dhruva

A Ryan LLC Affiliate

LITIGATION ALERT

July 13, 2026

Madras High Court upholds SCN's under Section 74 – says a lower threshold for initiating SCN for fraud applies under GST regime compared to the erstwhile pre-GST laws

Madras High Court upholds SCN's under Section 74 – says a lower threshold for initiating SCN for fraud applies under GST regime compared to the erstwhile pre-GST laws

Fastenex Private Limited vs State Tax Officer[1]

The Madras High Court has held that assessment proceedings or Show Cause Notices ('SCN') initiated under Section 74 of the respective GST enactments covering multiple tax periods or financial years in a common/consolidated manner do not automatically fail.

The Court has dismissed the writ petitions holding that there was no pre-determination or bias vitiating the notices, and that a detailed SCN does not, by itself, indicate a closed mind on the part of the Proper Officer. The Court examined, at length, the scope and jurisdictional threshold for invoking Section 74 of the CGST Act to propose a demand.

Background and facts

- The Petitioner, Fastenex Private Limited along with other taxpayers Turbo Energy Private Limited and Ispahani Estates Private Limited etc., filed writ petitions before the Madras High Court.
- The challenge was part of a large batch of approximately 250 Writ Petitions questioning the validity of SCNs and Assessment Orders initiated under Section 74 of the CGST Act.
- For Fastenex Private Limited, the State Authorities had initiated proceedings under Section 74 of the CGST Act by issuing multiple SCNs dated October 15, 2024, covering the tax periods 2021 to 2025.
- The primary ground of challenge by the petitioners was that the "Proper Officers" lacked foundational/jurisdictional facts or failed to explicitly spell out the specific reasons required to invoke the extended period of limitation under Section 74 of the CGST Act, i.e. fraud, collusion, wilful misstatement, or suppression of facts.
- Additionally, the petitioners argued against the practice of clubbing multiple tax periods/financial years into single, composite proceedings, placing reliance on co-ordinate bench rulings including in **Titan Company Limited**[2], which had mandated the segregation of tax periods to raise demands.

Contentions of the Revenue

- The Revenue Department contended that the "Proper Officer" was legally justified in invoking Section 74 of the CGST Act based on the audit, inspection, or scrutiny

[1] TS-467-HC(MAD)-2026-GST

[2] Titan company Limited Vs. JC, 2024 (1) TMI 619

mechanisms embedded within the GST structure.

- On the issue of clubbing multiple tax periods, the Revenue relied upon emerging judicial developments, highlighting a recent Division Bench decision of the Karnataka High Court in **Chimney Hills Education Society**[3] which explicitly reversed the single-bench's ruling and held that nothing in the statute bars a common consolidated notice for multiple financial years.
- The Revenue Department maintained that under Sections 73 and 74 of the CGST Act, limitations are triggered by relevant dates that are not strictly confined to individual financial years, making composite notices practically workable and valid.

Issue

- Whether the Proper Officer was legally justified in invoking the extended period of limitation under Section 74 of CGST Act, and what constitutes the threshold of jurisdictional facts required for the invocation of Section 74 of the CGST Act?
- Whether assessment proceedings or SCNs initiated under Section 73/74 of the CGST Act covering multiple tax periods or financial years are barred under the scheme of GST?

Findings of the High Court

At the outset, the High Court noted that to answer the question of threshold applicable to invoke Section 74 of the CGST Act, it was essential to examine whether Section 73 and 74 of the CGST Act are comparable to the erstwhile indirect tax provisions since the parties have relied on multiple rulings pertaining to the erstwhile regime. The Court concluded that the pre-GST statutory provisions and precedents are distinguishable from those under the current GST regime:

- In this regard, the Court undertook a detailed analysis on the doctrine of sub silentio and weight of *obiter dicta*. Placing reliance in **Vazir Sultan & Sons**[4] and **Hazara Singh**[5], the Court noted that the obiter dicta of the Supreme Court ('SC'), while not strictly binding, holds "considerable weight" and judicial propriety demands the same be followed.
- The Court clarified that not merely the *ratio decidendi* of cited authorities, but their *obiter dicta* and observations made *sub silentio*[6], thereby treating all three as carrying precedential weight.
- The Court held that the bulk of case laws cited by parties across the batch, including **Chemphar Drugs and Liniments**[7], **H.M.M. Ltd**[8], **Cosmic Dye Chemical**[9], **Uniworth Textiles Ltd**[10] were all decided in the context of Section 11A of the Central Excise Act, 1944[11], Section 28 of the Customs Act, 1962[12], and Section 73 of the Finance Act, 1994 ('analogous provisions').
- The Court conducted a thorough historical review of the analogous provisions and held that under earlier regime, assessment conducted by the Proper/Central Excise Officer himself and not by self-assessment, thus a subsequent demand necessarily

[3] 2024 SCC Online Kar 21844.
[4] 1959 SCC OnLine SC 125
[5] AIR 1975 SC 1083
[6] A court pronouncing a ruling or applying a legal principle without explicitly stating its rationale, or without formally perceiving and debating the specific point of law involved
[7] (1989) 2 SCC 127
[8] 1995 Supp (3) SCC 322
[9] (1995) 6 SCC 117
[10] (2013) 9 SCC 7
[11] As it stood, read with the pre-1994/1995 regime of Approved Classification Lists under Rule 173B and Approved Price Lists under Rule 173C of the Central Excise Rules, 1944
[12] As it stood prior to the 2011 amendment to Section 17 introducing self-assessment

required "definite information" that had escaped duty.

- It was held that the threshold under the erstwhile regime for invoking the extended period was materially higher requiring the officer to already possess concrete, definite information of evasion by fraud/collusion/wilful misstatement/ suppression before a notice could even issue.

- Based on the above understanding, the Court held that those decisions are at best a "useful guide", but their ratio cannot be blindly applied onto Section 73/74 of the CGST Act, which operate in a wholly different, self-assessment driven framework.

- The Court observed that decisions under the Tamil Nadu General Sales Tax Act, 1959 and Tamil Nadu Value Added Tax Act, 2006 (which use the phrase "where, for any reason" under the charging sections) are not *pari materia* with Section 73/74 of the CGST Act.

- The Court further held that since the expression "reason to believe" used under the income tax provisions imports a materially higher threshold requiring a "live link" or rational nexus demonstrable from recorded reasons than the phrase "where it appears" used in Section 73/74 of the CGST Act, the income tax decisions are not of profit to the Petitioners

<u>Interpretation of the expression "Where it appears to the Proper Officer" under Sections 73 and 74 of the CGST Act</u>

- The Court traced the history of Section 74 through the First Draft GST Model Law and the Second Draft GST Model Law and held that the earlier draft contained a materially higher threshold for invoking the fraud/suppression limb, modelled closely on Section 11A of the Central Excise Act and Section 28 of the Customs Act. However, at the 8th GST Council meeting, the Council apparently under a mistaken belief that the draft provision did not satisfy "due process" inserted the words "where it appears to the proper officer that", which the Court held had the effect of substantially diluting the safeguards originally built into the Second Draft GST Model Law.

- The Court extensively deliberated on why the phrase "Where it appears to the Proper Officer" was consciously drafted into both Sections 73 and 74 of the CGST Act.

- The Court surveyed an extensive body of case laws interpreting "appears"/ "where it appears" across different statutes including in the case of **Hardeep Singh**[13] concluding, uniformly, that "appears" denotes only a prima facie view, "seeming" or "clear to the comprehension," importing a lesser degree of probability than proof, and requiring only that the authority apply its mind to available material and form a rational, non-arbitrary belief not a conclusively established or "definite" finding.

- Court also examined the scrutiny-to-notice pipeline under Section 61 of the CGST Act (Form GST ASMT-10/ASMT-11/ASMT-12), Section 65 of the CGST Act (Audit), Section 66 of the CGST Act (Special Audit), and Section 67 of the CGST Act (Inspection, Search and Seizure), holding that any of these processes can generate the "jurisdictional fact" required for a Section 73/74 of the CGST Act, and that reasons communicated at any of these earlier stages need not be repeated verbatim in the SCN

[13] (2014) 3 SCC 92

itself, so long as the SCN references or builds upon them.

Whether a "detailed" SCN under Section 74 amounts to pre-determination:

- The Court noted that the SC ruling in the case of **Oryx Fisheries**[14] was rendered in an entirely different statutory context of Rule 43 of the MPEDA Rules, 1972, dealing with cancellation of an exporter's registration certificate, wherein the SC noted that the notice itself used language asserting that the charges had been "proved beyond doubt". However, in the present case the SCN contained no such language of concluded guilt but merely set out allegations and a proposed demand.

- The Court further observed that the SC in **Siemens Ltd.**[15] dealt with a situation where a demand was issued in the disguise of a SCN, in a case where the Revenue Department had no territorial jurisdiction whatsoever and thus the decision is not relevant to the facts of the present case.

- The Court instead, relied on the SC ruling in **Armour Security**[16] which held that a SCN is expected to be exhaustive, detailed, and specific laying out allegations, the legal provisions invoked, and the materials relied upon so that the noticee is able to meet the case sought to be made out against him. Applying this reasoning, the Court dismissed the Petitioner's contention that the detailed and specific nature of the SCNs indicated predetermination.

Validity clubbing of SCNs

- The High Court acknowledged a deep judicial split across States (High Courts) on the issue of clubbing of SCNs and the acknowledged the earlier order of the Madras HC in cases such as **Titan Company Limited** ***(Single judge)*** which held that clubbing multiple financial years was impermissible. However, the Court differed from that precedent and instead explicitly aligned itself with the Division Bench of the Karnataka High Court **Chimney Hills Education Society *(Supra)*.**

- The Court observed that if an assessment proceeding is fundamentally initiated within the legal window of time, it cannot be abated or quashed merely because the notice was structured as a composite document covering several tax periods.

Judgement

- The threshold for issuing an SCN under both Section 73 and Section 74 of the CGST Act is materially lower than under the analogous provisions and is satisfied once it "appears" to the Proper Officer from records available at any stage (self-assessment scrutiny, audit, special audit, or inspection/search) that tax was unpaid/short-paid/erroneously refunded or ITC wrongly availed/utilised.

- On the point of clubbing of SCN's, the Madras High Court disposed of the Writ Petitions concerning Fastenex Private Limited and Turbo Energy Private Limited, ruling in favour of structural workability, observing that there is no statutory bar against issuing common or composite notices under Section 74 of the CGST Act covering multiple tax periods or financial years.

- The Court declined to quash the proceedings on the mere technicality of clubbed periods. However, the Court refrained from issuing further sweeping directives as the issue remains pending

[14] (2010) 13 SCC 427
[15] (2006) 12 SCC 33
[16] [2025] 177 taxmann.com 478 (SC)

before a Division Bench of the Madras High Court (W.A.Nos.3448 of 2025 etc.) and the Larger Bench of the Bombay High Court[17] besides the Supreme Court of India.

Re-adjudication of a matter under Section 73 where the original adjudication under Section 74 of the CGST Act is found incorrect

- With respect to the writ petitions pertaining to Ispahani Estates Private the challenge was to final Assessment Orders under Section 74 of the CGST and not SCNs. The Court found that neither the SCN nor the reply indicated the value of outward supply made by the Petitioner during the relevant periods, and that the ITC amounts demanded appeared, prima facie, highly disproportionate without that context. Since the ineligible ITC characterisation had not been demonstrated with the rigour required for invoking fraud/suppression, the Court remitted the matters back to the Respondent to pass a fresh order on merits under Section 73 of the CGST Act as the limitation under the section had not expired.

[17] WP No. 16848 of 2025

Lower threshold for invoking fraud allegations – goes against the historical judicial spirit: This decision posits that Section 74 GST notices are evaluated on a materially lower threshold ("where it appears") than the pre-GST excise/customs/service tax regime.

Established legal principles require allegations of fraud to be clearly stated with precise details and facts. This mandatory requirement of detailed pleading was affirmed by the Supreme Court of India in the landmark rulings of **Bishundeo Narain v. Seogeni Rai**[18] **and A.C. Ananthaswamy v. Boraiah**[19]. However, the lower standard of detail required in GST fraud notices, as upheld by the Court, departs from this established jurisprudence. This dilution violates the principles of natural justice, which mandates that a notice recipient must be informed of the exact allegations to prepare a proper defence – as was held in **Armour Security (supra)**.

The ruling could be an uncurbed weapon for the Revenue Department: The apprehension is not in the ratio but, in how field formations will read it and more concerning will be its application. The decision and conclusion that the notice "need not specify the ingredients of fraud" may further fuel the existing practice of rampant invocation of Section 74 with a bare cross-reference to a scrutiny or audit form, if this decision holds, taxpayers will need to re-strategize, as the centre of gravity shifts from the notice stage to the adjudication stage.

Impact on taxpayer litigation strategy: Taxpayers seeking to challenge SCNs on the ground of pre-determination/bias must show that the notice records a concluded finding of guilt rather than a reasoned proposal, a distinction the Court applied strictly here. Based on this reasoning the writ courts may be reluctant to quash SCNs merely because they are detailed or specific.

The evidentiary bar for quashing SCNs on bias has been set quite high by this decision. Therefore, the taxpayers facing SCNs following inspection/search action may henceforth have to focus on filing comprehensive replies addressing both (procedural and substantive) issues, rather than relying on threshold challenges to the SCN itself.

The Ispahani Estates outcome demonstrates that taxpayers can approach the writ court not just to quash a Section 74 order, but to seek remand for fresh adjudication under Section 73, where the threshold for invoking Section 74 of the CGST Act is not met.

Clubbing of SCNs: Given that the matter is *sub-judice* a larger bench, rather than concluding the legal aspect, the Court followed a pragmatic and purposive approach in the disposing of the batch of petitions before them stating that invalidating tax notices purely on the technicality of "clubbing" would place an immense administrative burden on the tax department without necessarily altering the underlying tax liabilities. Thus, the ruling does not carry any precedential value on this point. Until the Division Bench of the Madras High Court or the Supreme Court delivers a definitive, binding verdict on

[18] AIR 1951 SC 280

[19] (2004) 8 SCC 588

this procedural conflict, taxpayers facing composite notices must continue to include the point in their defence.

The statute has since moved on: The Explanation to Section 74 of the CGST Act (deemed suppression), relied on in the Ispahani Estates reasoning, was omitted by the Finance (No. 2) Act, 2024 w.e.f. 01.11.2024; and, from FY 2024-25 Sections 73 and 74 of the CGST Act are replaced by a unified Section 74A. Thus, the threshold analysis of Section 74 in the present case is portable to Section 74A of the CGST Act, but the finding based on the Explanation to Section 74 are specific only to demand periods covered under Section 74 of the CGST Act.

ADDRESSES

Mumbai
Dhruva Advisors India Pvt. Ltd.
1101, One World Centre,
11th Floor, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai – 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad
Dhruva Advisors India Pvt. Ltd.
402, 4th Floor, Venus Atlantis, 100
Feet Road, Prahlad Nagar,
Ahmedabad – 380 015
Tel: +91 79 6134 3434

Bengaluru
Dhruva Advisors India Pvt. Ltd.
67/1B, Lavelle Road,
4th Cross, Bengaluru,
Karnataka – 560001
Tel: +91 90510 48715

Delhi / NCR
Dhruva Advisors India Pvt. Ltd.
305-307, Emaar Capital Tower-1,
MG Road, Sector 26, Gurugram
Haryana – 122 002
Tel: +91 124 668 7000

New Delhi
Dhruva Advisors India Pvt. Ltd.
1007-1008, 10th Floor, Kailash
Building, KG Marg, Connaught Place,
New Delhi – 110001
Tel: +91 11 4471 9513

GIFT City
Dhruva Advisor IFSC LLP
510, 5th Floor, Pragya II,
Zone-1, GIFT SEZ, GIFT City,
Gandhinagar – 382050, Gujarat.
Tel: +91 79 6512 3604

Pune
Dhruva Advisors India Pvt. Ltd.
406, 4th Floor, Godrej Millennium,
Koregaon Park,
Pune - 411001,
Tel: +91 20 6730 1000

Kolkata
Dhruva Advisors India Pvt. Ltd.
4th Floor, Camac Square,
Unit No. 403 & 404B,
Camac Street,
Kolkata - 700016, West Bengal
Tel: +91-33-66371000

Singapore
Dhruva Advisors Pte. Ltd.
#16-04, 20 Collyer Quay,
Singapore – 049 319
Tel: +65 9144 6415

Abu Dhabi
Dhruva Consultants
1905 Addax Tower,
City of Lights, Al Reem Island,
Abu Dhabi, UAE
Tel: +971 26780054

Dubai
Dhruva Consultants
Emaar Square Building 4,
2nd Floor, Office 207, Downtown,
Dubai, UAE
Tel: +971 4 240 8477

Saudi Arabia
Dhruva Consultants
308, 7775 King Fahd Rd,
Al Olaya, 2970,
Riyadh 12212, Saudi Arabia

KEY CONTACTS

Dinesh Kanabar
Chairman & CEO
dinesh.kanabar@dhruvaadvisors.com

Ranjeet Mahtani
Partner
ranjeet.mahtani@dhruvaadvisors.com

Jignesh Ghelani
Partner
jignesh.ghelani@dhruvaadvisors.com

Kulraj Ashpnani
Partner
kulraj.ashpnani@dhruvaadvisors.com