CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi
PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 51632 Of 2022

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-243-21-22 dated 30.03.2022 passed by the Commissioner (Appeals) of Central GST & Central Excise, 48-A, Bhopal]

Daawat Foods Limited **: Appellant**
Plot No. 7, Satlapur Growth Centre
Phase-II, Mandideep, District-Raisen
Madhya Pradesh-462046

Vs

Commissioner of CGST & Central Excise, Bhopal-I **: Respondent**
48-A, Administrative Area, Area Hills
Bhopal, Madhya Pradesh-462011

APPEARANCE:
Present for the Appellant : Shri A. K. Batra, Ms, Sakshi Khanna, Chartered Accountants

Present for the Respondent: Shri Rakesh Kumar, Authorised Representative

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50688/2026

Date of Hearing:09.03.2026

Date of Decision:07.04.2026

HEMAMBIKA R. PRIYA

Challenge in the present appeal is to the impugned Order-in-Appeal No. BHO-EXCUS-001-APP-243-21-22 dated 30.03.2022 wherein the Commissioner confirmed the demand of Rs. 6,59,000/- along with equal interest and penalty.

2. The brief facts of the case are that the appellant is a limited company having its office at Plot No.7, Satlapur Growth Madhya

Pradesh-462046 and registered with the Service Tax department for various taxable services for discharge of service tax under reverse charge mechanism. The appellant was engaged in the production and supply of Basmati/ Organic Rice, Rice Flour, and other staples. During the period in dispute, the appellant received reimbursement of expenditure from the Ministry of Food Processing Industries (MOFPI) under the Government Scheme for Creation/Expansion of Food Processing & Preservation Capacities vide two sanction orders No. M-19012/14/10-11(RM) dated 12.09.2013 and dated 18.06.2015. The appellant held that such reimbursement of expenses was not liable to service tax, and had neither charged nor paid service tax on the same. During scrutiny of the financial records of the appellant, the Department alleged that the grant-in-aid received by appellant for technological upgradation, establishment, and modernization of food processing industry was with a counter obligation to transfer know-how and other aspects of IPR to the Govt. Consequently, such grant was a consideration for rendering declared services under Section 66 E (e) of the Finance Act, 1994 and liable to service tax. The Department issued Show Cause Notice No. 25/AC/ST/Audit/Cir-II/AC/32019-20 dated 15.04.2019 for the period 2013-14 & 2015-16 to the appellant proposing service tax demand of Rs. 6,59,000/- along with interest u/s 75 and penalty under Section 78 of the Act. The Deputy Commissioner vide Order-in-Original No. 23/DC/ST/DIV. III/ADJ/2021 dated 10.02.2021 confirmed the entire service tax demand along with

interest u/s 75 and penalty of Rs. 6,59,000/-under Section 78 of the Act. Being aggrieved, the appellant filed an appeal before the Commissioner (Appeals) who upheld the adjudication order vide the impugned order. Being aggrieved, the appellant has filed the present appeal.

3. Learned counsel for the appellant submitted that the demand for the period beyond 5 years of limitation was untenable as the same was against the provisions of law. Consequently, the confirmation of the demand amounting to Rs. 3,09,000/- for the period 01.04.2013 to 30.09.2013 was beyond the statutory provisions of the Finance Act of 1994. Learned counsel further submitted that the SCN was served to the Appellant on 15.04.2019. According to the proviso to section 73 (1) of the Finance Act 1994, the department can raise demand for the period of five years, from the date of service of notice. Thus, the said notice for the period 01.04.2013 to 30.09.2013 stands time barred. He further submitted that the Commissioner (Appeals) had erred in upholding the adjudication order, which had held that the appellant's acceptance of grant conditions created a counter obligation, treating the grant-in-aid as consideration for taxable services to the Government. He further stated that the grant had merely reimbursed the capital expenditure incurred on the Mandideep plant and could not be treated as consideration. The appellant had not received any sum over and above the partial reimbursement of expenses incurred for acquiring plant and machinery for the rice mill. Therefore, the

allegations raised by the Department lacked any basis and were contrary to the facts of the case. In support of his submission, learned counsel relied upon the following decisions:-

- M/s ILFS Clusters Development Initiative Ltd. vs. Commissioner, Customs, Central Excise and Service Tax, Noida[1]
- Apitco Ltd. Vs Commissioner of Service Tax[2]

3.1 Learned counsel further submitted that invoking of extended period under the proviso to section 73 (1) of the Finance Act, 1994 is not warranted, thus the impugned show cause notice was time barred for the period 2013-14 and 2015-16 and hence, the demand for Rs. 6,59,000/- was liable to be dropped. The Appellant had filed all the ST-3 returns, maintained audited accounts, and had cooperated fully. Hence, there was no suppression or intent to evade wherein interpretational issues were involved. He submitted that the Department had raised the demand based on the appellant's Books of Account. Hence, the entire demand was barred by limitation and was liable to be quashed on this ground alone. He further contended that cum tax benefit should be extended. He prayed that the appeal may be allowed.

4. Learned Authorized Representative for the Department submitted that the plea of the show cause notice beyond 5 years as per Sec 73 of the Finance Act had neither been taken before the Adjudicating authority nor before the Commissioner (Appeals). Thus

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1 2018 (10) TMI 1007 CESTAT ALLAHABAD
2 2010 (7) TMI 176 CESTAT, Bangalore

even if a legal ground, the same could be taken subject to the leave of the Tribunal by filing a miscellaneous application. Learned Authorized Representative contended that by agreeing to the terms of the grant-specifically relating to the obligation to expand and upgrade the unit and surrender Intellectual Property (IPR) rights to the Government-the party had performed a "declared service". He submitted that under Section 66E(e) of the Finance Act, 1994, "agreeing to the obligation to do an act" was a taxable service. The grant-in-aid was not a general subsidy but a "consideration" received for the counter-obligation of providing IPR and technical know-how to the Government. Since the subsidy enabled the party to run their business more profitably through modernization, it was liable to be treated as a trading/revenue receipt rather than a non-taxable capital receipt. On extended period, learned AR relied on the decision in **Commissioner of Central Excise, Vishakhapatnam** versus **Mehta & Company (2011)-** and **Checkmate Facility and Management Solutions Private Limited** versus **CIT (2022)**. Learned AR contended that the Department discovered the evasion only through third party (Income tax) data. The appellant had also failed to file ST-3 returns or respond to preliminary inquiries. This constituted suppression of facts with and intent to evade tax, justifying the penalty under Section 78. He prayed that the appeal may be dismissed.

5. We have heard the learned counsel for the appellant and the learned Authorized Representative for the Department and have

perused the records. Grant-in-Aid is a form of non repayable financial assistance provided by the Government to States/Local Bodies/Institutions etc. to support specific projects/services or general development. It acts as a subsidy for operational costs, infrastructure or social welfare.

6. In the instant case, the appellant received grant-in-aid under the Central Sector Scheme for Creation/Expansion of Food Processing and Presentation Capacities[3] under the Pradhan Mantri Kisan Sampada Yojna which offers credit linked financial assistance to industries for setting up or modernising food processing units, focusing on reducing wastage, enhancing value addition and creating infrastructure for perishable items. The appellant received grant-in-aid in 2 installments vide sanction order No. M-19012/14/10-11 (RM) dated 12.09.2013 and 18.06.2015 for setting up 'Rice Milling Unit' in Mandideep, M.P. The sanction order clearly states as follows:-

> "2. The grants-in-aid shall be subject to the terms and conditions mentioned in the enclosed Annexure-11 and that the project will be completed within the prescribed time limit as indicated in the project/appraisal report.
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> (e) Before the Grant is released, the grantee should execute a bond with two sureties to the President that (i) he will abide by the conditions of the grant by the target dates, if any, specified therein (ii) that he will not divert the grants and entrust execution of the scheme or work concerned to another Institution(s) or organization(s) and (iii) shall abide by any other conditions specified in this agreement and in the event of his falling to comply with the conditions or committing breach of the bond, the grantee and the sureties individually and jointly will be liable to refund to the President of India, the entire amount of the grant with interest at 10% per annum thereon or the sum specified under the bond.

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3 CEFPPC

> (b) No UC is required to be furnished in instant case as per rule 212(1) of GFR since grant-in-aid are being made as re-imbursement of expenditure already incurred on the basis of duly audited accounts,
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> The Grants-in-aid is non-recurring and confirms to the pattern of assistance framed as per rules of M/o Finance or any scheme framed with the approval of it. Since this grant-in-Aid is re-imbursement to the expenditure already incurred by the company, there is no need to fix time limit to spend the grant."

7. From the above, it is apparent that the appellant is not a research and development agency engaged in activities to generate IPR, but was a rice mill engaged in the production and supply of rice. The appellant had received the grant only as reimbursement of expenses and not for creating any Intellectual Property Rights (IPR). It is also essential to note that the conditions in the sanction order are general and does not make any contractual obligations, nor create any counter obligations. As the grant-in-aid was a reimbursement of expenses already incurred, hence, no consideration flowed from the Government to the appellant. Consequently, there was no provision of service under Section 65B (44) of the Act, and no service provider-recipient relationship existed between the appellant and the Government. This grant has merely reimbursed capital expenditure incurred on the Mandideep plant and cannot be treated as consideration. We note that the appellant had not received any sum over and above the partial reimbursement of expenses incurred for acquiring plant and machinery for the rice mill. A perusal of the sanction order reveals that the condition of knowhow and all other aspects of IP generated as a result of the project mill be wholly owned

by the MOFPI is a general condition, and not specific appellant. In the instant case, it is admitted fact that the project was setting up of rice milling plant. No evidence has been led by the Revenue to establish that there was some research and knowhow created by the appellant which was classified as declared service. In this context, we draw support from the decision of **Checkmate Services Private Limited** versus **Commissioner of Central Excise and Service Tax, Vadodara**[4]**,** the Tribunal held as follows:-

> "3. We have heard both the sides. We find that the matter is no longer res integra as the principal bench of this Tribunal by its order in case of M/s. ILFS Clusters Development Initiative Ltd reported under 2018 (10) TMI 1007-CESTAT have decided the issue wherein it has been held that the grant-in-aid received by the appellant from Government of India is not taxable under the category of commercial coaching or training service. The relevant extract of the decision are reproduce here below:
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> > A. Demand of service tax of 23,44,07,478/-
> > (i) The learned counsel for the appellant has submitted that the details of Skill Development Programme for rural BPL Youths under Swarnjayanti Gram Swarozgar Yojana implemented by Ministry of Rural Development of Government of India is available at Page-107 onwards in appeal paper book. He has submitted that object of the said programme was for development of skill of specified number of youths from below poverty line strata of society where 75% of the amount required for imparting training and improving skills was to be borne by Government of India through grant-in-aid and 25% was to be collected from contribution from non-governmental organizations and trained youth were assisted for getting employment on the basis of imparted skills. The contribution from non-governmental organization did not have any relationship

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4 2024 (8) TMI 91-CESTAT

between the amount contributed and the number of youth recruited into the contributing organization. He has also referred to a letter dated 23/01/2009 issued by Government of India, Ministry of Rural Development available at Page-136 of appeal paper book wherein at Para-5 it is stated that Central Government share of fund would be released as grant-in-aid in three installments in the ratio of 25:50:25. The learned counsel for the appellant has relied upon the Final Order issued by this Tribunal in the case of Apitco Ltd. vs. Commissioner of Service Tax, Hyderabad reported at 2010 (20) S.T.R. 475 (Tri-Bang.). He has further submitted that the findings in the said Final Order are affirmed by Hon'ble Supreme Court as reported at 2011 (23) S.T.R. 194 (SC). He has submitted that in the said case the appellant therein received grant-in-aid from Central Government and State Governments for implementation of welfare scheme for various sections of society. The assessee therein did not pay service tax on the said amount. Revenue wanted to levy service tax on grant-in- aid received by the assessee in the said case. This Tribunal held that assessee therein collected grant-inaid from Government and grant-in-aid was totally utilized for implementation of welfare scheme and nothing over and above said grant-in-aid was received by the assessee and it was concluded that the assessee therein did not receive any consideration for any service to the Government. This Tribunal had held in the said case that service tax was not leviable on grant-in-aid received by the assessee from the Government as Project Implementing Agency of Government. The learned counsel for the appellant has submitted that the amount received for the said programme on which demand of about 23 crores (approximate) of service tax was demanded is not sustainable in view of the said Final Order passed by this Tribunal as affirmed by Hon'ble Supreme Court.

(ii) The learned A.R. for the Revenue has supported the impugned Order-in-Original.

(iii) Having considered the submissions from both the sides, we find that the amount of around 21.12 crores

> (approximate) was received by the appellant from Government as grant-in-aid and by following decision of this Tribunal in the cAse of Apitco Ltd. as affirmed by Hon'ble Supreme Court, we hold that service tax is not leviable on the amount received from Government as grant-in-aid. Further, we accept the contention of the learned counsel for the appellant that the contribution received from non-governmental agencies was not in respect of any specific service rendered to the organization from whom the money was received and the money received had no relation with the number of people to be recruited by such organization and therefore, we do not find any service provider and service receiver relationship between the appellant and the organizations from whom contribution of 2.31 crore (approximate) was received by the appellant. Therefore, we set aside the demand of service tax of 23,44,07,478/- alongwith interest and equal penalty."

8. Similarly, the Tribunal in **M/s. Apitco Limited** vs. **Union of India**[5] observed as under:-

> "6. We have given careful consideration to the submissions. It is not in dispute that the assessee company had implemented welfare schemes for the Central and State governments for the benefit of the poor or otherwise vulnerable/weaker sections of the society and collected grants-in-aid from the governments concerned. It is not in dispute that these grants-in-aid had been totally utilized for implementing the welfare schemes. Nothing over and above these grants-in-aid was received by the assessee from any of the governments. In other words, the assessee did not receive any consideration for "any service' to the governments. Therefore, we hold that, in the implementation of the Governmental schemes, the assessee as implementing agency did not render any taxable "service" to the government. The department seems to be considering the Governments to be "clients" of APITCO. The question now is

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5 2010 (20) STR 475 (Tri.- Bang)

whether there was "service provider-client" relationship between the assessee and the governments. Here, again, the nature of the amounts paid by the governments to the assessee is decisive. A client must not only pay the expenses of the service but also the consideration or reward for the service to the service provider. Admittedly, in the present case, there was no payment, by any government to the assessee, of any amount in excess of what is called "grant-in-aid". Thus any service provider-client relationship between the assessee and the governments is ruled out. It is true that the assessee had executed the governmental schemes mainly through their engineers (technocrats) but this was not enough for the revenue to bring the assessee within the ambit of "scientific or technical consultancy" as clearly held by this Bench in the case of Administrative Staff college of India (supra) (An organization rendering "scientific or technical consultancy" service under Section 65(105) (za) of the Finance Act 1994 must be a science or technology institution. The assessee company has not been shown to be such an institution, a moreover, the revenue has failed to show that any scientific or technical advice or consultancy or assistance was rendered by the assessee to the governments. Many of the activities in question, such as micro-enterprises development, training programmes, project planning, infrastructure planning etc, are apparently in the nature of projects involving application of social science principles. The revenue has not shown that any techniques or principles of pure and applied sciences were applied in the implementation of the governmental schemes by the assessee. In the case of Administrative Staff College of India (supra), this Bench held that, as there search activities of the assessee (Administrative Staff College) were related to social science, they would not be within the ambit of "scientific or technical consultancy" and hence no service tax could be levied under that category, which view is squarely applicable to the facts of the present case. The view taken by the Tribunal in the above case stood affirmed by the apex court in the above case with the dismissal of the department's Civil Appeal filed against the Tribunal's Order.

> 7. For the reasons noted above, we hold that any amount of service tax is not leviable/on the grants- -aid received by the assessee from the governments, as project-implementing agency of the governments during the period of dispute. The assessee has also made out a good case on the ground of limitation against a major part of the demand of duty raised in the first show-cause notice. As early as in January 2004, the assessee had furnished all the relevant facts to the department through a letter addressed to the jurisdictional Assistant Commissioner Later on, in 2006, they stated all these facts once again in a letter addressed to the n Superintendent of Service Tax. The show-cause notice in question was issued on 13.06.2006 invoking the first proviso to Section 73(1) of the Finance Act 1994 on the ground of suppression of facts. We have no hesitation to hold that this allegation of suppression of facts by the assessee is not tenable."

8.1 The above decision of this Tribunal has also been upheld by the Supreme Court vide their order dated 2nd May, 2011[6].

9. We also take note of the decision in **Ahmedabad Management Association** versus **Commissioner of Service Tax, Ahmedabad**[7] wherein the Tribunal held as follows:-

> "4.3 The second argument of the appellant is that there is no service provided by the appellant to the government as all the amounts are received as "grants-in-aid". He relied on the decision of Tribunal in case Checkmate Services Pvt. Ltd (Supra) and in the case of Centre for Research & Industrial Staff Performance (Supra). He also relied on the circular No. 127/9/2010-ST dated 16.08.2010. In the aforesaid circular following has been clarified:-
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> **Circular No. 127/9/2010-ST, dated 16-8-2010**
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> "A representation has been received seeking clarification whether donations and grants-in-aid received from different sources by a charitable Foundation imparting free livelihood training to the poor and marginalized youth, will be treated as

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6 2011 (5) TMI 1086 (SC)
7 2024 (12) TMI 532-CESTAT, Ahmedabad

> 'consideration' received for such training and subjected to service tax under 'commercial training or coaching service'.
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> 2. The matter has been examined. The important point here is regarding the presence or absence of a link between 'consideration' and taxable service. It is a settled legal position that unless the link or nexus between the amount and the taxable activity can be established, the amount cannot be subjected to service tax. Donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. Between the provider of donation/grant and the trainee there is no relationship other than universal humanitarian interest. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training."
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> Xxxxx xxxxxx xxxxxx xxxxxxx
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> 5. In this back ground, we do not find any merit in the impugned order. Relying on the decision of Hon'ble Apex Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd., the impugned order is set aside. Appeals are allowed."

10. We also take note of the Tribunal's decision in **Mineral Exploration Corporation Limited** versus **Commissioner of Central Excise, Nagpur**[8] wherein it was held:-

> "6.3 Coming to the issues whether any service has been provided by the appellant for consideration, we are convinced by the argument of the learned Counsel that when the activity is undertaken by them on the basis of 100% grant received from the Government and the grant is totally expended on the expenses involved under various activities as reflected in the balance sheet, it cannot be said that any service has been provided. For any service, there has to be a service provider, a service receiver and consideration. In the present case, the records show that no consideration has been paid by the Government to the appellant for undertaking the work of Survey and Exploration of Mineral and preparation of the detailed reports thereof. What has been received from the Government is only the reimbursement of the actual expenses involved. Board's Circular (supra) also clarifies that if Scientific or Technical Consultancy Service is provided to the Government Department for which consultation fees are received, then Service. Tax would be applicable. In the present case it has not been shown by the Revenue that any consultation fee has been received by the appellant. It is also not a matter of dispute that the reports prepared by the appellant on the

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8 2015 (38) STR 421 (Tri.-Mumbai)

> basis of Grant-in-Aid received are kept with them. As and when the situation or opportunities arise, these reports may be sold to clients or customers on payment of charges and Service Tax is paid on such charges. Clearly there cannot be duplication of Service Tax payment. If the Revenue's contention is accepted that the Service Tax should be paid by the appellant for preparation of Consultancy Report and again when the reports are sold to parties for consideration. Therefore, we hold that there has been no service provided by the appellant to the Ministry of Mines."

11. In view of the above discussions, we hold that the grant-in-aid received by the appellant was merely a reimbursement of the expenditure already incurred for setting up rice milling plant. Consequently, there is no consideration received for a service provider-service recipient relationship.

12. Consequently, we set-aside the impugned order and allow the appeal.

(Order pronounced in the open Court on 07.04.2026)

(DR. RACHNA GUPAT)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.