Dated: 23.11.2026

GSTAT

State Bench Lucknow

Division Bench Court No. Court II

APL/224/LCK/2026

BABA INDUSTRIES **.....Appellant**

Versus

NIHARIKA LAKHA, ADDITIONAL COMMISSIONER, LUCKNOW & ORS. **.....Respondent**

Quorum

Hon'ble Narendra Kumar, Member(Judicial)
Hon'ble Alok Chopra, Member (Technical)

Counsel for Appellant

SHRI. AKSHAY AGARWAL, ADVOCATE

Counsel for Respondent

SHRI ASHWANI KUMAR DUBEY, SUPERINTENDENT CGST

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZN090371126000373H **Date of order :** 23/11/2026

1.	GSTIN/Temporary ID/UIN - 09AMEPV7468D2ZI	
2.	Appeal Case Reference no. - APL/224/LCK/2026	Date - 22/07/2026
3.	Name of the appellant - BABA INDUSTRIES , DEEPANSHU100@GMAIL.COM , 9839023382	
4.	Name of the respondant - 1. Niharika Lakha , niharika.lakha@gov.in , 9557702400 2. Niharika Lakha	
5.	Order appealed against - AD090825043324Z	
	(5.1) Order Type - Registration Order	
	(5.2) Ref Number - ZD0912250477455	Date - 03/12/2025

6.	Personal Hearing - 23/11/2026 12/11/2026 29/10/2026 14/10/2026 01/10/2026
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief - The GST Appellate Tribunal, vide its order dated 23.11.2026, allowed the appeal filed by M/s Baba Industries (GSTIN: 09AMEPV7468D2ZI) and set aside the Order-in-Appeal dated 03.12.2025 and the registration cancellation order dated 09.07.2025. The Tribunal held that the second Show Cause Notice (SCN) dated 12.06.2025, issued under Rule 21(b) and Rule 21(e) of the CGST Rules, was barred by the principles of res judicata and constructive res judicata. It observed that the allegations in the second SCN were substantially based on the same foundational facts and DGGI investigation material that had formed the basis of the earlier SCN dated 22.03.2024. The proceedings initiated through the first SCN had already been dropped by a reasoned order dated 01.10.2024, which had attained finality as the Department had not challenged it. The Tribunal further observed that the second cancellation order was non-speaking, lacked independent application of mind and violated the principles of natural justice. It also found the retrospective cancellation from 10.01.2020 unjustified and disproportionate. Accordingly, holding the second SCN and consequential proceedings legally unsustainable, the Tribunal set aside both the impugned appellate order and the cancellation order.
Summary of Order	
9.	If demand order then whether demand quantified: No

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Registration	registration cancellation	set aside both the order-in-appeal No. 514/CGST/APPL/LKO/2025 dated 03.12.2025 and order for cancellation reference ZA0907253328058 dated 09.07.2025.

Place :LUCKNOW

Date : 23.11.2026

Signature

LUCKNOW Deepak Yadav

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

1.0 M/S Baba Industries (GSTIN 09AMEPV7468D2ZI) (hereinafter referred to as 'the Appellant') filed this Interlocutory application requesting for an early hearing of their appeal claiming that because of "the non-functionality of the GST Tribunal at the relevant time, the Applicant had initially approached the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, by way of a Writ Petition. The Hon'ble High Court, vide its order dated 08.01.2026, was pleased to relegate the Applicant to contest the proceedings before the GST Tribunal, which was not established at that juncture. That subsequently, the Applicant preferred a Civil Miscellaneous Review Application (Defective) No. 89 of 2026 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench. That the Hon'ble High Court, vide its reasoned order dated July 23, 2026, took judicial notice of the fact that the GST Tribunal is now functional. Consequently, the review application was dismissed as not pressed".

1.1 While disposing of their application, Hon'ble High Court of Allahabad left it open for the applicant "to move an appropriate application before the GST Tribunal for expeditious disposal. In case, if any application is moved, the same shall be considered sympathetically by the GST Tribunal".

1.2 While in his application the appellant also requested for hearing his main appeal no. 2026053101000456 dated 22-07-2026 entreating passing of orders in the interest of justice, the thrust of their arguments for early hearing to restore their registration rests on the following reasoning-

i. the appellant is a proprietorship concern and cancellation of their registration on wrong presumption and facts is causing their business to suffer which has resulted in the blockage of substantial working capital, adversely impacting the day-to-day business operations and threatening the livelihood of the proprietor and its employees, which is violative of the

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fundamental right to carry on trade and business guaranteed under Article 19(1)(g) of the Constitution of India;

ii. that the issues raised in the main appeal are predominantly legal in nature, involving the interpretation of statutory provisions, and can be adjudicated without the need for any elaborate trial or evidence.

iii. Because the right to speedy justice is a fundamental right enshrined under Article 21 of the Constitution of India. Any inordinate delay in the adjudication of the appeal would render the statutory remedy of appeal illusory and would amount to a denial of justice.

2.0 Before proceeding further, we would like to record that since the provisions of State GST Act and Rules are in *pari materia* with the said CGST Act and Rules respectively, any reference to the CGST Act, 2017 or CGST Rules, 2017 shall mean a reference to the corresponding provisions of the Uttar Pradesh GST Act and Rules respectively.

3.0 While acceding to the request for early hearing of the case, both the appellant represented by Sh. Akshay Agarwal, Advocate (hereinafter referred to as the Ld. Counsel) and the Respondent Department represented by Sh Ashwani Kumar Dubey, Superintendent CGST (hereinafter referred to as Ld DR) were amenable to proceeding with hearing the case on merits, and since the case entailed questions of law it was heard by the Division Bench.

4.0 The Bench deemed it prudent to peruse the observations and directions of Hon'ble High Court of Allahabad in the subject matter. We notice that the appellant had uploaded the following 03 orders of Hon'ble High Court of Allahabad viz.,

a. Civil Miscellaneous Review Application (Defective) No. 89 of 2026 dtd 23.07.2026 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench that has afforded this opportunity of early hearing to the appellant.

b. Writ Tax no. 713 of 2025 wherein on 04.08.2025, Hon'ble High Court of Judicature at Allahabad, Lucknow Bench observed that the initial

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proceedings were under Rule 29 2(e) of the CGST Act, now have been initiated under Rule 21 (b) & 21 (e) of CGST Rules and on directed appellant to seek departmental appellate remedy.

c. Writ Tax no 85 of 2024 whereby vide its order dtd 04.09.2024 Hon'ble High Court had ordered that all documents referred to in the SCN dated 22.03.2024 should be made available to the appellant.

5.0 The Appellant, a proprietorship concern engaged in the business of FMCG products, waste papers, gitti trading, and food grains was issued a Show Cause Notice-cum-Suspension Order (SCN) on 22.3.2024 for cancellation of their registration under Section 29(2)(e) of the CGST Act, alleging that the registration was obtained by means of fraud, wilful misstatement, or suppression of facts. The said SCN was based on a letter from the Directorate General of GST Intelligence (DGGI) dated 19.03.2024.

6.0 Being aggrieved by the non-supply of relied-upon documents, the Appellant approached the Hon'ble High Court of Judicature at Allahabad in Writ Tax No. 85 of 2024. The Hon'ble High Court, vide its order dated 04.09.2024, directed the Respondents to provide all documents and thereafter pass a reasoned and speaking order after considering the Appellant's reply.

6.1 In compliance to the directives of Hon'ble High Court, the DGGI letter was provided to the appellant, who filed a detailed reply on 18.09.2024. After due consideration of the SCN, DGGI's recommendation, and the Appellant's reply, a detailed and reasoned order was passed by the Respondent Department on 01.10.2024, dropping the proceedings for cancellation of registration. They were again issued a second SCN dated 12.06.2025, once again seeking to cancel their registration invoking Rule 21(b) and 21(e) of the CGST Rules, 2017. The appellant stated that this second SCN was purportedly based on the very same DGGI letter dated 19.03.2024, along with a subsequent letter dated 20.12.2024.

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7.0 The appellant alleges that without affording them a proper opportunity, an unreasoned and non-speaking order ZA0907253328058 was passed on 09.07.2025 cancelling appellant's registration with retrospective effect from 10.01.2020 on the ground that the taxpayer did not respond to the SCN. The Appellant again approached the Hon'ble High Court in Writ Tax No. 713 of 2025. The Hon'ble Court, vide order dated 04.08.2025, relegated the Appellant to the statutory appellate remedy.

8.0 Accordingly, the appellant filed an appeal before the First Appellate Authority (FAA), vide the impugned Order-in-Appeal No. 514/CGST/APPL/LKO/2025 dated 03.12.2025 and the appellate authority rejected the appeal, holding that the second SCN was based on new facts and was not barred by res judicata / constructive res judicata.

9.0. It is against this order of the First Appellate Authority that the Appellant has filed an appeal before the GST Appellate Tribunal citing the following grounds:-

a. The impugned Order-in-Appeal is bad in law being barred by the principles of res judicata / constructive res judicata and the department is estopped from re-agitating the issue and contrary to the facts on record the Appellate Authority has failed to appreciate that the entire proceedings initiated vide SCN dated 12.06.2025 is a nullity, being barred by the principles of res judicata / constructive res judicata. The earlier proceeding, based on the same foundational DGGI letter of 19.03.2024, was concluded by a speaking order dated 01.10.2024 dropping the cancellation. The department, having accepted that order, is estopped from re-agitating the same issue.

b. The learned Appellate Authority has grossly erred in holding that the second SCN was based on 'new and additional facts'. The so-called new facts, such as the passing of a demand order under Section 74(9), are subsequent events and do not alter the fundamental basis of the allegation, which was already considered and adjudicated upon. An order which is itself under appeal and has not attained finality cannot

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be treated as a new, conclusive fact to justify the review of a final order.

c. The CGST Act, 2017 does not confer any power of review upon the adjudicating authorities. The issuance of the second SCN and the subsequent cancellation order dated 09.07.2025 amount to an impermissible review of the earlier order dated 01.10.2024 by the same authority. This action is ultra vires the Act and is liable to be set aside, as held by the Hon'ble Supreme Court in Radha Krishna Industries Vs. State Himachal Pradesh (Civil Appeal No.1155/2021).

d. The impugned OIA erroneously upholds an Order-in-Original that is patently non-speaking, unreasoned, and cryptic. The cancellation order dated 09.07.2025 fails to record any reason for the cancellation, let alone for its retrospective application. It is settled law that reasons are the soul of an order and their absence renders the order arbitrary and void. Reliance is placed on Secretary and Curator, Victoria Memorial Vs. Howrah Gantantrik Nagrik Samiti & others JT 2010 (2) SC 566 and M/s Namo Narayan Singh Vs. State of U.P & 2 others (Writ Tax No. 1476 of 2022).

e. Because the entire proceedings have been conducted in gross violation of the principles of natural justice. The cancellation order was passed without considering the factual and legal matrix of the case and simply on the ground of non-filing of a reply, ignoring the fact that the proceedings themselves were void ab initio. The learned Appellate Authority failed to rectify this fundamental flaw. The Hon'ble Supreme Court in Oryx Fisheries Pvt. Ltd Vs. Union of India (2010) 13 Supreme Court Cases 427 has held that an order passed in violation of natural justice is a nullity.

f. The adjudicating authority as well as the Appellate Authority have acted on the diktat of a superior/external authority, i.e., the DGGI, without any independent application of mind. The SCN and the cancellation order were issued solely based on the recommendation of the DGGI, which is impermissible in law as held by the Hon'ble

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Supreme Court in Sirpur Papers Limited Vs. Commission of Wealth Tax Hyderabad (1970) 1 Supreme Court Cases 795. An adjudicating authority must act independently and not under the command of another agency.

g. The retrospective cancellation of registration from 10.01.2020 is arbitrary, punitive, and has been ordered without any justification. Section 29 of the Act does not permit such retrospective cancellation in a mechanical manner. There is no finding in the order as to why the registration must be cancelled from a date more than five years prior to the order, and this action has severe and irreversible consequences for the Appellant and its entire supply chain.

h. The conditions stipulated under Rule 21(b) and 21(e) of the CGST Rules, 2017, have not been met in the present case. The Respondents failed to bring on record any cogent, specific, or corroborative evidence to prove that the Appellant has issued invoices without supply of goods or has availed ITC in violation of Section 16 of the Act. The cancellation is based on mere suspicion and allegations contained in an investigation report, which cannot substitute for legal proof in an adjudication proceeding.

i. Because the arbitrary and illegal cancellation of the Appellant's GST registration is a direct infringement of the fundamental right to carry on trade, business, and profession as guaranteed under Article 19(1)(g) of the Constitution of India. Such a drastic measure, taken without following the due process of law, cannot be sustained.

10.0 The appellant prays for,-

i. Allowing the present appeal;

ii. Quashing and setting aside the impugned Order-in-Appeal No. 514/CGST/APPL/LKO/2025 dated 03.12.2025 passed by the learned Additional Commissioner (Appeals), Lucknow;

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iii. Quashing and setting aside the Order-in-Original No. ZA0907253328058 dated 09.07.2025 passed by the Superintendent, Range-1, CGST & Excise, Barabanki;

iv. Directing the Respondents to restore the GST registration of the Appellant (GSTIN: 09AMEPV7468D2ZI) with immediate effect;

v. Passing any other order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

11.0 The issues that this court is seized of and will be addressed through this decision are as hereunder:

i. Whether the issue of second show cause notice is legally infructuous on the grounds of res judicata / constructive res judicata;

ii. Whether the respondent department adhered to the principles of natural justice;

iii. Whether there was non-application of mind and due process of law was followed.

12.0 We feel that it is necessary to first address the issue on the grounds of res judicata / constructive res judicata that has been vehemently argued by the appellant in their appeal before the Tribunal. The principle behind the doctrine of res judicata / constructive res judicata is largely that once a court or an authority has decided on an issue, the same cannot be re-opened for the same cause of action. This doctrine helps in whittling down and easing the burden of unnecessary litigation. In India, Section 11 of the Code of Civil Procedure, 1908 (CPC) has captured the doctrine of res-judicata in that,

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."

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12.1 The application of the doctrine of res judicata / constructive res judicata calls for the following:

a. The issue in the subsequent case must be directly and substantially the same as the one decided in the earlier case.
b. The parties in the subsequent case must be the same as the parties in the earlier suit.
c. The parties must litigate in both cases under the same legal capacity or title.
d. The court deciding the earlier matter must have jurisdiction over the subject matter.
e. The matter must have been finally decided by the earlier court, meaning it was adjudicated on its merits.

12.2 However, we need to examine if the doctrine of res judicata applies in tax matters? The general supposition is that res judicata does not apply tax disputes. It is said that a finding or an opinion recorded by an authority or even by a court of law for one assessment year has no binding effect on the issues in subsequent assessment years.

12.3 In *Sri B. Temple* v. *V.V. Bhavanarayanacharyulu* (1970)1 SCC 673, the Hon'ble Supreme Court observed:

"The doctrine of res judicata is not confined to the limits prescribed in Section 11, Civil Procedure Code. The underlying principle of that doctrine is that there should be finality in litigation and that a person should not be vexed twice over in respect of the same matter."

12.4 In *Radhasoami Satsang Vyas* [*Radhasoami Satsang Vyas* v. *CIT*, 1991 Indlaw SC 948] Hon'ble Supreme Court observed that each assessment year is a separate unit. Decision in one year may not carry forward and hold for a subsequent year. The court held that in taxation matters, the rule of *res judicata*, as embodied in Section 11 of Civil Procedure Code, 1908 (CPC) has no application. Each year's assessment and decision is final to only that financial year and hence so determines the liability of the assessee of that particular financial year or period. It is open to the authorities to consider the issues and position of the assessee in the subsequent years.

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12.5 It was, however, in the year 1981 that Justice S. Ranganathan in a Delhi High Court Division Bench ruling, in the case of J K Synthetics vs Union of India, held inter-alia that the Department can take a differing view from its earlier stand "if the facts are different or further and fresh facts are brought on record". It was held that the Department should not be permitted to change its view capriciously or to take a different stand from its earlier view unless there are good or cogent reasons for a change in its view. It then enumerated the following factors which could justify a departure from a stand taken in earlier year:-

(*i*) If the facts are different and fresh facts are brought on record; or

(*ii*) If the process of manufacturer has changed (this was a central excise case); or

(*iii*) If the relevant entries in the Tariff have undergone a modification; or

(*iv*) If, subsequent to the earlier decision, there has been a pronouncement of a Higher Court or the Supreme court which necessitates reconsideration of the issue.

12.6 Though these principles were laid down in a case relating to central excise and reference made to tariff entries and the process of manufacture, the same principles will apply to cases involving direct taxes and indirect taxes.

12.7 In ***BSNL v. Union of India (2006) 3 SCC 1***, a three-judge Bench analyzed the earlier case law and held that *res judicata* does not apply in matters pertaining to tax for different assessment years because *res judicata* applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct.

13.0 It is submitted that the above principles apply even where a particular view has been taken in respect of another assessee. Once the statutory provisions remain unchanged, the Department cannot legitimately depart from its earlier position. Experience shows that when a view taken in one case is subsequently reversed whether by the Tribunal, the High Court, or the Supreme Court the Department tends to adopt a different stance in another matter. The correct position, however, is that the same principles govern such situations as well. The decision in *Bharat Sanchar Nigam Ltd.* makes this clear: where the facts and the

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law in a subsequent assessment year remain identical, no authority, whether quasi-judicial or judicial, is generally permitted to arrive at a different conclusion.

14.0 With the above as a background, we shall examine the case of the appellant to assess if the principle of res judicata / constructive res judicata applies to the subject case or not.

15.0 Prior to that it would be apt to examine the relevance of the following case laws cited by the appellant in his favour.

a) Radha Krishna Industries Vs. State Himachal Pradesh (Civil Appeal No.1155/2021) – In this case the Supreme Court of India examined the scope of provisional attachment powers under the Goods and Services Tax (GST) Act and the maintainability of writ petitions under Article 226 of the Constitution.

b) Reliance is placed on Secretary and Curator, Victoria Memorial Vs. Howrah Gantantrik Nagrik Samiti & others JT 2010 (2) SC 566 that dealt with raising environmental and heritage concerns regarding the campus of Victoria Memorial Hall and the judgement established that both administrative and judicial orders must be supported by clear, recorded reasons.

c) In M/s Namo Narayan Singh Vs. State of U.P & 2 others (Writ Tax No. 1476 of 2022 the Show Cause Notice issued to the petitioner was defective since it lacked a specific date and time for personal appearance. Hon'ble Court observed that the registration cancellation order and the subsequent appellate dismissal order were passed without assigning cogent reasons or recording any application of mind.

d) Hon'ble Supreme Court in Oryx Fisheries Pvt. Ltd Vs. Union of India (2010) 13 Supreme Court Cases 427 dealt with the cancellation of registration based on a show cause notice issued by Marine Products Export Development Authority of India. Hon'ble Supreme Court laid stress on the principles of natural justice, and the requirement for speaking orders by quasi-judicial authorities that gave clear reasons in orders to make the remedy of appeal meaningful

16.0 Now we come to the other batch of case laws cited by the appellant. We perused the orders of Hon'ble High Court of Allahabad in the case of Sunny

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Enterprises vs Union of India (WRIT TAX NO. 1040 OF 2026); in the case of Anil Art and Craft vs. State of Uttar Pradesh (WRIT TAX NOS. 5924 & 5931 OF 2025); in the case of Siddha Mahajan (P.) Ltd. vs. State of U.P. (WRIT TAX NO. 136 OF 2024); Hon'ble High Court of Gauhati in the case of Shashi Kumar Choudhury vs Union of India W. P. (C) NO. 878 OF 2026, Hon'ble High Court of Punjab & Haryana in the case of Bansal Casting vs Union of India CWP NOS. 16770 OF 2024 & 21710 & 32537 OF 2025 (O & M).

16.1 The crux of each case of the cases cited by the appellant (para 17 refers) is presented hereafter:

16.1.1 Hon'ble High Court of Allahabad

Sunny Enterprises vs Union of India (WRIT TAX NO. 1040 OF 2026):
Hon'ble High Court of Allahabad quashed cancellation order of registration and revived fresh adjudication on the grounds that cancellation was done on the basis of a non speaking order. Where GST-registered person's registration was cancelled by a non-speaking order with no reasons or recorded satisfaction, such cancellation violated Article 14 and principles of natural justice and was unsustainable, therefore cancellation and consequential appellate order were quashed and matter was revived for fresh adjudication after giving opportunity of hearing to petitioner

Siddha Mahajan (P.) Ltd. vs. State of U.P. (WRIT TAX NO. 136 OF 2024): Where show cause notice proposing to cancellation registration of assessee was issued by merely mentioning violation of two sub-rules, without clarifying as to how those rules were violated and what was material to substantiate such violations and also reply of assessee to show cause notice was not taken into consideration before passing impugned order cancelling registration retrospectively, such order could not be sustained.

Anil Art and Craft vs. State of Uttar Pradesh (WRIT TAX NOS. 5924 & 5931 OF 2025): Where cancellation of GST registration was effected by a non-speaking order merely concluding that reply to show cause notice was unsatisfactory without assigning reasons, such absence of reasoning and violation of principles

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of natural justice rendered cancellation unsustainable, warranting setting aside of impugned order and fresh proceedings to be conducted in accordance with law.

16.1.2 *Hon'ble High Court of Delhi*

Riddhi Siddhi Enterprises vs. Commissioner of Goods and Services Tax (CGST), South Delhi W.P.(C) NO. 8061 OF 2024

Power to cancel registration with retrospective effect can neither be robotic nor routinely applied; order must reflect reasons which may have weighed upon authority to cancel registration with retrospective effect

16.1.3 *Hon'ble High Court of Gauhati*

Shashi Kumar Choudhury vs Union of India W. P. (C) NO. 878 OF 2026

Where GST registration was cancelled on basis of a vague show-cause notice alleging ITC mismatch, since proper officer acted under dictation of investigative wing without exercising independent quasi-judicial power and revocation application was rejected by a non-speaking order, cancellation order was set aside and registration was restored

16.1.4 *Hon'ble High Court of Punjab & Haryana*

Bansal Casting vs Union of India CWP NOS. 16770 OF 2024 & 21710 & 32537 OF 2025 (O & M)

An order cancelling GST registration cannot operate retrospectively unless the initial show-cause notice clearly put the assessee on notice regarding a proposal for retrospective cancellation. Cryptic, non-speaking orders issued without proper reasoning or without supplying underlying verification reports/documents are unsustainable. The Court granted liberty to the tax authorities to initiate fresh proceedings strictly in accordance with the law, including proper notice and hearing if they wish to pursue retrospective cancellation or tax recovery.

16.2 In all the above judgments, the common thread is that the lower authorities had not followed the principles of natural justice. The case laws *supra* dealt with

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either that the Registration was cancelled without issuing a speaking order with no reasons or, vague reasons recorded or, that the SCN was issued without any substantiating material or, without providing relied upon documents to support the allegations raised in the respective SCNs.

16.2.1 In the case of Riddhi Siddhi Enterprises vs. Commissioner of Goods and Services Tax (CGST), South Delhi W.P.(C) NO. 8061 OF 2024, Hon'ble High Court of Delhi ruled that the power to cancel registration with retrospective effect can neither be robotic nor routinely applied; order must reflect reasons which may have weighed upon authority to cancel registration with retrospective effect.

16.3 In sum, in all these case laws the singular common running feature is that authorities cancelled registration in a mechanical manner contravening the principles of *audi alterm partem*. Whether res judicata / constructive res judicata is attracted in the instant subject case will be revealed from the chain of events commencing with the issue of show cause notices culminating with the order-in-appeal.

17.0 The first SCN was issued to the appellant on 22.03.2024 against which the appellant approached Lucknow Bench of Hon'ble High Court of Allahabad, who directed the Department to provide relied upon documents and pass a speaking order. The department provided a copy of letter C. No. DGGI/INV/GST/316/2024-GR-A dated 18.03.2024 issued by Directorate General of GST Intelligence (DGGI) that had shared the following details with the show cause issuing authority

Further, principal place of business was found to be dealing with FMCG products only however as per e-way bill records, the said firm is dealing with waste/scrap, gravel/gitti etc as well. In addition to the above, upon examination of documents and various electronic devices resumed during searches conducted, the following is noticed in respect of Baba Industries:

i. Huge mismatches between amount of inward & outward supplies.
ii. Outward supplies of the products that have no inward supply
iii. The said firm is involved in supply of bills only to certain firms.
iv. The said firm was also found involved using fake bilty books of transporters that were found non-existent upon verification.
v. Certain inward suppliers of the firm have been found non-existent upon verification.

It is pertinent to mention that upon finding sufficient evidence and reasons to believe, mastermind of case Deepanshu Srivastava was arrested on 02.02.2024 and is in judicial custody since then.

17.1 DGGI vide the said letter requested that the appellant's registration maybe cancelled under section 29 of the CGST Act 2017 and Rules thereunder to prevent fraudsters from passing ITC without supply of goods.

18.0 To better appreciate whether the cause in the second show cause issued on 12.06.2025 raised similar allegations as were raised in the SCN issued in 2024, both the SCNs and related orders-in-original needed to be studied. Since no copy of first SCN, which was issued as a consequence of letter C. No. DGGI/INV/GST/316/2024-GR-A dated 18.03.2024, was uploaded by the appellant, it was during the hearing on 14.10.2024 that the Bench directed the Ld Counsel to upload the SCN issued in 2024, their reply thereto and the order issued by the adjudicating authority. He was also advised to provide an update on the arrest of Deepanshu Srivastava. The LD, DR too was directed to upload the respective documents.

19.0 The appellant uploaded the required documents on 25.10.2026. We read that the appellant (GSTIN 09AMEPV7468D2ZI) was issued a SCN dated 22.03.2024 proposing why their GST registration may not be cancelled under Section 29(2)(e) of CGST Act, 1994 and later the adjudicating authority issued order-in-original C. No. 20-CE /Mis Corres/R-II/BBK/2020-21/1706 dated 01.10.2024 (DIN: 20241053ZU0400717584).

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20.0 The said order-in-original reveals that on 18.09.2024 the appellant appeared before the adjudicating authority and also submitted their written reply. After going through the defence submission of the party and the records available, the adjudicating authority found that there was no evidence that the appellant had obtained registration through fraud, willful misstatement or suppression of facts and accordingly dropped the proceedings.

21.0 We notice that the chain of events thereafter led to the issue of letter C. No. DGGI/INV/GST/316/2024-GR-A dated 20.12.2024 by DGGI claiming a new series of facts advising that jurisdictional officer may take steps for cancelling registration of appellant; prompting the proper officer to issue SCN (reference no. ZA0906251248565 dated 12/06/2025) for cancellation of registration. The SCN was issued to GSTIN 09AMEPV7468D2ZI, Deepanshu Srivastava, Dewa Road, Gadia, Barabanki. This second SCN that was issued on 12.06.2025 invoked Rule 21 (b) and Rule 21 (e) of the CGST Rules for cancelling the registration and afforded the appellant an opportunity for personal hearing on 18/06/2025. Failing to get any response from the appellant, the proper officer passed an order (reference no.: ZA0907253328058 dated 09/07/2025) cancelling the registration w.e.f. 10/01/2020. It is against this order that the Appellant again approached the Hon'ble High Court in Writ Tax No. 713 of 2025. The Hon'ble Court, vide order dated 04.08.2025, relegated the Appellant to the statutory appellate remedy and thereafter the appellant approached the first appellate authority on 12.09.2025. After weighing the written and oral submissions of the appellant, the First Appellate Authority upheld the order cancelling the registration under Rule 21(b) and (e) of CGST Rules, 2017.

22.0 We now deem it apposite to examine the said show cause notices from the lens of res judicata / constructive res judicata. The SCN that was issued on 22.03.2024 invoked Section 29(2)(e) for cancellation of registration, the relevant portions of which are reproduced as hereunder:

"The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—

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.....

.....

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts"

22.1 The second SCN was issued on the grounds of contravening Rule 21(b) and Rule 21(e) of the Act and Rules, respectively. Under Rule 21(b), the Registration is liable to be cancelled, if the said person issues an invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder. And under Rule 21(e) the registration is liable to be cancelled if the person avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder.

22.2 Manifestly, the provisions are different for cancelling the registration. We notice that while the first SCN is issued for contravening Section 29(2) (e) the grounds that are the basis of the SCN are more in the nature of violations that would fit the bill for breaching Rules 21(b) and (e). The SCN issued on 22.03.2024 does not list omissions, discrepancies, irregularities or any evidence in support of flouting Section 29(2)(e). The letter of DGGI that was later made available to the appellant on directions of Hon'ble High Court too does not cite any evidence that the appellant had obtained Registration by fraud, wilful misstatement and suppression of facts. We observe that even the letter of DGGI requested that the appellant's registration maybe cancelled under section 29 of the CGST Act 2017 and Rules thereunder to prevent fraudsters from passing ITC without supply of goods. This cause, we understand, would appropriately address the second SCN issued on 12.06.2025. Now we turn to the course of events leading to the second letter of DGGI.

23.0 As spelt out in para 20 *supra*, as regards the first SCN, the appellant was given an opportunity of personal hearing and after going through the defence submission of the party and the records available, the adjudicating authority

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found that there was no evidence that the appellant had obtained registration through fraud, wilful misstatement or suppression of facts and accordingly dropped the proceedings raised in SCN of 22.03.2024.

24.0 The second SCN that was issued on 12.06.2025 invoked Rule 21 (b) and Rule 21 (e) of the CGST Rules for cancelling the registration. The appellant was informed that the cancellation proceedings were initiated based on the letters issued by DGGI vide C. No. DGGI/INV/GST/316/2024-GR-A dated 18.03.2024 and 20.12.2024.

A snapshot of the second SCN is attached that gives a ready reference.

Reference No.: ZA0906251248565 Date: 12/06/2025

To

Registration Number (GSTIN/UIN): 09AMEPV7468D2ZI

DEEPANSHU SRIVASTAVA

0,Dewa Road,Gadia,Barabanki,Uttar Pradesh,225003

Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1. Rule 21(b)- person issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder
2. Rule 21(e)-person avails ITC in violation of the provisions of section 16 of the Act or the rules made thereunder

Remarks:

Cancellation initiated on the grounds as mentioned in letter issued vide C.No. DGGI/INV/GST/316/2024-GR-A O/o Pr. ADG-DGGI-ZU-LKO/3821 Dated 19.03.2024 by the Dy. Director, DGGI Lucknow and further vide letter dated 20.12.2024 (Letters enclosed)

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

You are hereby directed to appear before the undersigned authority on 18/06/2025 at 13:30 .

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 12/06/2025.

25.0 The letter of DGGI dated 20.12.2024, was perused to learn the nature of the new facts that arose subsequent to the issue of the first SCN. The nature of infractions listed by the investigative agency in their letter of 20.12.2024 appear

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to be an outcome of a detailed and greater scrutiny of the case. It is noticed that the allegations cited in the letter dated 20.12.2024 flow from the primary violations of the Act and the Rules that were cited in DGGI's letter dated 19.03.2024 and were the basis of the first SCN dated 22.03.2024. Thus, the bedrock of the first SCN rested on the five broad categories of violations, listed in DGGI's letter dated 19.03.2024, outlined as hereunder:

"(i) Huge mismatches between amount of inward & outward supplies

(ii) outward supplies of products that have no inward supply

(iii) the said firm is involved in supply of bills only to certain firms

(iv) the said firm was also involved using fake bilty books of transporters that were found to be non-existent on verification

(v) certain inward suppliers of the firm have been found non-existent upon verification."

25.1 The second letter of DGGI dated 20.12.2024 appears to be an exhaustive and detailed coverage of the aforesaid violations. *Prima facie*, no new fact appears to have been unearthed. Right at the beginning of para 4 of the said second letter of DGGI states, "4. In this regard, it appears that grounds for cancellation of GST Registration of M/s. Baba Industries as communicated by this office were not taken into consideration while issuing the Show Cause Notice for cancellation of GST registration of M/s. Baba Industries".

25.2 Study of the details in para 4 thereafter is only a detailed break-down of the violations giving names of allegedly fake parties. We fail to appreciate what exactly are the new facts in the letter of DGGI dated 20.12.2024 that are distinctly, patently and markedly different from the five violations that were the basis of the first SCN dated 22.03.2024. Unfortunately, it appears to be a classic case of old wine in new bottles.

26.0 We notice another apparent haste and cavalier approach in deciding the issue. The second SCN, quoting both the letters of DGGI dated 19.03.2024 and

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20.12.2024, was issued on 12.06.2025 and the order-in-original was issued on 09.07.2025 cancelling the registration retrospectively with effect from 10.01.2020. Here we notice that in the 'Discussion & Findings' of his order dated 01.10.2024, the adjudicating authority had recorded, "I found that the party is duly registered for dealing with waste/scrap, gravel / gitti etc alongwith FMCG products at the time of issuance of SCN cancellation of registration." Apparently, the appellant was dealing in products other than those that were related to the investigation by DGGI.

26.1 This retrospective cancellation order dated 09.07.2025 read with the SCN dated 12.06.2025 suggests that only one opportunity was afforded to the appellant. We find it a little strange that a proceeding that would lead to retrospective cancellation, striking at the root of appellant's business, was decided only on the basis of one hearing, which too could not be attended by the appellant. The appellant was apparently having transactions with other taxpayers and cancelling the registration retrospectively without due diligence ostensibly does adversely hit the appellant's trade and profession.

27.0 We observe that the first SCN dated 22.03.2024 was adjudicated and a speaking order passed on 01.10.2024 deciding the issue of cancellation of registration based on the facts and investigation report available at that time. As per facts available with this Bench, crucially this decision was not appealed against by the Respondent department and it attained finality.

27.1 The investigative agency issues another letter to the Respondent department which appears to mildly tweak the facts while the cause of action appears to remain the same. The allegations of fraud, suppression and the like are raised based on facts that very easily could have been considered at the time of the first SCN, using noticeably the same foundational facts, and this appears to be the basis of the second SCN.

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27.2 The order-in-original issued consequent to the second SCN is a bald order that does not even attempt to list out the reasons for deviating from the first order-in-original and cancelling the registration given the fact that the second SCN dated 12.06.2025 explicitly mentions that the cancellation is based on both the letters of DGGI i.e. dated 19.03.2024 and dated 20.12.2024 and had enclosed copies thereof. This order-in-original dated 09.07.2025 merely repeats the cause cited in SCN dated 12.06.2025 and in the remarks mentions that the taxpayer did not respond to the SCN. It appears that the second SCN is framed on essentially the same cause of action or on facts that could have basis of violations of Rules 21 been arrived at the first instance, thereby safeguarding procedural fairness and preventing abuse of process.

27.3 Interestingly, we notice that recently on 26.10.2026, CBIC have issued a Circular No. 258/04/2026-GST issued from F. No. CBIC-20001/2/2026-GST, which clarifies issues related to SCN, demand, adjudication and appeal proceedings under the CGST Act, 2017. The circular is largely a compendium of various piece-meal instructions issued from time to time and we understand the officers are expected to have at least more than a rudimentary knowledge of drafting and issuance of a Show cause notice and its adjudication. Since it is procedural in nature and neither introduces any tax nor a vested right, we are compelled to draw attention to the circular given the apparent deficiencies / aberrations that we have observed in the issuance of SCNs and adjudication (especially the second order-in-original) in this case. We feel that the subject SCN, under our examination, could be a fit case for study how a SCN should not be drafted and issued. Further, while para 5.5 of the said circular expounds on the need to be vigilant as regards SCNs invoking Section 74, since the issue is pretty germane to the subject at hand, we deem it prudent to draw reference to the same. Para 5.5 of the circular mentions that,

"5.5. Further, issuing a second SCN, after the first on the same facts and grounds for the subsequent period, invoking fraud, wilful-misstatement, or suppression of facts is generally not legally valid unless new and independent grounds exist, such as unreported clearances. ....."

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27.4 The Circular is quite exhaustive providing broad guidelines on adjudication process as well that advise the need for affording personal hearings to the party. While the circular speaks of 03 opportunities, in the instant case the adjudicating authority proceeded with a non-speaking order issued after affording one opportunity to the party (paras 26 and 26.1 above) and not recording any reason why any further opportunity could not be extended given the fact that a retrospective cancellation is being awarded that would adversely impact financial transactions of other products as well.

28.0 Now we come to a vital and possibly clinching piece of information that the Respondent have uploaded on the portal on 08.11.2026. As per their averment, -
(i) The investigating agency had seized / resumed the laptop vide Panchnama dated 30.01.2024 drawn at the residence of Shri Deepanshu Srivastava;
(ii) The data extraction from the laptop was done not in a forensic lab but by the Digital Forensic Expert in the office of DGGI, Lucknow, and the proceedings were recorded in Panchnama dated 01.02.2024 & 02.02.2024;
(iii) The data extraction proceedings started on 01.02.2024 at around 05:00 PM and concluded on 02.02.2024 at around 01:30 PM. As per the "hash report" the acquisition of data from the laptop started at 09:13:10 and finished at 10:08:40 on 02.02.2024. The certificate under Section 65B of the Indian Evidence Act, 1872 is also enclosed.

28.1 The proper officer issued the SCN on 22.03.2024 on the basis of DGGI's letter dated 18.03.2024. No further searches or investigation appears to have been conducted after 22.03.2024 that could have provided the agency new leads or new facts or new information. The so called 'new facts' claimed in the letter dated 20.12.2024 were based on information ferreted out of the laptop seized by DGGI. This is clearly appearing in the letter dated 20.12.2024 of DGGI. If DGGI was not been able to unearth incriminating information prior to 18.03.2024 they should not have issued the first letter prompting the proper officer to issue the SCN on 22.03.2024. Logically, DGGI could have first done their homework rather than

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acting hastily. This averment dated 07.11.2026 of the Respondent Department is crucial in clarifying that the both the letters of DGGI that were the basis of the show cause notices were based on documents, or /and information unearthed from the seized laptop that were all available with DGGI before the issue of first letter dated 18.03.2024. We are also pained to observe that the authority mandated to issue show cause notice also does not appear to have applied its mind before issuing SCNs. This was much more important at the time of issuing the second SCN.

29.0 Cancelation of a registration is not a mechanical consequence of failing to comply with the SCN. Not only must the taxpayer be given an effective opportunity to respond but the authorities are bound to consider the response. Moreover, the order cancelling registration must be a reasoned order recording the findings of the authority. The reply of the taxpayer should be examined and conclusions must be based on law and facts connected to the case.

30.0 Retrospective cancellation is a harsh decision that not only affects the taxpayer but other taxpayers who have had transactions and thus the financial ecosystem. The implications are of a wider import. Such retrospective cancellation cannot be absent reasoned orders. Any retrospective cancellation must conform to the principles of natural justice, transparency and fairness as have also been observed by Hon'ble High Court of Delhi in the case of Suresh Chand Gupta vs Union of India and Ors WP (C) 11492/2024 dated 21.08.2024. As stated supra, in the matter of *Riddhi Siddhi Enterprises vs. Commissioner of Goods and Services Tax (CGST), South Delhi W.P.(C) NO. 8061 OF 2024* Hon'ble Delhi High Court have said that the power to cancel registration with retrospective effect can neither be robotic nor routinely applied; order must reflect reasons which may have weighed upon authority to cancel registration with retrospective effect.

31.0 We are constrained to acknowledge that the principle of constructive res judicata verily comes into picture herein as has been rightly raised by the appellant. Constructive res judicata refers to the principle that not only are

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matters actually decided by a competent court or authority final, but also matters which could have been, but were not, raised or adjudicated in the same proceeding, cannot be re-opened in a subsequent proceeding involving the same parties and cause of action.

31.1 The principle of constructive res judicata is incorporated in Explanation IV to Section 11 of the Code of Civil Procedure 1908 (CPC). It provides, in substance, that any matter which might and ought to have been made a ground of attack or defence in the former suit shall be deemed to have been directly and substantially in issue in that suit. While already outlined in para 12.1 above, the essential ingredients are paraphrased for appreciating the issue at hand:

a) There must have been an earlier proceeding between the parties or their privies;

b) The subsequent proceeding must concern the same matter or substantially the same cause of action, as applicable;

c) The ground now raised was available to the party in the earlier proceeding;

d) The party might and ought to have .....

e) the former proceeding must have been heard and finally decided by a competent court

32.0 It thus appears that the principle of res judicata / constructive res judicata, which is aimed at preventing unnecessary litigation and protecting the appellant from harassment by repetitive proceedings on the same essential argument, even if some new peripheral or related facts come to light later, is squarely applicable in this case under examination by us.

32.1 The letters of DGGI reveal that the second letter was largely an expansion of the earlier letter. The first SCN mentions the transgressions which appear to have been amplified in the second letter of DGGI dated 20.12.2024. In this background, S.P. Chengalvaraya Naidu v. Jagannath may not be applicable because it laid down that res judicata is excluded in cases if new fraud or new material facts are discovered after the first adjudication, which simply does not appear to be case herein.

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32.2 Study of the two letters issued by DGGI read with the two SCNs and their respective orders-in-original clearly establish that the principles that govern res judicata / constructive res judicata are veritably attracted in the subject case. The first SCN and its basis i.e, the letter of DGGI dated 18.03.2024 was again cited in the second SCN alongwith the second letter of DGGI dated 20.12.2024. The allegations were again the basis of the second SCN albeit with more detailed explanation and more exhaustive evidences cited. The first SCN dealing with substantially similar cause of action was decided by a competent court of the adjudicating authority and attained finality since it was not appealed against by the Department. In sum, the broad contours of res judicata / constructive res judicata are largely satisfied in the subject case.

33.0 We have noted that the First Appellate Authority has not found any merit in the appeal that the order-in-original dated 09.07.2025 was devoid of any reasoning or there was denial of principles of natural justice or that the second SCN was hit by res judicata / constructive res judicata. We, however, observe that the order-in-appeal fails to address these legal issues that we have discussed in detail in paras above, which strike at the heart of the adjudicatory framework.

34.0 We arrive at the conclusion that the second SCN is barred by res judicata / constructive res judicata, meaning thereby that the issues raised therein, or such issues which rightly could have been raised earlier, cannot be re-litigated. The cancellation order dated 09.07.2025 based on the SCN dated 12.06.2025 needs to be set aside as it is mired in legal infirmities and legally unacceptable.

34.1 Can the Bench, at this stage consider remanding the case to the adjudicating authority? No, because we have already held that the second SCN is legally unsustainable and liable to be quashed on grounds of constructive res-judicata. In fact, Hon'ble Supreme Court's decision in the case of Vikram Bhalchandra Ghongade v. State of Maharashtra (2025 INSC 1283) is a persuasive reaffirmation of the principle that jurisdictional legitimacy is the essence of

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judicial authority. Since the primary cause or, the SCN, being the jurisdictional foundation, is itself rendered a nullity and has jurisdictional defects, then the subsequent proceedings would indeed be otiose.

35.0 We are, thus, of the opinion that the order-in-original dated 01.10.2024 dropping the first SCN dated 22.03.2024 would be legally final and binding on both the appellant and respondent parties and no fresh proceedings based on the same cause of action or facts previously adjudicated can be initiated by the department unless genuinely new facts or material evidence are brought to light that were not available and could not have been reasonably presented earlier.

36.0 We also intend to underpin that unnecessary and tedious litigation on largely the same issues without patently and demonstrably fresh facts coming to light is totally avoidable and appellants need to be protected from manifestly undue harassment so as to safeguard their constitutional rights to carry on trade without fear or favour. It is the principle of res judicata / constructive res judicata that has strongly tilted the balance of scales decisively towards the appellant preventing the department from reopening settled matters. It affirms finality, fairness, and limits administrative overreach in GST cancellation proceedings.

Order

In the light of the discussions as above, we hereby set aside both the order-in-appeal No. 514/CGST/APPL/LKO/2025 dated 03.12.2025 and order for cancellation reference ZA0907253328058 dated 09.07.2025.

The order is pronounced in open court today i.e. 23.11.2026.

23/11/2026

(Alok Chopra)

(Narendra Kumar)

23.11.26

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