

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA**

REGIONAL BENCH – COURT NO.2

**Service Tax Appeal No.97 of 2012**

(Arising out of Order-in-Appeal No.01/SLG/2012 dated 13.01.2012 passed by  
Commissioner (Appeals) of CGST & Excise, Kolkata)

**M/s Contemporary Brokers**

Mallaguri, Pradhan Nagar, Siliguri-734003

**Appellant**

*VERSUS*

**Commissioner of Central Excise, Siliguri**

Haren Mukherjee Road, Hakimpara, Siliguri-734001

**Respondent**

**APPEARANCE :**

Shri Joydeb Bhattacharya, Chartered Accountant of the Appellant  
Shri J.Chattopadhyay, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**

**HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO...76064/2023**

DATE OF HEARING : 11 .07.2023

DATE OF DECISION : 11 .07.2023

**Per Ashok Jindal :**

The appellant is in appeal against the impugned order wherein they are praying that the extended period of limitation is not invocable. Hence, the demand for the extended period of limitation and penalty on the appellant, are not imposable.

2. The facts of the case are that the appellant is a "Tea Broker" and is registered as provider of "Auctioneer Service". The department found that from May, 2006 to March, 2007, the appellant has not paid the service tax on Auctioneer's Service rendered by them. Therefore, they have suppressed the facts and issued the show-cause notice dated 15.09.2009 by invoking extended period of limitation for demand of the said period and to impose penalty on the appellant.

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3. The matter was adjudicated. The demand of service tax was confirmed by involving the extended period of limitation and penalty was also imposed. Against the said order, the appellant is before us.

4. The Id.Counsel for the appellant submits that the issue whether the Auctioneer Service is taxable or not, was in dispute. On 7<sup>th</sup> July, 2006, the Tea Board , Kolkata, has sought a clarification from the Department and vide a reply dated 22.02.2007, it was stated that the matter is under examination by the Ministry and on 19.03.2007, it was held that the appellants are liable to pay service tax being Tea Auctioneer. Therefore, the appellant has started paying service tax from the said date and for the impugned period as the matter was under dispute, they did not pay the service tax and there is no malafide intention on the part of the appellant for not to pay the service tax. In that circumstances, the extended period of limitation is not invocable. Consequently, the demand for extended period of limitation and the penalty imposed on the appellant, are to be set aside.

5. On the other hand, the Id.A.R. for the Revenue, supported the impugned order.

6. Heard the parties and considered the submissions made from both the sides.

7. We find that in this case, admittedly, on 7<sup>th</sup> July, 2006, the Tea Board, Kolkata, sought a clarification from the Department of Commerce, Ministry of Commerce and Industry, Government of India, whether the Tea Auctioneers are liable to pay service tax or not and the said issue was under consideration and replied by the Office of the Commissioner of Central Excise, Siliguri vide letter dated 22.02.2007

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and clarification to this effect came on 19.03.2007 mentioning with the activity that the appellant is liable to pay service tax.

8. In that circumstances, we hold that the show-cause notice issued to the appellant by invoking extended period of limitation on 15.09.2009 is not sustainable as the issue was in dispute whether the service tax is payable on the activity undertaken by the appellant. Therefore, we hold that the demand for extended period of limitation is not sustainable. Accordingly, the same is set aside. As the extended period of limitation is not invocable, no penalty is imposable on the appellant.

9. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

Dictated and pronounced in the open Court.

Sd/-  
**(Ashok Jindal)**  
**Member (Judicial)**

Sd/-  
**(K.Anpazhakan)**  
**Member (Technical)**

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