193. They are however questioning the imposition of **"General Penalty"** under section 125 of the respective GST Enactments. Since it has been already concluded that **"Late Fee"** under Section 47(2) of the respective GST Enactments was penal in nature, there cannot be imposition of **"General Penalty"** under Section 125 of the respective GST Enactments over and above the **"Late Fee"** levied at concessional rate under the above-mentioned Notifications.

194. I am also inclined to adopt the above ratio in **Tvl.Jainsons Casters and Industrial Products** referred to *supra*. I therefore hold that there is no scope for imposing "**General Penalty"** under section 125 of the respective GST Enactments over and above the **"Late Fee"** levied on them at concessional rate under the above-mentioned Notifications.

195. In the light of the above observations, W.P.Nos.3540, 3567, 3570, 3902, 3966 of 2024 from **Table-3** deserve to be allowed.

196. The Petitioner in **Table-4B** [W.P.No.9867 of 2024] has been levied with **"Late Fee"** of Rs.1,17,038/- (Rs.58,519 x 2). The said Petitioner had filed the **"Annual Return"** on **15.06.2023**. This filing of **"Annual Return"** was within the time limit prescribed under **Notification No.7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central tax** dated **17.07.2023**.

197. There are, however, no indications that the said Petitioner has been imposed with a **"General Penalty"** under Section 125 of the respective GST Enactments. Therefore, W.P.No.9867 of 2024 deserves to be allowed.

198. Therefore, the Petitioner in W.P.No.9867 of 2024 is entitled to the benefit of **Notification No.7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023**.

199. As far as the case of Petitioners in **Table-4A** namely the Petitioners in W.P.Nos.27029, 27032, 27036, 32599, 34352, 34357, 35186 of 2023 and W.P.Nos.3572, 3916, 15690 of 2024 and W.P.Nos.9988, 28786, 42416, 46522 of 2025 are concerned, these Petitioners have challenged both imposition of **"Late Fee"** imposed under Section 47(2) of the respective GST Enactments and also **"General Penalty"** imposed under Section 125 of the respective GST Enactments.

200. They had filed the returns before the cut-off date prescribed in **Notification No.7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central Tax** dated **17.07.2023**. They cannot be denied the benefit of the said Notification, merely because in the **49th GST Council Meeting** held on **18.03.2023**, GST Council failed to address the issue.

201. To deny the benefit of partial waiver from payment of **"Late Fee"** under the above Notification particularly to these Petitioners in **Table-4A,** who had filed the **"Annual Returns"** before the dates specified in Notification **No.7/2023-Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central tax** dated **17.07.2023**. Challenge to the levy of **"Late Fee"** is to treat them unfairly. They cannot be singled out is justified as they

have filed the **"Annual Returns"** before the cut-off dates stipulated in these Notifications.

202. Further, if the GST Council had found mitigating circumstances to give partial waiver from payment of **"Late Fee"** to those Registered Persons who had failed to file **"Annual Returns"** and could file their **"Annual Returns"** between **01.04.2023** and **31.08.2023** in terms of the above Notifications. I see no reason why the Petitioners in **Table-4A** who had filed the **"Annual Returns"** before the dates mentioned in the above Notifications should not be given the benefit of partial waiver in terms of the above Notification issued under Section 128 of the respective GST Enactments.

203. To single them out would amount to hostile discrimination and contrary to Article 14 of the Constitution of India. To suspend **"Late Fee"** would also lead to mistrust in the tax administration and would be an anathema to Article 14 of the Constitution of India.

204. To single out would amount to arbitrary exercise of law failing the test of arbitrariness recognized under Article 14 of the Constitution of India.

205. The Division Bench of the Himachal Pradesh High Court in the case of **M/s.R.T.Pharma** Vs. **Union of India and others,** while dealing with a similar issue arising out of delay in filing of the **"Annual Returns"** in GSTR-9 under Section 39 of the respective GST Enactments held that it would be unjust to deny a **"Late Fee"**, waiver to a taxpayer who filed their Goods and Services Tax (GST) Annual Returns (GSTR-9 and GSTR-9C) before a specific Amnesty Notification was issued in **Notification No.7/2023-Central Tax** dated **31.03.2023**, and was amended by **Notification No.25/2023-Central Tax** dated **17.07.2023**.

206. Therefore, the benefit of the above Notifications namely **Notification No.7/2023- Central Tax** dated **31.03.2023** as amended by **Notification No.25/2023-Central tax** dated **17.07.2023** has to be extended to all those Petitioners in **Table – 4A** who had filed the returns before **01.04.2023.**

207. Since these Petitioners are liable to pay **"Late Fee"**, the question of imposing **"General Penalty"** under Section 125 of the respective GST Enactments cannot be countenanced in view of the reasons that **"General Penalty"** under Section 125 of the respective GST Enactments can be imposed

only in the absence of 'any other penalty' under the respective GST Enactments.

208. It is therefore held that the Petitioners in **Table-4A** are neither liable for **"Late Fee"** over and above Rs.10,000/- under each of the respective GST Enactments nor liable for **"General Penalty"** under Section 125 of the respective GST Enactments.

209. As far as the case of Petitioners in **Table-4B** namely the Petitioners in W.P.No.19967 of 2023 and W.P.Nos.23356, 30854, 9867 of 2024 and W.P.Nos.47726, 38007, 48941 of 2025 are concerned, they have been subjected to only **"Late Fee"** under Section 47(2) of the respective GST Enactments. They have not been subjected to **"General Penalty"** under Section 125 of the respective GST Enactments.

210. Since these Petitioners have also filed the **"Annual Returns"** before **01.04.2023**, they cannot be subjected to **"Late Fee"** over and above **Rs.10,000/-** under each of the respective GST Enactments as ordered in the case of those Petitioners in **Table-4A**.

211. As far as the case of Petitioner in **Table-4C** namely the Petitioner in W.P.No.3915 of 2024 is concerned, the said Petitioner has filed the **"Annual Return"** only on **19.01.2024** for the Tax Period 2020-2021. It was within the

time under Section 44(2) of the respective GST Enactments as the said date would have expired on **31.12.2024**. However, there is no scope for granting any waiver from payment of **"Late Fee"** under section 47 of the respective GST Enactments, as it was long after the date specified in Section 44(1) of the respective GST Enactments read with Rule 80(1) of the respective GST Rules. The said Petitioner has been imposed with **"General Penalty"** of Rs.25,000/- each under Section 125 of the respective GST Enactments. There is no scope for imposing **"General Penalty"** under Section 125 of the respective GST Enactments for the reasons stated for the other Petitioners. Therefore, to that extent W.P.No.3915 of 2024 deserves to be allowed.

212. In the result,

i. W.P.Nos.3540, 3567, 3570, 3902 and 3966 of 2024 as detailed in **Table-3** are allowed. Therefore, **"General Penalty"** imposed under Section 125 of the respective GST Enactments on these Petitioners are set aside.

ii. W.P.Nos.27029, 27032, 27036, 32599, 34352, 34357, 35186 of 2023 and W.P.Nos.3572, 3916, 15690 of 2024 and W.P.Nos.9988, 28786, 42416, 46522 of 2025 as detailed in **Table-4A** are allowed. Therefore, **"General Penalty"**

imposed under Section 125 of the respective GST Enactments on these Petitioners are set aside. These Petitioners are liable to pay a **"Late Fee"** of **Rs.10,000/-** under the respective GST Enactments.

iii. W.P.No.19967 of 2023 and W.P.Nos.23356, 30854, 9867 of 2024 and W.P.Nos.47726, 38007, 48941 of 2025 as detailed in **Table-4B** are allowed. These Petitioners are liable to pay a **"Late Fee"** of **Rs.10,000/-** under the respective GST Enactments.

iv. W.P.No.3915 of 2024 in **Table-4C** is partly allowed. However, imposition of **"General Penalty"** under Section 125 of the respective GST Enactments is set aside in view of imposition of **"Late Fee"** against the Petitioner.

v. No costs. Consequently, all connected Writ Miscellaneous Petitions are closed.

02.01.2026

Neutral Citation: Yes / No

arb / raja

To:

1.The Assistant Commissioner (ST) (FAC),
Park Town Assessment Circle,
Chennai – 600 003.

2.The Assistant Commissioner (ST),
Dharmapuri.

3.The Assistant Commissioner (ST),
Villupuram I Assessment Circle,
Collectorate Campus,
Commercial Taxes Buildings,
Villupuram.

4.State Tax Officer,
Hosur (North)-II,
Commercial Taxes Building,
Second Floor, Hosur – 635 109.

5.Deputy Commissioner (ST)(FAC),
Krishnagiri.

6.The Deputy State Tax Officer,
Harur Assessment Circle,
Dharmapuri.

7.The State Tax Officer,
Harur.

8.The Deputy State Tax Officer-1,
Harur.

9.Central Board of Indirect Taxes and Customs,
J 684+843, North Block,
Central Secretariat,
New Delhi – 110 001.

10.The State Tax Officer,
Cholavaram Assessment Circle,
Room No.108, 1st Floor,
Integrated C.T.Buildings,
Chennai – 600 003.

11.The State Tax Officer,
Palacode.

12.The State Tax Officer,
Ponneri Assessment Circle,
Room No.106,
Integrated Commercial Taxes Building (North Division),
Elephant Gate Bridge Road,
Vepery, Chennai – 600 003.

13.Superintendent of GST and Central Excise,
Tiruvannamalai Range,
No.26/42, 2nd Floor,
Gopal Pillaiyarkoil Street,
Thiruvannamalai – 606 601.

14.Assistant Commissioner of GST and Central Excise,
Villupuram Division,
Chennai Outer Commissionerate,
Old Telephone Exchange Building,
BSNL Campus,
Hospital Road,
Villupuram – 605 602.

15.The Branch Manager,
State Bank of India,
71/C Veerappan Street,
Polur, Tiruvannamalai – 606 803.

16.State Tax Officer,
Chidambaram-1 Assessment Circle,
Chidambaram.

17.The State Tax Officer,
Hosur North-2,
Commercial Taxes Building,
Second Floor, Hosur – 636 705.

18.The Assistant Commissioner (ST) Audit-II,
Office of the Joint Commissioner (ST),
Vellore Division, No.4, Bharathiyar Salai,
Fort Round Road, Vellore – 632 001.

19.The Commercial Tax Officer,
Pandit Jawaharlal Nehru Road,
Court Complex, Vaniyambadi – 635 751.

20.The State Tax Officer,
Office of the Assistant Commissioner (ST),
Pandit Jawaharlal Nehru Road,
Court Complex, Vaniyambadi – 635 751.

21.The Assistant Commissioner (State Tax),
Avadi Assessment Circle,
Integrated Building for Commercial
Taxes Department,
Thiruvallur Division, No.32,
Elephant Gate Bridge Road,
Vepery, Chennai – 600 003.

22.The Deputy Commissioner (ST),
Avadi Zone, Chennai – 03.

23.The Commercial Tax Department,
Government of Tamil Nadu,
Through its Commissioner,
Chepauk, Chennai – 600 005.

24.The State Tax Officer,
Kuniyamuthur Circle,
Coimbatore.

25.Assistant Commissioner (ST),
Mettur Assessment Circle,
Salem – II Division.

26.The Commercial Tax Officer,
Gugai Circle,
Integrated Commercial Taxes Building,
No.17, Pitchards Road,
Hasthampatty,
Salem – 7.

C.SARAVANAN, J.

arb / raja

Pre-delivery Common Order in W.P.Nos.27029, 27032, 27036, 32599, 19967, 34352, 34357, 35186 of 2023, W.P.Nos.3540, 3567, 3570, 3572, 3902, 15690, 3915, 3916, 3966, 23356, 30854, 9867 of 2024 and W.P.Nos.9988, 28786, 38007, 42416, 46522, 47726 and 48941 of 2025

02.01.2026