# INTUNE INDIRECT

## SUPREME COURT: INVOCATION OF EXTENDED LIMITATION UNDER SECTION 74 OF THE CGST ACT REQUIRES SCN TO SPECIFICALLY SET OUT BASIS FOR FRAUD, WILFUL MISSTATEMENT OR SUPPRESSION

### Background

The Supreme Court in ***G.R. Infra Projects Limited v. State of Madhya Pradesh & Ors.*** **[Civil Appeal No. 11277 of 2026]** considered whether a Show Cause Notice ("SCN") issued for FY 2018-19 could be sustained under Section 74 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**"), when the notice was issued beyond the period of limitation prescribed under Section 73 of the CGST Act.

The SCN dated 13 June 2025 was issued in respect of FY 2018-19. The assessee contended that proceedings were barred by limitation under Section 73 and that Section 74 of the CGST Act could not be invoked merely by alleging fraud, wilful misstatement or suppression of facts.

For FY 2018-19, the time for furnishing the annual return was ultimately extended to 31 December 2020. Consequently, the limitation under Section 73 of the CGST Act would ordinarily have expired on 31 December 2023. After giving effect to the exclusion of the period directed by the Supreme Court during the COVID-19 pandemic, the extended limitation period expired on 28 February 2025. The SCN issued on 13 June 2025 was therefore beyond the period prescribed under Section 73 of the CGST Act. The Department sought to justify the invocation of Section 74 by relying, inter alia, upon allegations of fraud and suppression contained in its counter-affidavit before the Court.

**Issue**

Whether an SCN can invoke the extended limitation under Section 74 of the CGST Act merely by using the expressions “fraud”, “wilful misstatement” or “suppression of facts”, without setting out the facts or circumstances forming the basis for such allegations.

**Hon’ble Supreme Court's ruling**

The Hon’ble Supreme Court held that the circumstances and allegations justifying invocation of the extended limitation under Section 74 of the CGST Act must emanate from the SCN itself.

The Hon’ble Court observed that a bare or mechanical reference to “fraud or concealment of facts” is insufficient. The SCN must disclose how fraud was inferred or how concealment/suppression of facts was detected, and must identify the aspects which led the proper officer to conclude that such conduct had occurred.

The Hon’ble Court further refused to consider the Department's counter-affidavit for supplying deficiencies in the SCN. It reiterated the settled principle that when an authority's notice or order is challenged for non-application of mind or failure to satisfy statutory requirements, the validity of such notice or order must be assessed from the contents of the notice/order itself and cannot subsequently be supplemented through a counter-affidavit filed before the Hon’ble Court.

Applying these principles, the Hon’ble Court found that the SCN contained only a bland statement referring to “fraud or concealment of facts”, without explaining the basis for such conclusion. The use of “or” itself indicated uncertainty as to whether the proceedings were founded on fraud or concealment of facts.

Accordingly, the Hon’ble Supreme Court set aside the SCN, set aside the order of the High Court which had upheld it, and directed the State to desist from taking any further proceedings pursuant to the SCN.

**Key takeaway**

The judgment reinforces that Section 74 of the CGST Act cannot be invoked as a mere limitation-extending provision by mechanically reproducing the statutory expressions of “fraud”, “wilful misstatement” or “suppression of facts” in an SCN.

Where the Department seeks to invoke the extended limitation under Section 74, the SCN itself must disclose the specific factual basis and circumstances from which the alleged fraud, wilful misstatement or suppression is inferred. Such deficiencies cannot subsequently be cured through pleadings or a counter-affidavit before the Court.

**Practical implication**

The ruling may provide a substantive ground for assessees to challenge proceedings under Section 74 where:

- the SCN is issued beyond the limitation period applicable to Section 73;
- the SCN merely reproduces the statutory expressions of “fraud”, “wilful misstatement” or “suppression of facts”;
- the SCN does not identify the conduct or facts constituting such fraud, wilful misstatement or suppression; or
- the Department seeks to rely upon material or allegations introduced subsequently through a reply, counter-affidavit or other proceedings to justify invocation of Section 74.

The judgment in the case of ***G.R. Infra Projects Limited (Supra)*** therefore places emphasis on the contents and application of mind evident from the SCN at the time of its issuance, particularly where invocation of Section 74 has the effect of extending the otherwise applicable limitation period.

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