

**Part-108-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-III  
CA Arpit Haldia**

S.N.	Case Subject	Case	Held
1.	Extended period not invocable for payment of tax under RCM as revenue received entire tax i.e. partly from recipient and partly from supplier and confirming liability would tantamount to receiving double tax on same transaction.	<b>Mahatma Gandhi University of Medical Sciences and Technology v. Commissioner Central Excise &amp; Central Goods and Service Tax, Jaipur [2021]</b> 132 taxmann.com 97 (New Delhi - CESTAT)	<b>During the scrutiny</b> of ST-3 Returns, Department noticed that appellant had paid Service Tax on 75% of gross service value under RCM as per the provisions of Notification No. 30/2012-ST dated 20th June, 2012. However, appellant was liable to pay Service Tax under RCM on 100% of gross service value in terms of the aforesaid Notification being amended <i>vide</i> Notification No. 07/2015-ST dated 1-3-2015 with effect from 1-4-2015. However, Service Tax on balance 25% amount of service value stands already paid by the service provider. <b>Tribunal Observed that</b> , the period in dispute was exactly from the date of coming into effect of amendment <i>i.e.</i> 1-4-2015 till the end of the said Financial Year <i>i.e.</i> March, 2016. Unawareness of the appellant to such a sudden change to be implemented in so proximity of time of its coming into effect could not be ruled out. Consequently, it was held that non-payment by the appellant for the said period was merely due to the <i>bonafide</i> belief of his liability to the extent of paying the service tax at 75% of the service value. Once there was no apparent <i>malafide</i> on part of the appellant and in view of the aforesaid <i>bonafide</i> belief of the appellant, fastening the allegations as that of concealment fraud and suppression were held to be highly unjustified. <b>Tribunal further observed</b> that there was no denial on part of the Department that the balance service tax on 25% value of the service was already been by service provider. The Department, thus, received 100% tax amount on the impugned transaction. Confirming such liability again under the pretext of the amendment of the applicable Notification would be nothing but would amount to receiving tax twice for the same transaction. Thus, the appellant liabilities stood discharged and the demand should not have been confirmed. Above all, Department was not entitled to invoke the extended period of limitation for no willful suppression on part of appellant that too with intent to not to pay duty (full duty already stands paid). <b>Cases Referred-</b> Pushpam Pharmaceuticals Co. v. Collector of Central Excise 1995 (78) ELT 401, Continental Foundation Jt. Venture v. CCE 2007 taxmann.com 532
2.	Since Finality to Tax liability accorded after substantial delay by CBIC Circular, therefore extended period not invocable	<b>Autobahn Enterprises (P.) Ltd. v. Commissioner of Service Tax [2022]</b> 136 taxmann.com 73 (Mumbai - CESTAT)	<b>Tribunal observed that</b> the finality was accorded to tax liability by circular no.87/05/2006-ST dated 6 <sup>th</sup> November 2006 of CBEC and therefore in view of the circumstances and the stand taken by the Tribunal in several decisions, invoking of the extended period for the purpose of imposition of penalty was held not to be sustainable. Accordingly, the penalty imposed under section 78 of Finance Act, 1994 was also set aside.
3.	No Levy of Penalty - presence of bonafide belief -Tax paid alongwith Interest at the time of audit and before SCN	<b>Fairfest Media Ltd. v. CGST &amp; Excise [ST Appeal No. 78619 of 2018, dated 19-6-2019]</b>	<b>Appellant stated that</b> service tax along with interest has already been paid by the appellant before issuance of SCN. <b>Tribunal stated that</b> the contention of the appellant was that he bona fide believed that he was not liable to pay service tax but during the audit, the audit party informed him that he was liable to pay service tax, then he immediately paid the entire service tax along with interest. Except mere allegation of suppression, Department did not bring any material on record to prove that there was suppression and concealment of facts to evade payment of tax. Consequently, imposition of penalty under section 78 of the Act was not justified and bad in law. Moreover, in the impugned order, the learned Commissioner (Appeals) did not record any finding on suppression of facts by the appellant with an intention to evade tax.
4.	Mere allegation that non-payment coming to notice of the department only after gathering intelligence and discreet investigation conducted by the head-quarters preventive unit not held to be sufficient for invoking Extended Period	<b>Vinoth Shipping Services v. Commissioner of Central Excise &amp; Service Tax [2021]</b> 132 taxmann.com 275 (Chennai - CESTAT)	<b>On the ground</b> of limitation, it was observed by the Bench that during the relevant period, the issue as to whether a sub-contractor has to pay Service Tax separately even when the main contractor had discharged Service Tax on the very same services was subject matter of litigation before various fora. In the decisions of <i>Semac (P.) Ltd. (supra)</i> , <i>Shivhare Roadlines (supra)</i> and <i>Urvi Construction (supra)</i> , the Tribunal had held that sub-contractors are not liable to pay Service Tax. There were conflicting views and the issue was referred to Larger Bench. In <i>Max Logistics Ltd. v. CCE</i> [Final order No. 53175/2016, dated 23-8-2016]. <b>Tribunal observed in the SCN</b> , that no positive act of wilful suppression/mis-statement was alleged on the part of assessee. SCN merely stated that: <i>"...As the non payment/non-registration came to the notice of the department only after gathering intelligence and discreet investigation conducted by the head quarters preventive unit, it appears that extended period of limitation is applicable to the facts of the case for recovery of service tax."</i> <b>Tribunal observed even</b> in the Order-in-Original, the only finding for invoking the extended period was that: <i>"As regards penal action, M/s. Vinoth Shipping Services, Tuticorin have contravened the Act by suppressing the fact of rendering services and not paying the Tax due during the year 2006 - 07 and by not obtaining registration certificate for service rendered. Hence penalty is imposable under sections 76, 77 &amp; 78 of the Act."</i> <b>Tribunal held that</b> there was no clear allegation that appellants had wilfully suppressed facts with the intention to evade payment of Service Tax. The main contractor/M/s. ACL had collected the full consideration including Service Tax from the clients, which was clear from the records. Appellants from the very beginning had raised the contention that they were instructed by M/s. ACL that they were not required to pay the Service Tax. Thus, there was no factual basis for invoking the extended period.