* Writ before High Court or Supreme Court is a public law remedy i.e. it gives right to any person to approach High Court or Supreme Court for the enforcement of his right against any person or authority performing public duty. Rights which comes for enforcement:-

(a) fundamental rights given by the Constitution;

(b) constitutional rights not having the status of fundamental rights;

(c) statutory rights;

(d) rights flowing from subordinate legislation;

(g) contractual rights if there is violation of Article 14

* Writ can be filed to enforce rights against action as well inaction of any person or authority performing public duty.
* Where a fundamental right is involved, a party should be free to approach either High Court or Supreme Court under Article 226 or Article 32 of the Constitution of India.
* The power of the High Court to issue writs under article 226 is wider than that of the Supreme Court. It is not confined to fundamental rights, but extends to all cases where the breach of a right is alleged. The writ may be issued for the enforcement of fundamental rights of for “any other purpose.
* Where relief through High Court is available under article 226, it is advisable that one should first approach the High Court.
* In general, a disputed question of fact is not investigated in a proceeding under article 226.
* The High Court may interfere with a finding of fact, if it is shown that the finding is not supported by any evidence, or that the finding is ‘perverse’ or based upon a view of facts which could never be reasonably entertained.
* A finding based on no evidence constitutes an error of law, but an error in appreciation of evidence or in drawing inferences is not, except where it is perverse, that is to say, such a conclusion as no person properly instructed in law could have reached, or it is based on evidence which is legally inadmissible.
* If the conclusion on facts is supported by evidence on record, no interference is called for even though the court considers that another view is possible.

**WRIT REMEDIES –AGAINST WHOM**

* The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action.

**Admission hearing**

* At the preliminary stage of hearing of a writ petition, the High Court is required to consider whether relief as claimed can be allowed. If prima facie case is made out than, the rule nisi can be issued calling upon the persons against whom relief is sought to show cause as to why such relied should not be granted.

**Alternative remedy**

* Non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy.
* The remedy under the statute, however, must be effective and not a mere formality with no substantial relief.
* There are some exceptions to the Rule of alternative remedy
* or when an order has been passed in total violation of the principles of natural justice
* or where the order or proceedings are wholly without jurisdiction
* or the *vires* of an Act is challenged
* or where alternate remedy being ineffectual or not efficacious

**TIME LIMIT FOR FILING WRIT**

* While there are different periods of limitation prescribed for the institution of different kinds of suits by the Limitation Act, 1963, there is no such period prescribed by law in respect of petitions filed under Article 226 of the Constitution.
* Delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances.

**TIME SPENT IN PURSUING WRIT REMEDY**

* Supreme Court in *M.P. Steel Corporation* v. *Commissioner of Central Excise* - 2015 (319) E.L.T. 373 (S.C.). It has held that the principle of Section 14 of the Limitation Act, 1963 is applicable even when in respect of statutory Appeals filed before the Tribunal from the orders passed by the Collector of Customs (Appeals) under the Customs Act, 1962. Thus, the period of time spent in prosecuting the Petition against the order dated 13th January, 2016 of the Commissioner of Service Tax has to be excluded while computing the period of limitation in filing an Appeal before the Tribunal. Undisputedly, the period between 4th May, 2016 to 30th March, 2017 was spent *bona fide* before this Court in prosecution of Writ Petition No. 1724 of 2016.

**WRIT REMEDIES –APPROPRIATE HIGH COURT?**

* On a combined reading of clauses (1) and (2) of article 226, one can say that writ can be issued against a Government, person or authority if—
* (a) its seat is within the High Court’s jurisdiction, or
* (b) the cause of action has arisen, wholly or in part, within the High Court’s jurisdiction.
* The **forum conveniens** is that which is having the jurisdiction convenient to all to decide the case.

**WRIT REMEDIES –TYPES OF WRIT**

* **Certiorari -** The decision is against natural justice, mala fide, perverse or without conforming to the principles of ‘fair play’. Object of certiorari is to get rid of a decision which is vitiated by a defect or jurisdiction or a denial of the basic principles of justice.
* **Habeas Corpus -** object is to secure the release of a person found to be detained illegally.
* **Mandamus -** Mandamus would issue to command a statutory authority to perform its duty to exercise its discretion according to law, but not to exercise its discretion in a particular manner unless that is expressly required by the law. Mandamus will not issue to direct a subordinate Legislative authority to enact or not to enact a rule, order or notification which it is competent to enact
* **Prohibition -** A writ of prohibition is normally issued only when the inferior Court or Tribunal—
* (a) proceeds to act without or in excess of jurisdiction,
* (b) proceeds to act in violation of rules of natural justice,
* (c) proceeds to act under law which is itself ultra vires or unconstitutional, or
* (d) proceeds to act in contravention of fundamental rights.
* **Quo Warranto -** The object of the writ of Quo Warranto is to prevent a person to hold an office which he is not legally entitled to hold. If the enquiry leads to the finding that the holder of the office has no valid title added to it, the court may pass an order preventing the holder to continue in office and may also declare the office vacant. Quo warranto is used to test a person’s legal right to hold an office, not to evaluate the person’s performance in the office. Quo warranto is not available to decide whether an official has committed misconduct in office.

**WRIT REMEDIES –AT THE STAGE OF SHOW CAUSE NOTICE OR SUMMON**

* Prejudice by denial of cross-examination of witnesses -Deponents may not be available after long delays in litigation - **Mohammed Fariz & Company v. Commissioner — 2019 (369) E.L.T. 218 (Ker.).**
* RIDDHI SIDDHI COLLECTION Versus UNION OF INDIA - 2019 (368) E.L.T. 852 (Bom.) - The objective of giving show cause notice is not an empty formality. The objective is to make the party aware of the case it has to meet. Thus time is given to respond to the same. The reduction of time as given in the notice, certainly causes prejudice to the party. The conduct of the petitioner in not attending the personal hearing would not absolve the Revenue from giving time of thirty days as stated in the notice, on serving the complete show cause notice on the parties. In these circumstances, there has been failure of principles of natural justice inasmuch as the petitioner has not been given sufficient opportunity to meet the show cause notice. In these circumstances, directing the parties to avail of alternative remedy would be unfair as original proceeding is itself in breach of natural justice.
* Court in exercise of its jurisdiction under Art. 226 of the Constitution will interfere with a show cause notice in the following circumstances:
* (1) When the show cause notice *ex facie* or on the basis of admitted facts does not disclose the offence alleged to be committed;
* (2) When the show cause notice is otherwise without jurisdiction;
* (3) When the show cause notice suffers from an incurable infirmity;
* (4) When the show cause notice is contraiy to judicial decisions or decisions of the Tribunal;
* (5) When there is no material justifying the issuance of the show cause notice.”
* Oryx Fisheries Pvt. Ltd. v. Union of India — 2011 (266) E.L.T. 422 (S.C.) - while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

**WRIT REMEDIES –ORDERS OF QUASI JUDICIAL AUTHORITY**

* In *Diamond Shipping Company Ltd.* v. *CC* - (2017) 358 E.L.T. 108 (Cal.), it has been held as under :-
* The impugned order in original is appealable. The petitioner has chosen not to prefer an appeal therefrom. The scope of inference with an order passed by an authority acting under a statute can be summarized as
* (i) if the authority concerned has acted in breach of principles of natural justice
* (ii) impugned order is without jurisdiction
* (iii) if the impugned order is vitiated by fraud or bias or malice and
* (v) if the impugned order is non-speaking.
* A quasi-judicial authority must record reasons in support of its conclusions.
* Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
* Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or ‘rubber-stamp reasons’ is not to be equated with a valid decision making process.
* Absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order.
* When the order passed by the Tribunal has not been stayed or set aside by the Hon’ble Supreme Court, it is the bounden duty of the adjudicating authority to follow the law laid down by the Tribunal. Since a binding decision has not been followed by the adjudicating authority in this case, this Court can interfere straightaway without relegating the assessee to file an appeal. **INDUSTRIAL MINERAL CO. (IMC) Versus COMMISSIONER OF CUS., TUTICORIN - 2018 (15) G.S.T.L. 249 (Mad.).**
* Shukla & Bros, reported in 2010 (254) ELT 6 (SC) held that principles of natural justice have twin ingredients, the first being that the person who is likely to be affected by the action should be given a Show Cause Notice thereof and granted an opportunity of hearing; the second being that the order passed by the authority should give reasons for arriving at the conclusion, showing proper application of mind. Failure of either of these would vitiate the order.

Appeal not maintainable against Commissioner’s order

No efficacious alternative remedy is available against the orders of provisional attachment passed under Section 83 of the HPGST Act. The jurisdiction to pass an order under Section 83 is conferred on the Commissioner of State Taxes. - Radha Krishan Industries v. State of Himachal Pradesh - [2021] 127 taxmann.com 26 (SC)

Section 107 of the HPGST Act, 2017 is incorporated in Chapter XVIII which deals with appeals and revisions. Section 107(1) provides as follows :

“**107. Appeals to Appellate Authority. -** (1) Any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act, 2017 (No. 12 of 2017) by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.”

Sub-section (2) confers a revisional power on the Commissioner in regard to the legality or propriety of a decision or order passed by an adjudicating authority. The expression ‘adjudicating authority’ is defined by Section 2(4) in the following terms :

“(4) “adjudicating authority” means any authority, appointed or authorized to pass any order or decision under this Act, but does not include the Commissioner, Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal;”

From the above definition, it is evident that the expression ‘adjudicating authority’ does not include among other authorities, the Commissioner. In the present case, the narration of facts indicates that on 21 October, 2020, the Commissioner had in exercise of his powers under Section 5(3) made a delegation *inter alia* to the Joint Commissioner of State Taxes and Excise in respect of the powers vested under Section 83(1). The Joint Commissioner, in other words, was exercising the powers which are vested in the Commissioner under Section 83(1) to order a provisional attachment in pursuance of the delegation exercised on 21 October, 2020. This being the position, clearly the order passed by the Joint Commissioner as a delegate of the Commissioner was not subject to an appeal under Section 107(1) and the only remedy that was available was in the form of the invocation of the writ jurisdiction under Article 226 of the Constitution. The High Court was, therefore, clearly in error in declining to entertain the writ proceedings.

* Hon’ble Supreme Court in the case of Radha Krishan Industries v. State of Himachal Pradesh - [2021] 127 taxmann.com 26 (SC) has held that power to order a provisional attachment of property of taxable person including a bank account is draconian in nature and conditions which are prescribed by statute for a valid exercise of power must be strictly fulfilled.
* -The order of provisional attachment under Section 83(1) is to be issued “during the pendency of any proceedings under Section 62 or Section 63 or Section 64 or Section 67 or Section 73 or Section 74”.
* The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.

**WRIT REMEDIES –CASE LAWS**

**JURISDICTION**

Jurisdiciton can be functional, pecuniary, subject matter territorial etc.

SCN beyond period of limitation

Cancellation of registration under GST beside reason specified in Section …..

Hon’ble Calcutta High Court has stayed the summons and proceedings thereunder initiated by the State GST authorities when the proceedings on the same subject matter were pending before the Central GST authorities in the matter of Raj Metal Industries & Anr. Vs. Union of India & Ors (W.P.A. 1629 OF 2021) vide order dated 24.3.2021.

The matter was argued by Advocate Vinay Shraff assisted by Advocate Himangshu Kr. Ray & Advocate Rowsan Kr. Jha. on the ground that in terms of clause (b) of sub-section (2) of section 6 of the WBGST ACT, where a proper officer under Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under that Act on the same subject matter. It was further argued that it has been clarified vide D.O.F. No.CBEC/20/43/01/2017-GST (Pt.) dated 5.10.2018 issued by the Central Board of Indirect Taxes and Customs, that if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of the Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions.

It was held by the Hon’ble Calcutta High Court upon due consideration, that the summons that have been issued on October 19, 2020 by the State GST is, prima facie, in violation of Section 6(2)(b) of the WBGST Act. Accordingly, the above summons and any proceedings thereunder were stayed.

* Hon’ble Supreme Court reported in 1983 (13) E.L.T. 1342 (S.C.) (*East India Commercial Co. Ltd., Calcutta* v. *Collector of Customs, Calcutta*). The Hon’ble Supreme Court held that the law declared by the highest Court in the State is binding on authorities or tribunals under its superintendence and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the proceedings of the authority themselves would be invalid and without jurisdiction. If the proceedings are without jurisdiction, the question of applying the rule with regard to the exhaustion of alternative remedy can be dispensed with.

Section 46 VAT Act - Section 46 of the West Bengal Value Added Tax Act,2003 as under:

Section 41 and Section 42 of the WB VAT Act, 2003 that notice of assessment under Section 46 of the WB VAT Act, 2003 can only be issued only after following the due process of law as mandated under Section 41 and Section 42 of the WB VAT Act, 2003. If the due process of law as mandated under Section 41 and Section 42 of the WB VAT Act is not followed than it would render section 41 and Section 42 of the WB VAT Act,2003 redundant and otiose.

 “Assessment after giving notice to registered dealer. –

 (1) The Commissioner may, after giving a notice to a registered dealer in such manner as may be prescribed, assess to the best of his judgment the amount of net tax or any other tax payable or net tax credit of such dealer in respect of a year or part thereof, where –

(a) No return has been furnished by the registered dealer for all or any of the return periods of such year or part thereof; or

(b) The Commissioner deems it fit and proper to assess the registered dealers, as he is prima facie, satisfied that there has been short payment of net tax or excess claim of net tax credit by such dealer, or the State Government has suffered loss of revenue on account of such dealer or for any other reason to be recorded in writing, including for the purpose of refund of tax:

1. Hon’ble Supreme Court in the case of Dimension Data Asia Pacific PTE Ltd. Versus Deputy Commissioner of Income Tax, 2018 SCC Online Bom 2111 wherein it was held that:-

“9.This “fresh adjudication” itself would imply that it would be an order which would decide the lis between the parties, may not be entire lis, but the dispute which has been restored to the Assessing Officer. According to us, the order dated 31st January, 2018 is not an order merely giving an effect to the order of the Tribunal, but it is an Assessment Order which has invoked Section 143 (3) of the Act and also Section 144C of the Act. Infact, Section 144C (13) of the Act can only be invoked in cases where the assessee has approached the DRP in terms of sub-section 144 (C) (2) (b) of the Act and the DRP gives direction in terms of Section 144C(5) of the Act. In this case, the assessment order has invoked Section 144C(5) of the Act. In this case, the assessment order has invoked Section 144C(1) of the Act without having passed the necessary draft Assessment Order under Section 144C (1) of the Act, which alone would make an direction under Section 144C(5) of the Act by the DRP possible. Thus, the impugned order is completely without jurisdiction

11. in the above view, the impugned order is without jurisdiction. Thus, the plea of alternate remedy advanced by the Revenue so as to not entertain this petition, does not merit acceptance in the present facts.”

Order passed by faceless officer contrary to order under section 119 of the IT Act

**Issue of jurisdiction can be raised at any stage even at appellate stage**

1. Hon’ble Supreme Court in the case of Commissioner of Sales Tax, UP Versus Sarjoo Prasad Ram Kumar, (1976)37STC533 (SC) wherein it was held that:-

“In the High Court, the department contended that the assessee's case was transferred from the file of the Assistant Sales Tax Officer, Sector III,to the file of the Assistant Sales Tax Officer, Sector II. This contention has been rejected by the High Court as having no basis. In fact, that contention has not been repeated before us. Mr. Karkhanis, appearing for the department, contended that in view of the provisions referred to earlier, we must hold that all the Assistant Sales Tax Officers in Lucknow Circle had jurisdiction to assess all the dealers in Lucknow Circle. This contention is unacceptable. If we accept that contention, sub-rule (3) of rule 3 becomes otiose. Further rule 6(a) also becomes ineffective. It is for obvious reasons the rule-making authority has empowered the Commissioner to allocate separate areas for separate Assistant Sales Tax Officers. When such an allocation is made, the jurisdiction of each officer is confined to the are allotted to him.

The only other contention advanced by Mr. Karkhanis is that the
assessee having not taken any objection as to the jurisdiction before the assessing authority he is precluded from raising that objection at a later stage. This contention is again unacceptable to us. Herein we are concerned with the question of jurisdiction. Unless there is some provision either in the Act or in the Rules framed which precludes the assessee from raising any objection as to jurisdiction, if the same is not raised before the assessing authority, the assessee cannot be precluded from raising that objection at a later stage. An objection as to jurisdiction goes to the root of the case.”

1. Chiranjilal Shrilal Goenka (Deceased) through Lrs. vs. Jasjit Singh and Ors. - 1993)2SCC507 wherein it was held as under:-

“It. is settled law that a decree passed by a court without jurisdiction on the subject matter or on the grounds on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party.”

Disputes going on in GST

* Whether to file writ for technical deficiency? Only if it is such that it can be quashed or remanding will exhaust period of limitation.
* Enter into correspondence for inaction before approaching writ court
* Summary show cause notice;
* Order not uploaded;
* SCN not uploaded;
* Unsigned / undated notices;
* DIN not mentioned;
* No date of personal hearing;
* Short time frame allowed to file reply;
* Very short adjournment granted;
* Under what section proceedings initiated
* Which provision violated not mentioned;
* No grounds provided for invoking section 74;
* Writ is the only remedy against order of appellate authority as tribunal is not functional yet.
* Constitutionality of AAR under challenge
* Calcellation of registration without assigning any reason or travelling beyond the scope of show cause notice or cancelling on the basis of old SCN.
* Constitutional validity of Section 16(2)(c) of the CGST Act which seeks to deny ITC to a buyer of goods or services, if the tax charged in respect of supply of goods or services has not been actually paid to the Government by the supplier of goods or services;
* Constitutional validity of Rule 86A which empowers GST officers to block ITC without issue of a notice or intimation;
* Constitutional validity and vires of Section 43A(4) of the CGST Act and Rule 36(4) of the CGST Rules, to the extent that it seeks to restrict ITC available to a buyer of goods or services if invoices are not uploaded by the suppliers on the portal;
* Demand for reversal of ITC under Section 16(4) of the CGST Act for credit availed after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice pertains or furnishing of the relevant annual return, whichever is earlier;
* Interest or compensation on delayed refund of ITC arising on account of export or inverted tax structure;
* Any issues arising out of technical glitches on the common portal or error in filing of return;
* Freezing of bank account or threat of arrest in attending summon;
* OCEAN FREIGHT
* REFUND NOT BEING GRANTED DUE TO RISKY EXPORTER
* SERVICE TAX NOTICES BEING ISSUED MERELY ON THE DIFFERENCE BETWEEN ITR RETURN AND SERVICE TAX RERTURNS
1. The appeal is required to be filed under section 107 of the CGST Act read with Rule 108(1) of the CGST Rules electronically or otherwise as may be notified by the Commissioner. However, no manner other than in electronic mode has been notified for filing of the appeal. The limitation period of three months prescribed under section 107 of the CGST Act would start only from the date of communication of order to the petitioner in electronic form.
2. The appeal which was filed manually was rejected on the ground that the appeals have not been filed within the time limit. It is mandatory in terms of Sub Rule 1 of Rule 108 of the CGST Rules to file an appeal to the appellate authority under sub section (1) of Section 107 electronically and therefore merely because petitioner was forced to file appeal manually after exhausting all efforts to ensure filing of appeal in proper and legal manner, impugned order rejecting such appeal on ground of limitation is in violation of section 107 of the CGST Act read with rule 108 of the CGST Rules.
* Section 65(6) of the said Act clearly provides that the proper officer is mandated to inform the tax payers about his rights and obligations alongwith the findings of the audit.
* Section 65(7) of the said Act provides that the where the audit conducted results in TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.
* MULTIPLE PROCEEDINGS ON THE SAME CAUSE OF ACTION
* COERCIVE RECOVERY
* such action of recovery also seeks to circumvent the right of appeal to the extent that such right can be exercised only upon payment of 10% of the disputed amount under section 107 of the Act.
* Dabur India Ltd. v. State of U.P. reported in AIR 1990 SC 1814 observed that:

“We would not like to hear from a litigant in this country that the Government is coercing citizens of this Country to make payment of duties which the litigant is contending not to be leviable. Government, of course, is entitled to enforce payment and for that purpose to take all legal steps but the Government, Central or State, cannot be permitted to play dirty games with the citizens of this country to coerce them in making payments which the citizens were not legally obliged to make. If any money is due to the Government, the Government should take steps but not take extra legal steps or manoeuvre.”

1. Bombay High Court in the case of Neelkamal Realtors Power Pvt. Ltd. Versus Union Of India reported in 2019 (31) G.S.T.L. 53 (Bom.), held that “the Hon’ble Supreme Court as well as Hon’ble High Court has repeatedly held that rule of law has to be followed and no officers of the respondent can take law in his own hands or take extra-legal steps or manoeuvre so as to collect amounts which have not yet been held by judicial and/or quasi judicial order as payable by the petitioners to the respondent.”

It was further held that the events as well as the material placed on record by the Petitioners, after considering the affidavits filed by the respondents, lead us to conclude that the respondents have acted in a high handed manner and forced the Petitioners under the threat of arrest to reverse the Cenvat Credit of Rs. 11.25 crores before the show cause notice was issued or before any adjudication order thereon was passed. In these circumstances, we direct the respondents to allow the Petitioners to recredit the amount of Rs. 11.25 crores in their Cenvat credit account. However, the petitioners are prohibited from utilising the same till the adjudication of the show cause notice dated 28 September, 2018 by the Commissioner, GST & CX.

1. Because in the case of Mahadeo Construction Co vs. Union of India reported in 2020 (36) G.S.T.L. 343 (Jhar.), it was held by the Hon’ble Jharkhand High Court that no recovery under GST could be made without initiating any adjudication process against the assessee. The relevant extract from the judgment is as follows:

“22. The next issue for adjudication in the instant writ application is as to whether garnishee proceedings under Section 79 of the CGST Act can be initiated for recovery of interest without adjudicating the liability of interest, when the same is admittedly disputed by the assessee. Section 79 of the CGST Act empowers the authorities to initiate garnishee proceedings for recovery of tax where “any amount payable by a person to the Government under any of the provisions of the Act and Rules made thereunder is not paid”. Since in the preceding paragraphs of our Judgment, we have already held that though the liability of interest is automatic, but the same is required to be adjudicated in the event an assessee disputes the computation or very leviability of interest, by initiation of adjudication proceedings under Section 73 or 74 ofthe CGST Act, in our opinion, till such adjudication is completed by the Proper Officer, the amount of interest cannot be termed as an amount payable under the Act or the Rules. Thus, without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount.”

1. Because by recovering taxes without issuance of a show cause notice, the Respondents have violated the principles of natural justice of granting your petitioner the right of being heard. Without the issuance of a show cause notice, no demand can be finalized against your petitioner. Time and again, it has been upheld by various courts of law that no recovery can be made without finalization of demand and as such, if any recovery is made without finalizing the demand, such recovery would be deemed arbitrary, vindictive and hence, would be violative of Article 265 of the Constitution of India. Such principle holds fort as has been upheld in the case of Century Metal Recycling Pvt. Ltd. vs. Union of India reported in 2009 (234) E.L.T. 234 (P & H), maintained by the Hon’ble Apex Court in 2009 (244) ELT A57 (SC), the Hon’ble Punjab and Haryana High Court held that:

“13. As far as the amount deposited by the petitioners is concerned, case of the petitioners is that the same was deposited under coercion. Case of the respondents was that the same was deposited voluntarily. Whatever be the position, unless there is assessment and demand, the amount deposited by the petitioners cannot be appropriated. No justification has been shown for retaining the amount deposited, except saying that since it was voluntarily deposited. In view of this admitted position, the petitioners are entitled to be returned the amount paid.”

Furthermore, this principle has found place in other precedents, specifically, in the case of Century Knitters (India) Ltd. vs. Union of India, reported in 2013 (293) E.L.T. 504 (P & H), whereof Hon’ble Punjab and Haryana High Court held that:

“11. After hearing learned counsel for the parties and perusing the record, we find that as on date no crystallized liability has been shown to be existing against the petitioners. Further, only a show cause notice has been issued whereunder a liability to the extent of Rs. 50 lacs could be fastened. Insofar, as the matters which are under investigations, it has not been shown that any show cause notice in respect thereof has been issued by the respondent-department so far.

12. It is trite law that unless a demand, which is finalized and is existing which is liable to be discharged, the revenue cannot retain any amount unless there exists specific provision in the statute for the retention of the amount.”

This ratio has been followed in the case of Concepts Global Impex vs. Union of India, reported in 2019 (365) E.L.T. 32 (P & H) among other cases.

1. Because the Hon‟ble Apex Court in the case of Gokak Patel Volkart Ltd. vs. CCE, Belgaum -1987 (28) ELT 53 (SC), held as under:

“9. No notice seems to have been issued in this case in regard to the period in question. Instead thereof an outright demand had been served. The provisions of Section 11A(1) and (2) make it clear that the statutory scheme is that in the situations covered by the sub-section (1), a notice of show cause has to be issued and sub-section (2) requires that the cause shown by way of representation has to be considered by the prescribed authority and then only the amount has to be determined. The Scheme is in consonance with the rules of natural justice. An opportunity to be heard is intended to be afforded to the person who is likely to be prejudiced when the order is made before making the order thereof. Notice is thus a condition precedent to a demand under subsection (2). In the instant case, compliance with this statutory requirement has not been made, and, therefore, the demand is in contravention of the statutory provision. Certain other authorities have been cited at the hearing by Counsel for both sides. Reference to them, we consider, is not necessary.”

1. Because coercive recovery has been on fire recently in various states of India and time and again, the Hon’ble Courts of law have thrashed the revenue who has stuck to such recovery procedures without following the due process of law, more so under the GST regime. The Hon’ble Gujarat High Court in the case of M/s Bhumi Associate vs. Union of India through the Secretary, bearing Special Civil Application No. 3196 of 2021, proposed to pass an interim order issuing certain directions which are as follows:

“The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central / State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:

1. No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search / inspection proceedings under Section 67 of the Central / Gujarat Goods and Services Tax Act, 2017, under any circumstances.
2. Even if the assessee comes forward to make voluntary payment by filing Form DRC 03, the assessee should be asked / advised to file such Form DRC 03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.
3. Facility of filing complaint / grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.
4. If complaint / grievance is filed by the assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer.”
5. Because the Hon’ble Jharkhand High Court in the case of Godavari Commodities Ltd. vs. Union of India, reported in 2020 (33) G.S.T.L. 16 (Jhar.) held that:

“In the present case, though it is submitted by Learned Counsel for CGST that since the tax was paid, Section 73(1) of the Act shall not be attracted in the case of the petitioner, but the fact remains that the tax was not paid by the petitioner Company in the Government account within the due date, and accordingly it is a case of tax not being paid, within the period prescribed, or when due. In that view of the matter, we are unable to accept the contention of Learned Counsel for CGST that no show cause notice was required to be given in this case. Even otherwise, if any penal action is taken against the petitioner, irrespective of the fact whether there is provision under the Act or not, the minimum requirement is that the principles of natural justice must be followed. In the present case admittedly, prior to the issuance of letter dated 6-2-2019, no show cause notice or an opportunity of being heard was given to the petitioner and no adjudication order was passed.”

1. Because the same principle has been concurred by the Hon’ble Karnataka High Court in the case of Union of India vs. LC Infra Projects Pvt. Ltd. reported in 2021 (44) G.S.T.L. 60 (Kar.), whereof the Division Bench held that :

 “11. On plain reading of sub-section (1) of Section 73 of the GST Act, it is applicable when any tax has not been paid or short paid. It contemplates that a show cause notice is to be issued to the assessee calling upon him to showcause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section50 of the GST Act.

12. Assuming that sub-section (1) of Section 73 is not applicable, in our view, before penalizing the assessee bymaking him pay interest, the principles of natural justice ought to be complied with before making a demand for interestunder sub-section (1) of Section 50 of the GST Act. Consequence of demanding interest and non-payment thereof is very drastic.

 14. The impugned demand has been set aside only on the ground of the breach of the principles of natural justice by granting liberty to the respondents to initiate action in accordance with law obviously for recovery of interest.

16. For the reasons which we have recorded earlier, we concur with the ultimate view taken by the Learned Single Judge that before recovery interest payable in accordance with Section 50 of the GST Act, a show cause notice is required to be issued to the assessee. Hence, no case for interference is made out. The appeal is accordingly dismissed. Interim applications do not survive.”