

**Part-107-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-II
CA Arpit Haldia**

S.N.	Case Subject	Case	Held
1.	No suppression as matter of pure interpretation and represented before audit & investigation by assessee	Adani Enterprise Ltd. v. Commissioner of Service Tax [2022] 141 taxmann.com 463 (Ahmedabad - CESTAT) (15-03-2022)	The issue involved was regarding classification and applicable rate on services. Tribunal held that firstly issue involved was of pure interpretation of legal provisions therefore, it cannot be said that Appellant had any <i>mala fide</i> intentions and had suppressed any fact with intention to evade. It was also on record that Appellant had represented the matter before Audit team and also before department during the investigation of case. This clearly reflected that there was no suppression or willful misstatement. The Appellant also provided all the details related to disputed activity before department. In this circumstances charge of suppression or wilful misstatement did not survive. Thus, extended period of limitation was also not invocable and no penalty was payable.
2.	No suppression or will misstatement when the information already communicated to the department	Ranjit Singh & Co. Ltd. v. Principal Commissioner, Central Excise And Service Tax Commissionerate [2022] 141 taxmann.com 122 (Allahabad-CESTAT)(28-03-22)	The question before the Tribunal was whether SCN dated 18-10-2016 for the period April 2011 to March 2015 was barred by limitation or not. The Tribunal took note of the fact that the appellant had informed the department that they will discharge their service tax liability under Composite Scheme under Works Contract Services and the said activity was known to the respondent during the period of execution of work. In these circumstances, SCN issued by invoking extended period of limitation was not sustainable. Accordingly, the whole of demand was barred by limitation.
3.	No suppression as activity as well as the payment were in knowledge of the department	R D Contractors and Consultants v. Commissioner of Central Excise & Service Tax, Panchkula [2022] 137 taxmann.com 288 (Chandigarh - CESTAT) (26-08-2021)	Tribunal observed that in this case, extended period of limitation was not invocable as it was a case of availment of benefit of Notification No. 30/2012-ST dt. 20.06.2012 and computation of taxable turnover and no fact were suppressed by the appellant from the department. The activity as well as payment of service tax were in the knowledge of the department, therefore, in the absence of any malafides on the part of the appellant, extended period of limitation was not invocable. Therefore, any demand pertaining to extended period of limitation was set aside.
4.	No penalty when the amount paid before SCN and order only reflected non-payment with no finding about the wilful misstatement or suppression.	Five Vision Promoters v. Commissioner, Central Excise & Service Tax, Ghaziabad [2022] 137 taxmann.com 13 (Allahabad - CESTAT) (28-02-2022)	The period involved in the case was 1-4-2010 to 31-12-2014 and SCN was issued on 13-1-2015. When the audit was conducted, the appellant had paid service tax on the rent received as on 24-1-2012 in respect of shops in the mall. The amount already stood appropriated. The Tribunal thus, was in agreement with the appellant that section 73(3) was applicable to the case and no SCN should have been issued. There was no finding of the Commissioner in the impugned order with respect to the demand which established any element of fraud or collusion or willful mis- statement or suppression of facts or violation of provisions of act or rules with an intent to evade payment of service tax. Therefore, section 73(4) did not apply to the part of the demand. All that the impugned order reflected was that the appellant had not paid service tax and when pointed out by the audit, it paid it forthwith. For the same reason, it was held that no case was made out by the Revenue to justify the imposition of penalty upon the appellant under section 78 in so far as this part of the demand was concerned.
5.	Extended period not invocable as -Department conducted audit of previous period & facts in the knowledge of department -Regular Returns filed -Specific provision not invoked in operative part -Demand being revenue neutral -Balance Sheet being a public document -No Positive evidence for malafide intention	Luit Developers (P.) Ltd. v. Commissioner of Central Goods and Services Tax & Central Excise, Dibrugarh [2022] 136 taxmann.com 109 (Kolkata - CESTAT) (23-02-2022)	Tribunal observed that the Service tax demand for April-September 2014 was beyond extended period of 5 years. Reasons were as follows- -Department had done audit of the appellant for February, 2014-15 as per Detailed Manual Scrutiny Report dated 15.12.2017, which included checking of Form 26AS as clearly mentioned in Para 5.2 of CBEC Circular No 185/4/2015-ST dated 30.6.2015 vide F.No 137/314/2012 and therefore no suppression can be alleged for this period. -Tribunal referred to Judgement in <i>Gannon Dunkerley & Co. Ltd. v. CST (Adjudication)</i> 2021 (47) GSTL 35 (Trib. - Delhi) wherein it was held that since appellant was filing all ST-3 Returns regularly, Department's stand that it could examine the factual position only on receiving details of Form 26AS cannot be sustained because CBEC Circular No. 113/7/2009-S.T., dated 23-4-2009 vide F.No. 137/158/2008-CX. 4 and CBEC Circular No 185/4/2015-ST dated 30.6.2015 vide F.No 137/314/2012 categorically puts duty on Assessing Officer to effectively scrutinize the returns at the preliminary stage. -Proviso to Section 73(1) was not invoked in the operative part of SCN and therefore extended period could not be invoked as held in <i>Satish Kumar & Co. v. CCE</i> 2019 (22) GSTL 269 (Mum. - CESTAT). -Extended period cannot be sustained for part of tax demand raised on RCM basis by virtue of it being a revenue neutral situation since the appellant was eligible for credit if it had done tax payment as also held in <i>Universal Dredging & Reclamation Corpn. Ltd. v. Commissioner of CGST & CE</i> 2021 (44) GSTL 401 (Chennai - CESTAT). -Appellant was Pvt Ltd Company and figures in Form 26AS were already included in Revenue from Operations in the Profit/Loss Account, which was a public document, therefore no suppression can be alleged as held in <i>Hindalco Industries Ltd. v. CCE</i> 2003 (161) ELT 346 (Trib. - Delhi). -Department had not adduced any positive evidence to show malafide intention for evasion of service tax and therefore extended period cannot be invoked as held in <i>Pushpam Pharmaceuticals Co. v. Collector of Central Excise</i> 1995 (78) ELT 401 (SC).