

## Section 74 and Its Misuse in GST Show Cause Notices

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### Introduction

In recent times, a significant issue has come out in the Goods and Services Tax (GST). Many taxpayers are receiving Show Cause Notices (SCNs) under Section 74 of the GST Act, in cases where the time limit to issue notices under Section 73 has expired. The department is resorting to Section 74, utilizing its extended period of limitation, without establishing the necessary grounds that justify its invocation.

By understanding Section 74 and recognizing when its use is unjustified, taxpayers can prepare robust replies to SCNs and safeguard their interests.

### What is Section 74 of the GST Act?

Section 74 of the GST Act allows to issue SCNs with an extended period of limitation when there is a case of fraud, willful misstatement, or suppression of facts. This provision is critical because it permits the department to take action beyond the usual time limits prescribed under Section 73, but only under specific conditions that must be established.

### The Misuse of Section 74: An Emerging Concern

A disturbing trend has been observed where departmental authorities issue SCNs under Section 74 without adequately establishing the grounds of fraud, willful misstatement, or suppression of facts. This is particularly prevalent in cases where the time limit for issuing notices under Section 73 has lapsed. Authorities are invoking Section 74 as a blanket provision to extend the limitation period without fulfilling the stringent requirements needed to justify its use.

### Key Points to Consider When Defending Against Section 74 Notices

#### 1. Differing Interpretations of Statutory Provisions:

If a taxpayer has interpreted a statutory provision differently from the department, it does not automatically amount to suppression or willful misstatement. The mere fact that the department disagrees with the taxpayer's interpretation does not constitute grounds for invoking Section 74. A genuine difference in interpretation should not be treated as a case of fraud or suppression.

#### 2. Proper Record Keeping in Books of Accounts:

If a taxpayer has properly recorded a transaction in their books of accounts, it cannot be considered as suppression of facts. The intention to suppress information cannot be inferred if the transaction has been transparently accounted for. This is a critical defense point as proper record-keeping demonstrates the absence of any intent to deceive the authorities.

#### 3. Revenue Neutrality:

In cases where there is no loss of revenue to the department, the invocation of Section 74 is unjustified. For instance, if a taxpayer unintentionally fails to pay liability under Reverse Charge Mechanism (RCM) but is eligible to claim the same amount as Input Tax Credit (ITC), there is no revenue loss to the department. Such situations should not be construed as attempts to evade tax and therefore do not warrant the extended limitation period under Section 74.

#### **4. Audit Conducted by the Department:**

If the department has already conducted an audit and found no objections, any subsequent attempt to issue an SCN under Section 74 is questionable. A detailed audit without findings of fraud or suppression weakens the case for invoking Section 74 later.

#### **5. Liability to Furnish Statutorily Required Information Only:**

Taxpayers are only obligated to furnish information that is statutorily required. If a departmental officer demands information beyond what is legally mandated and then claims suppression of facts, such a case should not hold under Section 74. The law does not require taxpayers to provide information not specified by the statute.

#### **6. Information in the Public Domain:**

If the information in question is already in the public domain, it cannot be claimed as suppressed. The transparency of the information negates any argument of intentional concealment.

### **Strengthening Your Defense Against Unjustified Section 74 Notices**

When receiving an SCN under Section 74, it is crucial for taxpayers to critically assess whether the essential conditions for invoking this section have been properly established. The key is to identify whether the department has genuinely substantiated its claims of fraud, willful misstatement, or suppression of facts. If the grounds for such claims are weak or non-existent, taxpayers have strong defenses to challenge the validity of the notice.

By leveraging the points discussed above, taxpayers can construct a compelling reply to SCNs issued under Section 74, ensuring that they are not unfairly penalized for situations that do not meet the criteria for this severe provision. Understanding your rights and the correct application of GST provisions is paramount in maintaining compliance and defending against overreach by authorities.

### **Final Thoughts**

If you find yourself on the receiving end of a Section 74 notice, remember that the burden of proof lies with the authorities. They must justify why the extended period of limitation under Section 74 is applicable to your case. If they fail to do so, you have every right to contest the notice and seek relief.