GSTAT

Division Bench Court No. Court I

APL/33/DEL/2026

VISHAL CHAUDHARY **.....Appellant**

Versus

ADDITIONAL DIRECTOR, C-526 DEFENCE COLONY NEW DELHI DLSED 110024 , MCDONALD,S INDIA PRIVATE LIMITED **.....Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Sh. Sanjay Kumar Aggarwal, Member(Judicial)
Hon'ble Sh. Rajiv Kapoor, Member (Technical)

ORDER

Present: Sh. Rahul Kumar, Ld. DC on behalf of the Appellant.

Ms. Ashwini Chandrasekaran, Ld. Counsel on behalf of the Respondent.

1. This appeal (APL-07) is directed against Order-In-Appeal No. 133/ADC/Central Tax/Appeal-II/Delhi/2023-24 dated 03.08.2023 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner of Central Tax, CGST Appeals-II, Delhi, whereby the Order-In-Original rejecting the refund claim of the Respondent was annulled.
2. The Respondent, M/s McDonald's India Pvt. Ltd. (hereinafter referred to as "the Respondent" or "MIPL"), is registered under the Goods and Services Tax regime with GSTIN No. 07AAACM2007JIZU.
3. The Respondent operates under a Master License Agreement effective from 01.01.1996 entered with McDonald's Corporation, USA. Under this agreement, McDonald's Corporation, USA (hereinafter referred to as "McDonald's USA") has granted a license to MCD Global Franchising Limited, UK (hereinafter referred to as "MGFL") to use the McDonald's System in India and to grant rights to sub-licensees. Thereafter, MGFL has appointed the Respondent (MIPL) as a service representative in certain regions of India to perform services on MGFL's behalf.

4. On 25.11.2022, the Respondent filed a refund claim (ARN No. AA0711220722002) under Section 54 of the CGST Act, 2017 (hereinafter referred to as “Act 2017”) read with Section 16 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "the IGST Act") before the jurisdictional authority, claiming a refund of accumulated Input Tax Credit (ITC) amounting to Rs. 6,97,00,683/- (Rupees Six Crore Ninety-Seven Lakh Six Hundred Eighty-Three only) in respect of exports of services for the period from April 2020 to March 2021.
5. 5**.** A Show Cause Notice was issued on 29.12.2022. The Respondent, however, sought an extension of one month vide RFD-09 dated 11.01.2023 without appearing for the scheduled personal hearing. The Adjudicating Authority did not grant the extension and proceeded to decide the refund claim based on the documents already on record.
6. The Adjudicating Authority vide Order-In-Original dated 30.01.2023, rejected the refund claim of the Respondent on the primary ground that:

   (i) The Respondent was covered under the definition of 'intermediary' as provided in Section 2(13) of the IGST Act, 2017.

   (ii) As the Respondent was an 'intermediary', the place of supply of its services was governed by Section 13(8)(b) of the IGST Act, which provides that for intermediary services, the place of supply shall be the location of the supplier of services. Since the Respondent (supplier) was located in India, the place of supply was within India.

   (iii) As the place of supply was within India, the condition stipulated in Section 2(6)(iii) of the IGST Act (which requires the place of supply to be outside India for a supply to qualify as 'export of services') was not satisfied. Consequently, the services provided by the Respondent did not qualify as 'export of services' and the refund claim was rejected.

7. Being aggrieved by the Order-In-Original, the Respondent filed an appeal before the first Appellate Authority. The Respondent raised the following grounds in appeal:

   (a) The Adjudicating Authority had failed to provide reasonable opportunity for filing submissions and for personal hearing, rendering the impugned order illegal and violative of the principles of natural justice.

(b) The services provided by the Respondent were on a principal-to-principal basis and the parties had explicitly agreed to transact on this basis in the service agreement, thereby negating the existence of an agent-principal relationship.

(c) The Respondent relied upon CBIC Circular No. 159/15/2021-GST dated 20.09.2021 and various judicial pronouncements of the higher courts.

(d) The Respondent placed reliance upon W.P.(C) No. 11430/2022, filed before the Hon'ble High Court of Delhi on 26.07.2022, which was admitted by the Hon'ble Court vide order dated 02.08.2022. This writ petition had been filed against Order-In-Appeal No. 269/2021-22 dated 14.02.2022 arising from an identical refund dispute concerning 'intermediary services' for FY 2018-19. The Respondent placed before the Appellate Authority a copy of the judgment dated 18.05.2023 of the Hon'ble High Court of Delhi in the said writ petition.

8. The first Appellate Authority vide Order-In-Appeal No. 133/ADC/Central Tax/Appeal-II/Delhi/2023-24 dated 03.08.2023, annulled the Order-In-Original so that the Adjudicating Authority could decide the matter afresh on the basis of the directions of the Hon'ble High Court.

9. The present appeal has accordingly been filed seeking to set aside the Order-In-Appeal and restore the Order-In-Original. The total amount in dispute is **Rs. 6,97,00,683/-** comprising Central Tax: Rs. 1,86,30,489/-, State/UT Tax: Rs. 2,99,54,143/-, and Integrated Tax: Rs. 2,11,16,051/-.

ISSUE INVOLVED

10. The issue arising in the present appeal is:

Whether the services rendered by the Respondent MIPL to MCD Global Franchising Limited, UK (MGFL) / McDonald's Corporation, USA, under the Service Agreement, are on principal to principal basis or whether the respondent acts as an intermediary within the meaning of 2(13) of the IGST Act, 2017, and consequently whether the place of supply of such services is to be determined under Section 13(8)(b) of the IGST Act (placing it within the taxable territory of India) as against being outside India, so as to decide whether the Respondent's services qualify as 'export of services' under Section 2(6) of the IGST Act, 2017, making it eligible for a refund of accumulated ITC under Section 54 of the Act 2017.

11. **Grounds of Appeal and Contentions of the Appellant.**

11.1 As regarding reliance on the order of Hon'ble High court, the appellant stated that the Hon'ble High Court appeared to have not appreciated that as per clauses of the Master Agreement, the services included making periodic visits to existing and prospective suppliers on behalf of McDonalds USA and in terms of section 13(3)(b) IGST Act, 2017, the supply of services was located in India as it required the personal presence of recipient of services or an agent on its behalf. Hence, the provision of section 13(3)(b), section 13(8)(b) and section 13(5) of IGST Act, 2017 covered the present case; The place of supply of services in the subject case was in taxable territory i.e. India and thus the services rendered did not qualify as export of services under section 2(6) of IGST Act, 2017.

11.2. That McDonald's India is not working on principal-to-principal basis and acting as agent to McDonald's USA. This fact is also supported from arrangement of training to the staff of the applicant (i.e. taxpayer) to be provided at Hamburg University at the cost which is to be incurred by McDonald's USA.That on conjoint reading of Agreements between McDonald's USA, McDonald's India and Service Agreements between McDonald's India and Franchisee of McDonald's India it appears that the provisions of section 13(3)(b), section 13(8)(b) and section 13(5)(b) of IGST Act, 2017 covered the present case and hence the place of supply of services in the subject case was in taxable territory i.e. India and thus the services rendered did not qualify as export of services under section 2(6) of IGST Act, 2017.

11.3. That the Appellate Authority vide instant Order-In-Appeal No. 133/ADC/Central Tax/Appeal-II/Delhi/2023-24 dated 03.08.2023 passed by the Additional Commissioner of Central Tax, CGST Appeals-II, Delhi has erred in allowing the appeal filed by M/s McDonald's India Pvt. Ltd. (GSTIN No. 07AACAM2007J1ZU), 202-206, Tolstoy House No. 15, Tolstoy Marg, New Delhi 110001 against Order-In-Original No. ZE0701230366715 dated 30.01.2023

11.4. The appellant prayed for setting aside the Order-In-Appeal No. 133/ADC/Central Tax/Appeal-II/Delhi/2023-24 dated 03.08.2023 passed by the Additional Commissioner of Central Tax, CGST Appeals-II, Delhi.

The appellant has also filed undertaking that the issue involve here- in pertains to place of supply.

12. The Ld. Authorised representative during hearing of the matter drew the attention of this bench towards an undertaking filed by him with respect to jurisdiction based on the place of supply. The Ld. Counsel for the Respondent concede that one of the issues involves in present matter pertains to place of supply.

13. Having heard both parties and having carefully examined the pleadings and the documents on record, our findings with respect to jurisdiction is as under;
14. 14**.** Section 109 of the CGST Act, 2017 constitutes and defines the jurisdiction and powers of the various Benches of the GST Appellate Tribunal. The relevant sub-section of Section 109, as they are material to the present order, read as follows:

> *"5) The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority:*
>
> *Provided that the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench."*

15. A plain reading of Section 109(5) of the Act,2017 makes it unambiguous that where an appeal involves a question relating to determination of the place of the supply, jurisdiction is exclusively vested in the Principal Bench. The use of the word *"shall"* makes it mandatory. The present State Bench has no jurisdiction to entertain or decide such an appeal.
16. In light of the above, this State Bench is of the considered opinion that it lacks jurisdiction to hear and decide the present appeal, as one of the issues involves the determination of the place of supply of services. The appeal is accordingly required to be transferred to the Principal Bench at New Delhi in terms of the provisions of Section 109(5) of the CGST Act, 2017.

ORDER

17. For the reasons stated above, and in terms of Section 109(5) of the Central Goods and Services Tax Act, 2017, it is hereby ORDERED that:

(i) The present appeal filed by the Appellant is hereby transferred to the PRINCIPAL BENCH of the Goods and Services Tax Appellate Tribunal at New Delhi for hearing and disposal, as one of the issues involved in the appeal relates to the determination of the place of supply.

(ii) The Registry is directed to transmit the case file along with all pleadings, documents, and records to the Principal Bench forthwith.

(iii) The parties are directed to appear before the Ld. Registrar Principal Bench, New Delhi on 21.08.2026

(Sanjay Kumar Aggarwal)

(Rajiv Kapoor)

Dated: 14.08.2026