

HC: Section 74 Limitation Cannot Replace Section 73

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REFER THE DECISION OF THE HON'BLE GUJRAT HIGH COURT IN THE CASE OF

Zodiac Energy Ltd. v. Assistant Commissioner of State Tax - [2025] 177 taxmann.com 560

Zodiac Energy Ltd. was issued a **show cause notice (SCN)** by the GST authorities for alleged tax and ITC dues. The SCN was issued under **Section 74(1) read with Section 74(10)** of the CGST Act, which prescribes a **five-year limitation period** in cases of **fraud, wilful misstatement, or suppression of facts**.

The assessee challenged the SCN before the Gujarat High Court, arguing that:

- There was **no allegation or finding** of fraud, wilful misstatement, or suppression.
- In the absence of such ingredients, the matter falls under **Section 73**, which prescribes a **three-year limitation period**.
- Since three years had already elapsed, the SCN was **barred by limitation**.

The Court agreed with the assessee and held that:

- The extended five-year period under **Section 74** can be invoked **only if fraud, misstatement, or suppression is established**.
- Authorities cannot mechanically apply Section 74 to extend limitation when no such circumstances exist.
- In this case, since the **three-year period under Section 73 had expired**, the SCN was **time-barred**.

Accordingly, the Court declared that the **notice was without jurisdiction and void**.

Key Takeaway

- **Section 73 (3 years)** → Applies where **no fraud / misstatement / suppression** is involved.
- **Section 74 (5 years)** → Applies **only when fraud / misstatement / suppression is established**.
- Wrongly applying extended limitation = **jurisdictional error**.
- SCN issued after 3 years without fraud = **void ab initio**.