GOODS AND SERVICES TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Division Bench Court No. 1

M/s. EXPEDIA ONLINE TRAVEL SERVICES INDIA PRIVATE LIMITED,
THROUGH ITS DIRECTOR, SHRI DEEPAK KUMAR KOTHARI ..... **Appellant**

Versus

COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX,
HARYANA .....**Respondent**

Counsel for Appellant:	Counsel for Respondent:
CA. Deepak Suneja and CA. Ramanand Mandal	Shri Devender Kumar Singh, Assistant Commissioner, Division North -1, CGST Gurugram assisted by Shri Dharambir, Superintendent

Coram:

Hon'ble Justice Dr. Sanjaya Kumar Mishra, President, GSTAT
Hon'ble Sh. Anil Kumar Gupta, Member (Technical), GSTAT

APPEAL NOS. APL/15/PB/2026, APL/16/PB/2026, APL/17/PB/2026, APL/18/PB/2026, APL/19/PB/2026, APL/24/PB/2026 AND APL/25/PB/2026

Final Order

- **Per, S.K. Mishra, President**

1. In these bunch of appeals filed by M/s Expedia Online Travel Services India Private Limited (hereinafter referred to as the "Appellant" or "Expedia India" for brevity) in the form of APL-05, wherein, the following simple question of fact and law arise for determination: -

   i. Whether this case comes under the exclusive jurisdiction of the Principal Bench, GSTAT, and if it involves an issue relating to the place of supply?

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

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

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2. These are a bunch of seven appeals filed under Section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act), read with Rule 110(1) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as CGST Rules). The Appellant being registered in the State of Haryana, the references to the CGST Act and CGST Rules shall, wherever the context so requires, include the corresponding provisions of the Haryana Goods and Services Tax Act, 2017 and the Rules made thereunder (HGST Act and HGST Rules).

3. All seven appeals have been filed by the same Appellant and arise out of claims for refund of unutilised Input Tax Credit on account of export of the same services, rendered to the same overseas group entities under the same agreements. The issue involved, namely, whether the said services are "intermediary services" within the meaning of Section 2(13) of the Integrated Goods and Services Tax Act, 2017, is common to all of them, and the appeals differ only in the tax period and the amount of refund involved. The appeals were, therefore, heard together and are being disposed of by this common final order.

4. The Appellant, M/s Expedia Online Travel Services India Private Limited, has assailed the following four Orders-in-Appeal passed by the Office of the Commissioner (Appeals), CGST, Gurugram (hereinafter, referred to as the First Appellate Authority or FAA): -

   (a) Order-in-Appeal No. 101-104/CGST-APPEAL/GURUGRAM/DK/2022-23 dated 31.08.2022, passed by the Joint Commissioner, CGST (Appeals), Gurugram, by which four separate appeals relating to the four quarters of the Financial Year 2019-20 were disposed of together by a single consolidated order;

   (b) Order-in-Appeal No. 158/CGST-APPEAL-GURUGRAM/AKV/2023-24 dated 25.08.2023, relating to the Financial Year 2020-21;

   (c) Order-in-Appeal No. 442/CGST-APPEAL-GURUGRAM/AKV/2023-24 dated 13.03.2024, relating to the Financial Year 2021-22; and

   (d) Order-in-Appeal No. 232/CGST-APPEAL-GURUGRAM/LKG/2025-26 dated 19.09.2025 (communicated on 25.09.2025), relating to the Financial Year 2022-23,

The orders at (b) to (d) having been passed by the Additional Commissioner, CGST (Appeals), Gurugram. These orders are, hereinafter, collectively, referred to as the impugned orders.

5. By the impugned orders, the First Appellate Authority has confirmed seven Orders-in-Original passed by the jurisdictional Deputy / Assistant Commissioner of Central Tax, Division East-I / East-II, CGST Gurugram (hereinafter referred to as the Adjudicating Authority or the proper officer), whereby the refund of unutilised Input Tax Credit (ITC) claimed on account of export of services made without payment of tax, under Section 54(1) of the CGST Act read with Rule 89 of the CGST Rules and Section 16(3)(a) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as IGST Act), was rejected in full in its entirety. The details of the impugned orders, the period of dispute and the amount involved in each appeal are tabulated as follows: -

S. No	**Appeal No.**	**Order-in-Original (O-I-O) challenged before First Appellate Authority**	**Order-in-Appeal (O-I-A) challenged before GSTAT**	**Period of Dispute**	**Amount Involved (INR)**
1	APL/15/PB/2026	No. ZU0605210371539 dated 21.05.2021	No. 101-104/CGST-APPEAL/GURUGRAM/DK/2022-23 dated 31.08.2022	01.04.2019 to 30.06.2019	2,45,72,777/-
2.	APL/16/PB/2026	No. ZZ0602220235671 dated 19.02.2022	No. 101-104/CGST-APPEAL/GURUGRAM/DK/2022-23 dated 31.08.2022	01.07.2019 to 30.09.2019	4,47,46,890/-
3.	APL/17/PB/2026	No. ZX0602220235682 dated 19.02.2022	No. 101-104/CGST-APPEAL/GURUGRAM/DK/2022-23 dated 31.08.2022	01.10.2019 to 31.12.2019	4,17,15,108/-
4.	APL/24/PB/2026	No. ZZ0602220235793 dated 19.02.2022	No. 101-104/CGST-APPEAL/GURUGRAM/DK/2022-23 dated 31.08.2022	01.01.2020 to 31.03.2020	4,04,61,087/-
5.	APL/18/PB/2026	No. ZX0607220067009 dated 06.07.2022	No. 158/CGST-APPEAL-GURUGRAM/AKV/2023-24 dated 25.08.2023	01.04.2020 to 31.03.2021	15,08,42,591/-
6.	APL/25/PB/2026	No. ZL0605230381619 dated 25.05.2023	No. 442/CGST-APPEAL-GURUGRAM/AKV/2023-24 dated 13.03.2024	01.04.2021 to 31.03.2022	12,24,68,543/-
7.	APL/19/PB/2026	No. ZF0605240674309 dated 31.05.2024	No. 232/CGST-APPEAL-GURUGRAM/LKG/2025-26 dated 19.09.2025	01.04.2022 to 31.03.2023	13,51,67,206/-
Total					55,99,74,202/-

6. It is pertinent to note that, for the Financial Year 2019-20, the Appellant filed refund claims on a quarterly basis, resulting in four separate refund applications and four separate Orders-in-Original in Form GST RFD-06. The Appellant filed four separate appeals in Form GST APL-01 before the First Appellate Authority, which disposed of all of them by a single consolidated Order-in-Appeal. For each of the Financial Years 2020-21, 2021-22 and 2022-23, the Appellant filed a single annual refund application, each of which culminated in a separate Order-in-Original and a separate Order-in-Appeal. In accordance with Rule 18 of the GST Appellate Tribunal (Procedure) Rules, 2025, a separate appeal has been filed before this Tribunal with reference to each Order-in-Original, which is why seven appeals are before us against four Orders-in-Appeal.

7. As regards limitation, Section 112 of the CGST Act provides for filing of an appeal before the Appellate Tribunal within three months from the date of communication of the order or such date as may be notified by the Government, whichever is later. By Notification S.O. 4220(E), the last date for filing appeals against orders passed before 01.04.2026 has been prescribed as 30.06.2026. All the impugned orders were passed before 01.04.2026, and all seven appeals were verified and filed on 24.06.2026. The appeals are, therefore, within the period of limitation. As the impugned orders arise out of rejection of refund claims and do not involve any demand of tax, interest, fine, fee or penalty, no pre-deposit under Section 112(8) of the CGST Act is required.

8. Shorn of the unnecessary details, the facts of these cases are as follows: -

(i) The Appellant, M/s Expedia Online Travel Services India Private Limited (hereinafter referred to as Expedia India), is a company registered under the CGST Act and the HGST Act, with its principal place of business at DLF Cyberpark, Udyog Vihar, Gurugram, Haryana. It is an indirectly wholly owned subsidiary of Expedia Inc., USA, and renders business support services and information technology software services to Expedia Inc. and its group companies (collectively referred to as “Expedia Affiliates”) on a cost plus mark-up basis.

(ii) For the aforesaid purpose, the Appellant entered into a Support Service Agreement dated 01.07.2010 with Expedia Inc. and an EAN Software Development Services Agreement effective 01.10.2016 with EAN.com LP,

which govern the supplies in all the periods covered by these appeals. Under them, the Appellant provides, through its own personnel, (a) contract software development services for the platforms and websites of the Expedia Affiliates; and (b) support services, namely supply sourcing support, supervision of third-party call centres in India, human resource support and product support (the services at (a) and (b) being collectively referred to as "Support Services"). Clause 3 permits the Services to be rendered through sub-contractors, Clause 11.1 makes each party liable to the other for direct damages, and Clause 13.4 provides for an independent contractor relationship and excludes any partnership, agency or employment between the parties. According to the Appellant, the Services do not involve any interaction with the customers of the Expedia Affiliates. The lodging supply support services and marketing support services, on which the Appellant discharges GST, are not in dispute.

(iii) The Appellant treated the Support Services as export of services under Section 2(6) of the IGST Act, zero-rated under Section 16 thereof, and exported them without payment of tax. It filed seven refund applications in Form GST RFD-01 for refund of unutilised ITC, quarterly for the Financial Year 2019-20 and annually for the Financial Years 2020-21 to 2022-23, between 26.03.2021 and 22.03.2024, aggregating Rs. 55,99,74,202/-. In APL/16/PB/2026, a fresh application was filed on 24.07.2021 pursuant to a deficiency memo dated 16.07.2021.

(iv) In each case, the proper officer issued a show cause notice in Form GST RFD-08 alleging that the services claimed as exports appeared to be intermediary services. In APL/15/PB/2026, APL/16/PB/2026, APL/17/PB/2026 and APL/24/PB/2026, the notices also raised, in varying combinations, the non-furnishing of agreements, mismatch between BRC/FIRC and export invoices, invoices not reflected in GSTR-2A, lack of nexus of certain inputs with the output services and, in APL/16/PB/2026, partial time-bar in respect of certain BRCs.

(v) In APL/15/PB/2026, the notice dated 27.04.2021 fixed a hearing on 06.05.2021 and a reply by 11.05.2021. The Appellant states that it could not reply or appear owing to the Covid-19 lockdown, the time for reply having been extended up to 30.06.2021 by Notification Nos. 14/2021-CT and 24/2021-CT, but the Order-

in-Original was passed on 21.05.2021. In the remaining six appeals, the Appellant filed replies in Form GST RFD-09 contending that the Support Services are exports and that it is not in nature of intermediary services.

(vi) The Adjudicating Authority rejected all seven claims in full in their entirety, holding that the Support Services are intermediary services under Section 2(13) of the IGST Act with the place of supply in India, and that the Appellant and the Expedia Group affiliates are merely establishments of a distinct person. In APL/15/PB/2026, the claim was additionally rejected on the grounds of BRC mismatch, invoices not appearing in GSTR-2A and lack of nexus of certain inputs with the business.

(vii) The Appellant's appeals in Form GST APL-01 were heard by the First Appellate Authority and rejected by the impugned orders. Hence, the present appeals before this Tribunal.

9. The First Appellate Authority, by virtue of the impugned orders, considered the contentions raised by the Appellant and, on substantially identical reasoning in each of them, recorded findings which may be summarised as follows: -

A. The services rendered under the agreements fall within the definition of "intermediary", as three entities are involved in the whole process, namely, the Appellant, its parent / holding company / associate enterprises, and the end-user customers, i.e. travellers, hotels or hotel operators.

B. The Appellant is involved in marketing and support services and interacts with the end-user customers of its overseas holding / parent company and associate enterprises.

C. The Appellant is not providing any services on its own account; it is facilitating the customers on behalf of its overseas client and is also procuring services from third parties, as is evident from the service agreements.

D. Applying the Circular No. 159/15/2021-GST, the Appellant has a subsidiary and supportive role in facilitating the main supply between the foreign entity and its customers. Relying by analogy on Illustration 1 of the said Circular, the Appellant was held to be in the position of the intermediary "C".

E. The case laws cited by the Appellant, namely Asahi Kasei India Pvt. Ltd. [2019 (21) GSTL 243 (AAR-GST)], Toshniwal Brothers (SR) Pvt. Ltd. [2019 (21) GSTL 294 (AAR-GST)], Go Daddy India Web Services Pvt. Ltd. [2016 (46) STR 806 (AAR)] and Universal Services India Pvt. Ltd. [2016 (42) STR 585 (AAR)], were held inapplicable as the facts are different.

F. Consequently, the Support Services are intermediary services, the place of supply is the location of the Appellant in India, the services do not qualify as "export of services" under Section 2(6) of the IGST Act, and the refund claims are liable to be rejected.

G. In APL/15/PB/2026, the claim of refund has been rejected also on grounds of alleged BRC/FIRC mismatch, invoices not appearing in GSTR 2A and lack of business nexus. Though this issue was also challenged before FAA, no clear findings supported by any reasoning appear in the impugned orders.

10. The Learned Tax Professional appearing for the Appellant would submit that the Orders in Original and Orders in Appeal travelled beyond the Show-cause Notice, in violation of principal of natural justice as there has been no detailed consideration of submissions made by the Appellant, erroneous interpretation of CBIC, the circulars of CBIC have binding on the Department. The conditions required to attract export of services as lay down u/s 2 (6 of the IGST Act) are satisfied whereas the requirement of 213 are not satisfied. Moreover, they would submit that nature of export cannot be questioned at a refund stage and if they are in entitled to interest as per Section 56 of the CGST Act at the rate of 6% from the expiry to 60 days from the date of respective ARN and at the rate of 9% from the date of expiry of 60 days from the date of application till the date of reform at the rate of 9%.

11. The Revenue of the other hand would submit that Principal Bench do not have the jurisdiction to decide this case and neither the OIO nor the OIA has travelled beyond the Show-cause Notice, there has been no violation of natural justice and the clarification of the CBIC circular has properly implemented and the facts of this case lead to the conclusion that the Appellant is an intermediary not an exporter of services.

12. On these grounds, the Appellant prayed in each appeal that the appeal be allowed in its entirety; that the impugned order, insofar as it rejects the refund for the respective period, be quashed and set aside; that the Appellant be held eligible for refund of the amounts set out in the table at paragraph 4, aggregating Rs. 55,99,74,202/-, along with applicable interest; and that the revenue authorities be directed to disburse the same in a time-bound manner.

13. Coming to the objections raised by the Learned Authorized Representative appearing for the Revenue, we see that he challenges the jurisdiction of the Principal Bench on the ground that the dispute involved in the case "is whether the Appellant is an intermediary? or whether the condition of the exports is satisfied? And not one relating with *place of supply*, within the meaning of Section 109 (5) of the CGST Act, 2017". It was, therefore, submitted that the case does not fall under the jurisdiction Principal Bench, GSTAT.

The learned Counsel appearing for the Appellant, however, would state that the essential question is regarding the Place of Supply because it will determine the incidence of GST. In case it is held that the Appellant is an intermediary service provider, then as per the Provisions, especially Section 13 (8)(b) of the IGST Act, 2017, as it stood prior to 30.03.2026, then, the place of supply, the location of the supplier of services, that in this case, is India. On the other hand, if it is decided that Appellant is not an 'intermediary service provider' then the services provided by the different entity would be an export. As per the law guiding, the place of supply will be outside India and, therefore, not be leviable with GST.

14. The Chapter XVIII of the CGST Act 2017, provides for appeals of revision. Section 107 of the CGST Act, 2017 provides appeal to the Appellate Authority and Section 108 of the CGST Act, 2017, provides for the powers of the Revisional Authority. Section 109 of the CGST Act, 2017, provides for the Constitution of the GSTAT and its Benches, wherein, the Jurisdiction of the Principal Bench and the State Benches have been defined under Sub-Section (5). Sub-Section (6) provides for powers to transfer the cases by special or general by the President, GSTAT.

15. For our purpose, the 109(5) of the CGST Act, 2017, is of utmost important which is quoted below: -

(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.*

Provided *further that the matters referred to in sub-section (2) of section 171 shall be examined or adjudicated only by the Principal Bench:*

Provided *also that the Government may, on the recommendations of the Council, notify other cases or class of cases which shall be heard only by the Principal Bench.]*

16. In order to properly understand this Provision, we also have to take into consideration the definition of Place of Supply. Section 2(86) of the CGST Act, 2017, provides for place of supply and it lays down that "place of supply" means as referred in Chapter V of the IGST Act, 2017. The Chapter V of the IGST Act, 2017, provides place of supply for goods and services or both. Section 10 of the IGST Act, 2017, provides for place of supply of goods other than supply of goods imported into, or exported from India, which is not relevant for this case. Section 11 of the IGST Act, 2017, provides for place of supply of goods imported into, or exported from India and it has been laid down that (a) imported into India shall be the location of the importer; (b) exported from India shall be the location outside India. Section 12 of the IGST Act, 2017, provides for place of supply of services where location of supplier and recipient is in India. Section 13 of the IGST Act, 2017, provides for place of supply of services where location of supplier or location of recipient is outside India. Section 13 (8) of the IGST Act, 2017, is relevant for us in this case and it provides that the place of supply of the services mentioned therein from Clause (a) to Clause (d) (Clause (b) having been omitted by Finance Act, 2026 dated 30.03.2026). the place of supply shall be the location of the supplier of services.

17. Thus, a harmonious reading of all these Provisions leads to the conclusion that in case, a service provider who exports services outside India shall not have any GST liability on the payment received by for such recipients unless it is treated or found to be an Intermediary service provider. Section 2(13) of the IGST Act, 2017, lays down the definition of intermediary which reads as follows: -

> *"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;*

A carful and proper understanding of this definition lead us to hold that intermediary as Section 2(13) of the IGST Act, 2017, is a person: -

'Intermediary' - Section 2(13) of the IGST Act, 2017,

I a. A broker, or
b. an agent, or
c. any other person, by whatever name called;

II An Intermediary as above arranges or facilitates the supply of
i. Good, or
ii. Services, or
iii. Both, or
iv. Securities

III Such services as mentioned above is between two more person.

IV It does not include goods and services, or both, or securities supplied on his own account.

18. Export of Services have been defined under Section 2(6) of the IGST Act, 2017, which reads as follow: -

(6) "export of services" means the supply of any service when, -
(i) the supplier of service is located in India;
(ii) the recipient of service is located outside India;
(iii) the place of supply of service is outside India;
(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange 1[or in Indian rupees wherever permitted by the Reserve Bank of India]; and
(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section -8;

19. Thus, in order to decide the case, whether supplier has been made in India or outside India and he doesn't come under the definition of intermediary service provider, then only the issue of refund of tax can be properly decided. Though, the main issue may be whether the service provided by the Appellant to its parent company is in the nature of intermediary service or export, it does involve the question of place of supply as discussed above. Thus, the contention raised by the Revenue that this case does not pertain to the Jurisdiction of Principal Bench is not relevant and is hereby not accepted.

20. The seminal question that arises in this case and which is in fact the genesis of the entire tax dispute is, 'whether the services provided by the Appellant to the parent company is

intermediary service or export?' In a recently decided case, viz., M/S NAVITAS EDUSERVICES PRIVATE LIMITED, IN APPEAL NOS. APL/23/PB/2026 along with other appeals, decided on 14.10.2026, we have held that education services supplied by the Appellant, i.e., Navitas Eduservices Pvt Ltd., India to Navitas Australia are export. After taking into consideration, the Judgment render by the Punjab and Haryana High Court in Genpact India Vs. Union of India; (2022) 1 Centax 226 (P&H), 2022 SCC OnLine P&H 4254, 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 Kar 3484, 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 have come to the conclusion that Navitas India Ltd., is not intermediary rather it is an exporter of services.

21. In that case, we have also considered the circular issued by CBIC bearing No. 159/15/2021-GST dated 28.09.2021, while considering 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). We take note of our observation made in para 33 of M/S Navitas Edu services Private Limited dated 14.10.2026, and reproduced it as follows: -

> "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.

iii. 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. 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 subcontract, 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.

22. We also take note by the Judgement render by Hon'ble Delhi High Court in the case of FATEH Education Consulting (P) Ltd. Vs. Assistant Commissioner: 2026 SCC OnLine Del 3200. The said case is latest case decided by the High Court that has been brought to our notice and again we reiterate that same principle is applicable here and we also take note of relevant paragraph relied upon for better understanding.

"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."

23. In course of hearing, learned Counsel appearing for the Appellant would also rely upon the Minutes of Conclusion of proceeding against Expedia Online Travel Services India Pvt. Ltd., it appears from the documents dated 21.05.2026 that Additional Director, DGGI, Ludhiana Zonal Unit have concluded the proceeding under proviso to Section 78 of Finance Act, 1994 read with para 2.5 of CBEC

letter dated 18.08.2015. The detailed conclusion of proceedings is attached thereto. The investigation led to the conclusion that out of the total eight services provided by the Expedia India, viz., Lodging Partner Supply Support, EAN Marketing Support Services, HR Support Services, Supply of Support Services, Supervisory Support Services, Product Support services, Marketing Support Services, Contract Software Development Services. Five qualify as export. Lodging Partner Supply Support, EAN Marketing Support Services, HR Support Services does not qualify as export. The DGGI itself has communicated to Appellant that its services are export and not intermediary. It is not the case of the Revenue that the present case involves Lodging Partner Supply Support, EAN Marketing Support Services, HR Support Service.

24. Though, the circular issued by the CBIC or report of conclusion by DGGI do not have a binding effect on adjudicating powers of the Tribunal, we have referred the aforesaid documents only to understand the issue in a clear manner and come to the conclusion that in fact CBIC circular and the conclusion of proceeding of DGGI buttresses our opinion and conclusion as given above.

25. In applying this principle to the case in hand, we further reiterate that as per the definition of intermediary under Section 2(13) IGST Act, 2017, it can be seen that the Appellant and its parent company have entered into agreement on principal-to-principal basis. There is no agency between them and Appellant is not acting as a broker for the parent company. There is no provision in the entire agreement which creates any obligation on the foreign company, undertaken by the Appellant, as we have held in Navitas India (Supra), that expression any person has to understood in the light of the doctrine of *'ejusdem generis'*, i.e., birds of same feather flock together and it cannot be treated to be including any person, by whatever name, to include a person who is not able to bind the foreign company with an obligation or a duty, acting on its behalf.

26. Though it facilitates the supplier service i.e. travel, etc., there is no privity of contract between a third party and the Appellant. The contract is strictly between

the Appellant and the foreign Company. As far as the customers of the parent company are concerned, it shall be contracts between those two entities and present Appellant has nothing to do with it. It also does not include supply of goods, or services, or both, or security on his own account.

27. A quick reference to the definition of export services as mentioned in Section 2(6) of the IGST Act, 2017, also leads to the conclusion that supplier is located inside India. The recipient is located outside India. The place of supply as discussed earlier shall be outside India and the payment for such services has been received by the supplier of services on convertible foreign exchange, etc., and supply of services and recipient of services not merely establishment of distinct person as mentioned in Explanation of Section 8 of the IGST Act, 2017. Section 8 of the IGST Act, 2017, provides for Intra-State Supply, the explanation-1 of Section 8 of the IGST Act, 2017, provides: -

> ***Explanation*** *1.-For the purposes of this Act, where a person has, -*
> *(i) an establishment in India and any other establishment outside India;*
> *(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
> *(iii) an establishment in a State or Union territory and any other establishment[1] [*****] registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.*

However, this expression does not exclude the contract between parent company and subsidiary company in the sense that both the foreign company and the India subsidiary are registered companies, incorporated under the relevant laws guiding the registration as well as business, functioning, etc., of incorporated companies. It is settled principle of law that each individual company, incorporated, shall be a separate entity. Thus, it is clear that the services provided by the Appellant does not come under the definition of intermediary services rather it is an export services, and, therefore, needs to be meritorious and needs to be allowed.

28. As far as additional ground to reject the refund application, as involved in APL/15/PB/2026, we find that the Show Cause Notice has not specified the BRC mismatch, GSTR 2A not reflecting the details of the invoices and the kind of nexus that is lacking in certain inputs of the business. It was stated that the BRC are mismatching, however, it is not brought to our notice at this stage of second appeal, that how the same are not matching. It may also be stated here that this issue was totally ignored by the 1st Appellate Authority and there is no finding on this quote. Similarly, there is no specification regarding GSTR 2A lacking invoices.

29. Thus, it is clear that SCN was not a proper one in the sense that the grounds for rejecting the refund application on different scores has not been elaborated and specifications have not been communicated to the Appellant. Moreover, these issues were discussed and involved in the proceedings before the Authorized Officer and FAA and there is hardly any discussion on these issues no findings have been recorded thereon.

30. Hence, we are of the opinion that this is a case of not only travelling beyond the gamut of the SCN but is also of violation of the principles of natural justice and, therefore, impugned orders are not sustainable.

31. In view of the aforesaid discussion and reasoning, we come to the definite conclusion that the services provided by the Appellant i.e. Expedia India do not come within the purview of intermediary services rather it comes within the definition of export services under Section 2(6) of the IGST Act, 2017. Therefore, the learned Authorized Officer and the learned 1st Appellate Authority have committed errors on records by dismissing the claims of the Appellant for refund.

Accordingly, the orders passed by the Adjudicating Authority and 1st Appellate Authority are set aside. The Respondent is directed to refund the unutilized tax credit along with interest as per provision laid down under Section 56 of the CGST Act, 2017.

Order pronounced in open court.

Dr. S. K. Mishra

Shri Anil Kumar Gupta

Date – 30.10.2026