GST APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

DIVISION BENCH, COURT NO. 1

IN THE MATTER OF:

ASSISTANT COMMISSIONER, CGST, CONNAUGHT PLACE DIVISION

...APPELLANT

V.

M/S HONOUR LANE LOGISTICS (INDIA) PRIVATE LIMITED

...RESPONDENT

IN APPEAL NOS. APL/41/PB/2026 AND APL/42/PB/2026

COUNSELS FOR THE APPELLANT (REVENUE):

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

COUNSELS FOR THE RESPONDENT (HLL):

Sh. Ankit Awal and Ms. Tanishka Saxena, Advocates.

CORAM:

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

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

FINAL ORDER

- **Per: Sh. Anil Kumar Gupta, Member (Technical)**

1. These are a bunch of two appeals having appeal nos. APL/41/PB/2026 and APL/42/PB/2026 filed by the Revenue in Form APL-07 dated 29.01.2026 and 06.02.2026 respectively, under Section 112 of the Central Goods and Services Tax

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Act, 2017 (hereinafter referred to as the "**CGST Act**"), read with Rule 111(1) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "**CGST Rules**"). The appeals have arisen from two separate Orders-in-Appeal (OIAs) passed by the Learned Additional Commissioner (Appeals-II), CGST, Delhi (hereinafter referred to as the "**First Appellate Authority**"), which were in favour of the Respondent, M/s Honour Lane Logistics (India) Private Limited. The following substantial questions of law and fact arise for determination in these appeals: -

I. Whether the services rendered by the Respondent to its overseas recipient, M/s Honour Lane Shipping Ltd., Hong Kong, qualify as "export of services" under Section 2(6) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "**IGST Act**"), or do they fall within the definition of "intermediary services" under Section 2(13) of the IGST Act?

II. Whether the Respondent is eligible for a refund of unutilized Input Tax Credit (ITC) on account of zero-rated supplies, as claimed under Section 54 of the CGST Act?

2. Since the two appeals involve common questions of law and fact and pertain to the same Respondent, they are being disposed of by this common order. The details of the two appeals are tabulated below:

S. No.	Appeal No.	Period of Dispute	Sanction Order / OIO	OIA	Refund Amount (Rs.)
1.	APL/41/PB/2026	April 2018 to March 2019	OIO No. 06/ZV0702210101758 dated 08.02.2021	OIA No. 88/2021-22 dated 12.10.2021	Rs. 21,13,189/-
2.	APL/42/PB/2026	April 2020 to March 2021	OIO No. ZN0706220377619 dated 22.06.2022	107/ADC/Central Tax/Appeal-II/Delhi/2023-24 dated 03.07.2023	Rs. 22,23,916/-
Total Amount (Rs.)					**Rs. 43,37,105/-**

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3. The Respondent, M/s Honour Lane Logistics (India) Private Limited (hereinafter referred to as "**HLL India**"), is a private limited company incorporated under the Companies Act, 2013, and is registered under the GST regime with GSTIN 07AADCH7957B1ZK. It was incorporated on 03.02.2016 as a 50:50 Joint Venture between M/s Honour Lane Shipping Ltd. (HLS HK) and Movers International Pvt. Ltd. HLL India is engaged in the business of providing 'Clearing and Forwarding Agents', 'Courier and Cargo Handlers', and related services. It provides freight forwarding, business auxiliary, business support, and clearing and forwarding services under various SAC codes to HLS HK located in Hong Kong and to certain other domestic third parties.

4. HLL India entered into a Service Agreement dated 15.02.2016 with HLS HK. As per Clause 1 of the said Agreement:

> *"HLS hereby nominates HLL for handling all the routing of shipments of HLS in India, and in some cases complete shipments will be handled by HLL on behalf of HLS, and for such purposes all the expenses including the Freight Charges and Clearance charges etc., paid by HLL in India on behalf of HLS in India shall be charged by HLL from HLS."*

Clause 2 provides that consideration would be paid by HLS to HLL based on the shipment of goods handled, and HLL would raise an invoice on HLS for payment.

5. **For the period April 2018 to March 2019 (APL/41/PB/2026),** HLL India filed a refund claim of Rs. 21,13,189/- (IGST of Rs. 5,52,521/- + CGST of Rs. 7,80,334/- + SGST of Rs. 7,80,334/-) on 10.12.2020 under Section 54 of the CGST Act, seeking refund of unutilized ITC on account of export of services without payment of tax. A Show Cause Notice (SCN) in Form GST RFD-08 dated 21.01.2021 was issued proposing rejection on the ground that the Respondent was an intermediary.

6. In its reply to the SCN dated 21.01.2021, the Respondent contended that it was providing freight forwarding services on its own account on a principal-to-principal basis and was not an intermediary. It submitted that the phrase "on behalf of" in the agreement was used for administrative convenience and did not create a principal-agent relationship. It further submitted that only two parties were involved in the transaction, there was no tripartite arrangement, and it did not negotiate or conclude contracts on behalf of HLS HK. The Adjudicating Authority, vide Order-in-Original (OIO) No. 06/ZV0702210101758 dated 08.02.2021, rejected the refund claim. Aggrieved, the Respondent (HLL) filed an appeal before the First Appellate Authority.

7. The First Appellate Authority, vide Order-in-Appeal (OIA) No. 88/2021-22 dated 12.10.2021, allowed the Respondent's (HLL) appeal, set aside the rejection order, and held that the Respondent was not an intermediary and its services qualified as exports.

8. **For the period April 2020 to March 2021 (APL/42/PB/2026),** HLL India filed a refund claim of Rs. 22,23,916/- (IGST of Rs. 14,41,294/- + CGST of Rs. 3,91,311/- + SGST of Rs. 3,91,311/-) on 22.04.2022 under Section 54 of the CGST Act, seeking refund of unutilized ITC on account of export of services without payment of tax under a Letter of Undertaking (LUT). An SCN in Form GST RFD-08 dated 04.06.2022 was issued, proposing rejection of the refund on the ground that the Respondent was an intermediary.

9. For the sake of brevity, the submissions made by the Respondent in its reply to the SCN dated 04.06.2022 are not reproduced again, as they are substantially similar to the submissions made in the reply to the SCN dated 21.01.2021, as detailed in para 6 above. The Adjudicating Authority, vide OIO No. ZN0706220377619 dated 22.06.2022, sanctioned the refund after finding that all conditions for export of services were met.

10. The Revenue, being aggrieved, filed an appeal before the First Appellate Authority against the OIO No. ZN0706220377619 dated 22.06.2022 for the period April 2020 to March 2021, which, vide OIA No. 107/ADC/Central Tax/Appeal-II/Delhi/2023-24 dated 03.07.2023, dismissed the Revenue's appeal.

11. The First Appellate Authority, while dismissing the Revenue's appeal, observed that the Respondent (HLL) was engaged in providing freight forwarding services to HLS HK on a principal-to-principal basis, that the services were covered under Cargo Handling Services, and that the Respondent (HLL) was not an intermediary under Section 2(13) of the IGST Act. The First Appellate Authority further observed that the requirements of an intermediary, as clarified by CBIC Circular No. 159/15/2021-GST, were not satisfied as there were only two parties, no second supply, and the Respondent did not act as an agent or broker. It held that the Respondent (HLL) provided services on its own account and that the place of supply was the location of the recipient (Hong Kong), thereby upholding the refund.

12. For the sake of brevity, the observations and findings of the First Appellate Authority in OIA No. 88/2021-22 dated 12.10.2021 are not reproduced again, as they are substantially similar to the observations and findings in OIA No. 107/ADC/Central Tax/Appeal-II/Delhi/2023-24 dated 03.07.2023, as mentioned in para 11 above. The First Appellate Authority held that the Respondent (HLL) was not an intermediary and that its services qualified as exports.

13. The Revenue, not being satisfied with both the OIAs, filed for the review of both the OIAs under Section 112(3) of the CGST Act, 2017. Consequently, the Commissioner passed Review Order No. 01/Commr/GST-Delhi South/2022-23 dated 19.04.2022 and Review Order No. 19/Commr/GST-Delhi South/2023-24 dated 14.12.2023 for the April 2018 - March 2019 period (OIA 88/2021-22 dated 12.10.2021) and the April 2020 - March 2021 period (OIA 107/ADC/Central Tax/Appeal-II/Delhi/2023-24 dated 03.07.2023), respectively, directing the filing of appeals before this Tribunal.

14. Pursuant to this, aggrieved by the two OIAs, the Revenue has approached this Tribunal. The two appeals, APL/41/PB/2026 and APL/42/PB/2026, have been filed against the respective OIAs. The grounds of appeal submitted by the Revenue include, inter alia, the following submissions: -

14.1 That the First Appellate Authority erred in law and on facts by wrongly classifying the services as export of services. The Service Agreement dated 15.02.2016 clearly establishes that the Respondent was acting as an agent facilitating shipment operations in India on behalf of the overseas entity, squarely falling within the definition of "intermediary" under Section 2(13) of the IGST Act.

14.2 That as per clause 1 of the agreement, HLS HK has nominated the Respondent for handling all the routing of their shipments in India and in some cases complete shipments will be handled by the Respondent on behalf of HLS HK, and for such purposes all the expenses including the Freight Charges and Clearance Charges etc. paid by the Respondent in India on behalf of HLS HK shall be charged by the Respondent from HLS HK.

14.3 That as per clause 2 of the agreement, in consideration of the services to be performed/provided by the Respondent under the agreement, HLS HK shall pay to the Respondent the amount depending on the shipment of goods to be handled by the Respondent, who shall raise an invoice to HLS HK for the payment compensation, and applicable taxes will be levied at the prevailing rate as on the date of raising the invoice.

14.4 That from the above clauses, it is clearly evident that the Respondent was providing "Freight Forwarding Services" for all the shipments in India on behalf of HLS HK for their clients. The expenses incurred were being reimbursed by HLS HK, and the amount paid was dependent on the shipments handled. Therefore, the Respondent was acting as an agent of HLS HK for facilitating or arranging the routing/movement of shipments in India, for which it received

consideration from HLS HK. Thus, the Respondent is covered under the definition of "intermediary" as provided in Section 2(13) of the IGST Act.

14.5 That the services provided by the Respondent have all the characteristics of an 'Intermediary service provider' as explained in CBIC Circular No. 159/15/2021-GST dated 20.09.2021. The Respondent is arranging/facilitating the supply of goods/services between the foreign client (HLS HK) and its clients. HLS HK themselves are not supplying any services to their clients for handling shipments in India. Thus, the requirement of minimum three parties is satisfied.

14.6 That there are two distinct supplies in the instant case; the main supply between the foreign client and its customers, and the ancillary supply of facilitating or arranging the main supply being done by the Respondent. Thus, this requirement of intermediary service is also satisfied.

14.7 That the Respondent's role is only supportive, as per Clause 1 of the agreement, and it does not himself provide the main supply. Therefore, the Respondent has the character of an agent, broker, or similar person.

14.8 That the Respondent does not himself supply any goods/services to the foreign client's clients. The fact that the party was paid on a commission basis meant that it did not provide services on its own account.

14.9 That since HLS HK is located in Hong Kong and the Respondent is acting as an intermediary, the place of supply of services of the Respondent would be governed by Section 13(8)(b) of the IGST Act, which provides that for 'intermediary services', the place of supply shall be the 'location of the supplier of services'. Since the Respondent is located in India, the services provided by it on behalf of HLS HK will be treated as services provided within India, i.e., within the taxable

territory of India, and therefore do not fulfil the condition of export of services as provided in Section 2(6)(iii) of the IGST Act.

14.10 That the Appellate Authority has erred in rejecting the appeal filed by the Assistant Commissioner against the OIO dated 22.06.2022 on the grounds detailed above.

15. During the course of proceedings, the Respondent filed a memorandum of cross-objection, which has been taken on record and considered by this Bench.

16. The Respondent, in its cross-objections, filed in Form GST APL-06, supported the findings of the First Appellate Authority and made the following submissions:

16.1 That the Appellant has grossly erred by stating that the Respondent facilitates HLS HK and is acting as an intermediary of HLS HK.

16.2 That the Appellant has grossly erred by stating that the Respondent is acting as an agent of HLS HK and the place of supply of services would be governed by Section 13(8)(b) of the IGST Act.

16.3 That the Appellant has grossly erred by stating that the conditions of export of services as provided in Section 2(6)(iii) of the IGST Act are not satisfied.

16.4 That the Respondent has entered into an agreement dated 15.02.2016 to provide freight and forwarding services to HLS HK. The Respondent has not acted as an intermediary and is working on a principal-to-principal basis, complying with Section 13(2) and Section 13(9) of the IGST Act. All the conditions of export as provided in Section 2(6) of the IGST Act have been satisfied.

16.5 That the Respondent has provided "handling support services of shipments" in India to HLS HK on a principal-to-principal basis, in terms of the Agreement dated 15.02.2016. The Agreement provides that the Respondent is only providing "freight forwarding services" and

all expenses, including Freight Charges and Clearance Charges, shall be charged by the Respondent from HLS HK.

16.6 That the phrase "on behalf of" is used in normal commercial practice and is never meant to be a "Principal-Agent Relationship". It is nowhere mentioned in the agreement that the Respondent shall act as an agent of HLS HK.

16.7 That the Respondent has an independent relationship with HLS HK on a principal-to-principal basis, and no party will be considered as an agent of the other party for any purpose.

16.8 That the Respondent is not interacting/dealing/exchanging any communication in any manner with the customers of HLS HK.

16.9 That the Respondent does not fall within the meaning of the term "intermediary" as defined in Section 2(13) of the IGST Act. An intermediary arranges or facilitates the provision of 'main services' between two or more persons for a consideration, and the Respondent is not doing so. The Respondent is not a broker, commission agent, or facilitator connecting HLS HK with its customers but is itself the provider of freight forwarding and logistics services contracted by HLS HK.

16.10 That the mere fact that the Respondent performs freight forwarding services in India on behalf of HLS HK does not render it an intermediary. The expression "on behalf of" used in the Agreement merely denotes the scope of the contractual obligation undertaken by the Respondent and does not establish an agency relationship.

16.11 That the mode or basis of remuneration is wholly irrelevant for determining whether a person is an intermediary. Commercial arrangements providing for reimbursement of expenses or shipment-wise consideration are standard business practices in the logistics industry.

16.12 That the Respondent does not negotiate or conclude contracts between HLS HK and its customers, does not solicit customers on behalf of HLS

HK, does not arrange or facilitate any contract for transportation between HLS HK and third parties, and does not receive any consideration from the customers of HLS HK.

16.13 That the Respondent provides services only to HLS HK, not to its clients, and is claiming refund of Input GST paid by it as attributable to the export of services rendered by it. The agreement between the Respondent and HLS HK is for freight forwarding services provided by it to HLS HK. It is a bilateral arrangement with no third-party involvement.

16.14 That the Respondent is not an intermediary as it does not satisfy any of the criteria of the definition of "intermediary" as it cannot be interpreted to be a "broker", "agent", or "any other person in the same genus".

16.15 That the Respondent places reliance on the judgment of the Hon'ble Supreme Court in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, wherein the Hon'ble Supreme Court held that agency means a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions. In the present case, the Respondent cannot in any way bind HLS HK by its words or actions.

17. The Respondent placed reliance on a catena of judgments to support its case. The relevant judgments and the reasons for which they were relied upon are as follows:

17.1 *M/s Ernst & Young Limited v. Additional Commissioner, CGST Appeals-II* 2023 SCC OnLine Del 1764: The Respondent relied on this judgment and submitted that an intermediary merely "arranges or facilitates" a supply between two or more persons, and a person who supplies the goods or services is not an intermediary. The Respondent contended that it provides services directly to HLS HK and does not arrange or facilitate any supply between HLS HK and third parties.

17.2 *M/s. Boks Business Services (P.) Ltd. v. Commissioner of CGST* 2023 SCC OnLine Del 5312: The Respondent relied on this judgment and submitted that where an Indian company is contracted to provide services to a foreign affiliate on a principal-to-principal basis and is the principal service provider, it cannot be treated as an intermediary. The Respondent submitted that its facts are similar as it provides services on a principal-to-principal basis and does not act as an agent or facilitator.

17.3 *K.C. Overseas Education Pvt. Ltd. v. Union of India* 2025 SCC OnLine Bom 5888: The Respondent relied on this judgment and submitted that where an Indian entity provides services to foreign universities and receives consideration from them, it cannot be treated as an intermediary merely because students in India are incidentally assisted. The Respondent contended that its services are provided to HLS HK and not to HLS HK's clients.

17.4 *Columbia Sportswear India Sourcing (P.) Ltd. v. Union of India* 2025 SCC OnLine Kar 3484: The Respondent relied on this judgment and submitted that where an Indian entity provides services to a foreign recipient on its own account as an independent contractor, and the foreign recipient is free to choose its suppliers, the Indian entity is not an intermediary. The Respondent submitted that it acts as an independent contractor and does not represent or bind HLS HK.

17.5 *Genpact India (P.) Ltd. v. Union of India* 2022 SCC OnLine P&H 4254: The Respondent relied on this judgment and submitted that where a refund claim of unutilized ITC used in making zero-rated supplies was allowed on a similar issue in the assessee's own case, holding the assessee not to be an intermediary, the impugned demand-cum-show cause notice for recovery of such refund is to be set aside. The Respondent submitted that the principle of consistency applies as the department had earlier accepted a similar view.

17.6 *M/s Navitas Eduservices Private Limited v. Commissioner of CGST, South Delhi* [2026] 191 taxmann.com 503 (GSTAT - New Delhi): The Respondent relied on this recent decision of this Tribunal and submitted that a sub-contractor providing the main service on its own account is expressly excluded from the definition of intermediary under Section 2(13) of the IGST Act, as clarified by CBIC Circular No. 159/15/2021-GST. The Respondent contended that it operates as an independent sub-contractor and not as an intermediary.

18. Thereafter, the Revenue filed a rejoinder dated 07.10.2026. For the sake of brevity, in addition to the submissions made in the APL-07, the Revenue made the following submissions:

18.1 That the Cross Objection filed by the Respondent does not answer the core question of whether the services supplied are "intermediary services" under Section 2(13) of the IGST Act. It was argued that compliance with procedural conditions, such as those under Circular No. 125/44/2019-GST and Rule 89 of the CGST Rules, cannot comply the substantive condition of export.

18.2 That the Respondent's own pleadings establish a tripartite arrangement; the Respondent admits that HLS has "clients" who place orders on HLS and pay HLS directly, and that the Respondent handles shipments "on behalf of" HLS.

18.3 That the Respondent's attempt to explain away the "on behalf of" clause as a mere "administrative convenience" is an attempt to vary the written terms of the agreement, which is impermissible.

18.4 That the Respondent's argument that there are only two parties confuses the number of contracting parties with the number of persons involved in the supply, and that the very nature of an intermediary service involves a tripartite arrangement without the need for a tripartite contract.

18.5 That the Respondent's reliance on the exclusion for supplies made "on his own account" is misplaced, as the Respondent does not supply the main service but merely arranges or facilitates it.

18.6 The Revenue distinguished the various judgments cited by the Respondent, including Ernst & Young, Boks Business Services, Columbia Sportswear, and Genpact India, on the grounds that they involved different factual matrices where the assessee provided services directly on its own account, unlike the present case where the Respondent acts "on behalf of" HLS.

18.7 That the principle of consistency does not apply, as the Department has not accepted the earlier OIA dated 18.03.2021. The Revenue submitted that the sanction orders for FY 2017-18 and 2020-21 themselves record that the OIA "has not been accepted by the Department," and that the sanctioning authority was "constrained" to sanction the refund merely because there was no stay, with a protective show cause notice contemplated. It was argued that these orders contain no finding on the merits of the intermediary question, and that each tax period is a separate cause of action; a refund sanctioned for one period without a decision on merits cannot stop the Department from contesting a separate claim for another period.

DISCUSSIONS AND FINDINGS

19. We have heard the Learned Authorised Representative for the Revenue and the Learned Counsels for the Respondent at length and have carefully perused the entire record, and the judgments cited by both parties. The core issue that arises for our consideration is whether the Respondent, HLL India, is an "intermediary" under Section 2(13) of the IGST Act, and consequently, whether the services rendered by it to HLS HK qualify as "export of services" under Section 2(6) of the IGST Act.

20. At the outset, it is necessary to understand the nature of the services in question. The Respondent is engaged in the business of international freight forwarding and logistics. Freight forwarding is a service that involves the arrangement and coordination of the transportation of goods. The freight forwarder acts as an intermediary between the shipper and the various carriers, such as shipping lines and airlines, to ensure that the goods reach their destination. The service is essentially the movement of goods from one place to another. In the present case, the Respondent handles the routing of shipments of HLS HK in India, which includes clearing, forwarding, cargo handling, and related activities. The goods in question are shipments that HLS HK is dealing with, and the Respondent's job is to ensure these shipments are handled efficiently within India and are dispatched to their ultimate destinations.

21. Further, it is essential to understand the statutory framework and the settled legal position. Section 2(13) of the IGST Act defines "intermediary" as under:

> *"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"*

22. The scheme of the IGST Act, as interpreted by various High Courts and this Tribunal, makes it clear that the incidence of tax is intrinsically linked to the place of supply. Section 13(2) of the IGST Act provides the general rule for determining the place of supply of services where the location of the supplier or the location of the recipient is outside India. It states that the place of supply of services, except the services specified in sub-sections (3) to (13), shall be the location of the recipient of services. Section 13(8)(b) of the IGST Act, prior to its omission by the Finance Act, 2026, provided that for "intermediary services," the place of supply is the location of the supplier. Therefore, if a service provider is found to be an intermediary, the place of supply is in India, and the service does not qualify as an

export under Section 2(6)(iii) of the IGST Act, which requires the place of supply to be outside India.

23. The distinguishing factor between a supplier of services and an intermediary is the nature of the activity. An intermediary merely "arranges or facilitates" the supply of goods or services between two other parties (the principal and the third party), without himself supplying the main service. The definition, however, expressly excludes a person who supplies the main service "on his own account." This exclusion is the crux of the matter.

24. This very issue has been the subject of detailed examination by this Bench in a recent case of ***M/s Navitas Eduservices Private Limited v. Commissioner of CGST, South Delhi Limited*** **(supra).** This Bench, after considering the judgments of the Hon'ble Punjab & Haryana High Court in *Genpact India (P.) Ltd. v. Union of India*, the Hon'ble Karnataka High Court in *Columbia Sportswear India Sourcing (P.) Ltd. v. Union of India*, and the Hon'ble Delhi High Court in *Pr. Commissioner, Central Excise and CGST - Delhi South v. Blackberry India Private Limited*, held that a sub-contractor providing the main service on its own account is not an intermediary. The Bench had further held that the term "any other person" in the definition of intermediary must be interpreted based on the principle of *ejusdem generis* and cannot be applied to a person who does not have the characteristics of a broker or an agent.

25. Similarly, in ***M/s Expedia Online Travel Services India Private Limited*** **[2026] 192 taxmann.com 26 (GSTAT – New Delhi)**, this Bench, relying on the aforementioned High Court judgments and the judgment of the Hon'ble Delhi High Court in *FATEH Education Consulting (P.) Ltd. v. Assistant Commissioner*, reiterated the principle that 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.

26. We further note the judgment of the Hon'ble Karnataka High Court in ***Columbia Sportswear India Sourcing (P.) Ltd. v. Union of India*** **2025 SCC OnLine Kar 3484,** which is directly on the issue of a foreign recipient and an Indian entity. In that case, the petitioner, an Indian company, provided "Buying Support Services" to its foreign parent, which included surveying the market to identify the best suppliers, monitoring production, and ensuring timely shipment. The Hon'ble High Court held as under:

> *"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."

27. The principles laid down in the aforesaid judgments are squarely applicable to the facts of the present case. In the instant case, HLL India is providing freight forwarding and logistics services to HLS HK on its own account. It is not merely arranging or facilitating a supply between HLS HK and its clients. It is the principal service provider. The fact that the phrase "on behalf of" is used in the Agreement does not alter this fundamental character, as the substance of the transaction, the conduct of the parties, and the flow of consideration clearly establish a principal-to-principal relationship.

28. Further, in the case of ***FATEH Education Consulting (P.) Ltd. v. Assistant Commissioner*** **2026 SCC OnLine Del 3200,** the Hon'ble Delhi High Court, while dealing with a similar issue, held as under:

"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.

17. ...

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."

29. We further note the observations of the Hon'ble Delhi High Court in the case of ***Pr. Commissioner, Central Excise and CGST - Delhi South v. Blackberry India Private Limited,*** **2023 SCC OnLine Del 4467,** wherein the Court, while examining the nature of services, held that where an independent service provider renders services directly to an overseas entity, receives consideration on a cost-plus basis, and has no authority to bind the overseas entity, such services cannot be considered intermediary services. The Court observed:

"It is apparent from the aforesaid definition that an intermediary merely arranges or facilitates provision of services. In the present case, the services rendered by BlackBerry India to BlackBerry Singapore under the Agreement, were not in the nature of facilitating services from another supplier. BlackBerry India, as an independent service provider, was required to render the promotional and marketing services; technical marketing assistance; and other related services. BlackBerry India did not arrange or facilitate these services from another supplier."

30. We find that the CBIC has also clarified the scope of "intermediary" through **Circular No. 159/15/2021-GST dated 20.09.2021,** wherein the key requirements for a service to be classified as an intermediary service, as per the Circular, are laid down as under:

30.1 There must be a minimum of three parties (the two principals transacting the main supply and the intermediary facilitating it).

30.2 There must be two distinct supplies (the main supply between the principals and the ancillary supply of facilitation by the intermediary).

30.3 The intermediary service provider must have the character of an agent, broker, or similar person.

30.4 The definition specifically excludes a person who supplies the main service on his own account.

30.5 Sub-contracting for a service is not an intermediary service.

31. Further, we find that the First Appellate Authority, while granting relief to the respondent and holding that the services rendered by HLL to HLS HK are "export of services", has analysed in detail the facts of the case in the light of the aforementioned clarification issued by CBIC vide Circular No. 159/15/2021-GST dated 20.09.2021 and has held that the Respondent was not an intermediary. It observed that there were only two parties to the transaction, no second supply, and the Respondent did not act as an agent or broker. It further held that the Respondent provided services on its own account and that the place of supply was the location of the recipient, i.e., Hong Kong. The First Appellate Authority also noted that the issue of the Respondent being an intermediary had been consistently decided in its favour in earlier proceedings. We are in complete agreement with the findings recorded by the First Appellate Authority. The reasons given by it are cogent, based on a proper appreciation of the facts and the law, and are in line with the settled legal position as discussed above.

32. At this juncture, we may also note that the circulars issued by the CBIC are binding on the departmental officers, but they do not have a binding effect on this Tribunal. However, as observed by this Bench in the case of ***Dow Chemical International Private Ltd. v. Commissioner of State Tax*** **[2026] 187 taxmann.com 392 (GSTAT - New Delhi),** such circulars can be looked into for the purpose of interpretation, as they have a persuasive role.

33. In the present case, applying the above principles, we find that the Respondent, HLL India, has entered into a Service Agreement dated 15.02.2016 with HLS HK. As per Clause 1 of the Agreement, HLS HK nominates HLL for handling all the routing of shipments of HLS in India, and in some cases complete shipments will be handled by HLL on behalf of HLS, and for such purposes all the expenses paid by HLL in India on behalf of HLS in India shall be charged by HLL from HLS. While the phrase "on behalf of" is used, we must examine the substance of the transaction and not be swayed by mere nomenclature.

34. The record reveals that HLL India is an independent legal entity, a 50:50 Joint Venture, which provides freight forwarding, clearing and forwarding, and other support services to HLS HK. HLL India is not a party to any arrangement between HLS HK and its clients. The orders from HLS HK's clients are placed with HLS HK, not with HLL India. The payment from HLS HK's clients flows directly to HLS HK. HLL India does not negotiate any transaction, nor does it collect or facilitate the collection of payments from HLS HK's clients. HLL India has no authority to conclude contracts on behalf of HLS HK. The services are rendered by HLL India on its own account, using its own resources and personnel. It receives consideration based on the shipment of goods handled and raises invoices on HLS HK.

35. The core question is whether there is a tripartite arrangement involving three parties and two distinct supplies, as required by the CBIC Circular No. 159/15/2021-GST. In the present case, there are only two parties to the contract; HLL India (the service provider) and HLS HK (the recipient of the service). The clients of HLS HK are not parties to the agreement between HLL India and HLS HK. The main supply is the freight forwarding and logistics service provided by HLL India to HLS HK. There is no ancillary supply of "facilitation" being provided by HLL India between HLS HK and any third party. HLL India itself is the supplier of the main service. Therefore, as per Para 3.1 of Circular No. 159/15/2021-GST, which requires a minimum of three parties, and Para 3.2, which

requires two distinct supplies, the essential requisites of an intermediary service are not satisfied in the present case.

36. Furthermore, the exclusionary clause in Section 2(13) of the IGST Act squarely applies to the Respondent. The clause states that an intermediary "does not include a person who supplies such goods or services or both or securities on his own account." HLL India supplies the freight forwarding and logistics services on its own account. It does not merely arrange or facilitate a supply between HLS HK and its clients. It is the principal service provider. The fact that the phrase "on behalf of" is used in the Agreement does not alter this fundamental character, as the substance of the transaction, the conduct of the parties, and the flow of consideration clearly establish a principal-to-principal relationship. This is further fortified by Para 3.4 of Circular No. 159/15/2021-GST, which clarifies that the word "such" in the definition refers to the main supply, and implies that in cases wherein the person supplies the main supply, either fully or partly, on a principal-to-principal basis, the said supply cannot be covered under the scope of "intermediary."

37. We must also examine whether the conditions of Section 2(6) of the IGST Act are satisfied in the present case. The said provision defines "export of services" as under:

> *"(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; 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;"*

38. In the facts and circumstances of the present case, all the aforesaid conditions are being satisfied:

(i) The supplier of service, HLL India, is located in India;

(ii) The recipient of service, HLS HK, is located outside India;

(iii) The place of supply of service is outside India, as per Section 13(2) of the IGST Act, since HLL India is not an intermediary;

(iv) The payment for such service has been received by HLL India in convertible foreign exchange; and

(v) The supplier of service and the recipient of service are not merely establishments of a distinct person, as HLL India and HLS HK are separate legal entities.

Therefore, the services provided by HLL India to HLS HK qualify as "export of services" under Section 2(6) of the IGST Act.

39. The Revenue has placed heavy reliance on the judgment of this Bench in ***Dow Chemical International Private Ltd.*** **(supra).** We have carefully perused the said judgment. In that case, the foreign entity was a centralized procurement hub, and the Tribunal, after examining the facts, held that the services provided by it were core services on its own account and not intermediary services. The ratio of that decision, therefore, supports the Respondent's case. The present case is on an even stronger footing, as HLL India is not merely providing support services but is actually providing the main freight forwarding and logistics services to HLS HK.

40. In light of the above discussion, we are of the firm opinion that the Respondent, HLL India, is not an "intermediary" within the meaning of Section 2(13) of the IGST Act. The services provided by it to HLS HK are on a principal-to-principal basis. The conditions of Section 2(6) of the IGST Act are satisfied, as the supplier is in India, the recipient is outside India, the place of supply is outside India, and the payment has been received in convertible foreign exchange. Therefore, the services qualify as "export of services," and the Respondent is entitled to the refund of unutilized ITC.

41. In view of the aforesaid discussion, we hold that the Respondent, M/s Honour Lane Logistics (India) Private Limited, is not an intermediary, and its services qualify as "export of services" under Section 2(6) of the IGST Act, 2017. The Respondent is entitled to the refund of unutilized ITC along with applicable interest.

ORDER

42. For the reasons recorded above, the appeals filed by the Revenue, bearing Nos. APL/41/PB/2026 and APL/42/PB/2026, are hereby dismissed.

43. Consequently, the findings of the First Appellate Authority vide Order-in-Appeal No. 88/2021-22 dated 12.10.2021 and Order-in-Appeal No. 107/ADC/Central Tax/Appeal-II/Delhi/2023-24 dated 03.07.2023, that the Respondent is not an intermediary and that its services qualify as export of services, are upheld.

44. The Respondent, M/s Honour Lane Logistics (India) Private Limited, is entitled to the refund of unutilized ITC of Rs. 21,13,189/- for the period April 2018 to March 2019 (APL/41/PB/2026) and Rs. 22,23,916/- for the period April 2020 to March 2021 (APL/42/PB/2026), along with applicable interest as per Section 56 of the CGST Act. The interest shall be payable at the rate of 6% per annum, from the date immediately after sixty days from the date of filing of each refund application till the date of actual refund.

45. Order pronounced in open court on 20.11.2026

(Dr. S. K. Mishra)

(Sh. Anil Kumar Gupta)

Date- 20.11.2026

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