

Decoding Section 73 & 74 of CGST Act

73 vs 74

	73	74
Recovery of	Tax not paid , short paid or erroneously refunded ITC wrongly availed or utilised	
Fraud / Wilful Misstatement /Suppression of Facts with an intent to evade tax	Not required	Required
Limitation to issue Order	Within 3 years from due date to furnish annual return	Within 5 years from due date to furnish annual return
Limitation to issue Notice	At least 3 Months prior to time limit for issuance of order	At least 6 Months prior to time limit for issuance of order

73 vs 74

	73	74
Maximum Penalty	10% of Tax	100% of Tax
Minimum Penalty	Rs 10,000 cgst 10000 sgst	100 % of Tax
Reduced Penalty if tax interest & reduced penalty paid		
Before issuance of notice	No Penalty*	15% of tax
Within 30 days of notice	No penalty*	25% of tax
Within 30 days of Order	No reduction in Penalty	50% of tax

Time Limit for issuance of notice/order

FY	Due date for Annual return	Notice u.s 73	Order u.s 73	Notice u.s 74	Order u.s 74
2017-18	07-02-2020	30-09-2023*	31-12-2023*	07-08-2024	07-02-2025
2018-19	31-12-2020	31-01-2024*	30-04-2024*	30-06-2025	31-12-2025
2019-20	31-03-2021	31-05-2024*	31-08-2024*	30-09-2025	31-03-2026
2020-21	28-02-2022	28/30-11-2024!	28-02-2025	31-08-2026	28-02-2027
2021-22	31-12-2022	30-09-2025	31-12-2025	30-06-2027	31-12-2027
2022-23	31-12-2023	30-09-2026	31-12-2026	30-06-2028	31-12-2028
2023-24	31-12-2024	30-09-2027	31-12-2027	30-06-2029	31-12-2029

	2017-18		2018-19		2019-20	
	Notice	Order	Notice	Order	Notice	Order
Original time limit	07/11/2022	07-02-2023	30-09-2023	31-12-2023	31-12-2023	31-03-2024
N.N 13/2022-CT Dt 05/07/2022	30-06-2023	30-09-2023				
N.N 09/2023-CT Dt 31-03-2023	30-09-2023	31-12-2023	31-12-2023	31-03-2024	31-03-2024	30-06-2024
N.N 56/2023-CT Dt 28-12-2023			31-01-2023	30-04-2024	31-05-2024	31-08-2024

Decisions related to time limit

- Validity of N.N 09/2023-CT and N.N 56/2023-CT has been challenged before Hon'ble Supreme Court in HCC-SEW-Meil-AAG JV vs Assistant Commissioner of State tax **(2025) 30 Centax 452 (S.C.)** .

Time limit to issue notice section 73 for fy 2020-21

28-11-2024

- Andhra Pradesh HC
 - Cotton Corporation of India (2025) 27 Centax 158 (
- Telengana HC
 - Sri Durga Bhavani Enterprises (2025) 30 Centax 207

30-11-2024

- Delhi HC
 - Tata Play Ltd. (2025) 33 Centax 113 (Del.)

Suppression of Facts

- Suppression shall mean
 - Non declaration of Facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder,
 - or failure to furnish any information on being asked for, in writing, by the proper officer."

Fraud / Wilful – Misstatement

- Wilful Misstatement
 - Knowingly giving False statement/representation/information
- Fraud
 - Presenting false facts or Concealment of facts or Fabrication
 - Knowledge of Falsity or relevancy of facts
 - Intent to Deceive
 - Reliance by Other party
 - Resulting damage

Real world examples

Act	Fraud	Wilful misstatement	Suppression of Facts	Sec 73
Difference in tax liability as per GSTR1 Vs GSTR 3B	No	No	No	Yes
Mismatch of ITC GSTR2A/2B vs GSTR 3B	No	No	No	Yes
Supply declared as exempted turnover in returns later held as taxable supply	No	No	No	Yes
Taxable Supply on which tax is not paid no where declared in returns (not even in annual returns) not even as exempted	No	No	Yes	No

Real world examples

Act	Fraud	Wilful misstatement	Suppression of Facts	Sec 73
Taxable goods cleared under correct name but exemption wrongly claimed / wrong HSN code	No	No	No	Yes
Taxable goods cleared under wrong name to claim exemption / reduced tax rate detected during search	No	Yes	No	No
Non reversal of input tax credit under Rule 42 where exempt supply is declared in returns	No	No	No	Yes
Knowingly Claiming Input tax credit on fake invoice without receipt of goods	Yes	No	No	No

Relevant Judgments

- Suppression does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning **that the correct information was not disclosed deliberately to escape from payment of duty** *Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression. Pushpam Pharmaceutical Company vs CCE Bombay 1995 (78) ELT (401) SC.*
- Where there is no separate columns in returns to disclose the fact taxpayer cannot be alleged to have suppressed facts where duty paid clearance of deemed export were clubbed with domestic clearance **(Commissioner of Central Excise vs Reliance Industries Ltd (2023) 8 Centax 96 (S.C.))**

Relevant Judgments

- Where assessee under bona fide belief that service are covered under negative list and declared the same in st-3 returns there was no suppression of facts on part of assessee (**Commissioner of Central excise Vs Chartered Logistics Ltd (2024) 16 Centax 474 (S.C.)**)
- Where dispute is due to interpretation of statutory provisions the same cannot be regarded as fraud, wil-ful misstatement or suppression of facts **International Merchandising Company LLc vs Commisioner Service tax New delhi (2022) 1 centax 31 SC**

Relevant Judgments

- ***Cosmic Dye Chemical v. Collector of Central Excise* [(1995) 6 SCC 117 = 1995 (75) E.L.T. 721 (S.C.)]**
 - Now so far as fraud and collusion are concerned, it is evident that the requisite intent, *i.e.*, intent to evade duty is built into these very words.
 - So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word **“wilful” preceding the words “misstatement or suppression of facts” which means with intent to evade duty.**
 - It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Misstatement or suppression of fact must be wilful.”

Burden of Proof

- Burden of proving mala fides lie on the person alleging it (**uniworth textiles vs CCE Raipur 2013(288) ELT 161(SC)**)
 - **Mere non-payment of duties is not equivalent to collusion or wilful mis-statement or suppression of facts - Otherwise, there would be no situation for which ordinary limitation of six months would apply**
 - Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of *bonafide* conduct, by observing that “the appellants had not brought anything on record” to prove their claim of *bona fide* conduct, on the appellant.
 - **It is a cardinal postulate of law that the burden of proving any form of *mala fide* lies on the shoulders of the one alleging it.** This Court observed in *Union of India v. Ashok Kumar & Ors.* - (2005) 8 SCC 760 that “**it cannot be overlooked that burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility**”

Specific allegations must in SCN

- *There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act* **Central Excise Act in Collector of Central Excise v. H.M.M. Ltd 1995 (76) E.L.T. 497 (S.C**

GST specific Judgements (Court)

- **Where taxpayer failed to file GST returns and pay tax despite having capacity to pay, penalty under Section 74 was upheld as constituting willful suppression of facts to evade tax. Sriba Nirman Company (2025) 29 Centax 206 (A.P.) SLP dismissed by Apex Court (2025) 36 Centax 256 (S.C.) Review petition also dismissed by Hon'ble Supreme Court (2025) 37 Centax 47 (S.C.)**
- Show cause notice issued under section 74 without even a whisper of allegation of any fraud , wilful mis representation suppression etc held to be without jurisdiction **HCl Infotech vs Commissioner commercial tax (2024) 23 Centax 71 (All.)**

GST specific Judgements (Court)

- Unless a case of fraud, wilful misstatement or suppression of facts is made out provisions of Section 74 would not be attracted on a mere allegation of mismatch between GSTR-3B and GSTR-1. **XIAOMI TECHNOLOGY INDIA PVT. LTD (2024) 25 Centax 22 (Del.)**
- **Zodiac Energy Ltd. [2025] 177 taxmann.com 560 (Gujarat)**
 - **The show cause notice only** refers tax without there being any material on record to show that the petitioner has committed fraud or has made any wilfull misstatement or made any suppression of facts
 - . In absence of such facts demonstrated in the show-cause notice, the respondent-Authority could not have assumed the jurisdiction under Section 74 of the GST Act.

GST specific Judgements (Court)

- **Parity Infotech Solutions (P.) Ltd. (2023) 7 Centax 169 (Del.)**
 - Blocking of ITC merely on basis of communication of another authority was not sustainable when GST authority who had blocked such ITC and issued show cause notice for its appropriation had no tangible material to form any belief to this effect
 - show cause notice under section 74 of CGST Act, 2017 could be issued only if proper officer had formed a prima facie opinion that matter involves reason of fraud or any wilful misstatement or suppression of facts

GST specific Judgements (Court)

- Scrutiny of returns under section 61 of CGST Act is not an essential condition for initiating proceedings to demand tax under section 73/74 **devi traders vs state of Andhra Pradesh (2023) 8 Centax 22 (A.P.)**
- Clubbing/consolidation of multiple assessment years in single show cause notice under Section 74 of CGST Act is impermissible; **separate notices must be issued for each assessment year.** Chimney Hills Education Society (2024) 24 Centax 9 (Kar.)

GST specific Judgements (Court)

- Manpar Exim Inc. (2025) 37 Centax 357 (Del.) **SLP dismissed by Apex Court** (2026) 38 Centax 135 (S.C.)
 - **Pre SCN consultation not mandatory after amendment in rule 142(1A)**
 - Thus, this Court is of the opinion that **in cases involving allegations of fraudulent availment of ITC, where the transactions are spread across several years**, a consolidated notice may in fact be required in such cases in order to establish the illegal modality adopted by such businesses and entities. **The language of the legislation, itself, does not prevent issuance of SCN or order for multiple years in a consolidated manner**

CBIC Instruction 05/2023-GST dt 13-12-2023

- From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis- statement or suppression of facts to evade tax on the part of the said taxpayer.
- Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax.
- Therefore, only in the cases where the investigation indicates that **there is material evidence of fraud or wilful misstatement or suppression of fact to evade tax on the part of the taxpayer**, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice,
- **and such evidence should also be made a part of the show cause notice.**

Sterlin & Wilson Pvt Ltd

- First Judgment by Principal Bench (Delhi) of GSTAT
- Facts
 - Mismatch of tax liability gstr1 vs gstr 3b fy 2018-19
 - Notice issued under section 74
 - Appellant claimed difference was due to issuance of credit notes and adjustment of advance for different periods which could not be amended in GSTR1 due system constraints
 - All such adjustments were duly reflected in books of accounts and GSTR 3B there by no element of tax evasion is present

Sterlin & Wilson Pvt Ltd

- Facts (contd..)
 - Adjudicating authority rejected as
 - credit notes were not issued within time frame u.s 34(2)
 - No proof of reversal of ITC by recipients
 - Tax liability in GSTR3B lower than GSTR1 and not fully reconciled with GSTR 9 /9C
 - First Appellate Authority held
 - No intent to evade tax due to fraud , suppression of facts as debit note credit note were disclosed in books of accounts but did not disclose in periodical returns matching with total liability in annual return correctly
 - The appellant has not proved that itc passed on by appellant has not been utilised by recipients hence demand is sustainable u.s 73
 - Modified penalty to 10 percent of tax confirmed demand of tax under section 73

Sterlin & Wilson Pvt Ltd

- Grounds of Appellant before tribunal
 - Demand of tax and interest is erroneous in law and facts
 - Appellate authority erred in upholding demand without considering reconciliation
 - Once absence of intent of evade tax was admitted entire demand was to be dropped
 - Levy of interest and penalty is unsustainable as issue is reconciliatory and revenue neutral

Sterlin & Wilson Pvt Ltd

- Findings of Tribunal
 - In terms of section 112 read with Rule 112 **Tribunal is empowered to examine question of facts and it is last adjudicating forum on question of facts**
 - FAA has observed that debit notes/credit notes were disclosed in books of accounts which led to conclusion of absence of intent to evade tax .
 - The Appellant has been faulted only for reason that transaction in periodical return matching with total liability in Annual return correctly and he could not prove that itc passed on to recipient has not been utilised . **This aspect has to be relooked by Proper officer and Appellant should be given chance to amend his returns by condoning his delay**

Sterlin & Wilson Pvt Ltd

- Findings of tribunal
 - . Tribunal observed **that every honest taxpayer should be protected** and if it is held that he has no intention of evading tax by submitting wrong data or fraudulent misinformation he should be given a proper hearing before saddling him with interest and penalties .
 - **If it his case that his argument is not heard he should be given another chance .**
 - further the period concerned was hit by covid 19 pandemic where supreme court has directed arrest of running of limitation from 15-03-2020 to 28-02-2022 . Which is not applicable to timeline compliance in tax returns Without applying the principal of limitation , **tribunal directed to take pragmatic view to be taken and pedantic approach to be shuned.**

Sterlin & Wilson Pvt Ltd

- Findings of Tribunal
 - The plea of respondents that such a decision would become precedent and may cause numerous case to be remanded was rejected
 - Every litigation has its own merits and demerit . A case not be decided on the basis of consequences that follow in other litigations
 - Once Appellate Authority holds that notice under section 74 is not sustainable and comes to the conclusion that this is a matter to be considered under Section 73 of the CGST Act, **then the matter has to be remitted back to the learned Proper Officer in terms of section 75(2) for re-determining the tax to be paid along with penalty, interest ,etc.**

Sterlin & Wilson Pvt Ltd

- Findings of Tribunal
 - Moreover, we are of the opinion that **CGST / SGST Act is relatively new Act** and **professionals may not be thorough in the filing returns** at the relevant period,
 - together with fact that, at that **particular time most of returns were being filed manually and the technique of auto-population and full online filling was not operational to fullest extent** as it is now
 - **There are chances of human error. In order to obviate any such human error, the matter should be re-considered by the learned Proper Officer.**

Sterlin & Wilson Pvt Ltd

- Final Order of Tribunal
 - Appellate order upheld to the extent that notice under section 74 not sustainable .
 - Matter remanded to Original proper officer
 - Liberty given to Appellant to file amendment petition
 - The Appellant through its authorized Representative shall appear before the Proper Officer and file suitable application within a month. The case shall be re-considered as one under Section 73 of the CGST Act and after affording a reasonable opportunity of hearing, producing documents and seeking amendment (amendment must be filled withing 30 days from the publication of this judgment) shall be considered on merits by the learned proper officer. The learned Proper Officerwhile disposing the proceeding Under Section 73 of the CGST Act shall examine the genuineness of the Credit / Debit note sand other documents produced by the Appellant and render the final order.

Thanks

Adv. Ashish Kr Bansal

B.Com , CA , LLB