

**Part-106-One Pager Snapshot to cases in Service Tax regime on invoking extended period-(Section 73 of Finance Act, 1994 which was similar to Section 73/74 of CGST Act, 2017)-Part-I
CA Arpit Haldia**

S.N.	Case Subject	Case	Held
1.	Extended period cannot be invoked in matters involving Interpretation of Statute	International Merchandising Company v. Commissioner, Service Tax [2022] 145 taxmann.com 247 (SC) (01-11-2022)	The appellant placed reliance on the decision in <i>Padmini Products v. CCE</i> 1989 taxmann.com 629 (SC) to submit that the extended period of limitation would not be attracted as the appellant has not acted with dishonest or fraudulent intent. The Court observed that the Tribunal had specifically observed that the present case involved interpretation of statutory provisions. Therefore, Tribunal having concluded that the issue turned upon an interpretation of the provisions of Section 65(68) and Section 65(86b) of the Finance Act 1994, there was no warrant to allow invocation of extended period of limitation and to direct determination of the penalty following the re-quantification of demand. The extended period of limitation would clearly not stand attracted in respect of the first SCN dated 20 October 2009. Thus, the demand was confined to the normal period of limitation excluding the extended period.
2.	No penalty wherein tax paid before the issue of the SCN	Cades Digitech (P.) Ltd. v. Commissioner of Central Tax [2022] 140 taxmann.com 189 (Bangalore-CESTAT) (04-01-2022)	Appellant submitted that the demand and duty has been paid before the issue of SCN and as such no penalty can be imposed. However, AR for the Revenue disputed the payment of interest thereof. The Tribunal was of the considered opinion that in order to verify the competing claims of the appellant and the Revenue, the matter was to go back to the original authority for verifying the records and arrive at the actual duty and interest payable. However, no penalties can be imposed at this court.
3.	Extended period cannot be invoked since department had conducted audit of the taxpayer in 2012 and had knowledge about the activities of taxpayer since then.	Abhishek Alcobev (P.) Ltd. v. Central Excise Commissionerate, Noida [2022] 139 taxmann.com 1 (Allahabad - CESTAT) (23-02-2022)	On the aspect of invoking extended period of 5 years by the department instead of normal period of 18 months while issuing the SCN, Tribunal held that extended period can be invoked by the department only when there was element of fraud or collusion or there was wilful intention for evading the payment of service tax or there was suppression of relevant facts resulting into the evasion of duty. In the present case, it was observed that department had conducted the appellants audit in August 2012 also. Hence, department had the knowledge about the activities of the appellant. There was no denial that the appellant had been filing its Service Tax returns regularly. Appellant had been registered with Service Tax department. Department had the option to and had assessability to entire information about receiving disputed amount of interest by appellant since 2009. Tribunal held that suppression of facts cannot be alleged. The fact being in the knowledge of the department since august 2012, no question of invoking the extended period at all arise. With respect to the taxable service being provided by the appellant there was no denial for discharge of liability of service tax. Hence there was never any intentional evasion on part of the appellant. It became crystal clear that there was neither a wilful mis-declaration nor wilful suppression. The extended period therefore was wrongly invoked and SCN was held to be barred by time. Cases Referred- Padmini Products v. Collector of Central Excise followed in Anand Nishikawa Co Ltd. v. CCE [2005] 2 STT 226 (SC)
4.	Mere non-payment of duties is not equivalent to collusion or wilful misstatement or suppression of facts	C.C.,C.E. & S.T. Bangalore v. Northern Operating Systems (P.) Ltd. [2022] 138 taxmann.com 359 (SC) (19-05-2022)	The Court observed that CESTAT relied upon two of its previous orders in giving the order in favour of the assessee and in the present case, the revenue itself discharged the later two SCN. Thus, it evidenced that view held by assessee about its liability was neither untenable, nor <i>mala fide</i> . This was sufficient to turn down revenue's contention about existence of "wilful suppression" of facts, or deliberate misstatement. The Court held that SCN was unjustified and unreasonable on the aspect of invocation of extended period of limitation and although the assessee was held liable to discharge its service tax liability but only for the normal period or periods, covered by the four SCNs issued to it. Cases Referred- Cosmic Dye Chemical v. CCE 1995 taxmann.com 926 (SC), Uniworth Textiles v. CCE [2013] 31 taxmann.com 67, Escorts Ltd. v. CCE [2015] 58 taxmann.com 125, Commissioner of Customs v. Magus Metals [2017] 16 SCC 491
5.	Extended period cannot be invoked since taxpayer sought clarification and instead of clarifying, investigation commenced for suppression of facts	Karnataka Co-operative Milk Producers Federation Ltd. v. Commissioner of Central Excise [2022] 138 taxmann.com 486 (Bangalore-CESTAT) (22-02-2022)	The appellant argued that the SCN was time barred. The Tribunal observed that the appellants had proactively informed the department in 2004 itself about their activities and sought clarification on the excisability to service tax. The department instead of giving clarification have decided to investigate the matter after two years and issued show-cause notice after further two years. In place of invoking extended period in cases of suppression of fact with an intent to evade payment of duty or tax, tribunal observed that department chose to invoke extended period in a case where the appellant has proactively informed the department about their activities and sought clarification. The Tribunal thus held that Revenue had no case to invoke the extended period to issue show-cause notice. Therefore, the impugned order was held not to survive on limitation.
6.	Extended Period cannot be invoked as no suppression of facts when proper Books maintained and returns filed regularly.	State Bank of Patiala v. Commissioner, Central Excise & Central Goods & Services Tax [2021] 129 taxmann.com 167 (New Delhi - CESTAT) (09-08-2021)	It was argued that proper books of accounts and statutory registers were maintained, and returns were filed with Department regularly. There was no allegation in SCN that the appellant had not filed return properly and/or there is any suppression of facts or mis-statement in the returns. Tribunal held that the SCN had been issued after more than 32 months from the last date when the return was due from the financial year ending 31-3-2010. Accordingly, SCN was bad for invoking the extended period of limitation. There was no suppression of facts or contumacious conduct on the part of the appellant.