Prima facie satisfaction and not conclusive proof of fraud is sufficient to invoke Section 74 of the CGST Act

The Hon'ble Madras High Court in ***Fastenex Private Limited & Ors. v. State Tax Officer & Ors. [W.P. Nos. 35967, 35970, 35974 and 35976 of 2024 & Ors. dated June 08, 2026]***, while deciding a batch of nearly 250 writ petitions challenging proceedings initiated under Section 74 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**)/ Tamil Nadu Goods and Services Tax Act, 2017 (**"the TNGST Act"**), upheld the jurisdiction of the Proper Officer to invoke Section 74 at the show cause notice stage and held that the expression "where it appears" prescribes only a prima facie jurisdictional threshold and does not require a conclusive determination of fraud, wilful misstatement or suppression of facts before issuance of the notice. Further, held that where the allegation of fraud ultimately fails during adjudication, the proceedings do not become invalid ab initio and can be converted into proceedings under Section 73 of the CGST Act by virtue of Section 75(2) of the CGST Act.

Facts:

M/s. Fastenex Private Limited (**"the Petitioner"**) was subjected to an inspection conducted by the Intelligence Wing of the State GST Department on September 13, 2024 under Section 67 of the TNGST Act. During the inspection, certain defects were noticed, *inter alia*, that the Registration Certificate was not displayed at a prominent place, the books of accounts were not properly maintained and original purchase invoices were not produced, the staff did not co-operate during inspection, separate financial statements for the second plant were not furnished, and that the Petitioner had classified and paid tax on its goods at the rate of 18% instead of 28% applicable to automotive parts.

Based on the defects noticed during the inspection, the State Tax Officer (**"the Respondent"**) issued Intimations in Form GST DRC-01A dated September 18, 2024 under Rule 142(1A) of the Tamil Nadu Goods and Services Tax Rules, 2017 for the Financial Years (**"FY"**) 2021-22 to 2024-

25. The Petitioner filed its reply dated October 03, 2024. Not being satisfied with the reply, the Respondent issued Show Cause Notices in Form GST DRC-01 dated October 15, 2024 (**"the Impugned SCNs"**) under Section 74 of the TNGST Act, proposing an aggregate demand of approximately ₹18.43 crores for the said tax periods.

The Petitioner challenged the Impugned SCNs by way of writ petitions contending that the Impugned SCNs suffer from pre-determination of the issue, and that proceedings under Section 74 of the CGST Act cannot be initiated unless the foundational/jurisdictional facts of fraud, wilful misstatement or suppression of facts are first established by the Proper Officer. Reliance was placed on the judgments of the Hon'ble Supreme Court in ***Oryx Fisheries Private Limited v. Union of India [(2010) 13 SCC 427]*** **and** ***Siemens Limited v. State of Maharashtra [(2006) 12 SCC 33]*****.** The Revenue, on the other hand, contended that the expression "where it appears" employed in Sections 73 and 74 of the CGST Act requires only a prima facie satisfaction of the Proper Officer, and the correctness of the allegations is a matter for adjudication after considering the reply of the taxpayer.

<u>Issue:</u>

Whether the Proper Officer is required to conclusively establish fraud, wilful misstatement or suppression of facts before invoking Section 74 of the CGST Act, or whether a prima facie satisfaction based on the expression "where it appears" is sufficient to issue a show cause notice under Section 74 of the CGST Act?

<u>Held:</u>

The Hon'ble Madras High Court in ***W.P. Nos. 35967, 35970, 35974 and 35976 of 2024 & Ors.*** held as under:

- **Observed that**, the phrase "where it appears" occurring in Sections 73 and 74 of the CGST Act consciously prescribes a lower jurisdictional threshold as compared to Section 11A of the Central Excise Act, 1944, Section 28 of the Customs Act, 1962 and Section 73 of the Finance Act, 1994, under which a notice invoking the extended period could be issued only on the basis of definite information of non-payment or short-payment of duty/tax. The threshold is also materially different from the stricter "reason to believe" standard under Section 147 of the Income-tax Act, 1961 and, therefore, the judicial precedents rendered under the income-tax reassessment regime cannot be mechanically imported into the GST framework.

- **Observed that**, under the self-assessment regime, the Proper Officer performs a largely passive adjudicatory role and is duty-bound to initiate proceedings where the records prima facie disclose non-payment or short-payment of tax, erroneous refund, or wrongful availment/utilisation of Input Tax Credit (**"ITC"**).

- **Noted that**, a conjoint reading of the phrase "where it appears" with the phrase "by reason of" in Section 74 of the CGST Act indicates that recording of a prima facie view before issuance of the notice is sufficient. The existence of the jurisdictional/foundational fact must be discernible from the records, i.e., there must be ocular presence of information coupled with a rational exercise of mind by the Proper Officer, which constitutes the sine qua non for issuance of the notice.

- **Noted that**, a notice under Section 74 of the CGST Act need not restate the ingredients of fraud, wilful misstatement or suppression of facts, if such reasons already stand communicated to the taxpayer during the course of scrutiny, audit, special audit or inspection through Form GST ASMT-10, ADT-02, ADT-04 or INS-02 issued under Sections 61, 65, 66 or 67 of the CGST Act respectively, as these proceedings are interconnected and it is sufficient if the notice alludes to the same.

- **Held that**, proceedings initiated on the basis of materials gathered during scrutiny, audit, intelligence or investigation do not suffer from the vice of "borrowed satisfaction", so long as the statutory satisfaction ultimately remains that of the Proper Officer himself.

The GST enactments constitute a complete code and information gathered during such statutory processes may legitimately form the basis of the prima facie satisfaction.

- **Held that**, failure to conclusively establish fraud, wilful misstatement or suppression of facts at the conclusion of adjudication does not retrospectively invalidate the assumption of jurisdiction under Section 74 of the CGST Act. In such cases, Section 75(2) of the CGST Act operates as an in-built statutory safeguard, whereby the Proper Officer, Appellate Authority, Appellate Tribunal or the Court may direct conversion of the proceedings from Section 74 to Section 73 of the CGST Act, thereby protecting the taxpayer from higher tax, penalty and interest without invalidating the entire proceedings.

- **Held that**, where ITC has been availed contrary to Form GSTR-2A/2B and utilised through Form GSTR-3B, the Proper Officer may legitimately invoke Section 74 of the CGST Act, provided the reasons stand communicated at any of the earlier statutory stages. Further, in cases of circular trading and fraudulent passing of ineligible ITC, proceedings under Section 74 and Section 122 of the CGST Act may be initiated simultaneously.

- **Held that**, prima facie agreeing with the Division Bench of the Hon'ble Karnataka High Court in *Commissioner of Central Tax v. Chimney Hills Education Society*, neither Section 73 nor Section 74 of the CGST Act prohibits issuance of a common show cause notice covering multiple financial years, and at the highest, the demands may require year-wise segregation. However, a final pronouncement was refrained from, in view of the pending references before the Division Bench of the Madras High Court and the Larger Bench of the Bombay High Court.

- **Held that**, a detailed show cause notice does not ipso facto lead to an inference of pre-determination, as the notice merely contains proposals. Once the threshold of "where it appears" is satisfied, the primary remedy of the noticee is to file a detailed reply and contest the allegations before the Proper Officer, and writ jurisdiction ought not to be invoked merely because Section 74 of the CGST Act has been invoked, unless the notice is demonstrably without jurisdiction, issued by an incompetent authority or suffers from patent legal infirmity.

- **Directed that**, the writ petitions filed by the Petitioner challenging the Impugned SCNs stand dismissed, with a direction to the Respondent to pass orders on merits and in accordance with law within a period of three months, after considering the reply, if any, filed by the Petitioner. The batch was accordingly disposed of, granting relief only in matters involving case-specific procedural defects, while upholding the general jurisdiction of the Proper Officers to invoke Section 74 of the CGST Act.

Our Comments:

Section 74 of the CGST Act empowers the Proper Officer to issue a show cause notice "where it appears" to him that tax has not been paid or short paid or erroneously refunded, or ITC has been wrongly availed or utilised, by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, within the extended period of limitation prescribed under Section 74(10) of the CGST Act. In contradistinction, Section 73 of the CGST Act covers cases arising for any reason other than fraud, wilful misstatement or suppression of facts. Section 75(2) of the CGST Act provides that where the Appellate Authority, Appellate Tribunal or the Court concludes that the charges of fraud, wilful misstatement or suppression are not established, the tax shall be determined deeming as if the notice were issued under Section 73(1) of the CGST Act. The present judgment elevates Section 75(2) into a complete answer to the challenge against invocation of Section 74, holding that the mechanism protects both the Revenue and the taxpayer. It is pertinent to note that with effect from FY 2024-25, Sections 73 and 74 have been replaced by a unified Section 74A of the CGST Act, inserted vide the Finance (No. 2) Act, 2024, which also opens with the very same expression "where it appears", and hence, the interpretation rendered in this judgment would continue to hold the field for the new regime as well.

The judgment consciously departs from the pre-GST jurisprudence of the Hon'ble Supreme Court in ***Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay [1995 Supp (3) SCC 462]*** **and** ***Uniworth Textiles Limited v. Commissioner of Central Excise, Raipur [(2013) 9 SCC 753],*** wherein it was consistently held that suppression of facts must be deliberate and with intent to evade duty, and that the extended period could be invoked only on the basis of definite material. The Hon'ble Madras High Court has reasoned that the legislature, by consciously employing the expression "where it appears" in Sections 73 and 74 of the CGST Act, has diluted this threshold at the stage of issuance of the notice, while preserving the taxpayer's full right of rebuttal during adjudication. Notably, the Court also drew support from the recent judgment of the Hon'ble Supreme Court in ***Armour Security (India) Limited v. Commissioner, CGST, Delhi East Commissionerate [2025 SCC OnLine SC 1700],*** which mandates that a show cause notice must contain detailed allegations to enable the assessee to file an effective reply.

However, it is equally important to note the contrary line of judicial thought. The Hon'ble Calcutta High Court in ***Joyous Blocks & Panels Private Limited v. Assistant Commissioner [2022 SCC OnLine Cal 4306]*** and the Hon'ble Madras High Court itself in ***SL Lumax Limited v. Deputy Commissioner of State Taxes-II [(2024) SCC OnLine Mad 420]*** had earlier taken the view that a notice under Section 74 of the CGST Act must specifically incorporate the ingredients of fraud, wilful misstatement or suppression of facts, failing which the very assumption of jurisdiction is vitiated. Similarly, the Hon'ble Allahabad High Court in ***HCL Infotech Limited v. Commissioner, Commercial Tax [Writ Tax No. 1015 of 2024 dated September 25, 2024]*** quashed a show cause notice issued under Section 74 which did not disclose the ingredients of fraud or suppression. The present judgment has expressly distinguished/declined to follow the former two decisions, holding that they did not consider the complete scheme of the GST enactments under which the reasons may be communicated at any anterior statutory stage.

In our view, this judgment marks a significant recalibration of the litigation strategy in Section 74 matters. Taxpayers can no longer expect show cause notices to be quashed at the threshold merely on the ground that fraud or suppression has not been conclusively established or elaborately pleaded in the notice, where the substratum of the allegation is traceable to Form GST ASMT-10, ADT-02, ADT-04, INS-02 or DRC-01A. The battleground now firmly shifts to the adjudication stage, where taxpayers must file detailed replies contesting both the merits and the invocation of the extended period, and, in appropriate cases, press for conversion of the proceedings into Section 73 by invoking Section 75(2) of the CGST Act, so as to avail the lower penalty regime and the benefit of the amnesty mechanisms built into the statute. At the same time, since the questions relating to consolidated show cause notices covering multiple financial years remain pending before Larger Benches, taxpayers should continue to raise and preserve such jurisdictional objections in their replies.

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(Author can be reached at info@a2ztaxcorp.com)