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IMPACT OF ENACTMENT OF SECTION 74A OF THE CGST ACT, 2017

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Abstract

The statutory framework dealing with the demand and recovery of the Goods and Services Tax (GST) in India has undergone a major change with the insertion of Section 74A into the Central Goods and Services Tax (CGST) Act, 2017. This provision was introduced through the Finance (No. 2) Act, 2024, replaces the existing adjudication mechanism of Sections 73 and 74 for financial years from 2024-25. The legislature seeks to reduce preliminary litigation surrounding statutory classification by merging cases of genuine errors and fraudulent evasion into a singular procedural code. However, the operational mechanics of Section 74A reveal a complex reality that while it standardizes issuance timelines and eliminates nominal disputes, it simultaneously extends the limitation period for non-fraudulent defaults. This article provides a detailed jurisprudential and practical analysis of the impact of Section 74A, evaluating its comparative architecture, early judicial interpretations by the Supreme Court and High Courts, and its ultimate effect on bona fide taxpayers.

INTRODUCTION

Since the inception of the GST regime on July 1, 2017, the adjudicatory machinery for demanding short-paid tax, erroneously refunded amounts, or wrongly availed Input Tax Credit (ITC) was bifurcated based on the intent of the taxpayer.

Originally, GST maintained a clear distinction in adjudication. The Section 73 of the CGST Act governed cases without fraud, wilful misstatement, or the suppression of facts. On the other hand, Section 74 governed cases involving such fraudulent elements, carrying substantially longer limitation periods and higher penalty structures.

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However, this theoretical neatness translated poorly into practicality and administration. A pervasive legacy problem emerged wherein tax authorities mechanically invoked Section 74 (fraud) even for routine, interpretational, or clerical issues. This aggressive administrative posture was largely driven by the desire to keep the limitation period alive after the shorter deadline under Section 73 had lapsed, thereby demanding higher penalties and subjecting genuine taxpayers to unwarranted allegations of fraud. Recognizing the resultant surge in classification challenged litigation, the legislature introduced Section 74A as a remedial consolidation.

OVERVIEW: SECTION 74A

The Finance (No. 2) Act, 2024, introduced the Section 74A¹, designing it as a consolidated, overarching demand provision. The legislative intent was to dismantle the preliminary battleground of "fraud versus no-fraud" at the stage of issuing the Show Cause Notice (SCN).

A. Prospective Application and the Survival of Legacy Provisions

Section 74A acts as the exclusive demand section for tax liabilities arising from the Financial Year (FY) 2024-25 onwards. Consequently, Sections 73 and 74 have not been entirely removed from the statute; they continue to govern and adjudicate demands pertaining to the period up to FY 2023-24. Section 74A does not retroactively reduce demands or penalties already initiated under the old 73/74 regime. Therefore, for the immediate future, tax professionals and the judiciary will navigate a dual-regime landscape.

B. Core Statutory Features

- 1. Unified Adjudication Umbrella:** All demands for non-payment, short-payment, erroneous refund, or excess ITC from FY 2024-25 onwards are raised strictly under Section 74A, regardless of whether fraud is involved. The assessing officer is no longer required to first decide between the "fraud" and "no-fraud" aspect before issuing a notice.
- 2. Statutory Threshold for Notice:** To relieve both the exchequer and the taxpayer from immaterial litigation, Section 74A mandates that no SCN shall be issued if the differential tax involved is below ₹1,000.

¹ The Finance (No. 2) Act, 2024 (Act 15 of 2024), s. 138.

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3. **Flexibility in Reclassification:** Addressing the prevalent misuse of fraud allegations, the new law expressly incorporates a reclassification mechanism. If a case is initially treated as "fraud" but the evidence does not support it, the law allows downgrading the penalty to the non-fraud level under Section 74A.

COMPARATIVE JURISPRUDENCE: TIMELINES AND PENALTIES

To accurately assess the impact of Section 74A, a comparative analysis is essential.

A. Harmonization of Limitation Periods

Under the old regime, there were two different time limits applicable. The limitation period to serve an SCN under Section 73 was 33 months, while Section 74 afforded the department 54 months.

Section 74A strikes a middle path by introducing a uniform limitation period of 42 months for the issuance of all notices, regardless of the underlying intent. For the adjudication order, under the old law, officers had 36 months under Section 73 and 60 months under Section 74. Under Section 74A, the adjudication order must be passed within 12 months from the date of the SCN, which is extendable by a further 6 months.

While this uniformity aids procedural predictability, it fundamentally prejudices the bona fide taxpayer. The limitation period for non-fraudulent cases has been effectively extended by 9 months. This grants authorities an extended runway to scrutinize routine transactions, thereby prolonging the period of uncertainty for compliant businesses.

B. Evolution of Penalty Structures and Settlement Windows

While the issuance of notices is consolidated, the penalty jurisprudence under Section 74A remains heavily tethered to the presence or absence of fraud. However, the procedural windows for voluntary settlement have been broadened significantly.

- **Pre-Notice Voluntary Compliance:** If a taxpayer pays the tax and interest before the SCN is issued, non-fraud cases attract a 0% penalty, while fraud cases incur a 15% penalty.

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- **Post-Notice Settlement:** The statutory window to pay reduced penalties after receiving an SCN has been doubled from 30 days to 60 days. Payment within this 60-day window results in a 0% penalty for non-fraud cases and a 25% penalty for fraud cases.
- **Post-Adjudication:** If the liability is settled within 60 days of the adjudication order, the penalty in non-fraud cases is capped at 10% of the tax or ₹10,000 (whichever is higher). For fraud cases, it escalates to 50% of the tax. If decided by the officer and paid later, fraud cases attract a mandatory penalty equal to 100% of the tax evaded.

THE BURDEN OF PROOF AND JUDICIAL PRECEDENTS

The jurisprudence surrounding the invocation of extended limitation periods and fraud penalties is deeply rooted in the concept of mens rea (guilty mind). While Section 74A consolidates the procedural issuance of notices, the substantive burden on the revenue department to prove fraudulent intent for higher penalties remains rigidly governed by established jurisprudence.

Before the transition, the Supreme Court of India in CC, CE and ST v. Northern Operating System categorically held that fraud or wilful misstatement cannot be presumed merely from a short payment of tax; it requires cogent, material evidence.² Conversely, in the recent landmark judgment of Sriba Nirman Company v. Assistant Commissioner, the Supreme Court settled the interplay between compliance and suppression, ruling that sustained non-filing of monthly GST returns combined with non-payment can indeed constitute wilful suppression under the CGST penalty regime.³

High Courts have also stringently monitored the mechanical invocation of fraud provisions. The Allahabad High Court in M/s RaghuvanshAgro Farms Limited Vs State of U.P deprecated the routine issuance of Section 74 notices, emphasizing that the existence of mens rea is a strict jurisdictional pre-condition.⁴ In a similar vein, the Madras High Court in Neeymo Enterprise Solutions v. The Commercial Tax Officer, quashed multiple assessment

² CC, CE and ST - Bangalore (Adjudication) v. M/s Northern Operating System, 2022 (5) TMI 967 (SC).

³Sriba Nirman Company v. Assistant Commissioner SLP(C) No. 14270 of 2025

⁴ M/s RaghuvanshAgro Farms Limited Vs State of U.P Writ Tax No. 3829 of 2025

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orders, ruling that proceedings are void ab initio if the foundational jurisdictional facts of fraud or suppression are not explicitly alleged in the show cause notice.⁵

Furthermore, the Bombay High Court in *M/s. Hakikatrai and Sons, Akola v. Union of India* restricted the department's overreach by ruling that the statutory scheme does not permit the consolidation of multiple financial years into a single show cause notice under Section 74, even in cases alleging fraudulent availment of Input Tax Credit.⁶

These precedents underscore a critical reality for the Section 74A era: authorities cannot bypass the evidentiary burden of proving intent simply because the initial notice categorization has been abolished.

EARLY JUDICIAL SCRUTINY

The introduction of Section 74A immediately birthed jurisdictional friction, prompting swift judicial intervention regarding its strict temporal applicability.

This issue was decisively addressed by the Madras High Court in *Tvl. Fancy Agency, v. The Deputy State Tax Officer-I, Virudhunagar*, wherein the petitioner challenged an ex parte Assessment Order passed by the proper officer under Section 74, explicitly for the Assessment Year 2024–2025. The principal contention raised was that, with effect from 01.04.2024, proceedings relating to the determination of tax could be initiated only under the newly introduced Section 74A.

Validating the taxpayer's statutory interpretation, the High Court categorically held that from 01.04.2024 onwards, the revenue authorities are legally empowered to initiate proceedings only under Section 74A of the Act, and not under Sections 73 or 74. Because the impugned SCN and assessment order for FY 2024-25 were issued under the obsolete machinery of Section 74, the High Court ruled that the tax officer had acted without the authority of law⁷. This precedent establishes a rigid jurisdictional perimeter, ensuring that the department cannot fall back on the old regime to sustain newly initiated proceedings.

⁵*Neeyamo Enterprise Solutions v. The Commercial Tax Officer*
W.P(MD)Nos.30453 to 30458 of 2024

⁶ *M/s. Hakikatrai and Sons, Akola v. Union of India and Ors* WRIT PETITION
NO.6118/2025

⁷*Tvl. Fancy Agency, v. The Deputy State Tax Officer-I, Virudhunagar* 2025
Taxo.online 3550

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PRACTICAL REALITIES

Despite the legislative intent to foster a predictable procedural code, the ground reality of Section 74A's implementation has ignited significant alarm among trade bodies and tax professionals.

During a prominent GST conclave jointly organized by the CGST Ahmedabad Zone and the Gujarat Chamber of Commerce and Industry (GCCCI), industry leaders articulated severe apprehensions regarding the administration of the new law⁸. Because Section 74A applies to "any reason" of short payment without first bifurcating into 73/74 buckets, assessing officers may feel more empowered to start proceedings and worry about fraud vs. non-fraud only at the penalty stage.

A senior representative of the GCCCI's Indirect Tax Committee highlighted a disturbing trend that most current GST scrutiny notices are being issued under Section 74(A), even in the absence of fraudulent intent. This indiscriminate application defeats the legislative purpose of the law and imposes an unfair burden on compliant taxpayers. The consequences of this misuse are grave, as unjustified fraud allegations under Section 74A expose businesses to harsh penalties and uniquely disqualify bona fide entities from participating in beneficial government amnesty schemes. In response, industry bodies are urgently petitioning for systemic reforms, demanding a balanced audit approach and that CGST authorities restrict the use of Section 74(A)'s fraud-level penalties strictly to cases where evasion is genuinely suspected.

CONCLUSION

The enactment of Section 74A of the CGST Act, 2017, represents a bold legislative stroke aimed at decluttering India's indirect tax dispute resolution mechanism. By fusing the disparate trails of Sections 73 and 74, it forces both the revenue department and the taxpayer into a singular procedural corridor for all future liabilities from FY 2024-25 onwards.

While the statutory consolidation, the ₹1,000 notice threshold, and the extended 60-day settlement windows undeniably introduce elements of relief, the provision is far from a

⁸ Tax experts raise concerns over misuse of GST audit scrutiny notices", The Times of India, Jun. 16, 2025, available at: <https://timesofindia.indiatimes.com/city/ahmedabad/tax-experts-raise-concerns-over-misuse-of-gst-audit-scrutiny-notices/articleshow/121890246.cms>.

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remedy. The extended 42-month limitation period for non-fraudulent cases operates as a tangible burden on compliance management. More alarmingly, early administrative practices indicate a predilection for deploying Section 74A notices to aggressively leverage fraudlevel penalty threats for minor discrepancies, signalling a potential explosion in litigation.

Ultimately, whether Section 74A manifests as a boon or a burden will be dictated by administrative discipline and judicial oversight. If revenue authorities adhere strictly to evidenceorientedadjudication reserving the higher penalty structures solely for cases of egregious tax evasion, the provision will successfully streamline GST administration. For genuine taxpayers, the strategy under the new regime must centre on proactive compliance: disclosing fully, documenting thoroughly, challenging uncorroborated fraud allegations vigorously relying on Supreme Court and High Court precedents, and tactically utilizing the 60-day settlement windows to close clear liabilities before they snowball into prolonged disputes.

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