CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

SERVICE TAX APPEAL NO. 51748 OF 2017

[Arising out of Order-in-Original No. DLI-SVTAX-003-COM-98-16-17 dated 21.06.2017 passed by the Commissioner, Customs, Indore (M.P.)]

M/s. Soft Dot Hi-Tech Educational and Training Institute ....Appellant
(A Unit of De Unique Educational Society),
K-16, South Extension, Part-1,
New Delhi-110049

versus

Commissioner of Service Tax, ...Respondent
Commissionerate, Delhi-III

APPEARANCE:

Shri Atul Gupta, Shri Anmol Gupta and Shri Varun Gaba, Advocates for the Appellant
Ms. Jaya Kumari, Authorised Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 10.01.2025
Date of Decision: 06.06.2025

FINAL ORDER NO. 50853/2025

JUSTICE DILIP GUPTA:

M/s. Soft Dot Hi-Tech Educational and Training Institute[1] has filed this appeal for setting aside the order dated 21.06.2017 passed by the Commissioner, Service Tax, Delhi-III Commissionerate[2] adjudicating the show cause notice dated 16.10.2015 issued to the appellant for the period from 01.04.2010 to 31.03.2015. The Commissioner has confirmed the demand of Rs. 3,05,92,676/-, out of the total demand of Rs. 4,31,53,154/- that was proposed in the show cause notice after

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1. **the appellant**
2. **the Commissioner**

invoking the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act 1994[3]. The Commissioner has also directed for recovery of interest under section 75 of the Finance Act and also imposed penalty of Rs. 10,000/- under section 77 of the Finance Act and a further penalty of Rs. 3,05,92,676/- under section 78 of the Finance Act.

2. The appellant claims to have been running Study Centres under Distance Education Mode for various Universities for imparting education in various courses such as B.Com, BBA and MBA and it is the Universities that award the degrees or diplomas to students undertaking education at such centres.

3. It was noticed by the department that though the appellant provided "commercial training or coaching centre" service as defined under section 65(26) of the Finance Act and made taxable under section 65(105)(zzc) of the Finance Act but the appellant was not paying service tax and was filing 'nil' ST-3 returns on the premise that this service was exempted under a Exemption Notification dated 20.06.2003[4] prior to 01.07.2012 and, thereafter, it was included in the negative list of services under section 66D(l) of the Finance Act. Accordingly, investigation was initiated against the appellant in the year May 2012.

4. A show cause notice dated 16.10.2015 was issued to the appellant calling upon the appellant to pay service tax on the fee collected from the students over and above the University expenses during the period 2010-11 to 2014-15 to the extent of Rs. 3,05,92,676/-. The show cause notice also mentions that the balance sheet for the year 2014-15 shows

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3. the Finance Act
4. the Exemption Notification dated 20.06.2012

that the appellant had received skill development amount of Rs. 10,16,21,987/- but the appellant could not provide any information regarding the fee received as skill development. Therefore, the appellant was further required called upon to pay service tax of Rs. 1,25,60,478/- on the said amount.

5. The extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act was also invoked for the following reasons:

> "Whereas, it further appears that the Noticee has deliberately and willfully suppressed the facts with intent to evade the payment of service tax inasmuch as they never disclosed to the Department the fact of provision of taxable service engaged in providing 'Commercial Training and Coaching Service' under Section 65(105)(zzc) of the Finance Act, 1994 to M/s. Jamia Hamdard University M/s. Guru Jambheshwar, University of Science & Technology, Hissar M/s. Punjab Technical University, M/s. Sikkim Manipal University & M/s. M.D. University, Rohtak. **Thus, the services provided by the party escaped the assessment for the purpose of levy of service tax and subsequent payment thereof to the Government. These facts would not have come to the notice of the Department had the Department had the Department not conducted investigation against the Noticee. It, therefore, appears that extended period of five years under proviso to Section 73(1) of the Act ibid invocable in this case for recovery of Service Tax from the Noticee.**"
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> **(emphasis supplied)**

6. The appellant filed a reply to the aforesaid show cause notice. Apart from contesting the demand on merits for the reason that 'commercial training and coaching' service provided by the appellant was exempted from service tax, the appellant also contended that the

extended period of limitation could not have been invoked in the facts and circumstances of the case.

7. The Commissioner adjudicated the show cause notice by order dated 21.06.2017.

8. The Commissioner found that the appellant could not take the benefit of the Notification dated 20.06.2003 for the following reasons:

> "46. xxxxxxxxxx. It can be observed from the said Notification No.10/2003-ST dated 20.06.2003 that, exemption was granted to the taxable service provided to any person by a commercial training or coaching centre, in relation to commercial training or coaching, which form an essential part of a course or curriculum of any other institute or establishment, leading to issuance of any certificate or diploma or degree or educational qualification recognised by law for the time being in force subject to the condition that the charges for such services were not paid by the person undergoing such course or curriculum directly to the commercial training or coaching centre. **In the instant case, admittedly the fee has been collected by the Noticee themselves directly from the students which is being shared by them with the concerned Universities, thereby, they have contravened the condition prescribed under the said exemption Notification No.10/2003-ST dated 20.06.2003.** Hence, I am of the considered opinion, that the Noticee is also not entitled to the benefit of Notification No.10/2003-ST dated 20.06.2003 for the period prior to 01.07.2012 as well."
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> **(emphasis supplied)**

9. The Commissioner also examined whether the appellant was liable to pay service tax upto 30.06.2012 under 'commercial training and coaching' service in view of the following submissions by the appellant:

> "41. The upshot of the arguments made by the Noticee was that till 30.04.2011, the services provided by them fell under the exclusionary clause of the

> definition of "Commercial Training or Coaching Centre" vide Section 65(27) of the Finance Act, 1994 and on or after 01.05.2011 such services were exempt by a Notification No. 33/2011-ST dated 25.05.2011. Consequently, no service tax was payable by them till 30.06.2012 under "Commercial Training or Coaching Service". Therefore, it would be useful to bring out the definition of "Commercial Training or Coaching Service" and the Notification No. 33/2011-ST dated 25.05.2011 prevalent during the relevant period."

10. In this connection, the Commissioner examined whether the service provided by the appellant was exempted from service tax under the Exemption Notification dated 25.04.2011[5]. This Notification is reproduced below:

> "In exercise of the power conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government on being satisfied that it is necessary in the public interest so to do, hereby exempt,-
>
> (i) any pre-school coaching and training;
>
> (ii) any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law for the time being in force;
>
> when provided by any commercial coaching or training centre from the whole of the service tax leviable thereon under section 66 of the Finance Act, 1994.
>
> 2. This notification shall come into force on the 1st day of May, 2011."

11. The Commissioner denied the benefit of this Exemption Notification dated 25.04.2011 for the following reasons:

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5. the Exemption Notification dated 25.04.2011

> "42.1 **Thus, it is unequivocally clear that, only those institutes or establishments that are providing coaching or training to their students which result in issuance of any certificate/diploma/degree or any educational qualification recognized by the law in India after successful completion of the course, are alone excluded from levy of service tax as per the said definition.** In the instant case, it is an undisputed fact that, the Noticee is a Study Centre engaged in imparting educating qua courses of the various Universities and the certificate or diploma or degree are issued by such Universities to the students after successful completion of their respective courses, and not by the Study Centre of the Noticee. Hence, the Noticee's claim that they fall under the exclusionary clause of the said definition till 30.04.2011 is incorrect."
>
> **(emphasis supplied)**

12. The Commissioner then examined the position from 01.07.2012 to 10.07.2014 and from 11.07.2014 onwards.

13. In respect of the period from 01.07.2012 to 10.07.2014, the appellant had placed reliance upon serial no. 9 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. The relevant portion of this Exemption Notification dated 20.06.2012 at serial no. 9 is reproduced below:

> "9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-
> (a) auxiliary educational services; or
> (b) renting of immovable property";

14. **'**Auxiliary educational services**'** is defined in clause (f) of the Definition Clause as follows:

> "(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for

> the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution'."

15. **'**Educational institution**'** has been defined in clause (oa) of the Definition Clause as follows:

> "(oa) "educational institution" means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994)."

16. Section 66D(l) of the Finance Act is as follows:

> "The negative list shall comprise of the following services, namely:-
>
> **(l)** services by way of-
>
> (i) pre-school education and education up to higher secondary school or equivalent;
>
> (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
>
> (iii) education as a part of an approved vocational education course;"

17. Serial no. 9 of the Exemption Notification dated 20.06.2012 was amended with effect from 11.07.2014 and it is as follows:

> "9. Services provided,-
>
> (a) by an educational institution to its students, faculty and staff;
>
> (b) to an educational institution, by way of,-
>
> (i) transportation of students, faculty and staff;
>
> (ii) catering, including any mid-day means scheme sponsored by the government;
>
> (iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution."

18. This issue was decided by the Commissioner in the following manner:

"52. In this context, I find that Section 65B(44) of the Act defines the term "service" which means 'any activity carried out by a person for another for consideration, and includes a declared service but shall not include,----. Thus, any activity carried out by a person for another for consideration, is a service. It is inherent that the consideration in lieu of services provided or agreed to be provided should be paid by the service recipient to the service provider. As discussed, supra, educational auxiliary services provided by the service provider under the said Notification are exempt only when such services are provided by him to the educational institutions. **Thus, it becomes clear that the S.No.9 (a) of the said exemption Notification No.25/2012-ST dated 20.06.2012 is applicable only when the consideration in lieu of services provided by the service provider is paid by the educational institution, and not by the students of such institution. As the Noticee has received the fee directly from the students and not from the universities in question, I am of the considered view that, they are not eligible to the benefit sought from 01.07.2012 to 10.07.2014 under S.No.9(a) of the said exemption Notification dated 20.06.2012. I further find that the services provided by the Noticee from 11.07.2014 also do not fall under Sr. No.9 of Notification No. 25/2012-ST dated 20.06.2012, as amended by the Notification No.6/2014-ST dated 11.07.2014 simply because none of the specified services under S.No.9 (b) relates to imparting of education provided by the service provider to the educational institution.**

> 53. In view of the foregoing, I hold that the Noticee is liable to pay service tax amounting to Rs. 3,05,92,676/- as alleged in the SCN."
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> **(emphasis supplied)**

19. The Commissioner, however, dropped the demand of Rs. 1, 25,60,478/- proposed in the show cause notice for the period 2014-15 for the following reason:-

> "55. I find that the Noticee has now produced copy of certificates showing registration as a Training Partner for a vocational skill development course under National Skill Certification and Monetary Reward Scheme with the various skill councils such as Retail Associations Skill Council of India (RASCI), Gem & Jewellery Skill Council of India, Telcom Sector Skill Council (TSSC), Security Sector Skill Development Council (SSSDC). The Noticee's Chartered Accountant has also certified the amount of fee of Rs. 1016.22 lacs received by them in lieu of skill development programme during the period 2014-15. Therefore, I am of the view that the Noticee is entitled to the benefit exemption under S. No. 9A to Notification No. 25/2012-ST dated 20.06.2012 as amended by Notification No. 13/2013-ST dated 10.09.2013. Accordingly, service tax of Rs. 1,25,60,478/- is not liable to be recovered from them."

20. Regarding the invocation of the extended period of limitation, the Commissioner observed:

> "57. xxxxxxxxx. Thus, the afore mentioned statutory provisions of service tax cast an obligation upon the assessee to get registration; to pay service tax; and to file periodical returns. The assessee in the instant case had failed to do so. **They had never disclosed to the department about the impugned taxable services provided. All these facts narrated above go to show that the party suppressed the facts, by non-compliance of the obligations cast upon them by the statutory provisions. The suppression of the facts clearly gives one conclusion that the party had intention to evade the tax, and nothing else.**

> 58. As far as the contention that, the Noticee had strong, belief that the impugned services were not amenable to tax under 'Commercial Coaching Centre Service' is concerned, I find that there is no complex legal provision which requires interpretation. The proceedings unfolded above clearly establish that the services in question of the Noticee were taxable. **There is no evidence as to whether the Noticee had at any point of time approached the department to ascertain the applicability of tax. xxxxxxxxx. Thus, forming a view, suomotu, without approaching the Department at any given time that service tax was not payable on the impugned services, is not a bonafide belief, especially when the assessee is registered with the Department. In the era of self- assessment, the statutory provisions of service tax casts an obligation upon the assessee to comply with provisions and Rules made there under, to self-assess their liability and pay it to the government exchequer and to file periodical returns correctly. The Noticee in the instant case has failed to do so. They had never disclosed to the department about the provision of impugned taxable service. All these facts narrated above go to show that, the Noticee suppressed the facts, by non-compliance of the obligations cast upon them by the statutory provisions. The suppression of facts clearly indicates that the Noticee had no intention to pay the tax. Had the department not investigated the case, the evasion of tax would have not come to the fore.** Hence, it is concluded that, the Noticee had contravened the said provisions of the Finance Act with the intention of not paying service tax at the appropriate time."
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> **(emphasis supplied)**

21. The Commissioner also held that interest would be payable by the appellant under section 75 of the Finance Act. The Commissioner also held that penalty would be leviable on the appellant under sections 78 and 77 of the Finance Act.

22. Shri Atul Gupta, learned chartered accountant appearing for the appellant assisted by Shri Anmol Gupta and Shri Varun Gaba made the following submissions:

(i) The appellant functions as a study center of various Universities for the students registered under Distance Education Mode of Study of these Universities. The degrees provided to the students are recognized by law during the entire period of dispute. Hence the services provided by the appellant are not covered under the category of 'commercial training or coaching' services under section 65(105)(zzc) read with section 65(27);

(ii) The appellant is acting as a college and preparing students to appear in the examinations in various Universities and on passing the students are provided degrees/certificates by the Universities, which degrees/certificates are recognized by law for the time being in force. The coaching or training provided by the appellant is in relation to the curriculum of the Universities and leads to issuance of certificate or diploma or degree recognized by law;

(iii) The appellant is taking care of all the facilities, amenities, infrastructure and formalities to educate the students to enable them to appear in the examinations at the Centers allocated by the Universities. Thus, the appellant can be equated with any college affiliated to any University. Hence, the services provided by the appellant are

not covered under the category of 'commercial training or coaching' services;

(iv) With effect from 01.05.2011, the exclusion clause was deleted from the definition of 'commercial training or coaching centre'. The said amendment brought institutes providing educational qualification recognized by law for the time being in force under the purview of service tax, including the appellant. However, the Government by Notification dated 25.04.2011 specifically exempted 'commercial coaching and training center' providing any coaching/training leading to grant of certificate/diploma/degree/educational qualification recognized by any law for the time being in force for the levy of service tax. The services provided by the appellant would be covered by the said Notification;

(v) With effect from 01.07.2012 the services provided by the appellant would be covered under clause (I) sub-clause (ii) of the section 66D (Negative List) of the Finance Act;

(vi) The service provided by the appellant would be exempted under entry 9 of Notification 25/2012 dated 20.06.2012;

(vii) Investigation was initiated against the appellant in 2012, whereas the show cause notice was issued to the appellant on 16.10.2015. Therefore, no suppression can be leveled against the appellant. Thus, the demand confirmed by invoking the extended period is not sustainable;

(viii) No suppression can be alleged as there were divergent views with respect to the issue involved. The extended period has, therefore, wrongly been invoked;

(ix) The appellant had also recorded all transactions in books and supporting documents were made available to the investigation team, which beyond reasonable doubts proves that there was never an intention on the part of the appellant to evade the payment of service tax;

(x) Service tax demand should be calculated on Cum Tax basis;

(xi) Penalty under section 78 of the Finance Act is not imposable; and

(xii) Penalty under section 77 of the Finance Act is not sustainable.

23. Ms. Jaya Kumari, learned authorised representative appearing for the department made the following submissions:

(i) The appellant is a Study Centre engaged in imparting education for courses of various Universities and the certificate or diploma of degree are issued by such Universities to the students after successful completion of their respective courses, and not by the Study Centre of the appellant. Hence, the claim of the appellant that it falls under the exclusionary clause of the definition till 30.04.2011 is incorrect;

(ii) The law laid down is that an exemption Notification has to be interpreted strictly and the onus lies on the

assessee to prove fulfillment of the conditions laid down therein;

(iii) Notification dated 20.06.2003 grants exemption to the taxable service provided to any person by a 'commercial training or coaching centre', in relation to 'commercial training or coaching', which form an essential part of a course of curriculum of any other institute or establishment, leading to issuance of any certificate or diploma or degree or educational qualification recognized by law for the time being in force subject to the condition that the charges for such services are not paid by the person undergoing such course or curriculum directly to the commercial training or coaching centre. In the instant case, admittedly the fee has been collected by the appellant directly from the students, which is being shared by the appellant with the concerned Universities. Thus, the appellant has not fulfilled the condition prescribed under the exemption Notification dated 20.06.2003;

(iv) Educational auxiliary services provided by the service provider under the said Notification are exempt only when such services are provided to the educational institutions;

(v) The services provided by the appellant from 01.07.2012 to 10.07.2014 are not exempted under Serial No. 9(a) of the Notification dated 20.06.2012; and

(vi) The services provided by the appellant from 11.07.2014 do not fall under Serial No. 9 of Notification dated 20.06.2012 or under the amended Notification dated 11.07.2014, since none of the specified services under

Serial No. 9(b) relates to imparting education provided by the service provider to the educational institution;

(vii) The extended period of limitation was correctly invoked; and

(viii) Penalties were correctly invoked.

24. The submissions advanced by the learned chartered accountant appearing for the appellant and the learned authorized representative appearing for the department have been considered.

25. The appellant claims that it is running study centres for various Universities for imparting education in courses such as B.Com, BBA and MBA. The appellant does not dispute that degrees or diplomas to the students who undertake coaching at the study centres are awarded by the Universities.

26. The issue that arises for consideration is whether the appellant provided 'commercial training or coaching centre' services.

27. Section 65(26) of the Finance Act, which was inserted w.e.f. 01.07.2003, defines 'commercial training or coaching' and it is reproduced:

> "**65(26)** 'Commercial Training or Coaching' means any training or coaching provided by commercial training or coaching centre;"

28. 'Commercial training or coaching centre' has been defined in section 65(27) of the Finance Act and it is reproduced:

> "**65(27)** 'Commercial training or coaching centre' means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any

> institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force;"

29. 'Taxable Service' under section 65(105)(zzc) of the Finance Act has been defined to mean 'any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching'. An Explanation was inserted by Finance Act, 2010 with retrospective effect from 01.07.2003. It is reproduced below:

> "**65(105)(zzc)** to any person, by a commercial training or coaching centre in relation to commercial training or coaching."
>
> Explanation. - For the removal of doubts, it is hereby declared that the expression "commercial training or coaching centre" occurring in this sub-clause and in clauses (26), (27) and (90a) shall include any centre or institute, by whatever name called, where training or coaching is imparted for consideration, whether or not such centre or institute is registered as a trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive and the expression "commercial training or coaching" shall be construed accordingly."

30. It is, therefore, clear from the aforesaid definitions that 'commercial training or coaching' means any training or coaching provided by a commercial training or coaching centre. A 'commercial training or coaching centre' has been defined to mean, any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field with or without issuance of a certificate and includes coaching or tutorial classes, but does not include any institute or establishment which issues any

certificate or diploma or degree or any educational qualification recognized by law for the time being in force.

31. The first issue that arises for consideration in this appeal is whether the appellant can take the benefit of the Notification dated 20.06.2003 to support the plea that service tax was not leviable under 'commercial training or coaching centre' services.

32. It would, therefore, be useful to reproduce the Notification dated 20.06.2003 and it is as follows:

> "In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided by a commercial training or coaching centre, in relation to commercial training or coaching, which form an essential part of a course or curriculum of any other institute or establishment, leading to issuance of any certificate or diploma or degree or educational qualification recognised by law for the time being in force, to any person, from the whole of the service tax leviable thereon under sub-section (2) of section 66 of the said Act:
>
> Provided that this exemption shall not be applicable if the charges for such services are paid by the person undergoing such course or curriculum directly to the commercial training or coaching centre:
>
> 2. This notification shall come into force on the 1st day of July, 2003.
>
> [Notification No. 10/2003-S.T., dated 20-6-2003]"

33. It is not in dispute that the students are directly paying charges to the appellant. The aforesaid Notification dated 20.06.2003 specifically excludes the benefit of the exemption to centres where the charges are directly paid to the "commercial training or coaching centre". The appellant would, therefore, not be entitled to the exemption granted

under the Notification dated 20.06.2003. This is precisely what has been held by the Commissioner in the impugned order dated 21.06.2017. There is, therefore, no error in the finding recorded by the Commissioner.

34. The second issue that arises for consideration is whether the appellant can claim the benefit of the Notification dated 25.04.2011. This Notification has been referred to in paragraph 10 of this order. The appellant is a study centre imparting education for some of the courses of the Universities. It is the Universities that award certificate, diploma or degree and not the appellant. The finding recorded by the Commissioner that in such circumstance the appellant would not be entitled to the benefit of the Notification dated 25.04.2011, therefore, also does not suffer for any illegality.

35. The third issue that arises for consideration is whether the appellant would be entitled to exemption from 01.07.2012 to 10.07.2014 in terms of serial no. 9 of the Exemption Notification dated 20.06.2012. It is clear from the aforesaid Notification that the exemption would be available to a coaching centre only when the consideration in lieu of services provided by the service provider is paid by the University and not by the students. The appellant directly receives the fees from the students and the consideration is not received from the Universities. The benefit of this Notification would, therefore, not be available to the appellant. This is what has been held by the Commissioner in the impugned order for denying the benefit of this Notification. There is, therefore, no error in the finding recorded by the Commissioner.

36. The next issue that arises for consideration is whether the appellant is entitled to exemption from 11.07.2014 onwards in terms of the Notification dated 11.07.2014 that amends the earlier Notification dated 20.06.2012. The amended Notification has been reproduced in paragraph 17 of this order. The benefit of clause 9(b) is not available to the appellant as none of the conditions are satisfied. The conditions do not relate to imparting of education provided by the service provider to the educational institution. The finding recorded by the Commissioner, therefore, that the benefit of this Notification cannot be taken by the appellant does not suffer for any illegality.

37. The last issue that arises for consideration is whether the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act could be invoked by the department.

38. The relevant portion of the show cause notice dealing with this aspect has been reproduced in paragraph 5 of this order. All that the show cause notice mentions is that the appellant deliberately and willfully suppressed facts with an intention to evade the payment of service tax as the appellant did not disclose to the department that it was providing “commercial training or coaching centre” service which is a taxable service and this fact would not have come to the notice of the department had the department not conducted investigation against the appellant.

39. The impugned order dated 21.06.2017 passed by the Commissioner has dealt with this issue and the relevant portion of the order has been reproduced in paragraph 20 of this order. The Commissioner found as a fact that the appellant had not approached the department to ascertain whether it was liable to pay service tax under

"commercial training or coaching centre" service and, therefore, forming an opinion without consulting of the department is not a bona fide belief of the appellant. The Commissioner further held that in the era of self-assessment it is the liability of the assessee to correctly assess the duty and file the periodical returns but the appellant failed to do so. Thus, the appellant had suppressed facts with an intention to avoid service tax and had the department not conducted an investigation, the evasion of service tax would not have come to the notice of the department.

40. In connection with the extended period of limitation, the appellant has provided a chart in the synopsis to demonstrate which part of the demand is covered by the normal period of limitation under section 73(1) of the Finance Act and which part is covered by the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act. This Chart is reproduced below:

Table Showing the normal period and the extended period

S.No.	Period	Date of return	18 months period	Actual date of SCN	No. of days delay	Covered by Extended Period or not
1.	Apr' 10 to Sept' 10	20-Oct-10	10-Apr-12	16-Oct-15	1284	Yes
2.	Apr' 11 to Sept' 11	20-Oct-11	20-Apr-13	16-Oct-15	909	Yes
3.	Oct' 11 to Mar' 12	12-Apr-12	12-Oct-13	16-Oct-15	734	Yes
4.	Apr' 12 to Jun' 12	11-Nov-12	11-May-14	16-Oct-15	523	Yes
5.	Jun' 12 to Sept' 12	26-May-13	26-Nov-14	16-Oct-15	324	Yes
6.	Oct' 12 to Mar' 13	11-Aug-13	11-Feb-15	16-Oct-15	247	Yes
7.	Apr' 13 to Oct' 13	13-Oct-13	13-Apr-15	16-Oct-15	186	Yes
8.	Oct' 13 to Mar' 14	12-Apr-14	12-Oct-15	16-Oct-15	4	Yes
9.	Apr' 14 to Oct' 14	11-Oct-14	11-Apr-16	16-Oct-15	-178	No
10.	Oct' 14 to Mar' 15	23-Apr-15	23-Oct-16	16-Oct-15	-373	No

41. The contention of the learned counsel for the appellant is that the necessary ingredients for invoking the larger period of limitation contemplated under the proviso to section 73 (1) of the Finance Act, namely wilful suppression of facts with an intent to evade payment of

service tax do not exist and, therefore, the extended period of limitation could not have been invoked.

42. There is substance in the contention advanced on behalf of the appellant that mere suppression of fact is not enough as it has also to be conclusively established that suppression was wilful with an intent to evade payment of service tax.

43. It is correct that section 73 (1) of the Finance Act does not mention that suppression of facts has to be "wilful" since "wilful" precedes only misstatement. It has, therefore, to be seen whether even in the absence of the expression "wilful" before "suppression of facts" under section 73(1) of the Finance Act, suppression of facts has still to be willful and with an intent to evade payment of service tax. The Supreme Court and the Delhi High Court have held that suppression of facts has to be "wilful" and there should also be an intent to evade payment of service tax.

44. Before adverting to the decisions of the Supreme Court and the Delhi High Court, it would be useful to reproduce the proviso to section 11A of Central Excise Act, 1944, as it stood when the Supreme Court explained "suppression of facts" in **Pushpam Pharmaceutical Co.** vs. **Commissioner of Central Excise, Bombay[6].** It is as follows:

> **"11A:** Where any duty of excise has not been levied or paid or has been short-levied or short-pain or erroneously refunded, by the reason of-
>
> (a) fraud; or
> (b) collusion; or
> (c) any wilful misstatement; or
> (d) suppression of facts; or

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6. 1995 (78) E.L.T. 401 (SC)

> (e) contravention of any of the provisions of this Act of the rules made thereunder with intent to evade payment of duty
>
> by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant dated, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under Section 11AA and a penalty equivalent to the duty specified in the notice."

45. In **Pushpam Pharmaceuticals Company**, the Supreme Court examined whether the Department was justified in initiating proceedings for short levy after the expiry of the normal period of six months by invoking the proviso to section 11A of the Excise Act. The proviso to section 11A of the Excise Act carved out an exception to the provisions that permitted the Department to reopen proceedings if the levy was short within six months of the relevant date and permitted the Authority to exercise this power within five years from the relevant date under the circumstances mentioned in the proviso, one of which was suppression of facts. It is in this context that the Supreme Court observed that since "suppression of facts" has been used in the company of strong words such as fraud, collusion, or wilful default, suppression of facts must be deliberate and with an intent to escape payment of duty. The observations are as follows;

> "4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. **But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts.** The meaning of the word both in law and even otherwise is well known. In normal

> understanding it is not different that what is explained in various dictionaries unless of court the context in which it has been used indicates otherwise. **A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.** Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."
>
> **(emphasis supplied)**

46. The Delhi High Court in **Bharat Hotels Limited** vs. **Commissioner of Central Excise (Adjudication)**[7] also examined at length the issue relating to the extended period of limitation under the proviso to section 73 (1) of the Finance Act and held as follows;

> "27. Therefore, it is evident that failure to pay tax is not a justification for imposition of penalty. Also, the word "suppression" in the proviso to Section 11A(1) of the Excise Act has to be read in the context of other words in the proviso, i.e. "fraud, collusion, wilful misstatement". As explained in Uniworth (supra), "misstatement or suppression of facts" does not mean any omission. It must be deliberate. **In other words, there must be deliberate suppression of information for the purpose of evading of payment of duty. It connotes a positive act of the assessee to avoid excise duty.**
>
> **xxxx**
>
> **Thus, invocation of the extended limitation period under the proviso to Section 73(1) does not refer to a scenario where there is a mere omission or**

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7. 2018 (12) GSTL 368 (Del.)

> **mere failure to pay duty or take out a license without the presence of such intention."**
>
> **xxxx**
>
> **The Revenue has not been able to prove an intention on the part of the Appellant to avoid tax by suppression of mention facts. In fact it is clear that the Appellant did not have any such intention and was acting under a bonafide belief."**
>
> **(emphasis supplied)**

47. The Delhi High Court in **Mahanagar Telephone Nigam Ltd.** vs. **Union of India and others**[8], also observed as follows:

> "28. In terms of the proviso to Section 73(1) of the Act, the extended period of limitation is applicable only in cases where service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, or collusion, or wilful misstatement, or suppression of facts, or contravention of any provisions of the Act or the Rules made thereunder with an intent to evade payment of service tax. **However, the impugned show cause notice does not contain any allegation of fraud, collusion, or wilful misstatement on the part of MTNL. The impugned show cause notice alleges that the extended period of limitation is applicable as MTNL had suppressed the material facts and had contravened the provisions of the Act with an intent to evade service tax.** Thus, the main question to be addressed is whether the allegation that MTNL had suppressed material facts for evading its tax liability, is sustainable.
>
> *****
>
> 41. **In the facts of this case, the impugned show cause notice does not disclose any material that could suggest that MTNL had knowingly and with a deliberate intent to evade the service tax, which it was aware would be leviable, suppressed the fact of receipt of consideration for rendering any taxable service.** On the contrary, the statements of the

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8. W.P. (C) 7542 of 2018 decided on 06.04.2023

> officials of MTNL, relied upon by the respondents, clearly indicate that they were under the belief that the receipt of compensation/financial support from the Government of India was not taxable. **Absent any intention to evade tax, which may be evident from any material on record or from the conduct of an assessee, the extended period of limitation under the proviso to Section 73(1) of the Act is not applicable.** The facts of the present case indicate that MTNL had made the receipt of compensation public by reflecting it in its final accounts as income. **As stated above, merely because MTNL had not declared the receipt of compensation as payment for taxable service does not establish that it had willfully suppressed any material fact.** MTNL"s contention that the receipt is not taxable under the Act is a substantial one. **No intent to evade tax can be inferred by non-disclosure of the receipt in the service tax return.**"
>
> **(emphasis supplied)**

48. It is, therefore, clear from the aforesaid discussion that the extended period of limitation could have been invoked only if there was suppression of facts with intent to evade payment of service tax.

49. It is keeping in mind the aforesaid discussion that it would have to be examined whether the Commissioner was justified in holding that the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act was correctly invoked. The show cause notice mentions that the appellant deliberately and willfully suppressed facts with intent to evade payment of service tax since the appellant did not disclose to the department that it was providing taxable "commercial training or coaching centre" service and this fact would not have come to the notice of the department had the department not conducted an investigation.

50. The period involved in the present appeal is from 01.04.2010 to 31.03.2015. The show cause notice was issued to the appellant on

16.10.2015. It is not in dispute that investigation was started in respect of the services provided by the appellant in May 2012 when the department noticed that though the appellant provided "commercial training or coaching centre" service as defined under section 65(26) of the Finance Act and made taxable under section 65(105)(zzc) of the Finance Act, but the appellant was not paying service tax and was filing 'nil' ST-3 returns on the premise that the service provided by the appellant was exempted prior to 01.07.2012 under the Exemption Notification dated 20.06.2003 and was thereafter included in the negative list of services under section 66D(l) of the Finance Act. Thus, the department was aware in May 2012 about the actual service provided by the appellant. Thus, all the facts were in the knowledge of the department in May 2012. The chart submitted by the appellant shows that the period involved from April 2010 to March 2014 is beyond the normal period of limitation.

51. The contention of the learned counsel for the appellant is that it bona fide believed that it was entitled to avail the benefit of the Exemption Notification and it cannot be said that the belief of the appellant is a mala fide belief merely because it may ultimately be held that the appellant is not entitled to the benefit of the Exemption Notification. This contention deserves to be accepted.

52. In this connection, it may be pertinent to refer to the decision of the Supreme Court in **Commissioner of C. Ex. & Customs** vs. **Reliance Industries Ltd.**[9]. The Supreme Court held that if an assessee bonafide believes that it was correctly discharging duty, then merely because the belief is ultimately found to be wrong by a judgment would

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9. 2023 (385) E.L.T. 481 (S.C.)

not render such a belief of the assessee to be malafide. If a dispute relates to interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation. The Supreme Court further held that in any scheme of self-assessment, it is the responsibility of the assessee to determine the liability correctly and this determination is required to be made on the basis of his own judgment and in a bona fide manner. The relevant portion of the judgment is reproduced below:

> "23. **We are in full agreement with the finding of the Tribunal that during the period in dispute it was holding a bona fide belief that it was correctly discharging its duty liability. The mere fact that the belief was ultimately found to be wrong by the judgment of this Court does not render such belief of the assessee a mala fide belief particularly when such a belief was emanating from the view taken by a Division Bench of Tribunal. We note that the issue of valuation involved in this particular matter is indeed one were two plausible views could co-exist. In such cases of disputes of interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation by considering the assessee's view to be lacking bona fides. In any scheme of self-assessment it becomes the responsibility of the assessee to determine his liability of duty correctly. This determination is required to be made on the basis of his own judgment and in a bona fide manner.**
>
> 24. **The extent of disclosure that an assessee makes is also linked to his belief as to the requirements of law.** xxxxxxxxxxx. On the question of disclosure of facts, as we have already noticed above the assessee had disclosed to the department its pricing policy by giving separate letters. It is also not disputed that the returns which were required to be filed were indeed filed. In these returns, as we noticed

> earlier there was no separate column for disclosing details of the deemed export clearances. Separate disclosures were required to be made only for exports under bond and not for deemed exports, which are a class of domestic clearances, entitled to certain benefits available otherwise on exports. **There was therefore nothing wrong with the assessee's action of including the value of deemed exports within the value of domestic clearances."**
>
> **(emphasis supplied)**

53. The Commissioner has in the impugned order also observed that in case the appellant had any doubts about the taxability of the service provided by the appellant it could have approached the department to ascertain whether it was liable to pay service tax or not. The Commissioner was not justified in forming such an opinion. No duty is cast upon the appellant to seek any clarification from the department. This is what was held by the Delhi High Court in **Mahanagar Telephone Nigam** and the relevant portion of the judgment is reproduced below:

> "32. xxxxxxxxxxx. Further, there is no provision in the Act which contemplates any procedure for seeking clarification from jurisdictional service tax authority. Clearly, the reasoning that MTNL ought to have approached the service tax authority for clarification, is fallacious."

54. The Commissioner also observed that in an era of self-assessment an obligation is cast upon the assessee to self-assess the liability and file periodical returns correctly and since the appellant did not disclose that it was providing a taxable service, the appellant suppressed facts and knowingly failed to discharge the obligation cast upon the appellant.

55. This approach of the Commissioner cannot be countenanced. It is the duty of the officers scrutinizing the returns to examine the

information disclosed by an assessee and the department cannot be permitted to take a plea that it is the duty of the assessee to disclose correct information and it is not the duty of the officers to scrutinize the returns.

56. In this connection, reference can be made to the decision of the Tribunal in **M/s. Raydean Industries** vs. **Commissioner CGST, Jaipur**[10]. The Tribunal, in connection with the extended period of limitation, observed that even in a case of self assessment, the department can always call upon an assessee and seek information and it is the duty of the proper officer to scrutinize the correctness of the duty assessed by the assessee. The Division Bench also noted that departmental instructions issued to officers also emphasis that it is the duty of the officers to scrutinize the returns. The relevant portion of the decision of the Tribunal is reproduced below:

> "24. **It would be seen that the ER-III/ER-I returns filed by the applicant clearly show that the applicant had categorically declared that it had cleared the final products by availing the exemption under the notification dated 17.03.2012. The applicant had furnished the returns on the basis of self assessment. Even in a case of self assessment, the Department can always call upon an assessee and seek information.** It is under sub-rule (1) of rule 6 of the Central Excise Rules, 20028 that the assessee is expected to self assess the duty and sub-rule (3) of rule 12 of the 2002 Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to

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10. Excise Appeal No. 52480 of 2019 decided on 19.12.2022

> the proper officer all the documents and records for verification as and when required by such officer. **Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.**
>
> 25. **Departmental instructions to officers also emphasise upon the duty of officers to scrutinize the returns.** The instructions issued by the Central Board of Excise & Customs on December 24, 2008 deal with "duties, functions and responsibilities of Range Officers and Sector Officers". It has a table enumerating the duties, functions and responsibilities and the relevant portion of the table is reproduced below:
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> xxxxxxxxx
>
> 26. The Central Excise Manual published by CBEC on May 17, 2005, which is available on the website of CBEC, devotes Part VI to SCRUTINY OF ASSESSMENT.
>
> xxxxxxxxxx
>
> 27. **It is thus evident that not only do the 2002 Rules mandate officers to scrutinise the Returns to verify the correctness of self assessment and empower the officers to call for documents and records for the purpose, Instructions issued by the department also specifically require officers at various levels to do so.**"
>
> **(emphasis supplied)**

57. The view that has been taken by the Commissioner was also not accepted by the Tribunal in **M/s G.D. Goenka Private Limited** vs. **The**

Commissioner of Central Goods and Service Tax, Delhi South[11] and the observations are as follows:

> **"16. Another ground for invoking extended period of limitation given in the impugned order is that the appellant was operating under self-assessment and hence had an obligation to assess service tax correctly and take only eligible CENVAT credit and if it does not do so, it amounts to suppression of facts with an intent to evade and violation of Act or Rules with an intent to evade. We do not find any force in this argument because every assessee operates under self-assessment and is required to self-assess and pay service tax and file returns.** If some tax escapes assessment, section 73 provides for a SCN to be issued within the normal period of limitation. This provision will be rendered otiose if alleged incorrect self-assessment itself is held to establish wilful suppression with an intent to evade. **To invoke extended period of limitation, one of the five necessary elements must be established and their existence cannot be presumed simply because the assessee is operating under self-assessment.**"
>
> **(emphasis supplied)**

58. The Tribunal in **Sunshine Steel Industries** vs. **Commissioner of CGST, Customs & Central Excise, Jodhpur**[12] also observed that the department cannot be permitted to invoke the extended period of limitation by merely stating that it is a case of self-assessment. The relevant observations are:

> "20. **The Department cannot be permitted to invoke the period of limitation by merely stating that it is a case of self-assessment as even in a case of self-assessment, the Department can always call upon an assessee and seek information.** It is under sub-rule (1) of rule 6 of the Central Excise Rules, 2002 that the assessee is

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11. Service Tax Appeal No. 51787 of 2022 dated 21.08.2023
12. (2023) 8 Centax 209 (Tri.-Del.)

> expected to self-assess the duty and sub-rule (3) of rule 12 of the Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer. **Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.**"
>
> **(emphasis supplied)**

59. **Civil Appeal No. 4246 of 2023** (Commissioner of CGST, Customs and Central Excise vs. Sunshine Steel Industries) filed by the department before the Supreme Court to assail the aforesaid decision of the Tribunal in **Sunshine Steel Industries** was dismissed by the Supreme Court on 06.07.2023 and the judgment is reproduced below:

> "Delay condoned.
>
> 2. Heard learned counsel for the appellant.
>
> 3. This Court is not inclined to interfere with the impugned order of the High Court (Sic).
>
> 4. The appeal is dismissed.
>
> 5. Pending applications, if any, are disposed of."

60. The aforesaid discussion would, therefore, lead to the inevitable conclusion that the extended period of the limitation contemplated under the proviso to section 73(1) of the Finance Act could not have been invoked in the facts and circumstances of the case.

61. The appellant has produced a chart which shows the period covered by the extended period of limitation under the proviso to section 73(1) of the Finance Act and the normal period provided for in section 73(1) of the Finance Act. It transpires from the chart that the period from April 2010 to 12.04.2014 is covered by the extended period of limitation. The demand of service tax for the extended period of limitation with interest and penalty, therefore, cannot be sustained. However, the demand for the normal period is confirmed.

62. The matter would, therefore, have to be remitted to the Commissioner to only examine what portion of demand falls within the normal period of limitation contemplated under section 73(1) of the Finance Act for it is such demand that has been confirmed and then consider whether penalty under sections 77 and 78 of the Finance Act should be leviable on the appellant for this period and if so then to determine amount of penalty.

63. The impugned order dated 21.06.2017 passed by the Commissioner is, accordingly, modified to the extent indicated above and the appeal is partly allowed.

(Order pronounced on **06.06.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Jyoti