

EY Tax Alert

HC holds Show Cause Notice cannot be clubbed and issued for more than one financial year

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Executive summary

This Tax Alert summarizes the recent ruling of the Madras High Court (HC)¹ on bunching of show cause notices (SCN) for multiple financial years (FY).

In the present case a single SCN was issued, and a single assessment order was passed by the assessing authority for six financial years, i.e. from FY 2017-18 to 2022-23. Aggrieved, the petitioner approached HC by filing a writ petition.

The key observations of the HC are:

- ▶ Section 73 and 74 of the Central Goods and Services Tax Act, 2017 (CGST Act) treats each FY as a separate unit with its own limitation period. Thus, clubbing multiple years in a single SCN violates the above provisions, as the limitation for each year is independent and cannot be combined.
- ▶ A combined reading of Section 73(1), (3), and (4) shows that term "any period" means a "tax period" which, as per Section 2(106), is based on monthly or annual returns. Since no return under the CGST Act covers more than one financial year, SCN cannot be issued for multiple financial years.
- ▶ If a SCN covers multiple years, it creates hardship in availing benefits of amnesty schemes notified by the Government under Section 128 of the CGST Act or for applying for compounding of offences under Section 138. Moreover, a multi-year notice under Section 74 may lead the department to treat all years as offences, restricting the petitioner's right to contest individual period under Section 73.
- ▶ Issuance of composite SCN covering multiple FYs and making composite demand without separate adjudication per year, frustrates the limitation scheme and prevents the assessee from giving year-specific rebuttals.

Accordingly, HC held SCN cannot be clubbed for multiple financial years, and an order covering more than one year is invalid and liable to be quashed.

¹ TS-644-HC(MAD)-2025-GST



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Background

- Section 73 and 74 of the Central Goods and Services Tax, Act 2017 (CGST Act) deals with determination of non-payment or short payment of tax or erroneous refund or wrong availment or utilization of input tax credit.
- Section 73 of the CGST Act applies when a tax shortfall is due to reasons other than fraud or misstatement, while Section 74 applies when tax shortfall is due to fraud, willful-misstatement, or suppression of facts to evade tax.
- As per Section 73(1), the proper officer shall issue a show cause notice to any person liable for unpaid tax, requiring him to explain why the amount specified in the notice should not be recovered.
- Section 73(2) states that the notice should be issued at least three months prior to the time limit fixed under section 73(10).
- Section 73(3) provides that if a notice has been issued, the proper officer may issue a statement for other periods, detailing tax not paid, short paid, erroneously refunded, or ITC wrongly availed or utilized. The service of such statement shall be deemed to be notice under 73(1).

Similar provisions are present under Section 74.

- In the present case, a single show cause notice (SCN) was issued and thereafter, a single assessment order was passed by the department for six financial years (FYs) from 2017-18 to 2022-23.
- Aggrieved, a writ petition was filed by the petitioner before the Madras High Court (HC) challenging such bunching of SCNs.

Petitioner's Contentions

- The GST law fixes a limitation for issuance of notices and passing of assessment orders for each financial year under Section 73 and 74 of the CGST Act.

Thus, notices under these sections are required to be issued individually for each financial year.

- A single notice for FYs 2017-18 to 2022-23 was issued just three months before the FY 2017-18 limitation expired, forcing to respond for all years within a limited timeframe and causing following undue hardships in the following:
 - i) It cannot apply for compounding of offences under Section 138 of the GST Act for a specific financial year.
 - ii) If an amnesty scheme is introduced for any one or two FYs, it cannot avail the same without

paying the demand for all the years covered in the order.

- iii) If it intends to contest certain years while paying tax for others, the bunching of notices/orders creates unnecessary hurdles in both contesting and settling issues for specific years.
- As per section 73(1), the proper officer must first issue SCN for a specific financial year or tax period. For similar issues in later periods, Sections 73(3) and (4) require separate statements to be issued for each subsequent tax period.

The first notice has to be a single notice and the subsequent notices for similar issues shall be issued by way of independent statements for each tax period.

- This court in case of Titan Company Ltd² also held that bunching of notices is impermissible.

Revenue Contentions

- Under Section 73 and 74 of the CGST Act, there is no restriction or specific prohibition on issuing a single SCN covering multiple financial years.
- The phrase "any period" used in the above provisions means that the issuance of SCN shall be for any block of years and the same is not constrained to a single year.
- The word "tax period" mentioned in Section 73(4) and 74(4) includes not only year wise tax periods but also month wise tax periods.

There are twelve tax periods in a financial year. If contention of the petitioner is accepted, then twelve notices for each year will have to be issued.

On the other hand, if petitioner has accepted the clubbing of show cause notices for twelve monthly tax periods within a financial year, there should be no difficulty in accepting a consolidated show cause notice covering multiple financial years, as long as it is issued within the limitation period.

HC ruling

- Sections 73(10) and 74(10) prescribe a limitation of 3 or 5 years from the due date of filing the annual return for each FY, treating each year as a separate unit.

Clubbing multiple years in a single SCN is inconsistent with these provisions, as the limitation period is distinct for each year and cannot be treated as continuous or can be carried forward to combine different FYs.

² (2024) 15 CENTAX 118 (Mad.)

- A combined reading of Section 73(1), (3) and (4) makes it clear that the phrase "any period" used in Section 73(1) and (3) refers to a "tax period".

As per Section 2(106), tax period means the period, for which, the return is required to be furnished.

Under GST law, a taxpayer files both monthly returns and annual returns. Based on these returns, a notice may be issued for a specific month or for the entire financial year.

If any return is filed for more than one financial year, then, based on the said return, single SCN can be issued. However, under the GST Law, there is no requirement for filing any returns other than monthly and yearly returns.

Hence, no SCN could be issued for more than one financial year.

- Section 128 empowers the Government to notify schemes for partial or full waiver of penalties or fees. If a SCN covering multiple years is issued before such a notification, the petitioner would be compelled to pay tax for all included years to avail the scheme, causing significant hardship.

Similar hardship will be faced by the petitioner, when they intend to file an application for compounding the offences under Section 138 for any particular year/s.

Further, when a notice under Section 74 covers multiple financial years, the department may treat all years as offences under Section 74, thereby restricting the petitioner's right to contest specific periods under Section 73 where no offence is involved.

- This court, in case of Titan Company Ltd (*supra*) has already held that bunching of notices is impermissible.
- Issuance of a composite SCN and demand for multiple FYs, without separate year-wise adjudication, violates the limitation framework and denies year-specific rebuttals, amounting to jurisdictional overreach and rendering the order *void ab initio*.
- Accordingly, the court held that no SCN can be clubbed and issued for more than one financial year. The order passed for more than one financial year is impermissible in law and hence liable to be quashed.

Comments

- While CGST Rules specifically allows conduct of audit for multiple financial years or a part thereof, no such provisions exist for adjudication under Section 73 or 74.
- It may need to be examined whether the department is permitted to issue fresh, year-wise SCNs beyond the statutory time limits prescribed under Sections 73 or 74, in instances where the original consolidated SCN was issued within the applicable limitation period.

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