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Tax alert: Supreme Court reiterates that allegations of fraud, suppression of facts should emanate from show cause notice itself

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The Supreme Court has held that a show cause notice (SCN) issued under Section 74 of the CGST Act cannot be sustained where the notice merely contains a generic allegation of "fraud or concealment of facts" without setting out the basis for such allegations.

In a nutshell

Supreme Court held that mere reproduction of expressions such as "fraud", "wilful misstatement" or "suppression of facts" is insufficient for invoking the extended limitation period under Section 74.

Aspects supporting allegations of fraud or suppression must emerge from the SCN itself and cannot be supplanted through a counter affidavit.

Scroll down to read the detailed alert

Background

- The petitioner was issued intimation in Form DRC-01A along with annexure under Rule 142(1A)[1] of CGST Rules for FY 2018-19. Thereafter, a show cause notice (SCN) dated 13 June 2025 was issued under Section 74 of the CGST Act alleging evasion of tax by way of fraud or willful misstatement.
- The petitioner challenged the notice before the Madhya Pradesh High Court contending that the allegations of fraud and suppression were vague and that the proceedings were barred by limitation. The High Court[2] declined to interfere at the show cause notice stage and relegated the taxpayer to the adjudication process and statutory remedy. Aggrieved, the taxpayer approached the Supreme Court.
- The Department contended that the allegations of fraud and suppression of facts have been elaborated in the counter affidavit.

Supreme Court Judgement[3]:

- The Supreme Court noted that the due date for furnishing the annual return for FY 2018-19 stood extended to 31 December 2020. Accordingly, the limitation period of three years to issue order under Section 73(10) of CGST Act would have expired on 31 December 2023. After considering the exclusion of the COVID-19 period pursuant to the Supreme Court's limitation orders[4], the last date for issuance of order was computed as 28 February 2025. Since the SCN itself was issued after this date on 13 June 2025, the Court held that the notice was time barred under Section 73.
- The Court held that validity of a notice must be tested on the basis of the contents of the notice itself and cannot be supplanted by providing details in a counter affidavit.
- The Court noted that the SCN merely asserted, "fraud or concealment of facts". However, it did not disclose how fraud had been inferred or how concealment of facts had been detected. The Court observed that the usage of the expression "or" itself reflected uncertainty regarding the basis of invocation of Section 74.
- It held that the allegations that warrant application of the extended limitation period must be specifically stated in the notice itself and should disclose the aspects that led the authority to conclude that fraud, wilful misstatement or suppression of facts had occurred.
- Accordingly, the Supreme Court held that the impugned SCN was unsustainable in law, set aside the judgment of the Madhya Pradesh High Court and directed the Department not to take any further proceedings pursuant to the impugned notice.

Comments:

The Supreme Court's ruling reinforces that invocation of the extended limitation period under section 74 cannot be justified merely by mentioning allegations of fraud, wilful misstatement or suppression of facts. The decision emphasizes that the aspects supporting such allegations must emerge from the show cause notice itself and cannot subsequently be supplemented through pleadings before the court.

Notably, the Supreme Court has recently adopted a similar approach in another matter[5], wherein it observed that the foundational facts leading to an inference of fraud, wilful misrepresentation or suppression must be evident from the notice itself and that a mere mechanical reference to such expressions would not justify invocation of section 74. Read together, these decisions underscore that the validity of proceedings invoking the

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[1] As per Rule 142(1A), the Department may before service of show cause notice communicate details of tax, interest and penalty ascertained in Form GST DRC-01A.

[2] G.R. Infra Projects Ltd. Vs. State of Madhya, [2025] 180 taxmann.com 381 (Madhya Pradesh)

[3] G.R. Infra Projects Ltd. Vs. State of Madhya, [2026] 189 taxmann.com 764 (SC)

[4] Cognizance for Extension of Limitation, In re [2020] 117 taxmann.com 66/220 COMP CASE 447 (SC)

[5] M/s Tata Steel Limited Vs. UOI, SLP (C) No. 16859/2026

extended limitation period would likely depend upon the adequacy of factual allegations set out in the notice itself.

This line of decision may provide support to taxpayers seeking to challenge notices issued under Section 74 where the allegations of fraud, wilful misstatement or suppression are not backed by reasonings in the notice itself.