* 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;

(e) rights based on case law;

(f) customary rights;

(g) contractual rights.

* 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.
* Fundamental rights are in part III of the constitution of India. Article 12 to Article 35 are fundamental rights. Article 14 to 18 relates to Right to equality or prohibition of discrimination. Article 19 relates to rights to freedom of speech, to move freely throughout territory of India, right to reside and settle in any party of India, right to practise any profession, or to carry any trade, occupation or business. Article 20 relates to avoidance of double jeopardy or conviction or penalty on the basis of anterior law or be witness against himself. Article 21 relates to right to life which is a colourless article. It is a repository of various human rights.
* Where relief through High Court is available under article 226, it is advisable that one should first approach the High Court.
* The High Court, under article 226, cannot sit as an appellate court on administrative decisions.
* 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. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion.
* Article 12 of the Constitution of India gives an inclusive definition to the expression 'State', and says that for purposes of Part III of the Constitution the expression 'State' includes the Parliament of India, the Government and the Legislature of each of the States and Local or other authorities within the territory of India or under the control of the Government of India.
* In Board of Control for Cricket in India and Ors. vs. Cricket Association of Bihar and Ors. (22.01.2015 - SC) : MANU/SC/0069/2015 it was held that BCCI may not be State Under Article 12 of the Constitution but is certainly amenable to writ jurisdiction Under Article 226 of the Constitution of India. Though the remedy Under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition Under Article 226 of the Constitution, which is much wider than Article 32.
* 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.
* 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
* where the statutory authority has not acted in accordance with the provisions of the enactment in question,
* or in defiance of the fundamental principles of judicial procedure,
* or has resorted to invoke the provisions which are repealed,
* 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
* The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. It is not the domain of the court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be.
* Repeated writ petitions not entertainable if earlier petitions seeking same relief either dismissed or withdrawn.

**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.
* The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.
* this rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of third-party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third-party rights would by their very nature be few and far between.
* The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law.

**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.
* Neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit.
* A defect in the jurisdiction goes to the root of the matter which cannot be cured by the consent of the parties. A decree passed by a court without jurisdiction is a coram non judice. Any judgment passed by such court cannot be taken to be valid and could be challenged at any stage of the suit.
* Where there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of the action having arisen there within, if the parties to the contract agreed to vest jurisdiction in one such to try the dispute which might arise as between themselves, the agreement would be valid.
* The making of the contract is part of the cause of action. Acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action.
* Even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. The **forum conveniens** is that which is having the jurisdiction convenient to all to decide the case.
* In international contracts, the parties may contract between themselves to submit their dispute to the jurisdiction of the court which is unrelated to either of the parties and so if in such case the defendant makes an unconditional appearance before such court, it will amount to submission.

**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.
* (a) Certiorari may be issued where the law under which the decision was given is void;
* (b) the decision itself violates a fundamental right or
* (c) the decision violates the law or is without jurisdiction;
* (a) Defect of jurisdiction attracts certiorari.
* b) certiorari will issue if, there is an error of law apparent on the face of the record, (as stated above) or if the tribunal acts without sufficient evidence or misdirects itself in considering the evidence.
* **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 - Procedural infirmity brought to notice of Constitutional Court cannot wait rectification till finding of prejudice in final order which would require to be set aside, making entire proceedings nullity - Deponents may not be available after long delays in litigation - Accused has right to defend himself reasonably at earliest opportunity, and that would not prejudice department or stall their inquiry - It is abuse to allow alleged delinquent be absolved of consequences merely for procedural error - **Mohammed Fariz & Company v. Commissioner — 2019 (369) E.L.T. 218 (Ker.).**
* 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.).**
* 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.
* 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**

* A quasi-judicial authority must record reasons in support of its conclusions.
* Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
* Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
* Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
* Reasons facilitate the process of judicial review by superior Courts.
* 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.
* Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.
* Judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “Due Process.
* Absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order.
* Insistence on reason is a requirement for both judicial accountability and transparency.
* All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered.

**WRIT REMEDIES –CASE LAWS**

* 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 demonstrated to be perverse
* (iv) if the impugned order is vitiated by fraud or bias or malice and
* (v) if the impugned order is non-speaking.

**JURISDICTION**

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.

Disputes going on in GST

* 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
* 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.”

* 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.