

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 88680 of 2018

(Arising out of Order-in-Original No. 38-41/SRP/COMMR/MUM. SOUTH/2018-19 dated 25.05.2018 passed by the Commissioner, CGST & CX, Mumbai South Commissionerate, Mumbai)

Standard Chartered Bank

Crescenzo, 7th Floor,
C-38/39, G-Block, Behind MCA Club
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.

.... Appellants

Versus

**Commissioner of CGST & CX
Mumbai South**

13th Floor, Air India Building
Nariman Point
Mumbai – 400 021.

.... Respondent

with

Service Tax Appeal No. 88699 of 2018

(Arising out of Order-in-Original No. 38-41/SRP/COMMR/MUM. SOUTH/2018-19 dated 25.05.2018 passed by the Commissioner, CGST & CX, Mumbai South Commissionerate, Mumbai)

Standard Chartered Bank

Crescenzo, 7th Floor,
C-38/39, G-Block, Behind MCA Club
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.

.... Appellants

Versus

**Commissioner of CGST & CX
Mumbai South**

13th Floor, Air India Building
Nariman Point
Mumbai – 400 021.

.... Respondent

with

Service Tax Appeal No. 88711 of 2018

(Arising out of Order-in-Original No. 38-41/SRP/COMMR/MUM. SOUTH/2018-19 dated 25.05.2018 passed by the Commissioner, CGST & CX, Mumbai South Commissionerate, Mumbai)

Standard Chartered Bank

Crescenzo, 7th Floor,
C-38/39, G-Block, Behind MCA Club
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.

.... Appellants

Versus

**Commissioner of CGST & CX
Mumbai South**

13th Floor, Air India Building
Nariman Point
Mumbai – 400 021.

.... Respondent

with

Service Tax Appeal No. 88712 of 2018

(Arising out of Order-in-Original No. 38-41/SRP/COMMR/MUM. SOUTH/2018-19
dated 25.05.2018 passed by the Commissioner, CGST & CX, Mumbai South
Commissionerate, Mumbai)

Standard Chartered Bank

Crescenzo, 7th Floor,
C-38/39, G-Block, Behind MCA Club
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.

.... Appellants

Versus

**Commissioner of CGST & CX
Mumbai South**

13th Floor, Air India Building
Nariman Point
Mumbai – 400 021.

.... Respondent

with

Service Tax Appeal No. 87929 of 2019

(Arising out of Order-in-Original No. MUM.SOUTH/CGST/COMMR/19/2019-20
dated 12.07.2019 passed by the Commissioner, CGST & CX, Mumbai South
Commissionerate, Mumbai)

Standard Chartered Bank

Crescenzo, 7th Floor,
C-38/39, G-Block, Behind MCA Club
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.

.... Appellants

Versus

**Commissioner of CGST & CX
Mumbai South****.... Respondent**

13th Floor, Air India Building
Nariman Point
Mumbai – 400 021.

Appearance:

Shri V. Sridharan Sr. Advocate a/w Vinay Jain, Jay Chheda, Advocates, &
Aniket Barwe, Chartered Accountant, for the Appellants
Shri Shambhoo Nath, Special counsel, for the Respondent

and

Service Tax Appeal No. 88873 of 2018

(Arising out of Order-in-Original No. 38-41/SRP/COMMR/MUM. SOUTH/2018-19
dated 25.05.2018 passed by the Commissioner, CGST & CX, Mumbai South
Commissionerate, Mumbai)

**Commissioner of CGST & CX
Mumbai South****.... Appellant**

13th Floor, Air India Building
Nariman Point
Mumbai – 400 021.

Versus

Standard Chartered Bank**.... Respondents**

Crescenzo, 7th Floor,
C-38/39, G-Block, Behind MCA Club
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.

Appearance:

Shri Shri Shambhoo Nath, Special counsel, for the Appellants
Shri V. Sridharan Sr. Advocate a/w Vinay Jain, Jay Chheda, Advocates, &
Aniket Barwe, Chartered Accountant, for the Appellants

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85045-85050/2025

Date of Hearing:	19.09.2024
Date of Decision:	20.01.2025

PER : M.M. PARTHIBAN

These appeals being Nos. 88680/2018, 88699/2018, 88711/2018, 88712/2018 and 87929/2019 have been filed by M/s Standard Chartered Bank, Mumbai, India (herein after referred to, for short, as "the appellants") assailing the Order-in-Original Nos. 38-41/SRP/COMMR/MUM.SOUTH/ 2018-19 dated 25.05.2018 and Order-in-Original No. MUM.SOUTH/CGST/ COMMR/19/2019-20 dated 12.07.2019 (hereinafter referred to, for short, as "the impugned orders") passed by the Commissioner, CGST & CX, Mumbai South Commissionerate, Mumbai. Further, Revenue has also filed an appeal bearing No. 88873/2018 being aggrieved against the dropping of demand for the period prior to 01.05.2011 in the same impugned order dated 25.05.2018.

2.1 The brief facts of the case are that the appellants herein is a banking company operating through various branch offices situated across India and having their head office in London, United Kingdom i.e., Standard Chartered Bank, UK (for short, referred to as "SCB-UK"). The SCB-UK has an extensive global network of its branches all over the world including India. The appellants provide various services to their customers such as trade services, cash management operations, utilities, loans processing, securities services, credit risk control, financial market operations and compliance & assurance, handling transaction processing activities across various product lines including credit cards, personal loans, current account and savings account, mortgage raising and corporate Finance solutions across all its domains. In order to provide support to all its global branches SCB-UK being the head office incurs certain expenses under the various heads such as advertising, auditing fees, donations, entertainment, gross emoluments, insurance, legal professional fees, national insurance contributions, pension contributions, postage, telephone, telegraph, printing, stationery, publication, newspapers, rent & rates, subscriptions, travel expenses, machinery, furniture, computer, Microfilm, miscellaneous expenses etc. All the above expenses are termed as 'head office executive and general administrative expenses'. These expenses incurred by the head office of the appellants 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 Department had observed that the expenses incurred by the head office of the appellants SCB-UK, which

is allocated to the Indian branches are for providing business support service to the appellants, and service tax is required to be discharged on the aforesaid services received by the appellants under the category of 'business support services'.

2.2 On the above basis, a detailed enquiry was conducted by the Department for obtaining the details of expenses incurred by the head office for appellants Indian operations and the appellants had furnished the requisite details of such expenses and also informed that they have paid service tax on the disputed services under protest. On such basis, show cause proceedings were initiated by the department against the appellants. The details of the same are as follows:

Sr. No.	SCN No. and Date	Appeal No.	Period	Service Tax demanded in SCN (in Rs.)
1	Commr/ST- I/ AE/ 1532/2015-16 dated 20.04.2015	Appellant in ST/88680/2018 Department in ST/88873/2018	October 2009 to December 2013	133,83,51,394
2	Commr/ST-I/AE/ 1582/2015- 16 dated 20.10.2015	ST/88711/2018	Jan. 2014 to Mar. 2014	13,17,64,398
3	Commr/ST-I/AE/ 1602/2015- 16 dated 13.01.2016	ST/88712/2018	Apr. 2014 to Dec. 2014	39,52,92,784
4	04/Commr/M-South/Divn- 11/2017-18 dated 16.10.2017	ST/88699/2018	Jan. 2015 to Dec. 2016	160,66,73,147
5	29/Commr/M South/Div.II/R.V/2017-18 dated 21.03.2018	ST/87929/2019	Jan 2017 to June 2017	49,10,03,746
Total				396,30,85,469

2.3 In the adjudication of various notices issued by the Department, learned Commissioner vide impugned Orders dated 25.05.2018 (pertaining to the period from October, 2009 to December, 2016) and 21.03.2018 (pertaining to the period from January, 2017 to June, 2017), had confirmed service tax demands of Rs. 366,46,36,354/- out of the total demand proposed in show cause notices of Rs. 396,30,85,469/- along with interest on the appellants under Section 73(2) read with proviso to Section 73(1) of the Finance Act, 1994 and also imposed penalties on the appellants under Sections 76, 77 and 78 ibid.

2.4 Further, learned Commissioner had dropped the demand for an amount of Rs. 29,84,49,115/- in the course of adjudication, on the ground that the services in the nature of operational or administrative assistance were included in the taxable service of "Business Support Services" vide a prospective amendment to the definition w.e.f. 1.5.2011. Therefore, for the period prior to 1.5.2011, the term "Business Support Services" did not include the phrase "*operational or administrative assistance in any manner*" and thus he held that service tax demand under the head "Business Support Services", prior to 01.05.2011, does not get covered under the scope of definition of 'support services of business or commerce' and therefore the tax demands to that extent is not sustainable on merits as well as on limitation.

2.5 Feeling aggrieved with the impugned Orders dated 25.05.2018 and 21.03.2018, the appellants have filed these appeals before the Tribunal. On the other hand, the Department have also preferred an appeal against the order of the learned Commissioner in dropping the tax demands to the extent of Rs. 29,84,49,115/-.

3.1 Learned Advocate appearing for the appellants had submitted that the said 'head office executive and general administrative expenses' have been incurred for their operations of their head office i.e., SCB-UK, in the UK and do not relate to Indian branch i.e. the appellants specifically. Unless two parties enter into a contractual relationship for performance of an activity/service, by one person to another, and there is an involvement of payment of consideration by said another person for such an activity, there is no provision of service triggering payment of service tax. In the present case, he stated that there is no contract or agreement between SCB-UK and the appellants which provides that SCB-UK will incur Head office expenses on behalf of the appellants or that the appellants shall reimburse SCB-UK in respect of the Head office expenses.

3.2 Further, he stated that the department has not pointed out any particular activity undertaken by SCB-UK for the appellants for charging service tax. The expenses incurred by SCB-UK are not branch specific, but of a general administrative nature and are accordingly not covered within the ambit of taxable service. In the adjudication proceedings, no material or evidence has been brought on record to show any particular service for which a request was made by the appellants to SCB-UK and that the service

was rendered for any exclusive benefit to the appellants against which a payment is made by them.

3.3 Further, learned Advocate submitted that as per Explanation (a) to Section 67 of the Finance Act, 1994, "consideration" includes any amount that is payable for the taxable services provided or to be provided. Thus, the definition of "consideration" itself provides that an amount should be "payable" in the context of services rendered. In the present case, there is no obligation on the appellants to make payment to SCB-UK for the Head office expenses purported to be incurred by SCB-UK on behalf of them. Further, SCB-UK has also not raised any invoice or debit note on the appellants for recovering the head office expenses. No consideration has been charged in the present case as no amount is actually paid by the appellants to SCB-UK towards the allocation of head office expenditure. Therefore, he claimed that the appellants are not liable to discharge service tax in absence of consideration.

3.4 Learned Advocate further stated that SCB-UK has allocated the expenses incurred by them among global branches based on appropriate allocation drivers such as turnover, head count etc. Such apportionment of head office expenses is only for the limited purpose of compliance with income tax laws and it does not put an obligation on the appellants to make payment to SCB-UK. The allocated amounts were not paid by the appellants to SCB-UK. Also, the allocated expenditure is merely on cost basis without any mark-up. Hence, he stated that such an arrangement of cost sharing will not be liable to service tax.

3.5 Learned Advocate further submitted that Section 66A (prevailing upto 30.6.2012) deals with a scenario when a *taxable service* is provided by a person located outside India and the same was received by an Indian recipient, then the burden to comply with the provisions of Finance Act, 1994 is cast upon such Indian recipient. In their case, the expenses incurred by SCB-UK are not Indian branch specific, but of a general administrative nature consumed by the UK Head office, itself. Hence, he claimed that the aforesaid provision for charge of service tax are not attracted in their case.

3.6 Learned Advocate relied upon the following judgments in support of their stand: -

- (i) M/s Tech Mahindra Ltd., Milind Kulkarni Vs. Commissioner of Central Excise, Pune-I - 2016 (44) S.T.R. 71 (Tri-Mumbai)
- (ii) Kusum Healthcare Pvt. Ltd. Vs. Commissioner of Central Excise, Jaipur-I - 2018 (2) TMI 1408 - CESTAT New Delhi
- (iii) M/s Gujarat State Fertilizers & Chemicals Ltd. & Another Vs. CCE - 2016 (45) S.T.R. 489 (S.C.)
- (iv) Hazira LNG Pvt Ltd Vs. C.S.T. -Service Tax – Ahmedabad - 2022 (11) TMI 437 - CESTAT AHMEDABAD
- (v) Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd – 2018 (3) TMI – Supreme Court
- (vi) Haldiram Marketing Pvt. Ltd. Vs. Commissioner, CGST, GST Delhi East - 2023 (71) G.S.T.L 414 (Tri – Del.) affirmed by Hon'ble Supreme Court
- (vii) Cathay Pacific Airways Ltd. Vs. Commissioner of Service Tax-I Interim Order No. 23/2024 in ST Appeal 88653 of 2013 dated 2.9.2024 - Larger Bench.
- (viii) SNC Lavalin Inc Vs. C.S.T., Delhi - 2018 (2) TMI 1679 - CESTAT New Delhi
- (ix) Infosys Ltd. Vs. Commissioner of Service Tax, Bangalore - 2014 (3) TMI 695 - CESTAT Bangalore.

4.1 Learned Special Counsel appearing for Revenue, reiterated the findings made by the learned Commissioner in confirmation of the adjudged demands and stated the following. The appellants have submitted certificates of profit remittance issued by independent Chartered Accountant for relevant years. On scrutiny of one such certificate dated 09-09-2011 covering the year ending 31-03-2011, it was interpreted by the department that to arrive at the surplus that could be remitted by the appellants to SCB-UK, they have added Head Office Administrative expenses (HOA expenses) claimed as deduction under section 44C of Income Tax Act, 1961. Out of such surplus amount, part of it is held in reserves and surplus and balance is remitted. Hence, learned Special Counsel claimed that the department's understanding that HOA expenses are consideration for the support services provided by head office of the appellants (SCB-UK) in terms of section 67 of the Finance Act, 1994 is correct. He further stated that if no expenses have been incurred by the head office (SCB-UK), then in that case no deductions will be available under section 44C of Income Tax Act, 1961. Since SCB has claimed such deduction, he stated that the appellants have actually incurred the HOA expenses attributable and allocated to the SCB-India for providing business

support. The expenses incurred by SCB-UK are intrinsically and essentially linked to their business operation in India.

4.2 Further, he stated that SCB-UK, located in a non-taxable territory i.e. outside India was providing services and the same was subject to service tax under reverse charge as per Section 66A of the Finance Act, 1994. The said services qualified as import of service under section 65(105)(c) of Finance Act, 1994 prior to 1.7.2012 and qualified as import of services as per Rule 3 of Place of Provision of Services Rules, 2012 post 1.7.2012.

4.3 Since the Appellant and SCB-UK are associated enterprises, the point of taxation as per Rule 3 of Point of Taxation Rules, 2011 would be date of debit in the bank accounts by recipient or date of making payment whichever is earlier. The head office expenses have been claimed as deduction for the purpose of calculating the taxable profit for payment of Income Tax in India. Therefore, the date of claiming deduction of expenses shall be deemed to be the date of making debit and thus, shall be deemed to be the point of taxation. If no expense has been incurred by SCB-UK on behalf of the appellants, in such a case no deductions would have been available under Income Tax Act, 1961. Even for the purpose of computation of remittance by the branch, the said amount has been considered which indicates that the Head Office expenditure was available for as "Remittable Surplus".

4.4 Learned Special Counsel in asserting for the appeal filed by Revenue stated that even prior to 01.07.2012, the services provided by the head office SCB-UK to the appellants are covered under business support service as defined under Section 65(104c) of the Finance Act, 1994 inasmuch as such service provided by SCB-UK were composite services in nature and the expenditure recovered was in relation to services such as customer relations, accounting and processing, logistic services, infrastructural support services, etc. Therefore, he stated that various services provided by SCB-UK to SCB-India were also covered under unamended "support services of business or commerce" individually and as well as collectively. Further, he claimed that the definition also covered services provided in relation to business or commerce generally and also included certain specific services detailed in the definition.

4.5 On the above basis and by relying upon the judgement in the case of South Gujarat Roofing Tiles Manufacturers Association and another Vs. The

State of Gujarat and another – (1976) 4 SCC 601, he claimed that the adjudged demands proposed in the SCN are thus sustainable in its entirety including the amount dropped by the Commissioner in the impugned order.

5. Heard both sides and perused the records of the case. We have also perused the additional written submissions presented in the form of paper books by both sides in this case.

6.1 The issues involved in these appeals is to determine whether the amount described as 'head office executive and general administrative expenses' apportioned by the headquarters of the appellants SCB-UK to the appellants as Indian branch office, involve payment of service tax under Sections 66A, 66B and 67 of the Finance Act, 1994 read with Place of Provision of Services Rules, 2012 (POPS). The services which are in dispute are Business Support Services (BSS) or 'support services', which were earlier covered under the specific category of taxable service viz. 'support services of business or commerce'.

6.2 It can be seen from the factual matrix of the case that the appellants have been allocated with certain costs towards the general administrative expenses incurred by their head office (SCB-UK) situated at London in United Kingdom. These expenses have been allocated at cost i.e., without any mark-up by SCB-UK to all its branches *inter alia* including the appellants, in compliance with Income Tax Act, 1961 and the extant regulations framed by the Reserve Bank of India in respect of remittance of profit by foreign banks operating in India. There is no service provider identified by the department, in the present case so as to bring the appellants liable for payment of such services, if any, availed by them through their head office; and to treat the said expenses which are allocated on certain criteria like gross revenue, employee headcount, profits of each branch or other suitable parameters as gross amount charged towards consideration payable for the services received by the appellants. The dispute is limited to the above activity of apportionment of general administrative expenses incurred by SCB-UK i.e., the head office of the appellants in UK being treated as services received by the appellants, which the Department had interpreted that it is 'support services of business or commerce'.

6.3 In order to address the above issues, we would like to refer to the legal provisions of levy of service tax under the Finance Act, 1994 and the

Finance Act, 1994

65. *In this Chapter, unless the context otherwise requires,—*

Explanation.—For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;

(105) "taxable service" means any service provided ²[or to be provided],_

xxx xxx xxx xxx

(zzzq) to any person, by any other person, in relation to support services of business or commerce, in any manner;

Post Negative List regime after 01.07.2012

CHAPTER V

SERVICE TAX

Extent, commencement and application.

Section 64. (1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It shall apply to taxable services provided on or after the commencement of this Chapter.

Interpretations

Section 65B (44) service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) *an activity which constitutes merely,—*
- (i) *a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
- (ii) *such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or*
- (iii) *a transaction in money or actionable claim;*

¹ Substituted for "operational assistance for marketing" by the Finance Act, 2011, w.e.f. 01.05.2011.

² *Inserted by the Finance Act, 2005, w.e.f. 16-6-2005.*

- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.— For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
- (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2.— For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include—

- (i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;
- (ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—
 - (a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998);
 - (b) by a foreman of chit fund for conducting or organising a chit in any manner.]

Explanation 3.— For the purposes of this Chapter,—

- (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- (b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.— A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

65B(52) "taxable territory" means the territory to which the provisions of this Chapter apply;

Charge of service tax on and after Finance Act, 2012.

Section 66B. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of ³[fourteen per cent] on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Determination of place of provision of service.

Section 66C.

³ Substituted for "twelve" by the Finance Act, 2015, w.e.f. 1-6-2015.

(1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

(2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

Power to make rules.

Section 94.

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(hhh) the date for determination of rate of service tax and the place of provision of taxable service under section 66C.”

Place of Provision of Services Rules, 2012.

“Place of provision generally.

Rule 3 . The place of provision of a service shall be the location of the recipient of service:

Provided that in case ⁴[of services other than online information and database access or retrieval services, where] the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

Place of provision of performance based services.

Rule 4. The place of provision of following services shall be the location where the services are actually performed, namely:—

(a) services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair;

(b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

Place of provision of services relating to immovable property.

Rule 5. The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use

⁴ Inserted by Notification No.46/2016-ST, dated 9-11-2016, w.e.f. **1-12-2016**.

immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

Place of provision of services relating to events.

Rule 6. *The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.*

Place of provision of services provided at more than one location.

Rule 7. *Where any service referred to in rule 4, 5 or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.*

Place of provision of services where provider and recipient are located in taxable territory.

Rule 8. *Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.*

Place of provision of specified services.

Rule 9. *The place of provision of following services shall be the location of the service provider:—*

- (a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;*
- (c) Intermediary services;*
- (d) Service consisting of hiring of all means of transport other than,--*
 - (i) aircrafts, and*
 - (ii) vessels except yachts,**upto a period of one month*

6.4 On careful reading of the definition of taxable service, as it existed prior to 01.07.2012, under Section 65(104c) *ibid* read with Section 65(105) (zzzq) *ibid*, where the taxable services were enumerated under various category included, the scope of services covered under the tax net in terms of Section 65(104c) *ibid* is the services provided in relation to business or commerce including services of evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing. The term 'operational assistance for marketing' was substituted w.e.f. 01.05.2011 as 'operational or administrative assistance in any manner' by expanding

the scope of the service. During the introduction of such change in the Budget for the year 2011-12, the Ministry of Finance, Tax Research Unit vide D.O.F.No.334/3/2011-TRU dated 28.02.2011 have explained the scope of expansion of existing services by amendment or addition of new aspect of a certain service to the existing one as follows:

"5. Business Support Service [section 65 (105) (zzzq)]:

5.1 The scope of the service is being expanded to include operational or administrative assistance of any kind. The scope will cover all support activities for others on a contract or fee, that are ongoing business support functions that businesses and organizations commonly do for themselves but sometimes find it economical or otherwise worthwhile to outsource.

5.2 The words "operational and administrative assistance" have wide connotation and can include certain services already taxed under any other head of more specific description. The correct classification will continue to be governed by Section 65A."

In view of the above, we find that the Government had clearly stated that the scope of taxable services under Section 65(105)(zzzq) *ibid* is being expanded and the scope of services to be covered w.e.f. 01.05.2011 are explained as those services which are in the nature of support activities for the ongoing business support functions. As these services are distinct from operational assistance for marketing which was covered earlier under the scope of taxable services, for the limited purpose of understanding and for coming to a conclusion about the date of effect of bringing into tax net the scope of comprehensive services of 'operational or administrative assistance', we come to the conclusion that such expansion of services were brought under the tax net only with effect from 01.05.2011 and not earlier, as argued by the special counsel and appealed by the Revenue in the appeal filed by them before us. Therefore, we are of the considered view that the appeal filed by Revenue, for charge of service tax on the disputed activity, prior to 01.05.2011 do not have the support of law and therefore such appeal is liable to be dismissed.

Further, post 01.07.2022, services were interpreted to refer any activity carried out by a person for another for consideration, including certain services which is a declared service, provided these services are not covered by certain exclusion provided therein under Section 65B(44) *ibid*. Hence, it is clear that the nature of services provided to the appellants should fall in the scope of 'support services of business or commerce', prior to 01.07.2012 in order to specifically cover under the taxable category in terms of Section 65(105) (zzzq) *ibid*; and after 01.07.2012, generally

under the scope of "service", to prove that these do not fall outside the scope of taxability of services under Section 66B *ibid* read with definition clause under Section 65B(44) *ibid*.

6.5 In order to further examine whether the services provided to the appellants by the overseas Head Office is covered under the scope of taxable net of services or not, we have examined the relevant provisions of the Finance Act, 1994. For the period prior to 01.07.2012, it was specifically provided that there shall be involvement of two persons viz., a service provider and a service receiver and the services should have been covered by the taxable service specifically defined therein. During the period subsequent to 01.07.2012, the charging provision under Section 66B *ibid* specifically provided that all services other than those in the negative list when provided in the taxable territory is liable to pay service tax. In other words, the provision of services that were under the tax net of service tax were those services provided within the territory of India except the State of Jammu and Kashmir. Services provided to any person situated outside taxable territory, not involving a service provider from India, as a corollary are not liable for payment of service tax. Thus, it is clear that when any services are provided outside the taxable territory between two persons who are not connected to the branch office in India and the services not being provided to the appellants situated in India, such services cannot be brought under the tax net for payment of service tax.

6.6 We had also examined the legal provisions under the context of Place of Provision of Services Rules, 2012 (POPS) framed in exercise of the powers under Section 66C *ibid* and Section 94(2)(hhh) *ibid*. It transpires from plain reading of the above legal provisions, that for the limited purpose of date for determination of rate of service tax and the place of provision in certain services in specified situations, these POPS Rules have been framed. The place of provision shall in general be the location of recipient of service, except in certain circumstances specified therein. These exceptions include performance-based services, situations where services have been provided relating to immovable property, certain events such as celebration, conference, fair, exhibition etc., and certain specific services. In such cases, the place of provision of services is stated therein in the respective Rules. In the factual matrix of the present case, Rule 9 *ibid* is relevant as it provides for the situation where the services

are provided by a banking company. In terms of Rule 9 *ibid*, in respect of services provided by a banking company to account holders, it shall be the place of service provider.

6.7 In the present factual matrix of the case, the appellants by themselves or the Head office through the appellants have not provided any of the disputed service to their account holders in India. As the appellants have only been shared with the expenses relating 'head office executive and general administrative expenses' apportioned by their headquarters, there is no element of any service involved therein. It is an undisputed fact that the appellants have not entered into any agreement or contract with respect to the said expenses or for receipt of any services. Further, as explained by the learned Advocate for appellants the said amount is not recorded by the appellants in its books of accounts as expenditure; no invoice was raised for the said amounts by SCB-UK on the appellants. The said amount has not been paid to SCB-UK i.e., there is no payment of the said allocated expenditure by the appellants to SCB-UK. The appellants had only claimed the deduction of head office expenses under the provisions of the Income-tax Act, 1961 while filing its income tax return. Further, in this regard Section 44C of the Income-tax Act, 1961 provides for the permissible limit upto which a deduction can be claimed in respect of the Head-Office expenditure by its branch in India, while computing taxable income for the purposes of computation of income tax. Therefore, we are of the view that such treatment for the purpose of income tax purposes, *per se* does not tantamount to the same being treated as 'gross amount' received for provision of services between head office situated abroad and branch office in India, in the absence of any element of service involved therein.

6.8 It is also seen that the Head office expenses have been allocated at cost i.e., without any mark-up by SCB-UK to all its branches *inter alia* including the appellants, only for filing of local Income Tax return purposes. The said expenses are allocated on certain criteria like gross revenue, employee headcount, profits of each branch or other suitable allocation parameters. This allocation of expense is communicated by SCB-UK to the appellants vide an independent auditor's report. The said audit report consists of total head-wise expenditure incurred, basis of allocation or apportionment of the head office expenses to the branches and the amount which is allocated/attributed to the branches. The said audit report also

categorically mentioned that the purpose of report is merely for compliance with local Income tax purposes. Further, at the end of every year, the appellants remit, a part of its surplus profits to SCB-UK (referred to as 'remittable surplus'). In case there is no remittable surplus profit for any year, then there is no remittance done by the appellants. For instance, the learned Advocate had pointed out that the appellants have not remitted any surplus to SCB-UK during the financial year 2011-12. The amount of surplus profit or the remittable surplus in respect of banking company incorporated outside India (foreign company) is subject to certain regulations prescribed under the Banking Regulation Act, 1949 and the circular issued by the Reserve Bank of India, which state that an amount calculated at twenty per cent. of profit for that year in respect of all business transacted through bank's branches in India, shall be deposited by such banking company with the Reserve Bank, either in cash or in the form of unencumbered approved securities, or partly in cash and partly in the form of such securities. These capital adequacy regulations have been complied with by the appellants and these do not have any relation with the taxation of services for the purpose of payment of service tax.

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.). 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. The relevant paragraphs of order of the Tribunal in the case of *Tech Mahindra Ltd., Milind Kulkarni* (supra) is extracted and given below:

"9. *The primary planks of the confirmation of demand in the impugned order are that the appellant and its branches are different persons, that the purpose and activities of the branches are for rendering service to the head office in India, that the payments made to the branches are not reimbursements but are taxable consideration for taxable service and that there has been suppression of facts by the appellant.*

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12. *At the core of the dispute are four issues, viz., the status of overseas branches vis-à-vis the 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. All of these are to be required to be answered to sustain the confirmation of demand by the adjudicating authority.*

13. *That the branch and head office are distinct entities for the purpose of taxation cannot be a matter of dispute. The law relating to taxation of service, an indirect, destination-based tax, is constitutionally restricted to India. In the scheme of Chapter V of Finance Act, 1994, the incidence of tax on services is to be borne by the recipient of service and levy is enforced on the provider of service. As the tax can be collected only from a service-provider within the jurisdiction,*

undertakings beyond the territory are beyond the ambit of the statute irrespective of the nature of the structural form or the linkage-organic or contractual. In such a taxing law, an entity that is beyond the jurisdiction of the statute has an existence independent of the taxable entity. A branch is, therefore, an entity distinguishable, for purposes of Finance Act, 1994, from its head office.

14. *Consequently, an entity that is not subject to a domestic taxing statute is not amenable, by any stretch of argument, to scrutiny for conformity with the provisions of that statute. Activities of the overseas entity cannot be subject to ascertainment of classification of services in Section 65(105) of Finance Act, 1994. More so, as tax authorities are bereft of wherewithal to scrutinize the activities of such an entity and there is, indeed, no cause to embark upon such a venture either. Undoubtedly, such entities are subject to tax in the territory in which they operate. We notice that decisions of this Tribunal in *Torrent Pharmaceuticals Ltd. v. Commissioner of Service Tax, Ahmedabad* [[2015 \(39\) S.T.R. 97](#) (Tri.-Ahmd.)] and *KPIT Cummins Infosystems Ltd. v. Commissioner of Central Excise, Pune-I* [[2014 \(33\) S.T.R. 105](#) (Tri.-Mumbai)] have considered the subjection to tax by another State for deciding on exclusion from tax levied by the laws of India. A note of caution must be recorded here: this acknowledgement of evidentiary value is not intended to be construed as a condition sufficient for exemption. As the Tribunal expressed in *re Torrent Pharmaceuticals Ltd.* :*

'5.8 Therefore, payment of VAT abroad will be an indicator to decide whether service is provided and consumed outside India or has been consumed/received in India. The agreements/documents available with the appellant have to be accepted for the purpose of determining place of providing and consumption of service in India... '

That it is to be taken as an indicator arises from the absence of cross-border tax facilitation that extends availment of credit beyond the tax frontiers of the country. For these reasons, it is neither feasible nor necessary to delve into the activities of the overseas entity except where the tax liability of the assessee is sought to be mitigated on grounds of discharge of tax abroad. Correspondingly, the refund of any tax abroad is not necessarily detrimental to the assessee without a clear understanding of the tax laws under which refund was sanctioned. The principles and procedures of the tax statute in India should not be presumed to apply to the overseas tax law for crystallising tax liability in relation to activity that has been undertaken by the overseas entity.

15. *However, that does not foreclose the jurisdiction over or preclude necessity of examining an overseas activity from the point of view of the recipient of service. Section 66A of the Finance Act, 1994 has been specifically enacted to tax services received by an assessee as though the assessee has provided the service to itself. And in providing the framework for such 'tax shifting', various organizational forms may have to be disaggregated - accordingly, a branch in another country is deemed to be an establishment distinct for the purposes of ascertaining the receipt of service. Therefore, notwithstanding the identifiability of all the essential factors relevant to charge of tax, viz., supplier, customer, supply and place of provision, tax becomes leviable to the extent that*

receipt of service in India is established. The 'business auxiliary service' that the impugned order has found to have been rendered by the branch office of the appellant-assessee has to cross this hurdle.

16. *Section 66A of Finance Act, 1994 taxes all taxable services received by a person who 'has his place of business, fixed establishment, permanent address or usual place of residence in India' from*

'a person who has established or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India'

Revenue has alleged that Explanation 1 in sub-section (2) having designated branches as business establishment overseas and Section 66(2) mandating that -

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

tax liability devolves on the appellant-assessee.

17. *Tax-shifting arises from the nature of the levy. It is now well-settled that service tax is a destination-based indirect tax; its incidence is borne by the recipient of the service though mechanics of the collection are entrusted to the provider of the service. As a provider who is not within the tax jurisdiction of this country cannot be subject to such entrustment 'reverse charge' is resorted to. Furthermore, akin to the import of goods, equivalence requires that the tax be collected as though it was a domestic transaction with responsibility devolving on the taxable entity in the country.*

18. *A commercial organization establishes its subordinate formations to further the commercial activity that the principal body is engaged in. Commercial feasibility mandates that such branches exist to render services or to facilitate placement of goods. Therefore, to posit that the overseas branches render services does not require genius of a high order. At the same time, reasonable intelligence suffices to identify the recipient of the service and the nature of the service rendered.*

19. *The appellant-assessee has established branches for furthering its commercial objectives. The benefit of assigned activities of the branch will, undoubtedly, accrue to the appellant. There is no dispute that it is the appellant-assessee who enters into contractual agreements with overseas customers for supply of 'information technology services' which have 'off-shore' components rendered directly to the overseas entity by the appellant-assessee. 'On-site' activity is undertaken by deputing employees working at the site of the customer. These employees are, without doubt, on the rolls of the appellant-assessee which, save for the specific and limited role of Section 66A(2), encompasses the branches within its corporate structure. As Section 66A(2) is limited to being a charging section in a specific context, it is not elastic enough to govern the corporate intercourse and commercial indivisibility of a headquarters and its branches. Therefore, any service*

rendered to the other contracting party by branch as a branch of the service provider would not be within the scope of Section 66A. Merely because there is a branch and that branch has, in some way, contributed to the activities of the appellant-assessee in discharging its contractual obligations, the definition of 'business auxiliary service' in Section 65(19) of Finance Act, 1994 may not apply. That is where the impugned order has erred in not reading Section 65(105) along with Section 66A and Rules framed for the purpose of charging tax on services received from abroad. Unless both are applied together, the jurisdiction to tax would be in question.

20. *It would be worthwhile to look at the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006*

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21. *From the above, it is apparent that mere identification of a service and the legal fiction of separate establishment is not sufficient to tax the activities of the branch. The very existence of a branch presupposes some kind of activity that benefits the primary establishment in India and the organizational structure inherently prescribes allocation of financial resources by the primary establishment to the branch to enable undertaking of the prescribed activity. The books of accounts and statutory filings do not distinguish one from the other. The application of Finance Act, 1994 to such a business structure within India does not provide for a deemed segregation. Such a legal fiction in relation to overseas activities should, therefore, have a reason.*

22. *Section 66A of Finance Act, 1994 does not prescribe promulgation of any Rule for its administration. The two sets of Rules extracted supra are framed under the general provision in Section 94 of Finance Act, 1994. Moreover, the Rules draw upon Section 93 of Finance Act, 1994 in a manner akin to Export of Service Rules, 2005. It is noticed that the Taxation of Services (Provided from Outside India and Received in India) Rules, 2005 also mirrors the Export of Service Rules, 2005. That, however, cannot be taken as intent to tax the inflow of service merely because of a corresponding exemption accorded to the outflow of services. Reference to Section 93 as an authority for prescribing the Rules would make it appear that the purpose of the said two sets Rules is to exclude from tax such services that do not fall within the three classifications predicated the import of service. The residuary provision in the Rules of 2006 make it clearly that such services have to be received by a recipient located in India for use in relation to business or commerce. The provisions of the successor Rules are no different.*

23. *The catena of judgments cited for both sides, viz., British Airways v. Commissioner of Central Excise (Adjn) [2014-TIOL-979-CESTAT-Del = [2014 \(36\) S.T.R. 598](#) (Tri.-Del.)], Torrent Pharmaceuticals Ltd. v. Commissioner of Service Tax [[2015 \(39\) S.T.R. 97](#) (Tri.-Ahmd.)] and Infosys Ltd. v. Commissioner of Service Tax [2014-TIOL-409-CESTAT-Bang = [2015 \(37\) S.T.R. 862](#) (Tri.-Bang.)] does support the proposition that a service is taxable under Section 66A of Finance Act, 1994 only when such service is rendered in India. The question that arises then in the context of the present dispute is whether the branch renders a service is rendered in India within the meaning of the above statutory provisions. A forced disaggregation*

merely for the purpose of tax when similar domestic structures are not taxed and when commercial soundness calls for establishment of branches would be clearly inequitable.

24. *Hence, the legislative intent of this legal fiction may have to be ascertained. In doing so, the goals of the appellant as an exporter cannot be far from our mind.*

25. *Section 66A requires taxing of taxable services rendered by an overseas branch to its head office and the two sets of Rules limit tax demand only to the extent that these services are received in India in relation to business or commerce. A plain reading would make it apparent that the services referred to must be for pursuit of business or commerce in India. The two sets of Rules provide for availment of Cenvat credit of the tax paid by the Indian entity on 'reverse charge basis.' As an exporter, the Indian entity is entitled to claim refund of taxes lying unutilized in Cenvat credit account. There is no dispute that the activities of the branch are in connection with the export activity of the appellant-assessee. That the legislature would prescribe the collection of a tax merely for the purpose of refunding it subsequently does not pass the test of reason. More so, as there is no inference of any monitorial aspect in undertaking such an exercise. An exporter who operates through branches is clearly not the target of the legal fiction of branches being distinct from head office. The proposition that the intent of Section 66A in taxing the activity rendered by an overseas branch to its headquarters in India is limited to the local commercial or business activities of the head office is thereby confirmed. Consequently, mere existence as a branch for the overall promotion of the objectives of the primary establishment in India which is essentially an exporter of services does not render the transfer of financial resources to the branch taxable under Section 66A.*

26. *The legal fiction of service rendered by overseas branch to its primary headquarters would appear to be intended to prevent escapement from tax by resort to branches specifically to take advantage of the principle of mutuality. When a service to be rendered in India by the primary establishment is deliberately routed through an overseas branch or when a service that would otherwise be contracted from an overseas entity is, instead, sourced through an overseas branch, this legal fiction will come into play. The transaction of the appellant-assessee and the branches which is under dispute before us being related to exports is unambiguously not intended to be taxed as it has nothing to do with business or commerce in India.*

27. *We do not need to examine whether the flow of funds from the head office to the branch is consideration or reimbursement as the test of services having been received in India fails. Nevertheless, we do so. A branch, by its very nature, cannot survive without resources assigned by the head office. The business of the appellant-assessee is such that credibility in the eyes of its overseas clients lies in the name and style of the appellant-assessee. It cannot be substituted by any other entity. The activity of the head office and branch are thus inextricably enmeshed. Its employees are the employees of the organization itself. There is no independent existence of the overseas branch as a business. The economic survival of the branch is entirely dependent on finances*

provided by the head office. Its mortality is entirely contingent upon the will and pleasure of the head office. The transfer of funds - by gross outflow or by netted inflow - is, therefore, nothing but reimbursements and taxing of such reimbursement would amount to taxing of transfer of funds which is not contemplated by Finance Act, 1994 whether before 2012 or after.

28. *In view of our findings above, the demand of tax in the impugned order is without authority of law and does not survive. The penalties imposed on the assessee-appellant and the principal officers are also set aside. All appeals are, consequently, allowed."*

8.2 We also find that this Tribunal in the case of *Steel Authority of India Limited Vs. Commissioner of Service Tax, New Delhi* in Final Order No.50397/ 2020 dated 26.01.2020 had held that charging section is Section 66 of the Finance Act, 1994 and not Section 66A *ibid*. The provision of Section 66A is only to determine whether the provision of service is in India or out of India. Therefore, it was held unless that charge of service tax is proved under Section 66 *ibid*, there cannot be levy of service tax only on the basis of Section 66A *ibid*. The relevant paragraphs of the said order is extracted and given below:

"20. It is clear from the aforesaid two decisions that section 66A (1) refers to 'service provider' and 'service recipient' as 'persons' which would mean different business persons. Section 66A(2) and its Explanation I only fix service tax liability on a recipient of service under a reverse charge mechanism by treating the permanent establishments in India and abroad as separate persons. This only clarifies whether a service is provided and consumed in India or abroad. If the 'permanent establishment' is treated as a 'service provider' to its own head office in India then it will amount to charging service tax for an activity provided to own self. Therefore, a comprehensive reading of Section 66A of the Act, would indicate that a permanent establishment situated abroad as a 'separate person', is only to determine whether the provision of service is in India or out of India. The contention of the Appellant, therefore, deserves to be accepted.

*21. The Commissioner (Appeals) also observed that section 66A is an independent charging section for levy of service tax on services provided or to be provided to a person located in India. This observation of the Commissioner (Appeals) is not correct. The charging section is section 66 of the Act and not section 66A, as was observed by the Allahabad High Court in *Glyph International Ltd. v/s Union of India**

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23. The confirmation of demand under the impugned order, therefore, cannot be sustained."

8.3 We find that in the case of *Cathay Pacific Airways Ltd. Vs. Commissioner of Service Tax-I, Mumbai*, the Larger Bench of the Tribunal in Interim Order No.23/2024 dated 02.09.2024 have held that transactions between both the service provider and service receiver located outside India cannot be leviable to service tax. The relevant paragraph of the said order is extracted and given below:

"39. The aforesaid discussion would lead to the inevitable conclusion that the branch office in India is not the recipient of OIDAR services provided by CRS companies. It is the head office which is contractually entitled to receive the services rendered by the CRS/GDS companies and it is the head office which is contractually obligated to make payment for the services rendered by the CRS/GDS companies.

40. The reference would, accordingly, have to be answered in the following manner:

"(A) For the purpose of levy of service tax under reverse charge under section 66A of the Finance Act, the services should have been received in India by the recipient from the service provider who does not have any permanent establishment in India. The appellant, in the present case, is not the recipient of service and it is the head office located in Hong Kong that is the recipient of service. As the appellant has not received any service, it cannot be held liable to pay service tax in respect of the services rendered by the foreign CRS/GDS companies to the head office located outside India;

(B) In the present case, the Commissioner has recorded a finding of fact that the branch office and the head office are two separate persons. This issue would, therefore, not arise for consideration. In any case, it has been found as fact that the branch office and the head office are two separate persons; and

(C) The issue that arose for consideration in British Airways was whether the branch office was the recipient of service or not. The issue, therefore, that has been referred is beyond the dispute decided in British Airways. In any view of the matter, the branch office has not received any service from foreign CRS/GDS companies and it is the head office alone which has received the services and made payment. The appellant, which is the branch office, cannot be held liable to pay service tax under reverse charge under section 66A of the Finance Act."

8.4 In one other case involving demand of tax on transactions between head office situated abroad and branch office situated in India, the Tribunal have held that such transaction cannot be subjected to service tax levy as follows:

"7. Regarding the contention of the Revenue with reference to deemed legal entity in terms of Section 66A, we note that the scope of the said provisions have been subject matter of various decisions of the Tribunal. We find in the present facts of the case, there will be no tax liability by invoking such provision. In Kusum Health Care Pvt. Ltd. the Tribunal relying on the decision of Torrent

Pharmaceutical Ltd. - 2015 (39) STR 97 (Tri. -Ahmd.), Milind Kulkarni - 2016 (44) STR 71 (Tri. -Mumbai) held that the fiction created under Section 66A to consider the branch of an assessee as a separate establishment is not to tax a service rendered to its head office. On the same ratio, we hold that even service if any received by the branch office cannot be subjected to tax.

8. We note that the appellant has not received any service to be taxed in the present situation. The debit entries are for maintaining complete financial transaction on behalf of SNC, Canada. Further, it is clear that SNC, Canada cannot be categorized as a manpower recruitment or supply agency while involving deputing their own staff to execute their own contract in India. We find no justification to hold against the appellant for service tax liability. In view of the above discussion and analysis, we find the impugned order is not legally sustainable. Accordingly, the same is set aside. Appeal is allowed."

8.5 We also find that the Tribunal in the case of *Haldiram Marketing Pvt. Ltd. Vs. Commissioner, CGST, GST Delhi East Commissionerate - 2023 (71) G.S.T.L. 414 (Tri. Del.)* have held that sharing of expenditure by associated enterprises cannot be held to be treated as service rendered by one to another. The relevant paragraph of the said order is extracted and given below:

"26. *The goods of the associated enterprises are also being sold from same premises and certain portion of the rent is received from the associated enterprise. The associated enterprises is benefiting with respect to the space. This arrangement would, therefore, fall under the category of sharing of expense. In this connection reference can be made to the decision of the Supreme Court in Gujarat State Fertilizers & Chemicals Ltd. v. Commissioner of C. Ex. 2016 (45) S.T.R. 489 (S.C.)/[2016] 76 taxmann.com 357/59 GST 240 (S.C.). In *M/s. Historic Resort Hotels (Pvt.) Ltd. v. CCE, Jaipur-II 2017 (9) TMI 1066-CESTAT New Delhi = 2018 (9) GSTL 422 (Tri.) a division of the Tribunal also held that sharing of expenditure cannot be treated as service rendered by one to another."**

8.6 We further find that in the Civil Appeal filed by the department against the aforesaid order of the Tribunal holding that the sharing of expenditure cannot be treated as services, the Hon'ble Supreme Court had dismissed the appeal filed by the department, by upholding the order of the Tribunal. The extract of the said judgement of the Hon'ble Supreme Court is given below:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO. 6147 OF 2023
(@DIARY NO.31248 OF 2023)

COMMISSIONER OF CGST, CST DELHI EAST

Appellant(s)

VERSUS

M/S HALDIRAM MARKETING PVT. LTD.

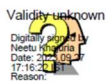
Respondent(s)

O R D E R

Delay in filing the civil appeal is condoned.

Having heard learned Additional Solicitor General for the
appellant, we do not find any merit in the civil appeal.

Hence, the civil appeal is dismissed.

Pending application(s), if any, shall also stand disposed
of..J
[B.V. NAGARATHNA].J
[UJJAL BHUYAN]NEW DELHI,
SEPTEMBER 25, 2023

9. In view of the foregoing discussion and analysis, we are of the considered view that 'the allocation of head office executive and general administrative expenses' by the head office of the appellants situated in London, UK, in the present set of facts cannot be subjected to levy of service tax under the Finance Act, 1994. It would, therefore, not be necessary to examine the contentions of the appellants that the extended period of limitation could not have been invoked in the present case. Further, in this view of the matter it would also not be necessary to examine the contentions raised by learned Special Counsel appearing for Revenue in contesting the demands dropped by the learned Commissioner and the other contentions raised by the learned Advocate for the appellants for assailing the impugned orders passed by the Commissioner.

10. Therefore, the impugned orders are liable to be set aside to the extent it had confirmed the adjudged demands proposed in the SCNs. Accordingly, by setting aside the impugned orders dated 25.05.2018 and 21.03.2018, the appeals filed by the appellants are allowed in their favour with consequential relief, if any, as per law. The appeal filed by the Revenue is dismissed.

(Order pronounced in open court on 20.01.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)