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–Adv. B. Maragatha Nithya & Adv. Nithika. A

Section 74 Proceeding Void Without Jurisdictional Facts

A jurisdictional fact is a foundational fact that must exist before a statutory authority can assume power to act ; if this essential condition is absent, the authority lacks jurisdiction and any resultant proceeding stands vitiated. Section 74 of the CGST Act, 2017 empowers authorities to initiate proceedings in cases where there is an allegation of tax not paid, short paid, erroneously refunded, or input tax credit wrongly availed due to fraud, wilful misstatement, or suppression of facts with intent to evade tax. This section can only be invoked when these essential jurisdictional facts are clearly alleged and supported in the show cause notice itself. Without such foundational allegations, the authority lacks jurisdiction to proceed, rendering the proceedings void ab initio.

However, despite this clear statutory mandate, very often , Section 74 of the CGST Act 2017 is invoked mechanically mainly because of the advantage of getting extended period for locking revenue with respect to otherwise time barred demand. Therefore, many a times, notices /order under Section 74 would be lacking in any substantive material to support allegations of fraud, suppression, wilful misstatement etc.



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Such matters when challenged vide writ jurisdiction at the show cause notice stage, will have to stand the test of alternate route of adjudication and if challenged after adjudication, the availability of alternate remedy. Coupled with this, such demands under Section 74 of CGST Act, 2017 are an easy throw to alternate remedies on the ground that same is a question of fact or mixed question of fact and law. Issues of limitation, exemption, and classification are typically left to adjudicating authorities as it involves aligning facts to law.

Yet, there are Judgments which addressed and determined that Courts are not precluded from addressing question of fact. An advanced category would be one involving mixed question of law and fact. Mixed question of law and fact refers to a question which depends on both law and fact for its solution. The Hon'ble Apex Court recently also elaborately examined the issue in *A.P. Electrical Equipment Corporation -2025 INSC 274* and has decisively clarified that the mere existence of disputed facts does not oust writ jurisdiction. To treat disputed facts as an automatic bar would render Article 226 of the Indian Constitution illusory. This echoes the Court's earlier reasoning in *ABL International Ltd. -(2004) 3 SCC 553*, which held that writ petitions may be entertained if the matter can be resolved on the basis of documents already on record.



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In the above background , when 'discretion' available under Article 226, sways the balance either way depending on the objective satisfaction of the judicial mind, we are presented with a Judgment by the Madras High Court in *Neeyamo Enterprise Solutions Private Limited -2025 (11) TMI 847* wherein the Court found that when Section 74 has been invoked without establishing offending conduct indicated in the Section as fraud, suppression or wilful misstatement, the demand is bound to fail as the 'jurisdictional fact' for invoking the impugned Section itself is absent. Another opportunity for establishing the same was curtailed by the Judgement by quashing the proceedings instead of remand. It has been held categorically that since jurisdictional facts alone confer power to act, their absence rules out any remand, which cannot be directed mechanically or in cases where the issue goes to the root of jurisdiction.

The probable misuse of the Judgment is attempted to be curtailed with the observation that though it is not necessary for the show cause notice to reproduce the statutory wording of Section 74 verbatim, on an overall reading of the notice and the impugned order, the essential elements required under Section 74 has to be clearly discerned.



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Judicial discipline warrants adherence to precedents and any deviation has to be substantiated. Therefore, the Judgment made a clear departure from *Annai Angammal Arakkattalai (Pre Mahal)-W.P.(MD) No. 28502 of 2022*, which sanctioned invocation of Section 74 even without specific allegations in the notice by inferring intent from the assessee's conduct. The departure has been explained as owing to the fact that the Judgment did not take into account the prior binding precedent established by the same Court in *S.S. Communications -W.P. (MD)No.22420 of 2024* and the CBIC Instruction dated 13.12.2023 where the invocation of Section 74 restricted to instances involving fraud, wilful misstatement, or suppression aimed at tax evasion was explicitly articulated. It has also been observed that the earlier ruling failed to examine the importance of statutory phrase "by reason of", which makes the ingredients of fraud, wilful misstatement, or suppression with an intent to evade tax, a compulsory jurisdictional fact that must be established in the notice.

The Court further noted that Section 74(1) of the CGST Act, 2017 requires the proper officer to specify the amount proposed to be recovered in the show cause notice. However, in the present case, the authority has used the word "determined".



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There is a vast difference between specifying an amount and determining it. The expression “determined” cannot be treated as equivalent to “specified.” By using the term “determined”, the show cause notices reveal a clear element of pre-determination on the part of the authority.

However, what is at stake is revenue and a fair mind should act fair and square, the Court granted liberty to the Department to proceed under Section 73 or any other provision of CGST Act, 2017 as appropriate.

Beyond the decision – What are the probable ramifications of the quashing of proceedings under Section 74 ?

Where Section 74 collapses for want of jurisdictional facts, any demand re-determined under Section 73 must strictly respect limitation periods. Exclusions are permitted and period for raising demand is protected, when proceedings are stayed by a higher forum or when a revenue appeal on an identical issue is pending, as provided in Section 75(1) and 75(11) of CGST Act, 2017. Circular No. 185/17/2022-GST dated 27.12.2022 also clarifies that reassessment under Section 73 cannot borrow the extended timelines of Section 74.



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Determining whether a mismatch or omission amounts to suppression with intent to evade is not a pure question of fact but also a legal question requiring factual assessment. It becomes a substantial question of law when the statutory threshold of Section 74 is incorrectly applied. Where the statute requires a condition to be fulfilled before power can be exercised, failure to meet that condition renders the action ultra vires.

Conclusion

As the legal maxim "*Sublato fundamento cadit opus*" translates, when the foundation is removed, the entire structure falls. Jurisdictional facts are not ornamental; they are the lifeblood of statutory power. When they are absent, the edifice of proceedings collapses, and no amount of procedural patchwork can revive it. In an era when revenue authorities frequently bend statutory language to chase fiscal goals, the Madras High Court judgment underscores that legality cannot be compromised in the name of expediency.