SCN issued beyond 5-year limitation for 2017-18 under sec. 74 not saved by notification; action void:

The High Court quashed the Demand-cum-Show Cause Notice (SCN) and Order-in-Original (OIO) issued for FY 2017-18, holding them to be without jurisdiction and contrary to law.

Key Findings

- For proceedings under Section 74 of the CGST Act, the department must act within the prescribed limitation period.
- The SCN and OIO were issued after the expiry of five years from the due date for furnishing the annual return for FY 2017-18.
- Since no valid notification extending the limitation period under Section 74 or Section 168A was shown to exist, the proceedings were time-barred and invalid.

Parallel Proceedings – Section 6(2)(b)

The Court also examined the bar on parallel proceedings under Section 6(2)(b) of the CGST Act:

- Where SGST authorities had already initiated and subsequently dropped proceedings relating to excess ITC on the same subject matter, the CGST authorities could not initiate parallel proceedings on the identical issue.
- Accordingly, the SCN and OIO were held to be without jurisdiction to the extent they covered the same subject matter already examined by SGST authorities.

Limitation of the Bar

The Court clarified that the bar under Section 6(2)(b) applies only when the subject matter is identical.

- If SGST proceedings relate to one issue (e.g., GSTR-1/GSTR-3B mismatch), and
- CGST proceedings relate to a different issue (e.g., short payment of tax),

then the CGST authorities are not barred from taking action, as the matters are distinct.

Key Takeaway

- Time-barred GST proceedings cannot be sustained unless limitation has been validly extended by law.
- CGST and SGST authorities cannot simultaneously pursue the same issue against a taxpayer.
- However, parallel proceedings are permissible where the issues involved are different and not identical in subject matter.

Section 74 of the CGST Act, 2017

Section 74 deals with the determination and recovery of GST where tax has not been paid, short-paid, erroneously refunded, or ITC has been wrongly availed/utilized due to fraud, wilful misstatement, or suppression of facts with an intent to evade tax.

When is Section 74 Invoked?

The department can invoke Section 74 if it believes that any of the following occurred because of:

- Fraud
- Wilful misstatement
- Suppression of facts
- Intent to evade tax

Examples:

- Fake invoices
- Bogus ITC claims
- Concealment of taxable transactions
- Deliberate non-disclosure of information required under GST law

Limitation Period

For periods covered by Section 74, the department must issue and complete proceedings within the prescribed extended timeline.

- Order can be passed up to 5 years from the due date of furnishing the annual return for the relevant financial year (subject to applicable amendments and valid extensions notified by law).

This is longer than Section 73, which applies to non-fraud cases.

Penalty Under Section 74

The penalty is much stricter because it involves alleged fraud or suppression:

Situation	Penalty
Tax paid before SCN	15% of tax
Tax paid within 30 days of SCN	25% of tax
Tax paid within 30 days of Order	50% of tax
Otherwise	Up to 100% of tax demanded

Key Difference: Section 73 vs Section 74

Particulars	Section 73	Section 74
Nature of default	No fraud/suppression	Fraud, wilful misstatement, suppression
Limitation	Generally 3 years	Generally 5 years
Penalty	Lower	Higher (up to 100%)

Relevance to the HC Case You Mentioned

The High Court held that for FY 2017-18, the SCN and Order were issued after the 5-year limitation period and there was no valid notification extending the limitation under Section 74 or Section 168A. Therefore, the proceedings were held to be time-barred and without jurisdiction. This illustrates that even in fraud-related cases, the department must act within the statutory limitation period.

What is the role of Section 168A?

Role of Section 168A of the CGST Act

Section 168A gives the Central Government the power to extend statutory time limits under the GST law in special circumstances, provided such extension is made on the recommendation of the GST Council through a notification.

What does Section 168A say?

The Government may extend time limits specified under the CGST Act for actions that cannot be completed or complied with due to "force majeure" situations.

Force majeure includes events such as:

- Epidemic (e.g., COVID-19)
- War
- Flood
- Drought
- Fire
- Cyclone
- Earthquake
- Other calamities affecting implementation of GST provisions

Why is Section 168A important?

It enables the Government to:

- Extend due dates for filing returns.
- Extend limitation periods for issuing notices and orders.
- Relax compliance timelines during extraordinary situations.

Connection with Section 74 Proceedings

In the case you referred to, the High Court examined whether the limitation period for issuing the Section 74 SCN and Order for FY 2017-18 had been validly extended.

The Court held that:

- The normal limitation period under Section 74 had expired.
- No valid notification extending that limitation under Section 74 read with Section 168A was shown to apply.
- Therefore, the SCN and Order were time-barred and without jurisdiction.

Practical Takeaway

Section 168A does not automatically extend time limits. An extension is effective only when:

1. The Government issues a notification;
2. The notification is based on GST Council recommendations; and
3. The extension relates to circumstances covered by Section 168A (force majeure).

Thus, whenever a taxpayer receives a delayed SCN under Section 73 or Section 74, one of the first checks should be whether a valid Section 168A notification exists extending the applicable limitation period.