CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. III

Service Tax Appeal No.50734 of 2019 with Cross Objection No.ST/Cross/50441/2019

[Arising of Order-in-Appeal No.DDN/EXCUS/000/APPL-DDN/14-18/2018-19 dated 01.01.2019 passed by the Commissioner, CGST (Appeals), Dehradun]

Commissioner of CGST & Central Excise **Appellant**
E-Block, Nehru Colony, Haridwar Road,
Dehradun, Uttarakhand-248 001.

Vs.

M/s. Dana India Private Ltd. **Respondent**
Plot No.1, Sector-12, Pantnagar,
Udham Singh Nagar,
Uttarakhand-263 153.

With

Service Tax Appeal No.50742 of 2019
with Cross Objection No.ST/Cross/50444/2019

[Arising of Order-in-Appeal No.DDN/EXCUS/000/APPL-DDN/14-18/2018-19 dated 01.01.2019 passed by the Commissioner, CGST (Appeals), Dehradun]

Commissioner of CGST & Central Excise **Appellant**
E-Block, Nehru Colony, Haridwar Road,
Dehradun, Uttarakhand-248 001.

Vs.

Shri Sharad Jain (Head of Finance),
M/s. Dana India Private Ltd. **Respondent**
Survey NO.278,
Raisoni Industrial Park, Hinjjewadi,
Mulshi, Pune (Maharashtra-411 057).

With

Service Tax Appeal No.50743 of 2019

[Arising of Order-in-Appeal No.DDN/EXCUS/000/APPL-DDN/14-18/2018-19 dated 01.01.2019 passed by the Commissioner, CGST (Appeals), Dehradun]

Commissioner of CGST & Central Excise **Appellant**
E-Block, Nehru Colony, Haridwar Road,
Dehradun, Uttarakhand-248 001.

Vs.

Shri Sunil Joshi (General Manager, Finance)
M/s. Dana India Private Ltd. **Respondent**
Survey NO.278,
Raisoni Industrial Park, Hinjjewadi,
Mulshi, Pune (Maharashtra-411 057).

With

Service Tax Appeal No.50744 of 2019

[Arising of Order-in-Appeal No.DDN/EXCUS/000/APPL-DDN/14-18/2018-19 dated 01.01.2019 passed by the Commissioner, CGST (Appeals), Dehradun]

Commissioner of CGST & Central Excise **Appellant**
E-Block, Nehru Colony, Haridwar Road,
Dehradun, Uttarakhand-248 001.

Vs.

Shri Saket Sapra, Managing Director,
M/s. Dana India Private Ltd. **Respondent**
Survey NO.278,
Raisoni Industrial Park, Hinjjewadi,
Mulshi, Pune (Maharashtra-411 057).

AND

Service Tax Appeal No.50745 of 2019 with Cross Objection No.ST/Cross/50443 of 2019

[Arising of Order-in-Appeal No.DDN/EXCUS/000/APPL-DDN/14-18/2018-19 dated 01.01.2019 passed by the Commissioner, CGST (Appeals), Dehradun]

Commissioner of CGST & Central Excise **Appellant**
E-Block, Nehru Colony, Haridwar Road,
Dehradun, Uttarakhand-248 001.

Vs.

Shri Manoj Agarwal, General Manager (Finance)
M/s. Dana India Private Ltd. **Respondent**
Survey NO.278,
Raisoni Industrial Park, Hinjjewadi,
Mulshi, Pune (Maharashtra-411 057).

Appearance:
Present for the Appellant: Shri Sangeet Kumar Meena, Authorised Representative.
Present for the Respondent : Shri B.L. Narasimhan & Shri Kunal Aggarwal, Advocates

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs. 50940-50944/2026

Date of Hearing: 06.04.2026
Date of Decision: 19.05.2026

BINU TAMTA:

1. The Revenue is in appeal assailing the Order-in-Appeal[1] whereby the demand for non-payment of service tax on uninvoiced allocations made by the parent company to the respondent was dropped.

2. The facts as submitted by the Revenue is that the respondent was engaged in manufacturing of Axles and axle components for heavy vehicles falling under chapter heading 86071990 of CETA, 1985, and was also registered with service tax registration. On the basis of intelligence gathered by the officers of DGCEI, it was found that M/s. Dana Corporation, USA[2] was providing services relating to technical know-how, engineering sales promotion for Dana brand name, product development, human resources policies, finance & accounting system etc. to the Respondent. These cost/expenses were known by the nomenclature "Selling General & Administration expenses"[3] . The Appellant discharged their service tax liability on the above service only for the portions invoiced to them by Dana USA. However, a major

[1] No. DDN/EXCUS/000/APL-DDN/14-18/2018-19 dated 01.01.2019
[2] Dana, USA
[3] (S G & A Expenses)

portion of said SG&A expense was in the form of un-invoiced allocations, on which no service tax was paid by the Respondent during January, 2012 to May, 2015. Subsequently, the respondent deposited the entire amount of service tax under protest. Show cause notice dated 17.10.2016 was issued to the respondent for demanding and appropriation of service tax of Rs.1,88,71,786/- along with applicable interest and alleging penalty under section 77 & 78 of the Finance Act, 1994. Penalty under section 78A was also proposed to be imposed upon Shri Sunil Joshi (G.M. Finance), Shri Manoj Agarwal(G.M. Finance), Shri Sarad Jain(Head of Finance), Shri Saket Sapra(Managing Director) for their acts of omission and commission in evasion of service tax. The Adjudicating Authority vide Order-in-Original dated 02.05.2017 confirmed the service tax demand of Rs.1,88,71,786/- and appropriated the same; imposed penalty of Rs.5,000/- upon the respondent under Section 77(2) & Rs.1,88,71,786/- under Section 78 of the Finance Act, 1994. Penalty of Rs.25,000/- each was also imposed upon Shri Sunil Joshi (G.M. Finance), Shri Manoj Agarwal (G.M. Finance), Shri Sarad Jain(Head of Finance), Shri Saket Sapra (Managing Director) under Section 78A of the Finance Act, 1994[4]. Aggrieved by the said order, all the five respondents had filed appeals before Commissioner (Appeals), Raipur. The Appellate Authority allowed the appeals filed by the respondents and dropped the entire demand of service tax and penalties. Being aggrieved, the Department has filed the present appeals.

3. We have heard the extensive arguments made by both the sides and have perused the records of the case.

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[4] Finance Act, 1994

4. Shri Sangeet Kumar Meena, the learned Authorised Representative for the Revenue reiterating the findings of the Adjudicating Authority submitted that the Respondent is 100% subsidiary unit in India of the parent company as allocation for IT General, allocation regional general SGA, allocation product group SGA in HFM system maintained. Parent company made entries in the books of accounts and debited Rs.90,08,62,122/- to respondent during the year 2011 to that 2015. However, later on some portion of debited amount was invoiced and remaining portion was not invoiced by Dana USA. The respondent paid service tax on invoiced portion only (as a service recipient in terms of Section 66A) and did not pay service tax on the uninvoiced amount.

5. As per Rule 5 of the Service tax (Determination of Value) Rules, 2006[5], the cost/expenditure incurred by the service provider is taxable consideration and should be included in the assessable value for the purpose of charging service tax. Though Dana USA have been reflecting the cost incurred in providing the taxable service as 'expenditure' in their HFM system maintained at Pune unit but the respondent whom Dana USA provided services have not paid service tax on full amount debited in HFM system to the Respondent. In this case, 88% of the debited amount is un-invoiced which resulted in short payment of service tax.

[5] ST Rules

6. The respondent has never disclosed the facts to the Department as these facts came to the notice of the Department only at the time of Audit/investigation. The respondent is working under self-assessment system and are bound by service tax law to correctly assess their service tax liability and thereafter file their ST-3 returns properly. The respondent did not assess the correct amount of service tax and have also not shown the actual amount in the relevant ST-3 returns, thus violated the provisions of section 70 of the Act. They have willfully suppressed the facts from the Department with intent to evade the payment of service tax. Therefore, extended period and penalty under section 78 is invokable.

7. Shri B.L. Narasimhan, learned Counsel for the respondent/assessee has analysed in detail the functioning of Dana, USA with its group entities, whereby former oversees the operations of all Dana group entities across the world by having uniform standards and practices for conducting business. Being the investor in all group entities, Dana USA analyzes the individual profitability of each business location across countries. Therefore, Dana, USA plans and estimates certain expenses which are to be incurred at its headquarter with respect to identified functions. These expenses (referred to as 'general allocations') are distributed to the Dana group entities for the upcoming calendar year(s) by Dana USA in its internal Hyperion Financial Management System[6]. Respondent and other group entities have no role whatsoever in uploading the general allocations in the HFM system. After undertaking the initial forecasting, Dana USA performs a more

[6] HFM System

detailed analysis (as per the Transfer Pricing Study) and determines whether an expense is meant for its own consumption, or if the benefit of such expense accrues to any of the Dana group entities. If a particular expense is incurred for any Dana group entity, then the same is charged to the said entity/entities as per the Transfer Pricing Regulations.

8. In this regard, Dana, USA has entered into a common Master Service Agreement, dated 27.9.2013, effective from January, 2011- with its group entities wherein it has been agreed that Dana USA would provide the services to the group entities and would charge for the same. It also provides a bifurcation between certain functions whose benefit would exclusively accrue to Dana USA only, and the cost of such function would not be charged to Dana group entities. As per the agreement, the inter-group transactions of the Dana group entities are guided by the "Transfer Pricing Policy' to ensure that all the transactions are based on arms-length price. The Transfer Pricing Report details out the benefits which accrue to the group entities and exclusively to the Parent company only and explains the rationale as to why certain costs are to be charged and some of them cannot be charged to the group entities.

9. The learned counsel has emphasized that a conjoint reading of the Master Service Agreement and the Transfer Pricing Report suggests that the costs which are incurred for and on behalf of Dana group entities are being invoiced with an appropriate mark-up as per the Transfer Pricing Policy. These costs include services in relation to the

areas of general and strategic administrative support, planning, human resource, finance, treasury, tax, legal, data processing, quality control, engineering, purchasing, business development and other related areas. These costs/expenses are commonly known as "invoiced allocations". Further, the services whose benefit does not accrue to Dana group entities are not invoiced, which include activities like, stewardship/shareholder activities, developing and/or maintaining investor relations, external audit compliance, etc., which generally benefit the parent company itself and/or its investors. The costs/expenses for such services are commonly known as 'un-invoiced allocations".

10. For provision of services to respondent, Dana USA raises invoices by adding appropriate markup as per the Global Transfer Pricing Policy. Respondent and its units account for such invoices and pay appropriate service tax under reverse charge mechanism. These SG&A services received by the respective plants have been duly recorded in their Service Tax Returns under the category of "Business Support Services". The un-invoiced allocations reflected in HFM are neither recorded by respondent & its units in their accounts nor any payment has been made by respondent to Dana USA towards them as no services were received in respect of these allocations. Such un-invoiced allocations are only recorded by Dana USA in its HFM system and, therefore, no Service Tax was paid on un-invoiced allocations.

11. Shri Narasimhan referring to the Master Service Agreement has argued that the invoiced and un-invoiced allocations are materially

different. Firstly, the un-invoiced allocations are not reflected in the books of accounts of the respondent. Secondly, the non-chargeable cost are those which are not towards any service rendered by Dana USA to the group entities including the respondent, but are those which are incurred by Dana USA towards its own consumption. On the basis of the contents of the Transfer Pricing Report enumerating the various heads of expenditure, it was submitted that chargeable services comprise of the activities, which provide benefit to the group entities whereas non-chargeable services do not benefit the group entities and are, therefore, not relatable to them. He has also argued that service tax cannot be demanded on the entries of invoiced allocations made by Dana USA in its HFM system in view of second proviso to Rule 7 of Point of Taxation Rules, 2011[7], whereby in case of associated enterprises, the point of taxation shall be the date of debit in the books of accounts of the person receiving services or the date of making the payment which is earlier. In the present case, the debit entry with respect to the un-invoiced allocations was made only in the books of account of Dana USA/service provider and the same cannot be treated as debit in the books of account of the respondent as HFM system is not the books of accounts of the respondent. Relying on the decisions of this Tribunal in the case of **Standard Charted Bank Vs. Commissioner of CGST and Central Excise, Mumbai South**[8] and **Futura Polyester Ltd. Vs. Commissioner of Central Excise, Chennai-I**[9], he submitted that the issue is no longer *res-integra*. Referring to the pre- negative as well as the post-negative era, he

[7] POT Rules
[8] 2025 –VIL-108-CESTAT-Mum-ST
[9] 2013 (29) STR 371 (Tri.-Chennai)

submitted that in the absence of any contractual agreement for provision of any service in lieu of un-invoiced allocations, such allocations cannot be subjected to service tax. The main allegation for raising the demand of service tax is on the basis of un-invoiced allocations made to the respondent no.1 by the parent company and such allocations did not enter the books of account of the respondent no.1.

12. From the submissions made by the respondent, we find that the modus operandi is such that the parent company estimates the expenses incurred with respect to any of the group entities, which is then charged to them through the invoiced allocations and service tax under Reverse Charge Mechanism is duly paid by the respondent on such charges. At the same time, there are certain expenses, the benefit of which accrues only to the parent company, and therefore, the cost of such expenses is not charged to the group entities and such charges are reflected in the books of accounts of the parent company as un–invoiced allocations which are neither linked to rendition of any services nor relatable to consideration. In the absence of any service and consideration between Dana USA and the respondent, the levy of service tax would not arise.

13. We may consider the recent decision of the Tribunal in the case of **Standard Chartered Bank and Futura Polyester Ltd.** reiterating the settled principle of law that in the absence of any service under the contract, no demand of service tax can be made by the revenue. In **SCB**, the facts are quite identical to the present case where SCB, UK

being the head office incur certain expenses which are termed as 'head office, executive and general administrative expenses', which are divided proportionately across various branches situated in different countries on the basis of gross receipts of the banks functioning in the respective country. The Revenue was of the view that expenses incurred by the head office which is allocated to Indian branches are for providing 'Business Support Service', and therefore, the appellant is required to discharge the service tax liability. The dispute was, therefore, limited to the activity of apportionment of general administrative expenses incurred by the head office in UK to the appellant. The Bench observed that since there was no contractual relationship or payment of consideration between the head office and the Indian branch for any specific services, the allocation of head office expenses by the UK head office to the Indian branch would not amount to provision of 'Business Support Services' leviable to service tax. The mere allocation of head office expenses to the branch for compliance with income tax laws does not create a service provider-recipient relationship, attracting service tax. Referring to the provisions of Section 66A, which deems the branch and head office as distinct persons for the purpose of service tax, is only to determine the place of provision of services and does not automatically lead to service tax liability on intra–group transactions without actual provision of services. It was also observed that these expenses have been allocated at cost without any markup by SCB–UK to all its branches. The department has not identified any service provider so as to make the appellant liable for payment of such services, if any, availed by them through their head office. Para 7 of the order reads as under:-

"7. Further, under the scheme of Negative List regime, the essence of indirect taxation is that a service should be taxed in the jurisdiction of its consumption. This principle is more or less universally applied. In terms of this principle, and applying it to the present factual matrix of the case, services provided to Head office situated abroad in UK, for various activities such as advertising, auditing, entertainment, insurance, legal assistance, postage, telephone, telegraph, printing, stationery, publication, newspapers, rent & rates, subscriptions, travel expenses, machinery, furniture, computer, Microfilm etc. by third parties who fall outside the taxable territory are not charged to service tax in India, as the consumption is elsewhere. Further, services need to pay tax only on their importation into the taxable territory, in terms of the legal provisions of the Finance Act, 1994. **Merely because the appellants and its head office at UK are being considered as establishment of distinct persons, there cannot be any charge of service tax. Unless it is proved that there is an element of services involved in an activity between head office abroad and branch office in India, the charge of service tax under Section 66B ibid does not arise automatically. In the present case, the department could not produce any evidence or record, to show that services were provided by the head office to the branch office of the appellants in India. Therefore, in our considered view there is no element of any service having been provided by the head office SCB-UK to the appellants in India, either by themselves or by involving any third party.**

8.1 We find that the dispute in respect of similar issue relating to status of overseas office vis-à-vis branches/head office and the limitation thereof, the jurisdiction to classify the services under Section 65(105) of Finance Act, 1994, the receipt of 'business auxiliary service' by the assessee appellant from its branches and the inclusion of reimbursable expenses for computation of gross receipts under Section 67 of Finance Act have been dealt in detail by this Tribunal in the case of Tech Mahindra Ltd., Milind Kulkarni Vs. Commissioner of Central Excise, Pune 2016 (44) S.T.R. 71 (Tri.-Bom.) 2016-VIL-625-CESTAT-MUM-ST. **In the aforesaid case, the Tribunal has held that transfer of funds is nothing but reimbursements and taxing of such reimbursement would amount to taxing of transfer of funds which is not contemplated by Finance Act, 1994 and therefore set aside the demand of tax as having been made without authority of law.** In view of the categorical decision of the Tribunal, the issues under dispute in the present case is no more open to debate, and a different view cannot be taken by this Tribunal."

Emphasis laid.

14. The Tribunal in the case of **Haldiram Marketing Private Limited versus Commissioner, CGST, Delhi East**

Commissionerate [10] has held that sharing of expenditure by associated enterprises cannot be held to be treated as service of renting by one to another as this was an internal arrangement and there was no privity of contract between the parties. The appeal filed by the Revenue has been dismissed by the Apex Court, thereby the view taken by the Tribunal stands affirmed.

15. We may next refer to the decision relied on by the appellant in the case of **Futura Polyester Ltd,** where the appellant made the debit entry for the services to be provided in future, in their books of accounts and for creating such entry in the books of accounts, the Revenue was of the view that they were liable to service tax. The Bench rejected the submission of the Revenue holding that merely making entry in the books of accounts does not render that the appellant has provided any service and therefore, when no service has been rendered service tax cannot be levied.

16. In **Gujarat State Fertilisers and Chemicals versus CCE**[11]**,** the Apex Court examined the arrangement between the appellant and the associated company to be in the nature of cost sharing as the handling portion and maintenance, including incineration facilities were in the nature of joint venture between two of them, and the parties have simply agreed to share the expenditure. Similar view has been expressed by the Tribunal in the case of **Reliance Ada Group Pvt. Ltd versus CST**[12] that cost shared by the recipient group

[10] 2023 (71) GSTL 414 (Tri.-Del.)
[11] 2016 (45) STR 489 (SC)
[12] 2016 (43)STR 372(T)

companies by making reimbursements to the appellant cannot be regarded as consideration flowing to the appellant towards the taxable service provided by the appellant.

17. From the judicial precedents cited, it is settled that sharing of cost and expenditure and reimbursement thereof cannot be subjected to service tax as the basic element of rendering service and the element of consideration are absent. Applying the basic principle that service tax is a contractual levy on the understanding between a service provider and a service recipient, therefore, there is no justification for levying service tax in the absence of a contractual agreement for providing service between Dana USA and the respondent. Alternatively, the respondent has argued that assuming any services are provided by Dana USA to the respondent in terms of the un–invoiced allocation, the same amounts to sharing of cost by the group entities and in view of the case law discussed above, the arrangement of cost sharing is not liable to be taxed. Along with it, we may also take note of the accepted principle that reimbursement of expenses are not susceptible to service tax. The decision of the **Delhi High Court** affirmed by the **Apex Court** [13] in **Intercontinental Consultants and Technocrats Pvt. Ltd.**[14]**,** where the challenge was to the constitutional validity of Rule 5 of the Service Tax (Determination of Value) Rules, 2006 to the extent it included reimbursement of expenses in the value of taxable services for the purpose of levy of service tax. Analysing the provisions of the Finance Act, it was observed that value of taxable services for charging service tax has to

[13] 2013 (29) STR 9 (Delhi)
[14] 2018 (10) GSTL 401 (SC)

be in consonance with Section 66, which levies tax only on the taxable service and nothing else. Further, it was observed that in the valuation of the taxable service, nothing more and nothing less than the consideration paid as *quid pro quo* for the service can be brought to charge. On this principle itself, since there is no contractual understanding with respect to the payment towards un-invoiced allocations and there is no agreed consideration, which is *sine qua non* to classify an activity as a 'service', respondent cannot be saddled with the liability of service tax.

18. The submission of the Revenue that since debit entries were made by the parent company with respect to the respondent in HFM System and therefore, the respondent is liable to pay service tax is not sustainable. The 'gross amount charged' in terms of Explanation (c) to Section 67 includes any amount, credited or debited in the books of accounts of a person liable to pay service tax where the transaction of taxable service is with any associated enterprise. The second proviso to Rule 7 of the POT Rules provides that point of taxation shall be the date of debit in the books of accounts of the person receiving the service. In terms of the said provisions, the respondent cannot be attributed with the liability of service tax for the simple reason that the un-invoiced allocations are not reflected in their books of account. The provisions of Explanation (c) to Section 67 and 2nd proviso to Rule 7 are quoted below:-

> "**67. Valuation of taxable services for charging service tax.**
> **Explanation:** For the purpose of this section,--
> **(c)** "gross amount charged" includes payment by cheque, credit card, deduction from account and

any form of payment by issue of credit notes or debit s and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of accounts of a person laible to pay service tax, where the transaction of taxable service is with any associated enterprise].

7. Determination of point of taxation in case of specified services or persons

Notwithstanding anything contained in rules 3,4, or 8, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

Provided further that in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment, whichever is earlier. "

In view of the statutory provisions above and in view of the factual matrix of the present case in light of the discussions cited, no demand can be raised against the respondent.

19. The learned Counsel has referred to the various clauses of the Transfer Pricing Report, which distinguishes the benefits accrue to the group entities and the benefits accruing exclusively to parent company only and therefore, certain costs are to be charged, and some of them cannot be charged to the Group entities. As noted by us, the service

tax liability is discharged under reverse charge mechanism by the respondent in respect of the expenses incurred by the parent company in respect to the cost relating to the group entities including the respondent. The balance of 'SG & A expenses/allocations', which are un-invoiced is accounted by the parent company at its own cost in the books of accounts towards the shareholding activity/stewardship activity in view of the transfer pricing report. Thus, the services pertaining to un-invoiced allocations are not consumed by the respondent but were meant for the self-consumption of Dana USA only. On the principle that mere entry in the books of account of the parent company is not requisite to fasten the liability of service tax, we affirm that the appellant cannot be subjected to service tax under the provisions of the Act.

20. We do not find any merits in the appeals filed by the Revenue and therefore, affirm the impugned order. The appeals are, accordingly dismissed and the cross objections are disposed of with consequential relief, if any.

[Order pronounced on 19th May, 2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

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

Ckp.