From the Department's Burden to the Taxpayer's Burden: How Madras High Court Flips the Onus on Extended Period Notices Under GST

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Every so often a judgment comes along that doesn't just decide a case it moves the ground under an entire body of practice. The Hon'ble Madras High Court's ruling in***Fastenex Pvt Ltd & Ors v. State Tax Officer [TS-467-HC(MAD)-2026-GST]*** is that kind of a judgment. Running past 150 pages, it will not be read cover to cover by most practitioners, and a single article cannot do justice to the arguments canvassed on either side that would need a booklet, not a column. What it can do, and what this piece attempts, is distil the Court's 41 para conclusions into something a busy GST practitioner can actually use on a Monday morning when a show cause notice under Section 74 lands on a client's desk.

The short version, this is a big win for the department. The Court has not merely upheld the power to invoke the extended period under Section 74/74A it has taken a view that sits at odds with decades of settled jurisprudence on what triggers that power and how far its limits stretch. For a generation of tax professionals raised on ***Anand Nishikawa***, ***Continental Foundation***, ***Uniworth Textiles*** and ***Chemphar Drugs***: out they go and the ground has shifted meaningfully, and it is worth understanding exactly how. Given the sheer sweep of the 41 para conclusions alone, this article is not a para-by-para restatement of the judgment but a selective discussion of those conclusions found to be most consequential from a taxpayer's and a practitioner's vantage point the ones that will actually decide how a Section 73 or 74 notice is drafted, defended, or challenged in the times to come.

The Architecture of Self-Assessment

Under the GST scheme, the Proper Officer plays a largely passive role at the point of self-assessment under Section 59. He does not sit in judgment over every return as it is filed. His active engagement begins only when one of the triggers under Section 64 (or, more commonly, Sections 61, 65, 66, or 67) brings a return, or a taxpayer, to his notice. This passivity, the Court holds, cannot be tested against the yardstick of the pre-GST regime, where duty liability was frequently subject to prior approval like price lists and classification lists cleared in advance under Rules 173B and 173C of the erstwhile Central Excise Rules. Proceedings under Section 74, therefore the Court adds are closer in spirit to reassessment under Section 147 of the Income Tax Act a mechanisms meant to protect revenue that has escaped assessment, and not to be frustrated by overly technical objections once initiated within time.

A Lower Threshold: "Where It Appears"

This is the heart of the judgment, and the part practitioners will feel most acutely. Both Section 73(1) and Section 74(1) use the phrase "where it appears" to the Proper Officer that tax has not been paid, has been short-paid, has been erroneously refunded, or that input tax credit has been wrongly availed or utilised. The Court has read this phrase **literally** and consequentially that it requires only a rational, prima facie conclusion drawn from the material on record and not the "definite information" standard that governed extended-period notices under Section 11A of the Central Excise Act, Section 28 of the Customs Act, or Section 73 of the Finance Act, 1994. Those provisions, forged in an era of pre-clearance and departmental approval, demanded something closer to certainty before the extended period could be invoked. GST, being a self-assessment regime from the outset, does not carry that baggage forward, and the Court has expressly declined to test Section 74 notices against the case law built around the older statutes. In practical terms, a Proper Officer who can point to a rational basis in the records which they can always do, nothing more is required to clear the threshold for issuing the notice, leaving the taxpayer's remedy to lie in a reply, not in a jurisdictional challenge to the notice itself.

What the Notice Must Say and When Silence Is Enough

The ordinary rule, the Court affirms, is that a Section 74 notice must both invoke the extended-period machinery and state the reasons i.e., the ingredients of fraud, wilful misstatement, or suppression for doing so, a position consistent with the Supreme Court's ruling in extended period jurisprudence. But the Court interestingly carves out a wide exception and said that where those reasons have already been communicated to the taxpayer at an earlier stage in an ASMT-10 scrutiny notice, an ADT-02 audit report, an ADT-04 special audit report, or an INS-02 inspection report, etc., the subsequent Section 74 notice need not repeat them. It is enough that the notice alludes to the earlier communication, since scrutiny, audit, inspection, and adjudication are treated as interconnected stages of the same proceeding rather than watertight compartments.

The Court extends this logic further than many will find comfortable. A mismatch between credit availed and what GSTR-2A/2B reflects, without more, can found an inference of fraud or wilful misstatement once claimed in GSTR-3B. And a taxpayer's failure to respond to an ASMT-10 or a DRC-01A intimation, or to furnish information sought during audit or inspection, can itself amount to suppression of fact meaning that silence at the scrutiny stage can do real work in justifying invocation of the extended period later. Exemption claims occupy a slightly different position as here the Court holds that the ingredients of fraud or suppression may still need to be specified (unless already communicated earlier), and places the **onus squarely on the taxpayer to establish bona fides**. Circular trading and the illegitimate passing of credit attract their own separate track and a Section 122 penalty notice against the party generating the credit, running alongside Section 74 recovery against the party that availed it.

The Procedural Trail: From ASMT-10 to DRC-01

The judgment also maps, with more precision than most rulings bother to, how a proceeding is meant to travel from first inquiry to final order. Scrutiny under Section 61 begins with an ASMT-10, answered by the taxpayer in ASMT-11, an unsatisfactory or absent reply opens the door to a show cause notice under Section 73 or 74, accompanied by a summary in DRC-01 under Rule 142. The Court also holds that a Proper Officer is not obliged to route every case through scrutiny before reaching for Section 74 as he may proceed directly to a notice under that section, following the Rule 142 mechanism. Scrutiny, audit, special audit, and inspection are, in this reading, alternative doors into the same room, not a mandatory sequence.

Two further points also merits reference here. First, a notice issued under Section 74 within its own limitation period can very well be issued even before the Section 73 limitation has expired, since the two provisions operate on independent triggers. Second, Sections 62 and 63, dealing with non-filers and unregistered persons, open with a non-obstante clause overriding Sections 73, 74, and 74A altogether which in the opinion of the Court is a structural departure from the erstwhile Central Excise and Service Tax regimes that had no equivalent carve-out.

Natural Justice, Jurisdictional Pleas, and the Limits of Technical Objections

The only recourse appears to be left with the taxpayers under the judgement was that where a notice is issued without any material from which fraud, wilful misstatement, or suppression can even be inferred, it is arbitrary and liable to be struck down and the "where it appears" standard is not a rubber stamp. However, it was cautioned that a mechanical or hyper technical challenge built on an alleged violation of natural justice will not succeed where the reasons for the notice are traceable to an ASMT-10, ADT-02, ADT-04, INS-02, or DRC-01A which is already in the taxpayer's hands.

The Doctrinal U-Turn: Extended Period, Then and Now

It is worth pausing on just how sharp a break this represents, because the shift is easy to understate if one reads the conclusions individually rather than as a whole. For roughly three decades, the law on extended period under the Central Excise Act and its cousins in Customs and Service Tax was built around a demanding standard that the department had to show a positive, deliberate act and not mere omission, not a bona fide interpretational dispute, not even negligence coupled with intent to evade tax, before the ordinary period of limitation could be stretched to five years. Mere non-disclosure was not suppression unless it was deliberate; mere short payment was not fraud unless dishonesty could be shown. That standard put the burden squarely, and heavily, on the Revenue, and it produced a large and taxpayer-favourable body of case law that professionals leaned on almost reflexively whenever an extended-period notice arrived.

Fastenex does not overrule that case law but it declares it inapplicable. The reasoning is that the two regimes are not comparable since the old law grew up around a system of departmental pre-approval, where the department had, in a sense, already looked at the taxpayer's numbers before the goods left the factory gate, so a later claim of "we didn't know" carried real force only in narrow circumstances. GST inverts that relationship entirely as the taxpayer self-assesses, files, and moves on, and the department's first meaningful look often comes months or years later, at scrutiny or audit. On the Court's logic, expecting the department to meet the old "definite information" standard in a regime built on self-assessment would make the extended period nearly impossible to invoke, defeating the provision's purpose. **Whether or not one agrees with that logic, its practical effect is to replace a fraud-intent standard requiring cogent proof with a prima facie, rational-inference standard requiring only a plausible reading of the records**.

What happens next is the interesting question. This is a High Court ruling, not a Supreme

Court one, and other High Courts are not bound to follow it and a split in judicial opinion, of the kind GST law has seen before on issues like blocked credit and transitional relief, would not be surprising. Given the scale of what is at stake for both revenue collection and taxpayer certainty, an appeal to the higher forum seems less a possibility than an inevitability, and until that happens, practitioners in Tamil Nadu will be arguing Section 74 cases under a materially different rulebook than their counterparts elsewhere. Until the Supreme Court resolves the divergence, or Parliament chooses to legislate the point away, GST show cause notices are going to be considerably harder to knock out on threshold grounds alone.

Closing Thoughts

If there is one takeaway for practice, it is this that the real battleground has moved upstream. A taxpayer who waits for the show cause notice to mount a defence, on the theory that a bare or formulaic notice can be struck down for want of particulars, is going to find that theory considerably less reliable than it used to be particularly once a scrutiny notice or audit query has already been served and answered, whether well or badly. The discipline that used to matter mainly to a client's compliance team like replying promptly and substantively to an ASMT-10, engaging seriously with an audit query, keeping the reconciliation between GSTR-3B and GSTR-2A/2B airtight, has now become, in a very direct sense, litigation strategy. ***Fastenex*** has not closed the door on challenging extended-period notices but it has simply moved the door to an earlier room, one that most taxpayers walk through without a lawyer in tow. That, more than any single paragraph of the judgment, is what practitioners will need to adjust to in the months ahead.

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