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## Section 74A vs 73 & 74 of CGST Act: Key Differences and Impact

**Section 74A** governs the procedural requirement of creation of demand in the GST law in respect of demands from financial year 2024-25. Upto Financial 2023-24, the said provisions were covered by **Sections 73 and 74**.

Section 73 of the GST Act, 2017 applies in cases where there is no fraud, wilful misstatement, or suppression of facts to evade tax. In such cases, the proper officer can issue an order within 3 years from the due date for filing the annual return for the relevant financial year. On the other hand, Section 74 applies when there is fraud, wilful misstatement, or suppression of facts with the intent to evade tax. In such cases, the officer has a longer period and can issue an order within 5 years from the due date for filing the annual return for the relevant financial year.



Due to separate time-lines, litigations largely centred on whether a particular case should be classified under Section 73 or Section 74 and many cases where demand raised was legally sustainable is squashed by the judiciary due to procedural lapses of the lower authorities.

This approach led to several issues. Considerable time was spent in procedural disputes over the applicable section before the merits of the case were even addressed. There was also a tendency for the department to classify cases under Section 74 in order to impose higher penalties and avail extended limitation periods, even in situations where interpretation differed.

The boundaries between “fraud,” “suppression,” and “wilful misstatement” were often subject to interpretation, resulting in inconsistent treatment and prolonged litigation.

With the insertion of Section 74A by the Finance (No. 2) Act, 2024 (effective from 1 November 2024 and applicable from FY 2024–25), the framework for recovery proceedings has undergone a significant change wherein timeline for both the situations are same.

This eliminates the preliminary procedural battle whether demand is raised within statutory time line and shifts the emphasis to a direct examination of the facts, circumstances, and nature of the case. By simplifying the process, Section 74A reduces procedural disputes, ensures more consistent treatment, shortens timelines, and brings greater clarity and efficiency to recovery proceedings, thereby lowering the scope for litigation.



## Comparison: Sections 74A, 73 & 74 of CGST Act

Aspect	Section 74A		Section 73	Section 74
	Fraud	Non-Fraud	Non-Fraud	Fraud
Applicability	Applies to fraud and non-fraud cases; unified framework		Applicable to only on-fraud cases	Applicable to only fraud/suppression cases
Penalty	100% of tax payable	10% of tax or ₹10,000 (whichever higher)	10% of tax or ₹10,000 (whichever higher)	100% of tax amount
Tax Paid	Penalties / Interest			
Before issuance of SCN	15% of Tax + Interest	No penalty	No penalty	15% of Tax + Interest
After issuance of SCN but within time limit prescribed	25% of Tax + Interest if paid within <b>60 days of SCN</b>	No penalty if paid within <b>60 days of SCN</b>	No penalty if paid within <b>30 days of SCN</b>	25% of Tax + Interest if paid <b>within 30 days of SCN</b>
After issuance of Order within prescribed time limit	50% of Tax + Interest if paid within <b>60 days of order</b>	10% of tax or ₹10,000 (whichever higher)	10% of tax or ₹10,000 (whichever higher)	50% of Tax + Interest if paid within <b>30 days of order</b>
After issuance of Order after prescribed time limit	100% of Tax + Interest			100% of Tax + Interest
Time Limits				
Time limit to issue SCN	Within <b>42 months</b> from due date of filing of annual return or from date of erroneous refund		Notice to be issued <b>3 months before expiry of 3 years i.e. 33 months</b> from due date of filing of annual return or date of erroneous refund	Notice to be issued <b>6 months before expiry of 5 years i.e. 54 months</b> from due date of filing of annual return or date of erroneous refund
Time Limit to issue an Order	<b>12 months</b> from date of notice Further extendable up to 6 months *		<b>3 years</b> from due date of return or from date of erroneous refund	<b>5 years</b> from due date of return or from date of erroneous refund
	Linked to SCN Date		Linked to Annual Return Date	

*\* The Commissioner, or an officer authorized by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.*

Particulars	Case 1		Case 2
Default Period	Oct-23		Apr-24
Applicable Section	Section 73 / 74		Section 74A
Annual Return Due Date	31-Dec-24		31-Dec-25
Time Limit	Sec 73	Sec 74	Sec 74A
Last Date to issue SCN	30-Sep-27	30-Jun-29	30-Jun-28
DRC-01 (SCN) Actual Issue Date	01-Jan-24	01-Jan-24	01-Jul-24
Last date to pass Order (DRC-07)	31-Dec-27	31-Dec-27	30-Jun-25*



*\*As under Section 74A, last date to issue order is linked to SCN date, it will differ from case to case and will not be same for all dealers which was the case till date*

#### **Author's Note:**

*This article is intended for informational purposes only and does not constitute legal advice. Businesses are advised to consult professional advisors for tailored litigation and compliance strategies.*