GST APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
DIVISION BENCH, COURT NO. 1

IN THE MATTER OF:

M/S NAVITAS EDUSERVICES PRIVATE LIMITED **…APPELLANT**

Vs.

COMMISSIONER OF CGST, SOUTH DELHI **…RESPONDENT**

IN APPEAL NOS. APL/23/PB/2026, APL/33/PB/2026, APL/37/PB/2026, APL/38/PB/2026, APL/89/PB/2026

AND

IN THE MATTER OF:

COMMISSIONER OF CGST, SOUTH DELHI **…APPELLANT**

Vs.

M/S NAVITAS EDUSERVICES PRIVATE LIMITED **…RESPONDENT**

IN APPEAL NO - APL/13/PB/2026

COUNSELS FOR NAVITAS:

Shri Himanshu Sinha, Shri Samyak Jain, Shri Pranjal Srivastava, Shri Ishabh Verma, and Shri Monarch Mittal, Learned Advocates.

COUNSEL FOR THE DEPARTMENT:

Shri Rahul Kumar, Deputy Commissioner, CGST Delhi South Commissionerate, Authorized Representative.

Coram: -

Hon'ble Justice (Retd.) Dr. Sanjaya Kumar Mishra, President, GSTAT

Hon'ble Sh. Anil Kumar Gupta, Member (Technical). GSTAT.

FINAL ORDER

➢ **Per: Dr. S.K. Mishra, President**

1. In these bunch of appeals filed by M/s Navitas Eduservices Private Limited (hereinafter referred to as the "Appellant" or "Navitas India" for brevity) in the form of APL-05 and one appeal filed by the Revenue in the form of APL – 07, wherein, the following simple question of fact and law arise in determination: -

i. Whether the services rendered by the Appellant i.e. Navitas India, qualify as "export of services" or will come within the definition of intermediary services?

ii. Whether the order passed by the 1st Appellate Authority in the appeal preferred by the Revenue, annulling the order passed by the proper officer and asking him to re-consider the matter is in fact a remand order and prohibited by law?

iii. What relief the Appellant and Revenue are entitled to?

Description of appeals: -

2. These are a bunch of six appeals filed under Section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), read with Rule 110(1) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules"). Five appeals have been filed by M/s Navitas Eduservices Private Limited (hereinafter referred to as the "Appellant" or "Navitas India") against the respective orders rejecting its refund claims of unutilised Input Tax Credit (ITC) on account of export of services. One appeal, bearing No.

APL/13/PB/2026, has been filed by the Commissioner of CGST, South Delhi (hereinafter referred to as the "Department"), challenging the order of the Appellate Authority. Since the appeals involve substantially common questions of law and fact, they are being heard and disposed of together by this common order.

3. The First Appellate Authority has passed orders in six appeals, of which five were filed by M/s Navitas Eduservices Private Limited and one was filed by the Commissioner of CGST, Delhi South Commissionerate, and whereby the refund claims made under Section 54 of CGST Act, read with Rule 92 and Rule 89 respectively of the CGST Rules, 2017, in the five appeals were rejected and in one appeal, the Order-in-Original was annulled and the matter was remanded back to the Adjudicating Authority for fresh consideration in light of the orders of the Hon'ble Delhi High Court. The details of the impugned orders with respect to the refund claim of the Appellant, pertaining to the respective tax periods, are as follows: -

a. In Appeal No. APL/23/PB/2026, for the period from 01.04.2022 to 31.03.2023, refund amounting to Rs. 50,77,028/-.
b. In Appeal No. APL/89/PB/2026, for the period from 01.04.2020 to 31.03.2021, refund amounting to Rs. 49,64,984/-.
c. In Appeal No. APL/33/PB/2026, for the period from 01.04.2018 to 30.09.2018, refund amounting to Rs. 32,62,600/-.
d. In Appeal No. APL/37/PB/2026, for the period from 01.03.2018 to 31.03.2018, refund amounting to Rs. 3,80,506/-.
e. In Appeal No. APL/38/PB/2026, for the period from 01.01.2018 to 28.02.2018, refund amounting to Rs. 4,24,248/-.
f. In Appeal No. APL/13/PB/2026, filed by the Department, for the period from 01.04.2021 to 31.03.2022, refund amounting to Rs. 4,71,630/-.

4. The details of the six appeals, as culled out from the record, are tabulated below:

S. No.	Case No.	Appellant	Period of Dispute	Amount (Rs.)	Order Appealed Against	Details of O-I-O challenged before the First Appellate Authority
1.	APL/23/PB/2026 (Lead Appeal)	Navitas	01/04/2022 to 31/03/2023	50,77,028/-	Order-in-Appeal No. ZD071025013593Q dated 10.10.2025	ZD070724008042T Dated 04.07.2024
2.	APL/33/PB/2026	Navitas	01/04/2018 to 30/09/2018	32,62,600/-	Order-in-Appeal No. 220-222/2021-22 dated 10.01.2022	CGST/CP/RFD-06/2019-20/ dated 30.09.2020
3.	APL/37/PB/2026	Navitas	01/03/2018 to 31/03/2018	3,80,506/-	Order-in-Appeal No. ZD0701260238821 dated 10.01.2022	CGST/CP/RFD-06/2019-20/200 Dated 24.02.2020
4.	APL/38/PB/2026	Navitas	01/01/2018 to 28/02/2018	4,24,248/-	Order-in-Appeal No. ZD0701260238969 dated 10.01.2022	CGST/CP/RFD-06/2019-20/199 Dated 24.02.2020
5.	APL/89/PB/2026	Navitas	01/04/2020 to 31/03/2021	49,64,984/-	Order-in-Appeal No. ZD070625010458E dated 11.06.2025	ZT0707220248076 Dated 18.07.2022
6.	APL/13/PB/2026	Commissi-oner of CGST	01/04/2021 to 31/03/2022	47,11,630/-	Order-in-Appeal No. ZD0703250319890 dated 14.03.2024	ZL0707230053800 Dated 05.07.2023
7.	**Total Amount Calculated**			Rs. 1,88,20,996		

Brief facts of the case: -

5. The Navitas Eduservices Private Limited (formerly known as Learning Information Systems (India) Private Limited) is a private limited company

incorporated under the Companies Act, 1956, and is a wholly-owned subsidiary of Navitas Pty Limited, Australia (formerly known as Navitas Limited). The Appellant is registered under the GST regime with GSTIN 07AABCL6126E1ZT. M/s Navitas Eduservices Private Limited is the Appellant in the five appeals filed by it, bearing Nos. APL/23/PB/2026, APL/33/PB/2026, APL/37/PB/2026, APL/38/PB/2026 and APL/89/PB/2026, and is the Respondent in the departmental appeal bearing No. APL/13/PB/2026.

6. Navitas Australia is a global education provider offering pre-university, managed campus, and university pathway programs in collaboration with various Partner Universities across Australia, Canada, the United Kingdom, etc. Navitas Australia's business involves two primary functions: -

(i) delivering and administering educational programs for Partner Universities, and

(ii) engaging local recruitment advisors (Advisors) to interact with prospective students, provide course information, and assist with admission and visa procedures.

7. Navitas Australia entered into bilateral services agreements dated 15.05.2018 with Edith Cowan College Pty Ltd with each Partner University. Under these agreements, Navitas Australia is the sole contracting service provider and is expressly contemplated to procure or sub-contract the underlying services through its Indian subsidiary, i.e., the Appellant. The agreement explicitly states that Navitas Australia and its subsidiary (LIS/Appellant) are engaged as independent contractors and not as employees, agents, partners, or joint ventures of the principal (Partner University). Clause 5.1 and 5.2 of the Sample University Agreement expressly negate any agency relationship and prohibit Navitas Australia or the Appellant from incurring obligations on behalf of the Partner University.

8. Pursuant to the University Agreements, Navitas Australia entered into a Master Services Agreement dated 07.12.2016 (Subject Agreement) with the Appellant to sub-contract the supply of marketing, promotion, and business support services. The scope of services under Schedule I of the Subject Agreement includes

assisting in managing relationships with the principal's business partners in India, including recruitment agents for the recruitment of students. The Appellant is remunerated on a cost-plus basis (cost + 16% markup) in convertible foreign exchange (Australian Dollars). Clause 5.1 of the Subject Agreement states that the Appellant is engaged as an independent contractor and not as an employee, agent, partner, or joint venture of the principal. Clause 5.2 restricts the Appellant from incurring any obligation on behalf of Navitas Australia without prior written instruction.

9. Separately, Navitas Australia entered into an Authorised Advisor Agreement with local recruitment advisors/agents in India. Under this agreement, the Advisors are responsible for physically interacting with prospective students, providing information about courses, and assisting with admission procedures. The Advisors are remunerated by Navitas Australia on a commission basis, linked to successful student enrolments. The Appellant is neither a party to this agreement nor does it provide or receive any services to or from the Advisors.

10. As per the Transfer Pricing Report (TP Report) and Form 3CEB filed with the Income Tax authorities, the Appellant provides a bouquet of Marketing Support Services and IT Enabled Services to Navitas Australia. These include:

- **Marketing Support Services:** Planning and implementing strategies for increasing enrolment via Advisors, supporting Advisors in achieving enrolment targets, participating in agent-run exhibitions, assisting Advisors in promoting parent universities, giving presentations/counselling to students, vetting student admission applications, assisting in counselling and checking eligibility, verifying documents for visa and admission processes, managing day-to-day affairs of the team, liaising between Navitas Australia and recruitment agents, and hosting university partners on its payroll for marketing and promotion.
- **IT Enabled Services:** Web development and digital design, marketing automation, social media campaigns, updating the Study Link portal, quality analysis, and mobile application and content development.

11. The Appellant (Navitas) submits that it operates on its own account as an independent sub-contractor, utilizing its own resources, personnel, and infrastructure. It does not act as an agent, broker, or intermediary, nor does it arrange or facilitate any supply between Navitas Australia, Partner Universities, Advisors, or students. It has no contractual privity with the Partner Universities or the Advisors and does not raise invoices on them. The consideration is received exclusively from Navitas Australia in convertible foreign exchange.

12. The Appellant (Navitas) filed refund applications under Section 54 of the CGST Act read with Section 16 of the IGST Act, 2017, hereinafter referred as IGST Act for brevity, for unutilized ITC on account of export of services without payment of tax for various periods (2018 to 2023). The Appellant had submitted all relevant documents, including the Subject Agreement, Sample University Agreements, Advisor Agreements, invoices, FIRCs, and the TP Report.

13. The Adjudicating Authority rejected the refund claims primarily on the ground that the services provided by the Appellant were in the nature of "intermediary services" and did not qualify as "export of services." The Authority also noted discrepancies, such as the service agreement between Learning Information Systems (India) Pvt. Ltd. and Navitas Limited, whereas the export invoices were raised on Navitas Pty Limited. The Appellate Authority upheld these rejections wherein, in one appeal, the Order-in-Original was annulled, and the matter was remanded back to the Adjudicating Authority for fresh consideration in light of the orders of the Hon'ble Delhi High Court.

14. For the period October 2018 to March 2020, the Appellant's refund claims were rejected. The Appellant challenged these rejections before the Hon'ble Delhi High Court in Writ Petitions (Civil) Nos. 15773/2022, 15781/2022, and 15764/2022. Vide orders dated 19.09.2023, the Hon'ble Delhi High Court quashed the rejection orders and restored the refund applications to the Adjudicating Authority for fresh consideration in light of the judgments in ***M/s Ernst & Young Limited v. Additional Commissioner, CGST Appeals-II, Delhi, 2023 SCC OnLine Del 1764*** **and** ***M/s McDonalds India Pvt. Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi (2023) TMI 1123 (Del.), 2023 SCC OnLine Del 3089***.

Submissions of the parties: -

15. For Appeal Nos. APL/23/PB/2026, APL/33/PB/2026, APL/37/PB/2026, APL/38/PB/2026 and APL/89/PB/2026, Navitas India i.e., the taxpayer Appellant, through its learned Counsel would submit that all the five conditions required to be fulfilled to attract Section 2 (6) of the IGST Act, 2017 are fulfilled in this case. He would submit that the supplier (Appellant) is located in India, the recipient (Navitas Australia) is located outside India, the place of supply is outside India under Section 13(2) of the IGST Act, as the services are not intermediary services, the payment is received in convertible foreign exchange (Australian Dollars) and the supplier and recipient are separate legal entities and not merely establishments of a distinct person.

He would further submit that it is not an intermediary under Section 2(13) of the IGST Act. He relies on the definition's exclusionary limb, which states that a person who supplies services "on his own account" is not an intermediary. The learned Counsel for the Appellant would further fortify his submissions by stating that there is no tripartite arrangement; that the contract, invoicing, and consideration flow are bipartite between the Appellant and Navitas Australia; there is no ancillary facilitation supply; that the Appellant performs substantive marketing and IT-enabled support services; that the Appellant does not have the character of a broker or agent; that the contract expressly denies agency and authority to bind Navitas Australia; that the Appellant supplies services on its own account as a sub-contractor, which is expressly excluded from the definition of intermediary as per Circular No. 159/15/2021-GST dated 20.09.2021; and that the presence of Advisors does not make the Appellant an intermediary, as the Advisors are separately contracted by Navitas Australia and paid on a commission basis, whereas the Appellant is paid on a cost-plus basis.

The learned Counsel would further submits that Section 13(3)(b), of the IGST Act applies only to "services supplied to an individual" requiring the physical presence of the recipient. Since Navitas Australia is a body corporate, Section 13(3)(b) is

not attracted. Reliance is placed on *Vodafone Idea v. Union of India* (2022) 66 GSTL 63 (Bom.) and *Cube Highways v. Union of India* (2023) 77 GSTL 387 (Del.).

The Appellant submits that the Original and Appellate Orders are non-speaking, cryptic, and passed without considering the detailed submissions and evidence on record, thereby violating the principles of natural justice. The Appellant contends that the principle of unjust enrichment does not apply to refund of unutilized ITC on zero-rated supplies, as the incidence of tax has not been passed on to any other person. The invoices raised on Navitas Australia did not charge GST, which is corroborated by the FIRCs.

The Appellant relies on several decisions, including *Ernst & Young* (Delhi HC), *McDonalds India* (Delhi HC), *IDP Education India* (CESTAT, Bombay HC, Rajasthan HC, P&H HC), *K.C. Overseas Education* (Bombay HC), *Global Opportunities* (Delhi HC), *Dow Chemical International* (GSTAT), and *Columbia Sportswear* (Karnataka HC), to argue that similar services have been held to be export of services and not intermediary services. The Appellant claims interest on the delayed refund under Section 56 of the CGST Act.

16. The Learned Deputy Commissioner, CGST Delhi South Commissionerate-Authorised Representative would submit that the Appellant's services fall within the definition of "intermediary" under Section 2(13) of the IGST Act. The Department argues that: the Appellant's own documents (Subject Agreement, TP Report) describe activities such as supporting Advisors, participating in agent-run exhibitions, liaising between Navitas Australia and recruitment agents, and assisting in student recruitment and admission processes; that these activities demonstrate that the Appellant is facilitating the supply of education services between Navitas Australia/Partner Universities and prospective students, which is the main supply; that the presence of three parties (Navitas Australia, Partner Universities, and students/Advisors) and two distinct supplies (main supply of education and ancillary facilitation supply) satisfy the prerequisites of an

intermediary service as per Circular No. 159/15/2021-GST; that the Appellant's argument that it is a sub-contractor is misconceived, as it is not providing the main service (education) but merely facilitating it; that the Department contends that the Appellant has failed to establish the precise nature of the services supplied. The Adjudicating Authority noted a discrepancy between the service agreement (between Learning Information Systems and Navitas Limited) and the export invoices (raised on Navitas Pty Limited). This discrepancy, according to the Department, prevents the ascertainment of the exact nature of services and the identity of the recipient; that for certain periods, the Department invoked Section 13(3)(b) of the IGST Act, arguing that the services required the physical presence of the recipient in India, thereby making the place of supply India.

The Department alleges that the Appellant failed to prove that the incidence of tax has not been passed on to any other person, thereby attracting the bar of unjust enrichment under Section 54(8) of the CGST Act. The Department submits that the claim for interest is consequential and cannot be granted unless the principal refund is found admissible.

The Department relies on the following cases, with a brief description of the services and the court's observations:

- **Airbus Group India (P.) Ltd. (2021) 54 G.S.T.L. 194 (A.A.R. - GST - Kar.):** The applicant provided vendor identification and quality monitoring services to its foreign holding company. The Authority held that the applicant was an intermediary as it was facilitating supplies between the foreign company and Indian vendors.
- **Global Reach Education Services (P.) Ltd. (2018) 12 G.S.T.L. 387 (A.A.R. - GST):** The applicant promoted courses of foreign universities in India and received commission. The Authority held that the applicant was an intermediary.

- **Toshniwal Brothers (SR) (P.) Ltd. (2018) 18 G.S.T.L. 129 (A.A.R. - GST - Kar.):** The applicant provided support services to its foreign parent. The Authority held that the applicant was an intermediary.

Appeal No. APL/13/PB/2026

17. The Department's Appeal No. APL/13/PB/2026 challenged the order dated 14.03.2024 passed by the Appellate Authority on the following grounds:

(i) The Appellate Authority erred in remanding the matter to the adjudicating authority, in violation of the bar contained in Section 107(11) of the CGST Act, 2017.

(ii) The appellate authority failed to appreciate that the place of supply of the services is governed by Section 13(3)(b) of the IGST Act, 2017 and is in India.

(iii) The services are in the nature of "intermediary services" under Section 2(13) of the IGST Act, 2017 and, consequently, do not qualify as export of services under Section 2(6) thereof.

18. The Respondent in its reply/cross-objections submitted that:

(i) The Respondent submitted that entertaining the appeal would deprive the taxpayer of its statutory first appellate remedy, particularly as the Appellate Authority had not adjudicated the matter on merits. It was further contended that the Department had raised a new tripartite theory at the appellate stage, not pleaded in the SCN or the original order, in violation of natural justice.

(ii) On merits, the Respondent submitted that the services qualify as exports under Section 2(6) of the IGST Act and are not intermediary services. It contended that it acted as an independent sub-contractor on a principal-to-principal basis, without any agency or commission arrangement, relying upon CBIC Circular No. 159/15/2021-GST.

(iii) It was further submitted that Section 13(3)(b) of the IGST Act is inapplicable, as the services were not provided to any local agent or representative and did not require physical presence. The Respondent also claimed interest on delayed refund under Section 56 of the CGST Act, relying upon *Sandvik Asia (SC)* and other precedents.

19. The facts of the case are not in dispute. Navitas India entered into an agreement with Navitas Pty Australia on a Principal-to-Principal basis. Navitas Australia's business has primarily two functions i.e. (i) delivering and administering educational programs for Partner Universities, and (ii) engaging local recruitment advisors (hereinafter referred to as Advisors for brevity) to interact with prospective students, provide course information, and assist with admission and visa procedures. Navitas Australia enters into bilateral services agreements dated 15.05.2018 with Edith Cowan College Pty Ltd with each Partner University. Under these agreements, Navitas Australia is the sole contracting service provider and is expressly contemplated to procure or sub-contract the underlying services through its Indian subsidiary, i.e., the Appellant. It is also not disputed at this stage that an explicit clause appears in the agreement that Navitas India and Navitas Australia are engaged as independent contractors and not as employees, agents, partners, or joint ventures of the principal (Partner University). The agreement between the University and Navitas Australia at clause 5.1 and 5.2 expressly negate any agency relationship and prohibit Navitas Australia or the Navitas India from incurring obligations on behalf of the Partner University.

20. In pursuance of the said agreement, Navitas Australia entered into entered into a Master Services Agreement dated 07.12.2016 (which shall be referred to as Subject Agreement) with the Appellant to sub-contract the supply of marketing, promotion, and business support services. The scope of services under Schedule I of the Subject Agreement includes assisting in managing relationships with the principal's business partners in India, including recruitment agents for the recruitment of students. The Appellant is remunerated on a cost-plus basis (cost +

16% markup) in convertible foreign exchange i.e. in Australian Dollars. Further Clause 5.1 of the Subject Agreement states that the Appellant is engaged as an independent contractor and not as an employee, agent, partner, or joint venture of the principal. Clause 5.2 provides a restriction to the effect that the Appellant from incurring any obligation on behalf of Navitas Australia without prior written instruction.

21. Navitas Australia enters into an Authorised Advisor Agreement with local recruitment advisors/agents in India. Under this agreement, the Advisors are responsible for physically interacting with prospective students, providing information about courses, and assisting with admission procedures. The Advisors are remunerated by Navitas Australia on a commission basis, linked to successful student enrolments. The Appellant is neither a party to this agreement nor does it provide or receive any services to or from the Advisors. The Appellant provides a bouquet of Marketing Support Services and IT Enabled Services to Navitas Australia, which include Marketing Support Services, IT Enabled Services, as mentioned in the preceding paragraphs.

22. The Appellant would submit that it operates on its own account as an independent sub-contractor, utilizing its own resources, personnel, and infrastructure. It does not act as an agent, broker, or intermediary, nor does it arrange or facilitate any supply between Navitas Australia, Partner Universities, Advisors, or students. It has no contractual privity with the Partner Universities or the Advisors and does not raise invoices on them. The consideration is received exclusively from Navitas Australia in convertible foreign exchange.

23. In the aforesaid backdrop, the Appellant filed refund applications under Section 54 of the CGST Act read with Section 16 of the IGST Act for unutilized ITC on account of export of services without payment of tax for various periods (2018 to 2023). The Appellant would submit that he has filed all relevant documents, including the Subject Agreement, Sample University Agreements, Advisor Agreements, invoices, FIRCs, and the TP Report.

24. However, the Adjudicating Authority rejected the refund claims primarily on the ground that the services provided by the Navitas India were in the nature of "intermediary services" and did not qualify as "export of services." The Authority also noted discrepancies, such as the service agreement being between Learning Information Systems (India) Pvt. Ltd. and Navitas Limited, whereas the export invoices were raised on Navitas Pty Limited. The Appellate Authority upheld these rejections wherein, in one appeal, the Order-in-Original was annulled, and the matter was remanded back to the Adjudicating Authority for fresh consideration in light of the orders of the Hon'ble Delhi High Court.

25. It may be noted here that in the matter the Appellant has approached Hon'ble Delhi High Court and filed Writ Petitions (Civil) Nos. 15773/2022, 15781/2022, and 15764/2022, wherein, Delhi High Court took note of the fact that Appellant is covered by its earlier judgment i.e. *M/s Ernst & Young Limited v. Additional Commissioner, CGST Appeals-II, Delhi (2023) TMI 1117 (Del.)* and *M/s Mc Donalds India Pvt. Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi (2023) TMI 1123 (Del.)*, 2023 SCC OnLine Del 1764 & 2023 SCC OnLine Del 3089**,** and therefore, remanded the matter to the adjudicating authority. However, the adjudicating authority did not consider the case and directed them to file fresh refund application, which after certain period filed by the Appellant and that appeal dismissed and barred by the limitation. It is that Order-in-Original challenge before the 1st Appellate Authority annulled and asked the Adjudicating Authority to reconsider it.

26. In all other appeals, the Appellant has not approached the Delhi High Court, the Appellant claims that order of the High Court as mentioned above is governing the field and ration decided by the Delhi High Court in the case of M/s Ernst & Young and Mc Donalds India (Supra). The Appeals should be allowed.

27. At first, let's consider the discrepancies noticed by the Adjudicating Authority regarding documents and invoices by the Appellant in the refund claims. It is not

an issue at present that the original agreement was between M/s Learning Information Systems (India) Pvt. Ltd., and Navitas Australia (Pty). Later on, the India Company was reconstituted and it was named as Navitas Eduservice India Pvt. Ltd. This aspect is not seriously challenged by the Respondent and therefore, the factual finding recorded by the Adjudicating Authority that there are discrepancies in documents, as the service agreement between Learning Information Systems and Navitas Limited and the export invoices raised by Navitas Pty Limited is of no substance. The reconstitution of Navitas India Ltd., is in fact not in any kind of assembly or issue in any of the proceedings before the Adjudicating Authority or Appellate Authority.

28. As far as the law is concerned, we take note of the fact that the GST regime envisages an incidence of tax as a place of supply of the goods or services, however, there are exceptions to it, intermediary services as defined under Section 2(13) of the IGST Act, 2017 is one of them. For proper appreciation, we quote the relevant provisions which reads as follows: -

2(13)- "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

Section 2(86) of the CGST Act, 2017, reads as, *"Place of supply" means the place of supply as referred to in Chapter V of the "Integrated Goods and Services Tax Act;*

Chapter V of the IGST Act deals with place of supply of goods and services or both. Section 10 of IGST Act, 2017, provides for *"Place of supply" of goods other than supply of goods imported into, or exported from India.*

Section 11 of the IGST Act, 2017, provides, *"place of supply" of goods imported into, or exported from India.*

Section 12 of the IGST Act, 2017, provides, *"place of supply" of services where location of supplier and recipient is in India.*

Section 13 of the IGST Act, 2017, provides, *"place of supply" of services where location of supplier or location of recipient is outside India and for our purpose, sub section (8) of Section 13 is relevant which provides the place of supply of the following services shall be the location of the supplier of services, namely: - clause (b) - intermediary services. [this clause has been omitted by Finance Act, 2026, w.e.f. 23.03.2026.]*

29. Thus, the scheme of the CGST Act and IGST Act, taken together, read in harmony, leads to the conclusion that in all cases, the incident of tax shall be the place of supply and place of supply except certain cases shall be the place where the goods and services are supplied with certain exceptions, which included, prior to omission by Finance Act, 2026 (4 of 2026), dated 30.03.2026, any services which have been rendered to the supplier as an intermediary, defined as intermediary services.

30. This question for the first time arose for consideration before Punjab and Haryana High Court in **Genpact India Vs. Union of India; (2022) 1** Centax 226 (P&H), 2022 SCC OnLine P&H 4254**.** In the said case Punjab and Haryana High Court has considered a case where the Appellant was providing a host of services collectively referred as BPO services to customers located in India as well as outside India which were illustrated as; maintaining vendor/customer master data, scanning and processing vendor invoices, book keeping, preparing/finalizing books of account, generating ledger reconciliations, managing customer receivables, developing, licensing and maintaining software as per clients' needs, Technical IT support i.e. trouble-shooting services, data analysis, etc,. It was asserted that aforesaid services are actually deliverables of the petitioner on its "own account". Such services are provided by the petitioner from India remotely through telecommunication/internet links using its own infrastructure and work force of approximately 50 thousand employees.

Petitioner entered into a Master Services Sub-Contracting Agreement dated 01-01-2013 with Genpact International Incorporated (GI) an entity located outside India. It was submitted that as per the terms of the MSA various services were to be provided by the petitioner on a principal-to-principal basis. Further the petitioner is engaged by GI for actual performance of BPO services to the clients of GI located outside India. The arrangement requires the petitioner to complete the assigned processes/scope of work directly to the 3rd parties located outside India.

After the introduction of GST regime, petitioner filed an application with Haryana GST authorities on 18-10-2018 claiming refund of un-utilized ITC or the period from July 2017 to March 2018 under section 16 of the Act read with section 54 of the Central Goods and Services Act 2017 and rule 89 of the Central Goods and Services Rules 2017. The Deputy Commissioner sanctioned the amount, forming that the services rendered by the petitioner qualify as "export of services". However, the refund claim was rejected on account of ITC availed in respect of certain alleged ineligible inputs.

In the meanwhile, CBIC issued a circular dated 18-7-2019 towards clarification whether 'intermediary services' to overseas entities qualify as export of services, however, the same was ab initio withdrawn vide circular dated 4-12-2019. the Principal Commissioner of Central GST reviewed the proceedings and passed an order dated 13-9-2019 reviewing the order in original dated 14-3-2019 and by recording that the services provided by the petitioner are in the nature of intermediary services and do not qualify as export of services in terms of section 2(6) of the IGST Act. Accordingly, directions were issued for filing of an appeal before the Joint Commissioner (Appeals) GST Gurugram. The Appeal was therefore filed and heard on merits, and it was held by the 1st Appellate Authority that the services provided by the petitioner qualify and fall in the category of "intermediary services", and therefore, the order passed by the adjudicating

authority was set aside. The Petitioner Genpact India challenged the same by filling Writ Petition before Punjab and Haryana High Court which considered the matter on merits and after taking into consideration the submission made by the parties, the relevant provisions of law. The Hon'ble High Court of Punjab and Haryana held as follows: -

> ***"28**. As per definition of "intermediary" under section 2 (13) of the IGST Act the following three conditions must be satisfied for a person to qualify as an "intermediary";*
>
> ***29**. First, the relationship between the parties must be that of a principal-agency relationship. Second, the person must be involved in arrangement or facilitation of provisions of the service provided to the principal by a 3rd party. Third, the person must not actually perform the main service intended to be received by the service recipient itself. Scope of an "intermediary" is to mediate between two parties i.e. the principal service provider (the 3rd party) and the beneficiary (the agents principal) who receives the main service and expressly excludes any person who provides such main service "on his own account".*
>
> ***30.** A bare perusal of the recitals and relevant clauses of the MSA reproduced hereinabove do not in any manner indicate that petitioner is acting as an "intermediary" so as to fall within the scope and ambit of the definition of "intermediary" under section 2 (13) of the IGST Act. Such clauses cannot also be interpreted to conclude that the petitioner has facilitated the services. The said clauses are in relation to the modalities of how the actual work would be carried out and do not in any manner establish that the petitioner was required to arrange/facilitate a 3rd party to render the main service which has actually been rendered by the petitioner.*
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> ***XXX***

36. *In the pre-GST regime the term "intermediary services" was defined under rule 2(f) of the Place of Provision of Service Rules, 2012. Under the 2012 Rules "intermediary services" were defined to mean a broker/an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service on his account.*

37. *A perusal of the definition of "intermediary" under the service tax regime vis-a-vis the GST regime would show that the definition has remained similar. Even as per circular dated 20-9-2021 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (GST Policy Wing), the scope of "intermediary" services has been dealt in para 2 thereof. In para 2.2 it stands clarified that the concept of "intermediary" was borrowed in GST from the Service Tax Regime. The circular after making a reference to the definition of "intermediary" both under rule 2(f) of the Place of Provision of Service Rules, 2012 and under section 2 (13) of the IGST Act clearly states that there is broadly no change in the scope of "intermediary" services in the GST regime vis-a-vis the service tax regime except addition of supply of securities in the definition of "intermediary" in the GST law.*

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42. *Furthermore, we find that the finding recorded by the respondents-department to hold the petitioner to be in a principal agent relationship with the GI to be without any basis and to be clearly erroneous. The impugned order proceeds oblivious of clause.*

> *21.6 of the MSA and which is in the following terms:21.6 Relationship of Parties Nothing in this Agreement shall constitute or be deemed to constitute a relationship of employer and employee, agency, joint venture or partnership between the parties hereto or constitute or be*

deemed to constitute one Party as agent of the other for any purpose whatsoever, and except as expressly provided herein, neither Party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose."

During the course of arguments, Mr. Sharan Sethi, learned Senior Standing Counsel for the respondents would concede that there is no separate agreement entered between the petitioner and GI's customers. In no manner as such can the petitioner be equated to be an agent or broker. It would also be useful at this stage to advert to the stand taken by the respondents-department in the written statement that had been filed in the previous round of litigation i.e. CWP No. 10302 of 2020 that had been filed by the petitioner. In para 8 of the written statement that stands placed on record and appended as Annexure P-11 it had been stated as follows: -

"It is further mentioned that the service is primarily in the nature of various types of backend services which are in the nature of call centre services, back-office management, IT helpdesk services etc. ('BPO services') to the overseas entity. The petitioner provides these services to third parties on behalf of its client located outside India. The arrangement requires the company to complete the assigned processes/scope of work and submit the deliverables directly to the third parties, either on-line or on-call or through e-mail using dedicated electronic networks and voice circuits.

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46. *Pursuant to the sub-contracting arrangement as per MSA (Annexure P-1), the petitioner provides the main service directly to the overseas clients of GI but does not get any remuneration from such clients. Pursuant to the arrangement, it is GI which gets paid by its customers to whom the services*

are being provided directly by the petitioner. Nothing has been brought on record to show that the petitioner has a direct contract with the customers of GI. Still further there is nothing on record to show that petitioner is liaisoning or acting as an "intermediary" between GI and its customers. All that is evident from the record is that the petitioner is providing the services which have been sub contracted to it by GI. As a Sub-contractor it is receiving fee/charges from the main contractor i.e. GI for its services. The main contractor i.e. GI in turn is receiving commission/agents from its clients for the main services that are rendered by the petitioner pursuant to the arrangement of sub-contracting. Even as per the afore-noticed circular dated 20-9-2021 and in reference to para 3.5 it stands clarified that sub-contracting for a service is not an "intermediary" service.

***47.** In the present case we find that in the written statement reference is made to a Transfer Pricing Report (Annexure P-24) as also to draw a distinction between two categories of supplies as per MSA i.e. main supply and the ancillary supply. The passing of the impugned order is sought to be justified that the main supply takes place between GI and its customers whereas it is the ancillary supply which is provided by the applicant to facilitate the provision of the main supply. 48. We find that the written statement seeks to justify the impugned order on grounds which are not even part of the impugned order and which is clearly impermissible in law. A reference in this regard may be made to the judgment of the Apex Court in Mohinder Singh Gill v. Chief Election Commissioner [1978] 1 SCC 405, wherein it had been held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise. It was further observed that an order which was otherwise bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.*

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> ***49.*** *For the reasons recorded above, we are of the considered view that the impugned order dated 15-2-2021 (Annexure P-18) holding the petitioner to be an "intermediary" under section 2 (13) of the IGST Act, cannot sustain. 50. The same as such is quash.*

31. Similar question was considered by the Hon'ble Karnataka High court in the case of **Columbia Sportwear India Sourcing (P.) Ltd. v. Union of India,** [2025] 174 taxmann.com 936 (Karnataka), 2025 SCC OnLine Bom 3484.

In the said case, petitioner before the High Court, the Indian subsidiary was providing the services to the Columbia Sportswear Company USA which included surveying the market to identify the best suppliers, identifying and visiting factories, monitoring production, ensuring timely shipment, tracking shipments, and documentation support. Consideration was on a cost-plus markup basis. The agreement between Columbia India and Columbia USA expressly provided that the petitioner acted as an independent contractor with no authority to bind the foreign recipient. The Recipient was free to choose suppliers; petitioner's recommendations were not binding on Columbia USA. In that case, the assessing authority also held that the place of supply is India as the supplier was treated as an intermediary as per the definition under Section 2(13) of the IGST Act, 2017.

Hon'ble High Court of Karnataka vide their judgment dated 26.04.2025 held as follows: -

> *"12. In the light of the principles that emerge from the aforesaid Judgments, Circulars, Notifications etc., in the facts and circumstances obtaining in the instant cases as set out supra analysing the said agreements, I am of the considered opinion that the petitioner is not an 'intermediary' under Section 2(13) of the IGST Act and provisions of the Finance Act, 1994 and the services provided by the petitioner to its service recipients are that of an independent service provider which qualify as export of services under the service tax provisions and 2(6) of the IGST Act for the following reasons:*
>
> *(i) There are only two persons in the subject agreements;*

(ii) The petitioner renders services on its own account to the service receiver located outside India and it does not enable supply between the foreign recipient and the third parties;

(iii) The acts of the petitioner are that of an independent contractor and it does not represent or bind the foreign client in the course of executing its services.

(iv) The foreign recipient, therefore, remunerates the petitioner by way of a service fee for the services rendered which is on a cost-plus mark-up basis and not based on percentage of success, etc. which is common in agency agreements.

(v) The foreign recipient is free to choose from whom he would procure and the petitioner's recommendations are not final and binding on it and the petitioner cannot also represent that it is doing something on behalf of the foreign recipient.

(vi) *The host of services rendered by the petitioner is more akin to business support services to enable efficient procurement of garments and a continuing business relationship rather than enabling procurement of orders on a commission basis."*

32. We also take note of the judgment passed by the Hon'ble High Court of Delhi in the case of Pr. Commissioner, Central Excise and CGST - **Delhi South v. Blackberry India Private Limited,**2023 SCC OnLine Del 4467**.** We considered and relied upon this Judgment as well as the aforesaid judgment of Karnataka High Court in our Final Order dated 04.06.2026 in the matter of M/s. Dow Chemical International Pvt, Ltd. Vs. Commissioner of State Tax, Mazgaon, Mumbai, (2026) 1 GSTAT E- Journal 15 (Principal Bench). The same principles are applicable in this case also. While considering the case of Dow Chemicals, we have also considered the circular issued by CBIC bearing No. 159/15/2021-GST dated 28.09.2021. In the said notification CBIC clarifies that the concept of 'intermediary' was borrowed in GST from the Service Tax Regime. The definition of 'intermediary' in the Service Tax law as given in Rule 2(f) of Place of Provision

of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows: -

> *"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;"*

33. The CBIC circular further elucidates that upon perusal of the definition of the "intermediary" under IGST Act as well as under Service Tax Law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law. The concept of intermediary services, requires basic requisites, which are discussed below: -

i. **Minimum of Three Parties**: an intermediary is someone who arranges or facilitates the supply of goods or services or securities between two or more persons. It is, thus, a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. It essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and does not himself provide the main supply.

ii. **Two distinct supplies**: there are two distinct supplies in case of provision of intermediary services;

    1. **Main supply**, between the two principals, which can be a supply of goods or services or securities;

2. **Ancillary supply**, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

Thus, a person involved in the main supply on principal-to-principal basis to another person cannot be considered as a supplier of intermediary service.

iii. The definition of "intermediary" itself provides that intermediary service provider means a broker, an agent or any other person, by whatever name called….". Thus, the role of intermediary is only supportive.

In this case, admittedly, the Appellant is not as a broker or an agent. There is no dispute that he cannot act as broker or as an agent as he doesn't have authority to bind the principal i.e. Navitas Australia. The only question that remains to be seen is whether he may be 'any other person by whatever name called'. In this connection we have already taken a view in Dow Chemicals that interpretation of 'any other person' has to governed by principles of *'ejusdem generis'* and it cannot be applied to any person or party who does not have the characteristics of a broker or an agent, having the authority to buying its principal and to act on behalf of the principal.

iv. *"Intermediary"* does not include a person who supplies such goods or services or both or securities on his own account".

In this case it is admitted that Navitas India has the responsibility or duty to supply any services to Navitas Australia on his own account.

v. The Circular clarify that Sub-contracting for a service is not an intermediary service, it is an important exclusion from intermediary. Navitas India provides service as sub-contractor. It provides the main supply and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. In fact, the

notification of the CBIC provides an example, for the purpose of clarity, we are quoting the same: -

"For instance, 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, Annual Maintenance of tools and machinery to 'B'. 'A' subcontracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i.e. to 'B' on behalf of 'A'. Though 'C' is dealing with the customer of 'A', but 'C' is providing main supply of Annual Maintenance Service to 'A' on his own account, i.e. on principal-to-principal basis. In this case, 'A' is providing supply of Annual Maintenance Service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, supply of service by 'C' in this case will not be considered as an intermediary.

This illustration fortifies the case in the sense that the Appellant is indulged in the main supply.

vi. The notification further clarifies that a specific provision of place of supply of 'intermediary services' under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

34. Exactly similar issues relating to intermediary services were considered by various Hon'ble High Courts in the case of Genpact India Vs. Union India (Supra), Pr. Commissioner, Central Excise and CGST - Delhi South v. Blackberry India Private Limited, (Supra), Columbia Sportwear India Sourcing (P.) Ltd. v. Union of India, (Supra). All these cases have been discussed in the preceding paragraphs.

35. The question of whether education consultancy services, the exact question involved in this case, also arose before the Hon'ble Delhi High Court in the case of **FATEH Education Consulting (P) Ltd. Vs. Assistant Commissioner:** 2026

SCC OnLine Del 3200. In that case, the petitioner, an education consultancy firm provided marketing and recruitment support services directly to foreign universities, received consideration from them, did not collect fees from students, and lacked authority to bind universities or guarantee admission, such services were not intermediary in nature merely due to incidental student assistance, thus refund of IGST paid on export of services with statutory interest. Having considered the matter on merits, Delhi High Court held as follows: -

> *15. Having heard learned counsel for the parties and having perused the record, this Court is of the view that the issue arising in the present petition is no longer res integra. The question whether education consultancy, marketing and recruitment support services rendered by an Indian entity to foreign universities would qualify as export of services, or would fall within the ambit of "intermediary" services under Section 2(13) of the IGST Act, has already been considered by this Court in Global Opportunities (P) Ltd (supra). In the said decision, this Court held that where the Indian entity renders educational consultancy/marketing services to foreign universities, raises invoices upon such foreign universities, and receives consideration from them, such services would not constitute intermediary services merely because students in India are incidentally assisted in the process.*
>
> *16. The said view is consistent with the judgment of the Bombay High Court in KC Overseas Education (P.) Ltd. (supra), wherein, in materially similar circumstances, it was held that the assessee was providing services to universities located outside India, which were paying consideration to the assessee, and that the assessee could not be treated as providing services to students in India merely by recommending their names to foreign universities. The Bombay High Court accordingly held that such services would not fall within the definition of "intermediary" and that the assessee would be entitled to refund, subject to receipt of consideration in foreign currency. The Special Leave Petitions preferred by the Union of India*

against the said judgment were dismissed by the Hon'ble Supreme Court, having regard to the judgment in CST v. Vodafone India Ltd [Civil Appeal Nos.10815-10819 of 2014, dated 6-5-2025] and the order in Commissioner, Central Excise, CGST-Delhi South Commissionerate v. Blackberry India (P) Ltd [SLP (C) No. 25992 of 2024, dated 4-11-2024].

17. In Global Opportunities Private Limited, this Court also considered the line of judgments including Ernst & Young Ltd v. Additional Commissioner, Central GST Appeals-II [2023] 148 taxmann.com 461/97 GST 820/73 GSTL 161 (Delhi), KC Overseas Education (P.) Ltd. (Supra), Vodafone India Ltd (supra), Blackberry India (P) Ltd (Supra)'. and other decisions, and held that a person who supplies services on its own account cannot be treated as an intermediary merely because such services may facilitate or further the business objective of the foreign recipient. The determinative factor is not the place where the incidental beneficiary may be located, but the contractual recipient of the service, the person liable to pay consideration, and the nature of the service supplied. This Court held that the respondent therein was engaged by foreign educational institutions for providing consultancy services and, upon rendering such services, received consideration from the said foreign universities and such relationship could not be characterised as intermediary services.

18. In the present case also, the petitioner has entered into agreements with foreign universities for providing education consultancy, marketing and recruitment support services. The impugned order itself proceeds on the basis that the petitioner promotes courses of the foreign university, identifies prospective students, assists in the recruitment/admission process and receives commission from the foreign university. Furthermore, the petitioner does not charge students for such services, has no authority to bind the foreign university, cannot guarantee admission, and receives consideration from the foreign university. The factual matrix, therefore, is materially

similar to that considered by this Court in Global Opportunities (P) Ltd (supra) and by the Bombay High Court in KC Overseas Education (P.) Ltd. (supra).

19. It is also relevant that Ms. Anushree Narain, learned senior standing counsel appearing for the respondents, while adopting the submissions advanced by the Department in Global Opportunities Private Limited, has also not disputed that the nature of services rendered by the petitioner in the present case is materially similar to the services considered by this Court in Global Opportunities (P) Ltd (supra). Thus, even upon considering the submissions adopted on behalf of the Department, the controversy remains squarely covered by the judgment of this Court. In view of the settled position of law and its application to the facts of the present case, the impugned order dated 30.10.2025, which rejects the refund claim by treating the petitioner as an intermediary, cannot be sustained.

20. Accordingly, the impugned order dated 30.10.2025 is set aside. The refund shall be processed and granted to the petitioner along with applicable statutory interest, in accordance with law, within a period of two months.

36. In applying the aforesaid principles to the present case, we are of the opinion that the services provided by M/s Navitas Eduservice Pvt. Ltd. do not come within the purview 'intermediary services', rather it comes within the definition of export of services under Section 2(6) of the IGST Act. The learned Deputy Commissioner appearing for the Revenue has relied upon some rulings of the Advance Ruling Authorities in support of his contention. However, the Advance Ruling Authorities are not courts of records and in view of the judgments rendered by different High Courts, we are inclined to follow the Judgments of the High Courts and do not rely upon the Judgments made by the AAR.

37. Accordingly, impugned orders passed by the 1st Appellate Authority are set aside. The Respondent is directed to refund the unutilised Input Tax Credit along with interest, at the rate of six percent and nine percent, respectively, from the dates delineated below: -

Appeal No.	Refund amount (Rs.)	Date of refund application	Interest payable from
APL/23/PB/2026	50,77,028	08.05.2024	08.07.2024
APL/33/PB/2026	32,62,600	15.03.2019	15.05.2019
APL/37/PB/2026	3,80,506	08.03.2019	08.05.2019
APL/38/PB/2026	4,24,248	18.12.2018	17.02.2019
APL/89/PB/2026	49,64,984	19.05.2022	19.07.2022

38. As far as APL/13/PB/2026 is concerned, it is the appeal preferred by the Revenue, in the form of APL-07 challenging the order passed by the 1st Appellate Authority who held that the order passed by the Authorised Officer is incorrect and instead of allowing the appeal has annulled the order of the Authorised Officer and directed him to reconsider the matter. Now, the question arises, whether the 1st Appellate Authority has the jurisdiction to remand a case to the authorised officer. We take note of the specific Provision i.e. Section 107, Sub-Section (11) of the CGST Act, 2017, which provides as under: -

> Sec-107 (9) xxx
>
> (10) xx
>
> (11) *The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:*
>
> ***Provided*** *that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:*
>
> ***Provided*** *further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or*

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where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 [or section 74A].

(12)x

39. Thus, a plain reading of this Provision, leaves no doubt at our end that the Appellate Authority has a jurisdiction to annul an order passed by the Authorized Officer, but it cannot direct the matter to be reconsidered by the Authorized officer. In other words, if there is an express and specific bar of remanding a case back to the Authorised Officer or the authority who has passed the order in original and a specific type of order is prohibited expressly by the Statute the Appellate Authority by resorting to jugglery of the words cannot circumvent the same and pass an order which in fact is a remand order. In that view of the matter, we allow the appeal preferred by the Revenue i.e., APL/13/PB/2026 to that extent and remand the matter back to the 1st Appellate Authority for consideration of the same, strictly in accordance with the merits of the case and in accordance with the principles laid down by us in the preceding paragraphs. We may note here that while the 1st Appellate Authority does not have jurisdiction to remand a matter to the Original Adjudicating Authority, the Tribunal in exercise of power conferred upon it under Section 113 (1) of the CGST Act may in its discretion remand a matter to the Appellate Authority or a Revisional Authority or the Original Adjudicating Authority.

40. The 1st Appellate Authority upon receipt of this order shall reconsider the matter after granting reasonable opportunity of hearing to both the parties and dispose the case as early as possible, preferring within a period of six weeks from the date taking cognizance of the order passed by us. With such observations, we dispose of all appeals.

41. Order pronounced in open court on 14.10.2026.

Dr. S. K. Mishra

Shri Anil Kumar Gupta

Date- 14.10.2026