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* **IN THEHIGH COURTOF DELHIAT NEW DELHI**

Date of decision: 2nd December, 2025

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\+ **SERTA 27/2025 & CM APPL. 70275/2025**

COMMISSIONER, CGST DELHI WEST COMMISSIONERATE .....Appellant

Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Priyatam Bhardwaj, Ms. Garima, Kumar and Mr. Avinash Shukla, Advs.

Versus

DEWSOFT OVERSEAS PRIVATE LIMITED .....Respondent

Through: Mr. Ashish Chauhan, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RENU BHATNAGAR

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 70273/2025 (condonation of delay)

2. This is an application for seeking condonation of delay in filing the affidavit of appeal. For the reasons stated in the application, the delay is condoned. The application is disposed of.

CM APPL. 70276/2025 (condonation of delay)

3. This is an application for seeking condonation of delay in re-filing of appeal. For the reasons stated in the application, the delay is condoned. The application is disposed of.

CM APPL. 70274/2025 (exemption)

4. Allowed subject to all just exceptions. Accordingly, the application is

disposed of.

SERTA 27/2025 & CM APPL. 70275/2025

5. This is an appeal challenging the decision of the Customs Excise &Service Tax Appellate Tribunal *(hereinafter, 'CESTAT')* dated 19th April, 2024 *(hereinafter, 'the impugned order')* by which the Order-in-Original dated 30th June, 2014, has been modified by CESTAT.

6. The Respondent was offering certain training by providing CDs, DVDs and e-books to customers. The issue arose as to whether with these materials that were being sold by the Respondent, the accompanying services were also provided or not and whether the Respondent was liable to pay service tax in respect of the same or not.

7. The facts of the case have been captured by CESTAT in the impugned order in paragraph 2 which reads as under:

> *"2. The brief facts of the case are that the appellant is engaged in supply of products (CD, DVD, e-books) through which customers of any age group could gain knowledge in the fields of language, Computer applications, managerial skills, entrepreneurship skills, etc.*
>
> *For the period 2001 to 2009, the Appellants extended courses to its customers through online and offline (self-owned, centres and through authorized training centres). The courses involved online access to reading material, teaching through a website allowing interaction with experts and other students, conducting of tests, etc and for providing the courses, the Appellant raised an invoice on its customers which carried line items, namely, (i) online software lease: (ii) website space lease: (iii) online education; and (iv) university fund. Service tax was collected and paid only on the component of 'online*

education'. Thereafter, from April, 2009, the Appellant converted its business model to supply of CDs, DVDs, e-books, power-point presentations, etc., no interactive sessions were conducted. The course material was merely purchased by the customers/students Further, courses were no longer conducted by the authorized training centres. Since only goods were supplied carried the course material, the Appellant stopped collecting and depositing service tax."

8. A total of six show cause notices were issued to the Respondent. The details of the said show cause notices are as under:

Sl no.	SCN date	Category of Service	Period	Amount (in ₹)
1	21.04.2010	Commercial Training & Coaching service	2007-08to 2008-09	25,57,78,412/-
		Franchise service		81,487/-
2	20.10.2010	Commercial Training & Coaching service	April 2009-Feb 2010	7,58,79,883/-
3	15.3.2011	Commercial Training & Coaching service	March 2010	91,83,259/-
4	17.10.2011	Commercial Training & Coaching service	April 2010-March 2011	6,989,79,359/-
		Franchise Service		60561/-
5	19.10.2012	Commercial Training & Coaching service	2011-12	12,18,20,782/-
6	21.04.2014	Commercial Training & Coaching service	2012-13	4,63,84,314/-

9. In respect of these SCNs the stand of the Respondent was that their business model had changed with effect from April, 2009 and only material/

content was being provided in the form of e-books, CDs, DVDs and power point presentations. After 2009, no training was rendered by the Respondent through any authorized training centres. Hence, the case of the Respondent was that post 2009, no service tax would be liable to be paid, since no service was being provided by them.

10. The CESTAT, in its impugned order, noticed that this issue was not in dispute and the question is whether after 2009, service tax was liable to be paid or not.

11. In respect of this, the CESTAT came to the conclusion that insofar as imposition of service tax for the years 2013-14 and 2014-15is concerned, the same have already been decided in favour of the Respondent. However, the SCNs under challenge, as stated above, relate to 2007-08 to 2012-13.

12. On an overall assessment, the CESTAT came to the conclusion that only in respect of the years till 2008-09, the quantification of service tax would be justified and for the remaining years the service tax would not be liable to be paid. The Order-in-Original was accordingly modified.

13. Mr. Anurag Ojha, ld. Counsel for the Appellant, submits that the Respondent has merely continued to provide the same services but has claimed that no services are provided. A perusal of the documents would show that those customers who took the CDs and DVDs would require certain support as well and therefore service tax was liable to be paid.

14. On behalf of the Respondent, it is submitted that the training centres were not there after 2009. In view of thereof, no service tax was liable to be paid.

15. The Court has considered the matter. The decision of CESTAT has

gone into the facts and details. CESTAT has considered the balance sheets and other relevant documents of the Respondent. The Order-in-Original dated 30th June, 2014had held as under:

"ORDER

In view of above discussions and findings, I pass the following order:-

(i) I confirm the recovery of Service Tax amounting to Rs.25,58,59,899/- (Rupees twenty five crores fifty eight lakhs fifty nine thousands eight hundred &ninty nine only), Inclusive of Cess & SHEC from M/s. Dewsoft Overseas Pvt Ltd., 402. Gagan Deep Building, Rajendra Place, New Delhi-110008 in respect of SCN c. no. DL/ST/AE/Gr.1-A/107/09 dated 21.04.10 as detailed above under para 1.47 in terms of proviso to Section 73(1) of Finance Act, 1994 read with Section 66.67 and 68 of the Finance Act, 1994 read with Rule 6(1) of the Service Tax Rules, 1994 and further read with Section 91 read with Section 95 of the Finance Act, 2004 and Section 136 read with Section 140 of the Finance Act. 2007;

(ii) I hereby order for appropriation of an amount of Rs.1,45,81,328/-(Rupees one crore forty five lakhs eighty one thousands three hundred & twenty eight only) claimed to be deposited by the noticee during 2007-08 & 2008-09 (as per ST-3s filed with the Deptt);

(iii) I confirm the recovery of Service Tax amounting to Rs.32,29,08,158/- (Rupees thirty two crores twenty nine lakhs eight thousand one hundred fifty eight only), inclusive of Cess &SHEC from M/s.Dewsoft Overseas Pvt. Ltd., 402, Gagan Deep Building, Rajendra Place, New Delhi-110008 in respect of following SCNs:-

S. No.	SCN no. & Date	Period involved	S. Tax demanded
1	DL/ST/RX/SCN/Dewsoft/129/2010/12044 dated 20/10/2010	April- 2009 to Feb- 2010	Rs.7,58,79,883/-
2	DL/ST/RX/SCN/Dewsoft/129/2010/4661 dated 15/03/2011	Mar-10	Rs. 91,83,259/-
3	DL/ST/RX/SCN/Dewsoft/129/2010/26629 dated 17/10/2011	April-2010 to March- 2011	Rs.6,90,39,920/-
4	DL/ST/RX/SCN/Dewsoft/129/2010/14710 dated 19/10/2012	April- 2011 to March-12	Rs.12,18,20,782/-
5	DL/ST/RX/SCN/Dewsoft/129/2010/7874 dated 21/05/2014	April-2012 to March-13	Rs.46,984,314/-

as detailed in para 1.49 and 1.50 above and above in terms of Section 73(1) of Finance Act, 1994 read with Section 66, 67 and 68 of the Finance Act, 1994 read with Rule (1) of the Service Tax Rules, 1994 and further read with Section 91 read with Section 95 of the Finance Act, 2004 and Section 136 read with Section 140 of the Finance Act, 2007;

(iv) I also order for recovery of interest amount from M/s. Dewsoft Overseas Pvt. Ltd., 402 Gagan Deep Building, Rajendra Place, New Delhi-110008 at applicable rate of interest from the due date of paymenttill the actual date of deposit of the above-mentioned service tax under Section 25 of the Act,

(v) I impose a penalty of Rs. 10,000/-on M/s. Dewsoft Overseas Pvt Ltd. 402, Gagan Deep Building, Rajendra Place, New Delhi-110008 under Section 77 of the Act for not filing of proper ST-3 return to the proper officer,

(vi) 1 impose penalty of Rs 25,58,59,899 (Rupees twenty five crores fifty eight lakhs fifty nine thousands eight hundred &ninty nine only) on M/s. Dewsoft OverseasPvt. Ltd., 402, Gagan Deep Building. Rajendra Place, New Delhi 110008 under Section 78 of the said Act for short payment/non-payment of the impugned service tax and suppression of facts and by contravention of the provisions of the Act and the Rules and as confirmed at sl. No. (i) of the Order above. However, M/s. Dewsoft Overseas Pvt. Ltd., 402,Gagan Deep Budding, Rajendra Place, New Delhi-110008 can, avail of the benefit of the proviso to Section 78 wherein it had been laid down that if the Assessee deposits the entire amount ofService tax along with the interest within 30 days from the date of the communication of the order, then the penalty amount under Section 78 shall be reduced to 25% provided the reduced penalty was also paid within the same time frame specified above;

(vii) I impose penalty in terms of Section 76 of the said Act on M/s. Dewsoft Overseas Pvt Ltd., 402,Gagan Deep Building, Rajendra Place, New Delhi-110008 which shall not be less than two hundred rupees for every day during which the failure continued or at the rate of two percent of the amount of tax short paid per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax, provided that the total amount of the penalty payable in terms of this section shall not exceed the service tax payable to the tune of Rs. 32,29,08,158/-(Rupees thirty two crores twenty nine lakhs eight thousand one hundred fifty eight only) as confirmed at sl. no. (iii) of the Order above; and"

Thus, the Adjudicating Authority has confirmed the demand of service tax

for the period 2007-2008 and 2008-2009 as also from 2009-2010 to 2012-2023, along with interest and penalty.

16. The above order has been modified by CESTAT to allow service tax to be charged till the time the Respondent was providing services along with its products. Thereafter, service tax was held to be not sustainable. The reasoning of CESTAT in the impugned order is set out below:

> *"7.1 We note that the activity undertaken by the appellant from April 2009 was that of basic learning programs which were pre-recorded on a CD/DVD. The customers/subscribers may use such CD/DVD for their learning nothing more than this is being undertaken. From the above it is noted that the activity being undertaken by the appellant is a sale and did not involve any service. For the period till 30.6.2012, vide Not No. 12/2003 ST, the value of goods, if any, was to be deducted for the levy of service tax. We also note that service tax and VAT are mutually exclusive taxes, and therefore levy of one would exclude the other. We also take note of the fact that the appellant had informed the department in the replies to the show cause notices, but the same have not been considered in the impugned order.* ***It has also been brought to our notice that the subsequent show cause notices for the period 2013-14 and 2014-15 have been decided in the appellant's favour. It is also been pleaded before us that these orders have not been challenged by the department and have hence attained finality****. It is also noted that the appellant did not have any authorised training centres as well Consequently, the demand under Franchise service confirmed in respect of the demand notice dated 17.10.2011 does not survive. In the light of the above discussions, we are of the considered opinion that the demand confirmed in the subsequent show cause notices requires to be set aside. in view of the changed business model.*
>
> ***8. Accordingly, we uphold the demand confirmed in***

respect of the show cause notice dated 21.4.2010 for the period 2007-08 and 2008-09 along with interest, and equal penalty imposed under section 78.

However, the issue relating to quantification of the demand taking into consideration the contentions regarding cum-duty tax is remanded to the adjudicating authority for recalculation of demand and consequently the amount of penalty under Section 78 of the Finance Act, 1994. We set aside the demand confirmed under the remaining 5 show cause notices.

9. In view of the discussions above, we uphold the demand for the period 2007-2008 to 2008-2009, and direct requantification as mentioned above. We set aside the demand for the period 2009 2010 to 2012-13 The order-in-original stands modified accordingly and the appeal is allowed partially by way of remand."

17. The question of taxability, thus, is not in dispute, as recorded in paragraph 6.1 of the impugned order which is set out below:

> ***"6.1 In view of the above, the taxability of the service, as provided by the appellant, is not in dispute.*** *We now address the arguments with regard to invocation of the extended period. The learned counsel for the appellant has submitted that the appellant has not suppressed the taxable value from the Department. It was also submitted that the transactions were known to the public at large the same is available on their website therefore it cannot be said that the appellant had suppressed the facts. On perusal of the facts in the instant case, we note that the appellant was asked to submit copies of theirBalance Sheet for the period 2007–2008, along with the details of the payments collected from clients/members on account of each of the services provided by them from 1.4.2007 to Sept 2008 and list of members and clients from whom such payments had been*

collected. It is seen that the appellant did not reply to the letter nor did they supply the requisite information. This was followed up with letter dated 23.02.2009 requesting the appellant to furnish the details on the gross amount collected and the amount on which service tax had been paid during the period 01.4.2007 to 31.01.2009. As the appellant did not cooperate, it is seen that the Asst Commissioner of Service Tax, Division – 1, issued a show cause notice dated 05.3.2009 under Section 77 of the Finance Act, 1994 for non-furnishing of information. Following the receipt of this notice, the appellant filed their letter dated 17.3.2009 and supplied certain information. The Department took a view that the information supplied by the appellant prima-facie was incorrect and grossly undervalued. A search was conducted on 25.3.2009 to extract the correct factual information. Records/documents relevant to the enquiry were resumed under panchnama and statements of concerned persons were recorded under Section 14 of the Central Excise Act, 1944, as made applicable to like matters in service tax by section 83 of the Finance Act, 1994. We find that in his statement dated 25.3 2009, Sh Manoj Kumar Satyawadi, Technical Support Executive, has admitted that he was not authorised to make any alteration or amendment in the data management but he could check the data available on the in-house server. It is noted that based on the data retrieved by the aforesaid Shri Manoj Satyawadi, the demand notice has been issued. It is on record that the data sheets were obtained during the course of search from the in-house server of the appellant by the executive in charge of technical support and duly authenticated by the said employee. We also note that Shri Manoj in his statement has categorically stated that he was not authorised to make any alteration or amendment in the data management. No contrary evidence has been led by the appellant for us to ignore the data as retrieved and authenticated by an employee of the appellant. In view of the above, we are of the opinion that the argument that the

> *data was incorrect is not acceptable. The apparent inconsistencies in the statement dated 9.10.2009 of Shri Rishi Sehdev, when confronted with the details as stated by Sh Manoj Satyawadi in his statement establishes the intent of the appellant to evade correct answers. It has also been established by the adjudicating authority that the authenticity and veracity of the Agreement dated 01.06.2003 entered by the appellant with M/s Dewsoft Nepal is doubtful in view of the fact that one of the witnesses to the said agreement is Sh Manoj Satyawadi whereas it is on record that Sh Manoj joined the employment of the appellant only in October, 2006. It has also been brought on record that two sets of Balance Sheet for the same year showing different figures of income were found during the search operations. No cogent explanation has been provided for the same. Having two sets of annual financial statement showing different figures clearly establishes the malafide intent of the appellant to mislead the investigations. Further, it is noted that the details as submitted by the appellant vide their letter dated 17.3.2009 was incorrect and the allegation of suppression of the taxable value is substantiated by the adjudicating authority in the impugned order."*

18. Since the taxability is no longer an issue for consideration in this case, the question as to whether the Respondent provided services or not post the year 2009, would be a factual dispute based on the analysis of the documents. Obviously if the Respondent was not rendering any services post 2009, service tax would not be liable to be paid.

19. The CESTAT has also noted that for the subsequent years*i.e.*, 2013-14 and 2014-15, the Department has in fact accepted and not challenged the decision that service charge would not be payable.This Court is therefore of the view that there is no substantial question of law that arises in the present

appeal.

20. The appeal is accordingly dismissed. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RENU BHATNAGAR
JUDGE

DECEMBER 2, 2025*/kp/ss*