

# TAX INFO

*Dated 20-08-2020*

Latest update on GST Law: Information regarding **Important ruling on constitutional validity of Rule 142(1)(a) of the CGST Rules** based on the **Judgement issued by Gujarat High Court**.

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## Gujarat High Court upholds the constitutional validity of Rule 142(1)(a) of the CGST Rules

<b>Name of Petitioner</b>	Mahavir Enterprise
<b>Name of Respondent</b>	Assistant Commissioner of State Tax
<b>Court</b>	Gujarat High Court
<b>Date of Judgement</b>	22.06.2020
<b>Order No.</b>	R/Special Civil Application 7613 of 2020

The present writ application is involved in bogus billing transactions without any physical movement of the goods. Writ application is filed praying to declare the Rule 142(1)(a) of CGST/GGST Rules, being ultra virus and dehors the Act and violative of Articles 14 and 19(1)(g) of the Constitution of India. Writ applicant seeks to challenge the legality and validity of the show cause notice dated 30th November 2019 issued by the respondent under Section 122(1) of the Act calling upon the writ applicant to show cause why an amount of Rs.6,87,68,821/- should not be recovered for the alleged contravention of the provisions of the Act and the Rules.

The High Court can interfere under Article 226 of the Constitution of India against a show cause notice where the same is issued by an authority in exercise of the power which is absent; the facts does not lead to commission of any offence; the show cause notice is otherwise without jurisdiction; it suffers from incurable infirmity; against the settled judicial decisions or the decisions of the Tribunal and bereft of material particulars justifying commission of offence.

A rule under delegated legislation can be held to be ultra virus the statutory provisions of the Act if it is shown:

- (i) That it is beyond the scope of or in excess of the rule-making power of the delegate conferred under the Act, or
- (ii) That it is in conflict with or repugnant to any enactment in the Act.

It may be noted that Section 164 of the Act confers power on the Central Government to frame the rules. Under Section 164 of the Act, the Central Government has the power to make rules generally to carry out all or any of the purposes of the Act. Rule 142(1)(a) of the Rules, 2017 is valid and is no manner conflict with any of the provisions of the Act. The challenge to the legality and validity of the show cause should fail having regard to the scope of judicial review and the challenge to the validity of Rule 142(1)(a) of the Rules should also fail. Writ application fails and is hereby rejected.

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