International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

Section 73 Versus Section 74 of the Cgst Act, 2017: The Critical Distinction between Tax Default And Fraud, and the Limits of Penal Jurisdiction

Vipin Kumar Singhal[1], Dr. Dharmendra Kumar[2]

[1]Research Scholar, Faculty of Legal Studies, HRIT University, Ghaziabad
[2]Professor, Faculty of Law, HRIT University, Ghaziabad

ABSTRACT

There is a distinction in India's GST enforcement architecture that ought to be obvious, is plainly stated in the statute, and has been repeatedly affirmed by the Supreme Court and yet is routinely ignored in practice. Section 73 of the Central Goods and Services Tax Act, 2017 deals with recovery of taxes not paid or short paid in ordinary cases, where there is no allegation of dishonesty. Section 74 deals with recovery in cases tainted by fraud, wilful misstatement, or suppression of facts with the specific intent to evade tax. The first carries a three-year limitation and a maximum discretionary penalty of ten percent. The second carries a five-year limitation and a mandatory penalty of one hundred percent of the tax demand. These are not two points on a severity spectrum; they represent two distinct jurisdictions, with Section 74 reserved exclusively for the deliberate wrongdoer. The problem this paper addresses is that adjudicating authorities have developed a habit of reaching for Section 74 in cases that call, at most, for Section 73 invoking fraud and suppression as template conclusions rather than as proven facts, and treating every audit-detected shortfall as evidence of a concealment that 'would otherwise have gone unnoticed'. This conflation of non-compliance with fraud is legally wrong, constitutionally troubling, and commercially damaging.

The paper begins with the statutory framework. Section 74(1) is examined as a provision of strict jurisdiction: its three ingredients: fraud, wilful misstatement, and suppression of facts to evade tax are conditions precedent, not factors to be inferred from the mere existence of an underpayment. Explanation 2's definition of 'suppression' is purposively narrow: it covers non-declaration of what is required to be declared or failure to answer a written inquiry, not honest interpretive choices. The self-correction immunity in Section 73(5) and (6) is shown to be an absolute statutory bar on proceedings where the taxpayer pays the differential tax and interest before notice of a provision whose logic is irrefutable: voluntary payment is the antithesis of evasive intent. Section 75(2) and Section 126 are examined as structural safeguards against jurisdictional overreach and unreasoned penalty orders.

Against that statutory backdrop, the paper traces the Supreme Court's construction of the essential ingredients. On suppression, the court has insisted across decades that a positive act of deliberate concealment is required mere omission, honest non-disclosure, and interpretive choices honestly made are categorically excluded. On wilful misstatement, the court has emphasised the mental element the act must be intentional with the specific purpose of doing what the law forbids and has expressly held that mere non-payment of tax is not equivalent to wilful misstatement or suppression. On mens rea and intent to

evade, the court has been equally clear: penalty is appropriate for deliberate defiance of the law and contumacious conduct, not for technical breaches or honest mistakes made under a bona fide belief.
The paper then maps seven specific categories of cases where courts have consistently refused to permit Section 74 invocation. Where a taxpayer has voluntarily paid differential tax with interest before any show cause notice, the Section 73(5)/(6) immunity operates as an absolute bar. Where the taxpayer has adopted a tax position based on a bona fide and reasonable reading of the law particularly one supported by available Tribunal decisions, conflicting High Court views, or industry-wide practice being wrong does not make one dishonest, and an honest belief that is later overruled is not thereby made mala fide. Where an alleged default comes to light not from new tangible material but entirely through audit of records always accessible to the department, invoking extended period and penal provisions is, as courts have held, 'thoroughly flawed and illegal'. Where the GST legislation introduced in 2017 in a fog of genuine complexity is still at its nascent stage, honest compliance errors attributable to that complexity cannot be branded as evasion. And where the differential tax is available as ITC to the recipient, the revenue-neutral character of the transaction defeats the evasion premise entirely.
The paper also addresses the burden of proof: the burden of establishing fraud, suppression, and wilful misstatement lies squarely on the revenue, and an adjudicating order that merely asserts these conclusions without walking through the specific facts, identifying the act of concealment, and demonstrating the intent to evade is bald, bereft of reasons, and unsustainable. The doctrinal methodology draws on the CGST Act and Rules, pre-GST fiscal statutes, CBIC circulars, and a comprehensive survey of Supreme Court, High Court, and Tribunal decisions. The recommendations offered a mandatory pre-invocation checklist for officers, reinforcement of the self-correction immunity, appellate vigilance against template orders, and GST Council guidance on areas of genuine interpretive ambiguity are directed at restoring the critical distinction that the statute draws and that practice has eroded: Section 74 is for the fraudster. It is not for the taxpayer who got the answer wrong.

Keywords: Section 73, Section 74, CGST Act 2017, Fraud, Wilful Misstatement, Suppression of Facts, Mens Rea, Bona Fide Belief, Classification Dispute, Extended Period of Limitation, GST Penalty, Tax Evasion, Self-Correction, Self-Assessment.

INTRODUCTION

Imagine a business that has been classifying its goods under a particular tariff heading for years consistently, openly, and in good faith based on its honest reading of the law and the way similar suppliers in its industry have always operated. One day, a DGGI summons arrives. After some back-and-forth, the business accepts the department's alternate classification, computes the differential GST, pays every rupee with interest, and sends a written intimation to the proper officer all before receiving a formal show cause notice. The matter, one would think, is closed. Instead, the adjudicating authority issues an order confirming demand and imposing a penalty equal to the full tax amount under Section 74 of the Central Goods and Services Tax Act, 2017,[1] on the grounds of suppression of facts and wilful misstatement. This scenario plays out across India every day, in GST, service tax, and excise proceedings alike, and it represents a fundamental misapplication of the law.

[1]Section 74, Central Goods and Services Tax Act, 2017 — determination of tax not paid or short paid or erroneously refunded by reason of fraud, wilful misstatement or suppression of facts to evade tax.

Section 73 and Section 74 of the CGST Act are not interchangeable provisions or two points on a sliding scale of seriousness. They represent two distinct jurisdictions with different thresholds, different limitation periods, and different penal consequences. Section 73 is the ordinary recovery provision it applies whenever tax has not been paid, has been short paid, has been erroneously refunded, or where ITC has been wrongly availed, without any element of dishonesty. Its limitation is three years, and even in the worst case, the penalty is capped at ten percent of the tax due. Section 74 is something qualitatively different: it applies only where the non-payment or wrongful credit arises 'by reason of fraud, or any wilful mis-statement or suppression of facts to evade tax.' The limitation stretches to five years, and the penalty is not merely possible but mandatory and it equals the entire tax amount. The distance between ten percent and one hundred percent is not procedural; it is the distance between correction and punishment.

The problem this paper addresses is simple to state but stubborn in practice: tax authorities have developed a habit of reaching for Section 74 in situations that call for Section 73. The invocation is often reflexive: a template allegation of suppression, a citation of the self-assessment regime as proof of evasive intent, a boilerplate observation that the issue was detected during audit and would otherwise have gone unnoticed. The Supreme Court of India has, across decades of excise, customs, and service tax jurisprudence, condemned this approach in terms that could not be clearer. Yet the problem persists, and GST has given it fresh life.

This paper traces the statutory framework, the judicial construction of Section 74's essential ingredients, and the specific categories of cases where courts have consistently refused to permit Section 74 invocation. Its central argument is that not every non-compliance is fraud, not every classification error is suppression, and not every shortfall in payment is evasion. The department bears the burden of proving its penal case, and that burden cannot be discharged by invoking the graver provision as a matter of administrative convenience.

PROBLEM STATEMENT

The routine conflation of Sections 73 and 74 has real and measurable costs. For taxpayers, a Section 74 notice carries not just financial exposure penalty equal to one hundred percent of the tax but the reputational damage of a fraud allegation, the anxiety of extended litigation, and the chilling effect on good-faith engagement with a regulatory framework that is still finding its feet. For the appellate system, it means a flood of cases that should never have arisen, crowding out genuine disputes. For the rule of law, it means that a distinction Parliament drew with precision and purpose is being steadily eroded in practice.

The erosion is particularly visible in two recurring patterns. The first is the invocation of Section 74 whenever an audit team detects an underpayment, relying entirely on records that were always accessible to the department on the logic that if the audit had not been conducted, the evasion would never have come to light. Courts have consistently rejected this reasoning: the fact that a vigilant department caught something is not evidence that the taxpayer was hiding it. The second is the use of the self-assessment architecture of the CGST Act as a one-size-fits-all justification for fraud allegations, the argument being that because the taxpayer was responsible for computing and paying its own tax, any shortfall must represent a deliberate act. This too has been firmly rejected. Self-assessment creates compliance obligations; it does not transform every compliance failure into a criminal act.

RESEARCH QUESTIONS

- What is the precise statutory distinction between Section 73 and Section 74 of the CGST Act, and

what essential ingredients must be established before Section 74 jurisdiction can be lawfully invoked?
- How have the Supreme Court and High Courts constructed and limited the concepts of 'fraud', 'wilful misstatement', 'suppression of facts', and 'intent to evade tax'?
- In which specific categories of cases classification disputes, bona fide belief, audit-based detection, nascent legislation, voluntary pre-notice payment, and revenue-neutral transactions have courts consistently held that Section 74 cannot be invoked?
- What procedural and substantive safeguards under Section 75(2), Section 126, and the principles of natural justice constrain the imposition of penalty under Section 74?

RESEARCH OBJECTIVES

This study aims to:
- Examine the text, structure, and legislative purpose of Sections 73 and 74 and identify the conditions that trigger Section 74 jurisdiction as distinct from Section 73.
- Analyse the Supreme Court's authoritative construction of fraud, wilful misstatement, suppression, and mens rea in fiscal penal provisions.
- Map and explain the categories of cases where judicial precedent consistently bars Section 74 invocation.
- Evaluate the protective effect of Section 73(5) and (6), Section 75(2), and Section 126w as statutory constraints on penal jurisdiction.
- Propose practical guidelines for officers, taxpayers, and appellate authorities on the correct demarcation between the two provisions.

RESEARCH METHODOLOGY

This research adopts a doctrinal methodology. It draws on the text of the CGST Act, 2017, the Central Excise Act, 1944, the Finance Act, 1994, and their allied rules and notifications, together with the judgments of the Supreme Court, various High Courts, and the CESTAT and GST appellate Tribunals. CBIC circulars acknowledging ambiguity in GST provisions have also been consulted. No empirical fieldwork or survey data has been used.

LEGAL FRAMEWORK: SECTIONS 73 AND 74: STRUCTURE AND DISTINCTION

Think of Sections 73 and 74 as two doors leading to the same room, the room of tax recovery but with entirely different keys. Section 73 is the ordinary door. It opens whenever tax has not been paid, has been short paid, has been erroneously refunded, or where ITC has been wrongly availed and when none of this happened because of fraud, deliberate misrepresentation, or deliberate concealment. The limitation is three years. The maximum penalty is discretionary and capped at ten percent of the tax demand. Section 74 is the extraordinary door. It requires a different key altogether: proof that the same shortfalls occurred 'by reason of fraud, or any wilful mis-statement or suppression of facts to evade tax.' It carries a five-year limitation and a mandatory penalty of one hundred percent. The two keys are not interchangeable, and the department cannot pick the Section 74 door simply because it leads to a higher recovery.

Section 74(1) is explicit: the proper officer can issue a notice under Section 74 only where the non-payment or wrongful ITC availment arises by reason of fraud, wilful misstatement, or suppression of facts. These are not afterthoughts or aggravating factors; they are conditions precedent, without which the jurisdiction simply does not arise. As the Supreme Court has said in a related context and as courts dealing

with Section 74 have consistently affirmed an officer who invokes Section 74 without establishing these ingredients is not exercising discretion poorly; he is acting without jurisdiction.

Parliament built a valuable escape hatch for good-faith taxpayers into Section 73(5) and (6). If a person, before any formal show cause notice arrives, computes the tax owing, pays it with interest on the basis of their own ascertainment, and informs the proper officer in writing, the officer is legally prohibited the provision uses the word 'shall not' from issuing any notice for the tax so paid. And no penalty shall be payable. The logic embedded in this provision is important: voluntary self-correction is the antithesis of wilful evasion. You cannot have intended to hide something that you computed, paid, and told the department about before they formally asked. This statutory immunity has been consistently upheld by courts, yet adjudicating authorities routinely pass it over when confirming Section 74 demands.

Section 75(2) provides a structural backstop. When an appellate authority, tribunal, or court finds that a Section 74 notice is unsustainable because fraud, wilful misstatement, or suppression have not been proved it shall determine the tax as if the notice were issued under Section 73. This provision does two things: it ensures the taxpayer is not left in a legal limbo once Section 74 falls, and it confirms that Section 74 is not merely a harsher version of Section 73 but a separate penal jurisdiction that requires separate proof.

Section 126 rounds out the framework by prescribing general disciplines for penalty. No penalty may be imposed for minor or procedural breaches made without fraudulent intent or gross negligence. Every penalty must be proportionate to the degree and severity of the breach. And crucially, the adjudicating authority must specify the nature of the breach and the provision under which the penalty is being imposed, a requirement that, if honestly followed, would prevent the template-order culture that infects much of Section 74 adjudication today.

JUDICIAL CONSTRUCTION OF THE ESSENTIAL INGREDIENTS

1. What 'Suppression' Really Means

Explanation 2 to Section 74 defines suppression narrowly and purposively: it means non-declaration of facts or information that a taxable person is required to declare, or failure to furnish information on being asked for in writing by the proper officer. The definition does not cover honest interpretive choices.

The Supreme Court has been saying this for decades. In Anand Nishikawa,[2] The court held that suppression of facts can have only one meaning: that the correct information was not disclosed deliberately to evade duty. Mere omission is not enough there must be a positive act of deliberate concealment. In Pushpam Pharmaceuticals,[3] The court confirmed that where facts are known to both parties, the omission by one to do what it might have done but was not specifically required to do is not suppression.

2. The Mental Element in Wilful Misstatement

The word 'wilful' does a great deal of legal work in Section 74, and courts have been careful to give it full effect. In Uniworth Textiles,[4] The Supreme Court held that 'wilful' introduces a mental element that requires the adjudicating authority to look into the actual state of mind of the taxpayer. An act is wilful only if done voluntarily and intentionally with the specific purpose of violating the law. In Cosmic Dye Chemical,[5] the court confirmed that the word 'wilful' qualifying both misstatement and suppression is not

[2] Anand Nishikawa Company Limited v. CCE, (2005) 188 ELT 149 (SC)
[3] Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, (1995) 78 ELT 401 (SC)
[4] M/s. Uniworth Textiles Ltd. v. CCE, 2013 (1) TMI 616 (SC)
[5] Cosmic Dye Chemical v. Collector of Central Excise, Bombay, (1995) 6 SCC 117 (SC)

decorative; it is essential. Misstatement and suppression that are not wilful simply do not exist for the purpose of these provisions.

3. Fraud Requires Deliberate Deception

The CGST Act does not define fraud, but the Supreme Court's formulation in S.P. Chengalvaraya Naidu[6] is clear: fraud is a deliberate act of deception designed to secure something by taking unfair advantage of another. In the tax context, it means a knowing misrepresentation or deliberate concealment of facts that the taxpayer knew would otherwise attract a higher liability. It is not a synonym for being wrong.

4. Intent to Evade: Mens Rea is Not Optional

The phrase 'to evade tax' at the end of Section 74(1) is the final and perhaps most important element. It imports a requirement of mens rea guilty intention into every Section 74 proceeding. The Supreme Court in Hindustan Steel[7] held that penalty is appropriate where a party acts deliberately in defiance of the law or is guilty of contumacious conduct, but not where there is a technical breach or a bona fide belief in non-liability. In Tamil Nadu Housing Board,[8] the court held that 'intent to evade' requires two things: that the assessee knew the duty was leviable, and that it deliberately chose to avoid paying it. In Pepsi Foods,[9] The court confirmed that mens rea is a necessary element of mandatory penalty.

CATEGORIES OF CASES WHERE SECTION 74 IS NOT INVOKABLE

A. Self-Correction Before Notice: The Section 73(5) Shield

The clearest and most conclusive bar on Section 74 invocation arises where the taxpayer has voluntarily paid the differential tax and interest before any show cause notice is served. Section 73(5) and (6) are unambiguous: where the taxpayer pays on self-ascertainment and informs the proper officer, the officer 'shall not' issue any notice, and no penalty shall be payable. The courts have applied this consistently. In Interglobe Aviation,[10] The Tribunal held that the absence of fraud, collusion, wilful misstatement, or suppression meant that penal provisions were not invokable even where the payment was made only after being pointed out by the DGCEI.

B. Bona Fide Belief and Interpretive Disagreement

Tax law is not simple. Classification of goods involves tariff headings, section notes, chapter notes, explanatory notes, HSN guidance, AAR rulings, and Tribunal decisions that frequently point in different directions. A taxpayer who studies all of this material and arrives at a position that reflects an honest, reasoned reading of the law has not engaged in suppression or fraud even if an adjudicating authority, a Tribunal, or eventually the Supreme Court takes a different view.

The Supreme Court addressed this directly in Jaiprakash Industries,[11] where it held that bona fide doubt arising from divergent High Court views precludes invocation of the extended period. In M/s Reliance Industries,[12] the court held that a belief based on a Tribunal decision cannot become mala fide merely because the Supreme Court later disagrees; the relevant question is whether the belief was honest at the time it was formed.

[6] S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1 (SC)
[7] Hindustan Steel Ltd. v. State of Orissa, (1978) 2 ELT J 159 (SC)
[8] Tamil Nadu Housing Board v. Collector of Central Excise, Madras, (1994) 74 ELT 9 (SC)
[9] CCE v. Pepsi Foods Limited, (2010) 260 ELT 481 (SC)
[10] Interglobe Aviation Ltd. v. Commissioner of Service Tax, Delhi, 2022-VIL-528-CESTAT-DEL
[11] Jaiprakash Industries Ltd. v. CCE, (2002) 146 ELT 481 (SC)
[12] Commissioner of Central Excise and Customs v. M/s Reliance Industries Ltd., 2023 (7) TMI 196 (SC)

C. Classification Disputes

Classification of goods and services under the GST tariff schedule is inherently interpretive. It involves judgments about the principal character of goods, their intended use, the applicability of specific entries over general ones, and the reading of technical notes that are often ambiguous even to specialists. The Supreme Court in H.P.L. Chemicals[13] and Reckitt Benckiser[14] has held that the burden of proving the correct classification lies on the revenue, and that any ambiguity must be resolved in favour of the assessee.

D. Audit-Based Detection: The Officer's Failure Cannot Become the Taxpayer's Crime

One of the most insidious patterns in Section 74 litigation is the argument that because an audit team detected an underpayment, the underpayment must have been intentional and that if the audit had not been conducted, the evasion would have gone unnoticed. The Calcutta High Court, in M/s Larsen & Toubro,[15] described this approach as 'thoroughly flawed and illegal'. The court held that invoking an extended period by inserting template language about self-assessment, without relying on any new or fresh tangible material beyond records always available to the department, is unsustainable. The Supreme Court in O.K. Play[16] held that where the department's own officers had visited the factory repeatedly and all facts were before them, suppression could not be alleged.

E. Nascent Legislation: GST Is Still Finding Its Feet

GST arrived in India on 1 July 2017 in a blaze of ambition and a fog of uncertainty. It merged multiple taxes, introduced new concepts, required entirely new systems, and presented businesses particularly those in complex industries with classification and valuation questions that neither the GST Council, nor the CBIC, nor the courts had fully answered. In that environment, compliance errors were not just foreseeable; they were inevitable. Courts have recognised this. In Srinivasa Real Estate,[17] The Madras High Court held that where a legislation is at its nascent stage and uncertainty loomed even within the department, non-payment attributable to that uncertainty cannot be characterised as evasion.

F. Revenue-Neutral Situations: No Gain, No Evasion

The premise of tax evasion is that the evader gains something they pay less tax than they owe and pocket the difference. In a genuinely revenue-neutral situation, that premise collapses. Where the differential tax, had it been paid at the higher rate, would simply have been available as ITC to the recipient of the supply, the Government's net collection is the same either way.

G. Public Disclosure: You Cannot Suppress What Is Already Visible

Suppression, by its very definition, requires that the relevant information be hidden. Where the taxpayer has disclosed the relevant facts in its audited balance sheet, its income tax returns, or other publicly available documents, the allegation of suppression is logically unsustainable; the department was never deprived of the information; it simply had to look.

BURDEN OF PROOF AND THE REQUIREMENT OF REASONED ORDERS

It is a well-settled principle of evidence that the burden of proving a fact lies on the party asserting it. When the department asserts fraud, suppression, or wilful misstatement, the burden is the department's to

[13]H.P.L. Chemicals Ltd. v. CCE, (2006) 197 ELT 324 (SC)
[14]Reckitt Benckiser (India) Ltd. v. Commissioner Commercial Taxes & Ors., (2023) 384 ELT 616 (SC)
[15]M/s Larsen & Toubro Limited v. Assistant Commissioner, 2022-VIL-800-CAL HC-ST
[16]O.K. Play (India) Ltd. v. CCE, (2005) 180 ELT 300 (SC)
[17]Srinivasa Real Estate v. ACST, (2021) 48 GSTL 351 (Mad.)

discharge not the taxpayer's to disprove.[18] In T.N. Dadha Pharmaceuticals, the Supreme Court held that where the revenue alleges suppression, it must produce evidence to show that suppression occurred, and in the absence of that evidence the inference of suppression would be unsafe, unfair, and illegal. In Pahwa Chemicals,[19] the court held that mere failure to declare is not wilful suppression; there must be a positive act. In Chemphar Drugs,[20] The court held that non-declaration in returns on the honest belief that the transaction was not taxable is not suppression where there is no deliberate withholding. The Supreme Court in Oryx Fisheries[21] held that the notice must tell the taxpayer the charges clearly enough that they can take a defence failing this vitiates the entire proceeding.

PRACTICAL IMPLICATIONS FOR TAXPAYERS

For a taxpayer facing a Section 74 notice, the fight begins long before the personal hearing. Here is what matters:

- Check immediately whether the tax and interest have been or can be paid on self-ascertainment before the formal DRC-01 notice is served. If so, make the payment, document it, and send written intimation to the proper officer. This may be the single most valuable step available.
- Compile a contemporaneous record showing that the position adopted whether on classification, valuation, or exemption was based on a genuine and reasoned reading of the law. Collect the Tribunal decisions, AAR rulings, industry guidance, and CBIC circulars that informed the position at the time.
- If the issue surfaced through an audit, document that the relevant information was always available to the department in returns, e-way bills, balance sheets, or income tax filings. Show that no new tangible material was relied upon beyond records that were always there.
- In transactions where the differential tax would have been available as ITC to the recipient, document and argue the revenue-neutral character of the transaction explicitly. The evasion allegation requires a motive to gain; the revenue-neutral argument removes that motive.
- Gather CBIC circulars, GST Council communications, and any official acknowledgements of interpretive ambiguity on the specific issue. Where the Government itself has regularised past practice in the area, that regularisation is a powerful indicator that the practice was not fraudulent.
- If Section 74 is ultimately found unsustainable, invoke Section 75(2) to ensure that the proper officer determines the tax liability under Section 73, so the matter does not remain unresolved.

RECOMMENDATIONS

1. A Mandatory Pre-Invocation Checklist for Section 74

CBIC should issue a circular requiring every officer who proposes to invoke Section 74 instead of Section 73 to complete and retain a documented checklist establishing: the specific positive act of fraud, misstatement, or suppression; the evidence relied upon to establish each element; and a considered finding on whether the taxpayer's position reflected a bona fide interpretation of the law. The checklist should specifically exclude template language about self-assessment regimes, discovery during audit, and mere

[18] T.N. Dadha Pharmaceuticals v. Collector of Central Excise, Madras, 2003 (152) ELT 251 (SC)
[19] Pahwa Chemicals Private Limited v. CCE, (2005) 189 ELT 257 (SC)
[20] Collector of Central Excise v. Chemphar Drugs and Liniments, (1989) 40 ELT 276 (SC)
[21] Oryx Fisheries Private Limited v. Union of India, (2011) 266 ELT 422 (SC)

non-payment as acceptable proxies for these elements. This would force the discipline the law already requires but practice has abandoned.

2. Publicising and Reinforcing the Self-Correction Immunity

The immunity provided by Section 73(5) and (6) is one of the most taxpayer-friendly provisions in the CGST Act, and one of the least understood. CBIC should issue a focused circular explaining its operation in plain terms, and appellate authorities should be directed to treat voluntary payment with interest before notice as a near-conclusive indicator of the absence of evasive intent.

3. Training Officers on the Section 73/74 Boundary

The Supreme Court's jurisprudence on the essential ingredients of fraud, suppression, and wilful misstatement is extensive and clear, but it is not filtering through to the level of adjudication where Section 74 demands are routinely confirmed. Officers at the level of adjudicating authorities and audit teams need specific, case-law-focused training on the positive-act requirement for suppression, the mental element in wilful misstatement, the definition of fraud, and the categories of cases where courts have consistently refused Section 74 invocation.

4. Appellate Vigour Against Template Orders

Appellate authorities and courts should treat adjudicating orders that invoke Section 74 without specific, evidence-based findings on the essential ingredients as jurisdictionally defective rather than merely procedurally irregular.

5. GST Council Guidance on Areas of Genuine Ambiguity

The GST Council should systematically identify categories of GST law that remain genuinely unsettled particularly in classification and issue circulars regularising past practice and clarifying that Section 74 proceedings cannot be initiated for the period of ambiguity.

CONCLUSION

The line between Section 73 and Section 74 of the CGST Act is one Parliament drew deliberately, with full awareness of what was at stake. It is the line between correcting a taxpayer who got it wrong and punishing one who cheated. It is the line between a system that accommodates the inevitable imperfections of compliance with a complex law, and one that treats every mistake as a crime. The Supreme Court has drawn this line clearly and maintained it consistently across decades of fiscal jurisprudence. The problem is not the law; it is the practice.

Not every non-compliance is fraud. Not every classification error is suppression. Not every underpayment discovered during the audit represents an evasion that 'would otherwise have gone unnoticed'. These statements are obvious once stated, but their implications are routinely ignored when adjudicating orders are being drafted and confirmed. The department bears the burden of proving its penal case under Section 74 with cogent, positive evidence of fraud, wilful misstatement, or suppression and that burden cannot be discharged by a template paragraph, a self-assessment reference, or the mere fact of an audit detection.

The broader purpose of Section 74 is important and legitimate: fraud, deliberate misrepresentation, and wilful evasion are real problems that damage the tax base and penalise the honest majority of taxpayers who comply. But that legitimate purpose is undermined, not served, when the provision is deployed against taxpayers who have done nothing dishonest. The purpose of Section 74 is to punish the fraudster not to penalise the taxpayer who got the answer wrong. Restoring that distinction, through CBIC guidance, appellate vigilance, and judicial correction, is the most important step India's GST enforcement system can take toward becoming both effective and fair.