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Mere Recital of Suppression Cannot Unlock the Extended Limitation under Section 74 of the CGST Act

The Hon'ble Supreme Court in ***Tata Steel Limited v. Union of India & Ors.*** [Civil Appeal arising out of SLP (C) No. 16859 of 2026 dated August 25, 2026] set aside the Show Cause Notice dated June 13, 2025 issued under Section 74 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) for FY 2018-19 to FY 2020-21 and the consequential Order-in-Original dated December 26, 2025, and held that the foundational facts leading to the inference of fraud, wilful misstatement or suppression must be evident from the notice itself, and that the mere mechanical recital of such words in the notice, without application of mind, cannot enable recovery beyond the normal period of limitation prescribed under Section 73 of the CGST Act.

Facts:

M/s Tata Steel Limited (**"the Appellant"**) was subjected to an audit by the office of the Comptroller and Auditor General of India (**"C&AG"**), pursuant to which audit observations were communicated to the Appellant on May 27, 2024 regarding alleged mismatch of Input Tax Credit (**"ITC"**) for FY 2018-19, FY 2019-20 and FY 2020-21 and short payment of tax for FY 2019-20. The Appellant furnished its replies, supporting documents were called for on June 27, 2024 and further communications were exchanged between the Appellant and the Department.

The Department (**"the Respondent"**) thereafter issued a Show Cause Notice dated June 13, 2025 (**"the Impugned SCN"**) under Section 74 of the CGST Act covering the three financial years. Vide communication dated June 27, 2025, the Additional Commissioner intimated the Appellant that the Impugned SCN had been transferred to the 'call book', i.e., kept in abeyance, and that the Department had contested the audit objection before the Public Accounts Committee (**"PAC"**). However, a fresh notice was issued on July 01, 2025 reviving the Impugned SCN and proposing a "protective demand" on the ground that the proceedings were

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time-bound under the GST law. The adjudication culminated in the Order-in-Original dated December 26, 2025 (**“the Impugned Order”**) confirming the demand under Section 74 of the CGST Act.

The Appellant challenged the Impugned Order before the Hon’ble Jharkhand High Court in ***Tata Steel Limited v. Union of India & Ors. [W.P. (T) No. 2485 of 2026 dated April 23, 2026]***, contending that none of the jurisdictional ingredients of Section 74 co-existed and that the summary recall of the matter from the call book on the plea of limitation violated the principles of natural justice. The Hon’ble High Court, relying on *Whirlpool Corporation v. Registrar of Trade Marks [(1998) 8 SCC 1]*, *State of Maharashtra v. Greatship (India) Limited [(2022) 17 SCC 332]* and *Oberoi Constructions Ltd. v. Union of India [2024 SCC OnLine Bom 3508]*, held that the Impugned Order was neither wholly without jurisdiction nor vitiated by any patent breach of natural justice, that the question whether the ingredients of Section 74 co-existed involved adjudication of factual issues which could be tested in the statutory appeal, and that assignment of a matter to the call book was merely an administrative convenience. The writ petition was dismissed with liberty to file a statutory appeal within four weeks. Aggrieved, the Appellant approached the Hon’ble Supreme Court.

The Appellant contended that the Impugned SCN did not contain any allegation of fraud, wilful misstatement or suppression of facts, in the absence of which the extended period of five years under Section 74 could not be invoked, the normal period being three years under Section 73 of the CGST Act. It was further contended that the Assessing Officer was himself not convinced about the audit objection, as was evident from the transfer of the matter to the call book, and that the revival of the notice as a “protective measure” was a concept alien to the GST regime.

The Respondent contended that the proceedings had commenced even before the expiry of limitation under Section 73 and that the record clearly indicated suppression of material facts and wilful misrepresentation. Reliance was also placed on Explanation 2 to Section 74 of the

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CGST Act to contend that “suppression” would cover even a mere non-declaration of facts or information which the assessee was obliged to declare.

Issues:

- Whether a Show Cause Notice under Section 74 of the CGST Act can be sustained where the notice merely employs the words “fraud, wilful misstatement or suppression of facts” without setting out the foundational facts on the basis of which such inference has been drawn by the proper officer.
- Whether the Impugned SCN dated June 13, 2025 for FY 2018-19 to FY 2020-21 was within the period of limitation prescribed under Section 73(10) read with Section 73(2) of the CGST Act.

Held:

The Hon'ble Supreme Court in **Civil Appeal arising out of SLP (C) No. 16859 of 2026** held as under:

- Observed that, Section 73(2) of the CGST Act mandates the proper officer to issue the notice at least three months prior to the time limit specified in Section 73(10), which requires the order to be issued within three years from the due date of furnishing the annual return under Section 44 read with Rule 80 of the CGST Rules, 2017. By virtue of successive notifications issued under Section 44(1), the due dates for furnishing the annual returns for FY 2018-19, FY 2019-20 and FY 2020-21 stood extended to December 31, 2020, March 31, 2021 and February 28, 2022 respectively, and the limitation under Section 73(10) accordingly expired on December 31, 2023, March 31, 2024 and February 28, 2025.
- Observed that, in view of the order dated January 01, 2022 in **In Re: Cognizance for Extension of Limitation [Suo Motu Writ Petition (C) No. 3 of 2020]** excluding the period

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from March 15, 2020 to February 28, 2022, the limitation for FY 2018-19 and FY 2019-20 stood extended to February 28, 2025, while for FY 2020-21 it remained unchanged at February 28, 2025. The Impugned SCN dated June 13, 2025 was, therefore, beyond the period of limitation under Section 73 for all the three years.

- Noted that, the argument that the proceedings had commenced before the expiry of limitation under Section 73 was fallacious, since the limitation under Section 73(10) is for issuance of the order under Section 73(9) and Section 73(2) requires the notice to be issued at least three months before that time limit. Equally, reliance on Explanation 2 to Section 74 could not be countenanced, since the said Explanation stood omitted with effect from November 01, 2024.
- Noted that, proceedings under Section 73 or Section 74 can be initiated only on the satisfaction of the proper officer. Even where objections are raised in audit, the proper officer must enter his own satisfaction before issuing the notice, and for a notice under Section 74, the satisfaction must extend not merely to the occurrence of ITC mismatch or short payment but also to the fact that fraud, wilful misstatement or suppression had led to such mismatch or short payment.
- Noted that, the very fact that the Department had taken up the audit objection before the PAC indicated that there was no satisfaction of the proper officer even as to the mismatch or short payment, let alone the suppression alleged. But for a bland statement of availment of ITC “without documentary evidence and suppress the facts”, the Impugned SCN contained no foundational facts to validate the allegation of suppression. The revival of the notice as a “protective demand” also had no statutory sanction, protective assessment being a measure not permitted under the GST law.
- Held that, when an extended period of limitation is provided for recovery on the ground of fraud, wilful misstatement or suppression, it is not mere lip service to the provision that is intended. The foundational facts which led to such inference must be

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evident from the notice itself; the mere employment of such words does not indicate application of mind, upon which alone the satisfaction can be arrived at, and the words are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute.

- Held that, the Impugned SCN could not be sustained and the consequential Impugned Order dated December 26, 2025 was equally put in peril; both were accordingly set aside.
- Directed that, since the three-year limitation for all the three years expired only on February 28, 2025, the extended period of two years under Section 74 was not yet over. It would, therefore, be open to the Department, if thought fit, to initiate appropriate proceedings under Section 74 with the foundational facts coming out from the notice itself, and an order being passed before February 28, 2027.

Hence, the appeal was allowed with the aforesaid liberty reserved to the Department.

Our Comments:

Section 73 of the CGST Act provides for determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts to evade tax, whereas Section 74 covers the same defaults where they are occasioned by reason of fraud or any wilful misstatement or suppression of facts to evade tax. The distinction between the two provisions lies in the period of limitation and the quantum of penalty. Under Section 73(10), the order is to be issued within three years from the due date of furnishing the annual return for the relevant financial year, with the notice under Section 73(2) to be issued at least three months prior thereto; under Section 74(10), the order is to be issued within five years, with the notice under Section 74(2) to be issued at least six months prior thereto. Section 75(10) further provides that the adjudication proceedings shall be deemed to be concluded if the order is not issued within the

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said time limits. Section 75(2) provides that where an appellate authority or court concludes that the charge of fraud, wilful misstatement or suppression is not established, the proper officer shall determine the tax deeming as if the notice were issued under Section 73(1), which, in our view, necessarily carries with it the three-year limitation under Section 73(10). Explanation 2 to Section 74, which defined “suppression” to mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or other document, or failure to furnish information asked for in writing by the proper officer, stands omitted with effect from November 01, 2024, and the Court declined to entertain the Revenue’s reliance on it for a notice issued in June 2025. Sections 73 and 74 now apply only up to FY 2023-24, and for FY 2024-25 onwards Section 74A prescribes a common limitation of forty-two months from the due date of the annual return for issuance of the notice irrespective of the nature of the default, with the distinction between fraud and non-fraud cases confined to the quantum of penalty. The present ruling is, therefore, of enormous significance for the legacy periods from FY 2017-18 to FY 2023-24, which constitute the bulk of the demands currently under adjudication and appeal.

The judgment reaffirms, in the GST context, the settled position under the erstwhile central excise, customs and service tax regimes that invocation of the extended period is a jurisdictional condition and not a matter of form. In *Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur* [(2013) 9 SCC 753], the Hon’ble Supreme Court held that the burden of proving mala fide conduct lies on the Revenue and that specific averments to that effect in the show cause notice are a mandatory requirement for commencement of action under the extended period, failing which the assessee has no opportunity to meet the case of the Department. In *Pushpam Pharmaceuticals Co. v. Commissioner of Central Excise, Bombay* [1995 Supp (3) SCC 462], *Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut* [(2005) 7 SCC 749] and *Continental Foundation Joint Venture v. Commissioner of Central Excise, Chandigarh* [(2007) 10 SCC 337], it was held that suppression must be deliberate and with intent to evade duty, and that mere omission or failure to disclose is not suppression. *ITW*

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Signode India Ltd. v. Collector of Central Excise [(2004) 3 SCC 48] and *Tamil Nadu Housing Board v. Collector of Central Excise, Madras [1995 Supp (1) SCC 50]* likewise require that the ingredients for invoking the extended period must co-exist and be spelt out in the notice, and *Commissioner of Central Excise v. Brindavan Beverages (P) Ltd. [(2007) 5 SCC 388]* lays down that the show cause notice is the foundation on which the Department has to build its case and that a demand cannot be sustained on allegations not contained in the notice. Under GST, the Hon'ble Allahabad High Court in *HCL Infotech Ltd. v. Commissioner, Commercial Tax* [Writ Tax No. 1396 of 2024 dated September 27, 2024] and *Varanasi Sangam Expressway Pvt. Ltd. v. Commissioner of State Tax* [Writ Tax No. 1028 of 2025 dated October 08, 2025] quashed notices under Section 74 which did not make even a whisper of fraud, wilful misstatement or suppression.

Significantly, the same Bench of the Hon'ble Supreme Court had, six days earlier, taken an identical view in *G.R. Infra Projects Limited v. State of Madhya Pradesh & Ors.* [Civil Appeal No. 11277 of 2026 dated August 19, 2026], while setting aside the order of the Hon'ble Madhya Pradesh High Court in *G.R. Infra Projects Limited v. State of Madhya Pradesh & Ors.* [W.P. No. 40749 of 2025 dated October 29, 2025]. In that case, a notice under Section 74 of the CGST Act read with the MPGST Act, also dated June 13, 2025, had been issued for FY 2018-19 raising a demand of Rs. 1,52,56,431/- on account of mismatch between GSTR-3B and e-way bills, ineligible ITC and post-supply cancellation of vendors' registrations. The Hon'ble High Court had dismissed the writ petition at the notice stage, holding that once a notice is issued under Section 74, the writ court cannot examine whether Section 74 was erroneously invoked, that the proper officer could in any event pass the order under Section 73 in view of Section 74(3) and (4), and that the plea of limitation was for the adjudicating authority to decide. The Hon'ble Supreme Court reversed the High Court, refusing even to look at the counter affidavit in which the allegations of fraud were sought to be elaborated, on the trite principle that the requirements which make a notice valid must be contained in the notice itself and cannot be supplanted by a counter affidavit in Court, a principle traceable to *Mohinder Singh Gill v. Chief*

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Election Commissioner [(1978) 1 SCC 405]. The Court held that a bland statement of “fraud or concealment of facts”, the disjunctive “or” itself indicating that the officer was not sure of the ground on which he proceeded, did not satisfy the requirement that the allegations leading to the inference of fraud or suppression must emanate from the notice itself, and directed the State to desist from taking any further proceedings in pursuance of the notice.

While the two decisions arrive at the same conclusion, the facts and the stage of challenge were materially different. *G.R. Infra Projects* arose out of anti-evasion proceedings involving summons under Section 70, search of the premises under Section 67, recording of statements and a 191-page investigation report, and the challenge was laid to the notice itself before adjudication; the Hon’ble Supreme Court nevertheless held that the existence of investigation material on the departmental file was of no avail where the notice did not articulate the foundational facts. *Tata Steel*, on the other hand, arose out of a C&AG audit objection which the Department itself had contested before the PAC, involved the peculiar sequence of transfer to the call book and revival as a protective demand, and reached the Supreme Court after the Order-in-Original had been passed and the High Court had relegated the assessee to the statutory appeal. Read together, the two decisions establish that the requirement of foundational facts in the notice applies irrespective of whether the notice is founded on audit or on investigation, and irrespective of whether the challenge is laid at the notice stage or after adjudication. One distinction, however, deserves attention: in *G.R. Infra Projects* the Court did not expressly reserve liberty to the State to initiate fresh proceedings, whereas in *Tata Steel* express liberty was granted to the Department to initiate proceedings under Section 74 with proper foundational facts and to pass an order before February 28, 2027, the five-year period not having expired. Taxpayers obtaining relief on this ground must, therefore, be conscious that quashing of a defective notice does not by itself foreclose fresh proceedings within the outer limit prescribed under Section 74(10).

Two further aspects of the decision merit attention. First, on alternate remedy, both the Hon’ble Jharkhand High Court in *Tata Steel* and the Hon’ble Madhya Pradesh High Court in *G.R.*

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Infra Projects had followed the line of authority in *State of Maharashtra v. Greatship (India) Limited* [(2022) 17 SCC 332], *Thansingh Nathmal v. Superintendent of Taxes* [AIR 1964 SC 1419] and *Oberoai Constructions Ltd. v. Union of India* [2024 SCC OnLine Bom 3508] to hold that the co-existence of the ingredients of Section 74 was a factual question to be tested in appeal. The Hon'ble Supreme Court, without expressly dealing with the question of alternate remedy, proceeded to examine the notice and set it aside, thereby treating the absence of foundational facts in the notice as a defect going to the root of jurisdiction within the first exception recognised in *Whirlpool Corporation v. Registrar of Trade Marks* [(1998) 8 SCC 1]. This is a welcome course-correction, as High Courts had of late been routinely relegating assesseees to the statutory appeal even where the notice on its face disclosed no ground for invoking the extended period. Second, on limitation, the Court computed the period under Section 73(10) with reference to the extended due dates for annual returns under Section 44(1) and the exclusion of the period from March 15, 2020 to February 28, 2022 under the suo motu order in *In Re: Cognizance for Extension of Limitation*, and treated the said exclusion as available to the statutory authorities as well. The judgment does not advert to the notifications issued under Section 168A of the CGST Act extending the time limit under Section 73(10) for FY 2017-18 to FY 2019-20, the validity of which has been separately litigated; however, even on the basis of those notifications, the outer limit for FY 2018-19 and FY 2019-20 stood at April 30, 2024 and August 31, 2024 respectively, and for FY 2020-21 at February 28, 2025, so that a notice dated June 13, 2025 was beyond the Section 73 period on any computation.

The observations on the 'call book' and 'protective demand' are equally instructive. The practice of transferring show cause notices to the call book has its origin in the Board's instructions under the erstwhile central excise and service tax regime, notably the Master Circular No. 1053/02/2017-CX dated March 10, 2017, and has no statutory recognition under the CGST Act. The only exclusion of time that the statute recognises is under Section 75(1), where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, in which event the period of stay is excluded in computing the limitation under

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Sections 73(10) and 74(10). A departmental decision to keep a notice in abeyance does not stop the clock, and the Court has now made it clear that a notice cannot be revived as a protective demand, a concept familiar in income-tax jurisprudence but alien to the GST law, merely because limitation is running out. Indeed, the Court treated the Department's own contest of the audit objection before the PAC as evidence of the absence of the proper officer's satisfaction, underscoring that audit objections, whether of the C&AG or of the departmental audit wing, cannot be mechanically converted into notices under Section 74 without the proper officer independently applying his mind.

The practical takeaway for taxpayers is that every notice under Section 74 for the legacy periods, particularly one issued after the expiry of the Section 73 time limit, should be scrutinised at the threshold for the presence of specific and particularised allegations of fraud, wilful misstatement or suppression, as distinct from a formulaic recital of the statutory words. Where such foundation is absent, the notice is vulnerable to challenge as being without jurisdiction, and the defect cannot be cured by the adjudication order, by a counter affidavit or by the appellate authority. For the Department, the decision is a reminder that the satisfaction of the proper officer must be independently recorded and reflected in the notice itself, and that reliance on audit objections, template allegations or procedural devices such as the call book and protective demands will not sustain a demand beyond the normal period of limitation.

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