

GSTAT
Division Bench Court No. 1

M/s. DOW CHEMICAL INTERNATIONAL PRIVATE LTD.,
THROUGH ITS DIRECTOR, SHRI RAHUNATHANGAVELAppellant

Versus

COMMISSIONER OF STATE TAX, MAZGAON, MUMBAI
ASHEESH SHARMA & ORSRespondent

Counsel for Appellant
MIHIR PRASHANT DESHMUKH

Counsel for Respondent
SHWETAL SHEPAL

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

Final Order

➤ Per, S. K. Mishra, President

1. These are a bunch of Appeals 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).
2. The Appellant, M/s DOW Chemical International Private Limited, has assailed the confirming orders passed by the Joint Commissioner of State Tax (Appeals), Raigad Division, Belapur, Navi Mumbai, dated 07.08.2023.
3. The First Appellate Authority has confirmed the order passed by the Deputy Commissioner of State Tax (MUMBAI-LTU_515) whereby the refund claimed u/s 54(1) & Rule 89 of the Maharashtra Goods & Services Tax Act, 2017 and Maharashtra Goods & Services Tax Rules,

2017 (hereinafter referred to as MGST Act and MGST Rules) were rejected. The details of the impugned orders refusing the refunds in favour of the Appellant pertaining to the tax periods spanning from January 2022 to June 2022 are as follows: -

- a) In appeal No. APL/2/PB/2026 for the period 01/01/2022 to 31/01/2022 of refund amounting to Rs. 7,81,12,995/-
- b) In appeal No. APL/3/PB/2026 for the period 01/02/2022 to 28/02/2022 of refund amounting to Rs. 1,12,62,629/-
- c) In appeal No. APL/4/PB/2026 for the period 01/03/2022 to 31/02/2022 of refund amounting to Rs. 1,30,15,941/-
- d) In appeal No. APL/5/PB/2026 for the period 01/04/2022 to 30/04/2022 of refund amounting to Rs. 1,47,89,813/-
- e) In appeal No. APL/6/PB/2026 for the period 01/05/2022 to 31/05/2022 of refund amounting to Rs. 1,31,52,277/-
- f) In appeal No. APL/7/PB/2026 for the period 01/06/2022 to 30/06/2022 of refund amounting to Rs. 38,56,339/-

Details of the six appeals are given in the table below: -

S. No	Case No	Order type	Details of order (O-I-O) challenged before Appellate/Revisional authority	Details of Order Appeal (O-I-A) challenged before GSTAT	Period of Dispute	Amount Involved (INR)
1	APL/2/PB/2026.	Refund	No. ZD2708230180897 Date- 07.08.2023	No. ZD2709250491371 Date - 11/09/2025	01/01/2022 to 31/01/2022	7,81,12,995/-
2	APL/3/PB/2026.	Refund	No. ZD270823018131Q Dated 07/08/2023	No. ZD2709250491470 Dated 11/09/2025	01/02/2022 to 28/02/2022	1,12,62,629/-
3	APL/4/PB/2026.	Refund	No. ZD270823018161N Dated 07/08/2023	No. ZD270925049159V Dated 11/09/2025	01/03/2022 to 31/03/2022	1,30,15,941/-
4	APL/5/PB/2026.	Refund	No. ZD270823018184F Dated 07/08/2023	No. ZD2709250491660 Dated 11/09/2025	01/04/2022 to 30/04/2022	1,47,89,813/-

5	APL/6/PB/2026.	Refund	No. ZD270823018195C Dated 07/08/2023	No. ZD2709250491735 Dated 11/09/2025	01/05/2022 to 31/05/2022	1,31,52,277/-
6	APL/7/PB/2026.	Refund	No. ZD270823018215I Dated 07/08/2023	No. ZD270925049180A Dated 11/09/2025	01/06/2022 to 30/06/2022	38,56,339/-

4. Bereft of unnecessary details, the facts of these cases are as follows: -

- (i) The Appellant, M/s Dow Chemical International Private Limited, is a company incorporated under the provisions of the Companies Act, 1956. The Appellant is primarily engaged in the business of manufacturing and distributing chemical components, as well as the provision of other services.
- (ii) For the purpose of streamlining its procurement operations, the Appellant entered into a written Procurement Agreement dated 01.07.2021 with Dow Europe GmbH, a company incorporated under the laws of Switzerland ('Dow Europe'). Dow Europe is a related entity within the global Dow group of companies and functions as a centralized procurement hub. The said agreement sets out a detailed scope of work, along with the terms and conditions under which Dow Europe is to provide services in relation to the procurement of materials, components, and other services to the Appellant.
- (iii) Under the aforesaid agreement, Dow Europe undertakes a comprehensive range of activities. These include, inter alia, the identification, selection, and approval of potential foreign suppliers, the negotiation of terms and conditions of procurement agreements, and the further facilitation of the supply from the selected suppliers to the Appellant. The role of Dow Europe is not limited to a single transaction but extends to the entire procurement lifecycle. Right from the development of procurement strategies to the final negotiation of contractual terms, and even the reviewing and signing of contracts and purchase orders, Dow Europe is engaged in the process of concluding contracts between the Appellant and the

respective third-party suppliers. The Appellant has consistently maintained that these activities are, in substance, in the nature of facilitating the supply of goods between the Appellant and its independent foreign suppliers.

- (iv) During the relevant period from January 2022 to June 2022, the Appellant, under a mistaken impression that the services received from Dow Europe constituted an 'import of services' as defined under Section 2(11) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act'), proceeded to discharge Integrated Goods and Services Tax (IGST) under the Reverse Charge Mechanism (RCM) on the consideration paid to Dow Europe amounting to INRs 7,81,12,995/- , 1,12,62,629/-, 1,30,15,941/-, 1,47,89,813/-, 1,31,52,277/- and 38,56,339/- respectively. Subsequently, upon identifying the error, the Appellant formed a view that the services rendered by Dow Europe were, in fact, in the nature of an 'intermediary' within the meaning of Section 2(13) of the IGST Act.
- (v) According to the Appellant, since the place of supply of intermediary services is the location of the supplier of such services in terms of Section 13(8)(b) of the IGST Act, the place of supply was outside India (Switzerland). Consequently, the Appellant argued that the transaction did not qualify as an 'import of services' and was therefore not liable to GST. Upon this realization, the Appellant duly reversed the Input Tax Credit (ITC) that had been availed on the said tax payment and filed refund applications before the Respondent authorities seeking a refund of the IGST so paid. The refund claims were rejected by the Adjudicating Authority, and the rejection was subsequently affirmed by the First Appellate Authority, aggrieved by which the Appellant has preferred the present appeals before this Tribunal.

- 5. The Adjudicating Authority have rejected the application for refund for the impugned orders. However, the first appellate authority, by virtue of

the impugned orders, considered all the contentions raised by the parties and passed the orders. The first Appellate Authority summarised its findings as follows: -

A. The Appellant itself had treated the services availed from the Procurement Hub as import of services and paid the IGST on import. It is an afterthought that they are contemplating that the said services are to be treated as intermediary services.

B. In view of Section 2 (11) of the IGST Act 2017, read with section 5(3) and Notification No. 10/2017 (Tax Rate) dated 28.06.2017, the said services qualify as import of services and the appellant is correctly liable to discharge tax under the reverse charge mechanism (RCM).

C. The Agreement provided by the Appellant has clauses that denounce the claim of the Appellant that the services availed from M/s Dow Europe GmbH (Procurement Hub) are intermediary services.

D. Further Clause no. 6(b) of the said agreement, the purchaser (the Appellant) does not appoint Procurement Hub as their agent or authorize Procurement Hub to commit Purchaser to any binding purchases or similar obligations.

E. M/s Dow Europe GmbH (Procurement Hub) is providing services at his own account; therefore, such services come out of the ambit of intermediary services.

6. In all these cases, therefore, the following mixed questions of law and facts arise for determination: -

a) Whether the services provided by Dow Europe GmbH (hereinafter referred to as "Dow Europe"), a company incorporated in Switzerland, under a contract entered into with the Appellant, M/s.

Dow Chemical International Private Limited, a company incorporated under the laws of India, are to be treated as ancillary services provided in relation to the main service?

- b)** Whether the services provided by Dow Europe GmbH qualify as “intermediary services” within the meaning of Section 2(13) of the Integrated Goods and Services Tax Act, 2017, and consequently attract the provisions of Section 13(8)(b) of the IGST Act, as applicable during the relevant period prior to the amendment dated 30.03.2026?
 - c)** Whether the place of supply of the services in question is liable to be determined under Section 13(2) of the Integrated Goods and Services Tax Act, 2017, thereby rendering the place of supply as being in India, or under Section 13(8)(b) of the said Act, thereby rendering the place of supply as being outside India?
 - d)** Whether, in light of the findings on the aforesaid issues, the Appellant is entitled to the refund of taxes paid, and whether the orders passed by the original proper officer and confirmed by the First Appellate Authority are liable to be set aside?
- 7.** In assailing the findings of the first Appellate Authority, the Learned Counsel appearing for the parties raised different issues of law and facts. We have considered the same and summarize their contentions as follows: -

7.1 Appellant's Contention

The Appellant, through its learned Advocate Shri Mihir Prashant Deshmukh, assisted by Shri Shamik Gupte, Learned Advocate, made the following detailed submissions:

- (i) It was submitted that the services provided by Dow Europe are squarely and unambiguously covered under the definition of 'intermediary' as provided under Section 2(13) of the IGST Act. The Appellant argued that the definition of 'intermediary' is wide and inclusive, covering not only brokers and agents but also any person who performs facilitative roles in arranging or enabling the supply of goods or services between two or more parties. It was contended that in the present case, the main supply, i.e., the supply of materials and components, is being executed directly between the Appellant (purchaser in India) and the foreign supplier. Dow Europe is merely facilitating the said supply by undertaking activities such as identification, selection, and approval of suppliers, and negotiation of terms. Therefore, it was argued, Dow Europe clearly falls within the four corners of the definition of 'intermediary'.

The Learned Counsel for the Appellant would rely upon the cases of Airbus Group India Pvt. Ltd., 2021 (54) G.S.T.L. 195 (A.A.R.- GST-Kar), M/s Toshniwal Brothers (SR) Pvt Ltd [Karnataka AAAR] [2018-TIOL197-AAR-GST]. On the basis of these rulings by the Advance Ruling Authority of the State of Karnataka, the Learned Counsel for the Appellant would submit that the activities performed by the Appellant fulfilling the parameters mentioned in the definitions of intermediaries as per Section 2(13) of the IGST Act, 2017, where similar services such as identification, assessment and review of potential suppliers, were being provided by Airbus India to Airbus SAS, France, the Learned Advance Ruling Authority was pleased to hold that such services qualify as “intermediary services”. It is a well-settled principle that the manner of remuneration is a key indicator of the nature of services. In numerous cases, arrangements have been classified as intermediary services primarily because the consideration was structured as commission or brokerage, rather than a fixed fee for principal services.

- (ii) The Appellant further placed strong reliance on Circular No. 159/15/2021-GST dated 20.09.2021 issued by the CBIC. It was submitted that all the pre-requisites for qualification as an 'intermediary' as specified in the said circular are satisfied in the present case. The Appellant argued that there is a minimum of three parties involved [Appellant, Dow Europe, and the foreign supplier(s)], which is the first prerequisite. Secondly, there are two distinct supplies: the main supply of goods from the foreign supplier to the Appellant, and the ancillary supply of facilitation services by Dow Europe. Thirdly, it was argued that Dow Europe is not supplying goods on its own account but is merely arranging the supply between the two principals.
- (iii) Regarding the contractual clause of 'independent contractor', the Appellant submitted that the Respondent has fundamentally misconstrued the same. It was argued that the independent contractor clause merely defines the working relationship between the parties, confirming that Dow Europe is not an employee of the Appellant. The Appellant distinguished a 'contract of service' (employee) and a 'contract for services' (independent contractor), arguing that this distinction has no bearing on the classification of the nature of services under GST law. The Appellant submitted that being an independent contractor does not by itself imply that services are provided on a principal-to-principal basis. It was further argued that the presence of a principal-agent relationship is not a prerequisite for a service to qualify as an 'intermediary', as the definition includes 'any other person, by whatever name called'. The Appellant contended that the principle of *'ejusdem generis'* cannot be applied to restrict the wide scope of the term 'intermediary'.

Relying upon the reported cases of M/s. Gulf Turbo Solutions LLP, 2022 (4) TMI 1343 Authority for Advance Ruling, Maharashtra, Global Reach Education Services Pvt. Ltd., 2018 (4) TMI 808 - Authority for Advance Ruling, West Bengal, M/s Airbus Group India

Private Limited, 2021 (7) TMI 263- Authority for Advance Rulings, Karnataka, Vservglobal Private Limited, 2018 (11) TMI 959 Appellate Authority for Advance Ruling, Maharashtra, the learned Counsel for the Appellant would submit that even if the contract is between two principals, despite being agreement providing that parties were independent contractors and not principal / agent the advance ruling authorities of Maharashtra, West Bengal and Karnataka held that applicants (service providers) were intermediaries because it connected customers with suppliers and facilitated supply.

- (iv) On the aspect of remuneration, the Appellant argued that the service fee paid to Dow Europe is directly linked to the procurements facilitated, i.e., 3.5% of the total purchase made by the Appellant. It was submitted that in case the Appellant does not make any procurement for a particular month, there is no consideration payable to Dow Europe, despite numerous activities being performed by it. The Appellant argued that this is a well-settled principle that the manner of remuneration is a key indicator of the nature of services, and a commission-based structure clearly reflects a facilitative role. Reliance was placed on the decision of the Karnataka AAAR in the case of M/s Toshniwal Brothers (SR) Pvt. Ltd. The Appellant also argued that the Respondent has failed to examine the actual nature of services availed in contravention of the principle of substance over form, and that the impugned orders are non-speaking orders passed in gross violation of the principles of natural justice.

7.2 Respondent's Contention

The Respondent, through its learned Advocate Ms Shwetal Shepal, advanced the following submissions:

- (i) At the outset, it was submitted that the present Appeals proceed on a fundamentally erroneous interpretation of Section 2(13) of the IGST Act. The Respondent argued that the Appellant has attempted to

portray a procurement outsourcing arrangement as a mere facilitation arrangement between suppliers and Dow India. It was contended that such an interpretation is contrary to the express terms of the Procurement Agreement and the statutory framework governing intermediary services.

Rely upon Columbia Sportswear India Sourcing (P.) Ltd. v. Union of India, [2025] 174 taxmann.com 936 (Karnataka) decided on 26.04.2025, and contends that the services provided by Dow Europe are an import of services and do not fall under the definitions of intermediaries.

- (ii)** The Respondent argued that a complete and holistic reading of Section 2(13) of the IGST Act demonstrates that the latter portion of the definition, namely the exclusionary clause which excludes a person who supplies services 'on his own account', is equally important. The Respondent submitted that the question to be asked is not merely whether the service provider 'arranges or facilitates', but whether the service provider independently renders substantive services on a principal-to-principal basis. It was argued that Dow Europe GmbH does not merely facilitate; it independently renders procurement and sourcing services to Dow India on a principal-to-principal basis.
- (iii)** The Respondent placed heavy reliance on Appendix-1 to the Procurement Agreement. It was submitted that this Appendix clearly demonstrates that Dow Europe GmbH independently undertakes substantive procurement operations, including procurement strategy development, procurement governance, supplier risk management, supplier relationship management, procurement analytics, strategic sourcing, procurement optimization, quality audits, spend analytics, and oversight of procurement. The Respondent argued that these are not ancillary or facilitative activities, but are core, substantive procurement operations independently rendered by Dow Europe

utilizing its own procurement expertise, systems, and strategic sourcing capabilities.

- (iv)** Regarding the 'independent contractor' clause, the Respondent argued that Clause 6 of the Procurement Agreement expressly provides that the parties shall function as independent contractors and further specifically provides that Dow Europe GmbH is not authorized to bind Dow India in any manner whatsoever. The Respondent contended that an intermediary ordinarily acts as a broker or liaising entity, facilitating transactions on behalf of another person, whereas Dow Europe independently performed substantive procurement operations and did not merely connect suppliers with Dow India. The Respondent submitted that the exclusionary portion of Section 2(13) squarely applies, as Dow Europe supplied services on its own account and received procurement service fees for independently rendering procurement services.
- (v)** The Respondent also argued that the sub-contracting or outsourcing of services on a principal-to-principal basis is not intermediary services, and the Circular itself clarifies this position. It was submitted that the present case is essentially a centralized procurement outsourcing arrangement whereby Dow India outsourced its entire procurement and sourcing functions to Dow Europe GmbH, which functions as the centralized procurement hub within the Dow Group. Finally, the Respondent argued that the refund provisions under Section 54 cannot be invoked to reopen or revisit taxability merely on account of a subsequent change in interpretation, especially after the Appellant itself had initially treated the transaction as an import of services and discharged tax accordingly.

- 8.** As per the scheme of the goods and services tax regime, incidence of tax is the place of supply. However, Section 13(8) of the IGST Act provides

for the exception for the same. Clause (b) of Sub-Section 8 of Section 13 provides that, in the case of intermediary services, the place of supply shall be the location of the supplier's services. In this case the Appellant claims that the supplier of services i.e. Dow Europe, is located in Europe and it supplies the services for the procurement of goods and materials to be used by Dow India Ltd., and therefore, it is claimed that since the services were provided from Europe, it shall be the place of supply and will be exempt from the levy of GST as prevalent in India. Both the original authority and the first appellate authority have not accepted this contention. In essence, they have accepted that this is not an ancillary service but is a core service and therefore has to be treated as an import of the services from Europe, which is leviable with GST at the rate applicable. So, the pivotal question around which the entire case revolves is whether the services provided by Dow Europe to Dow India are an intermediary service or a service that is the main service. We have noted different rulings relied upon by both parties. The Appellant relied upon the rulings of the Karnataka Advance Ruling Authority in the case of Airbus Group India Pvt. Ltd. (Supra), Global Reach Education Service (AAAR West Bengal).

In the above-mentioned rulings, the State Advance Ruling Authorities have held that in the facts and circumstances obtaining in that case, the Applicant is an intermediary. The Karnataka State Advance Ruling Authority observed that the applicant plays an important part in identifying the vendors, making them understand the product requirement, advising and guiding them not merely on the technical aspect of the product but also the ethical aspect in relation to such activities, without which, Airbus Invest SAS, France, will not be able to procure the goods from the vendors. The Authority further held that the instant activity is nothing but facilitating the supplies to them from India. The applicant's submission that the approval authority for such vendors lies with Airbus Invest SAS, France, does not make a difference to the role of facilitation undertaken by the applicant. The Authority further

noted that this work of facilitation is understood by them as technical advisory, guidance and business support assistance concerning quality control standards, performance and safety standards of the suppliers. By doing all this, they are merely facilitating the supplies to their holding company, as all these activities are directed at the vendors. They also noted that it is not necessary that a commission payment is always involved in an intermediary scenario.

Similarly, in the case of Global Reach Education, the West Bengal Advance Ruling Authority was considering a case where Global Reach promoted courses of Foreign Universities in India, found suitable prospective students, and assisted in recruitment for which a consideration was paid as a percentage of fees paid by admitted students (commission-based). No fixed retainer or no consideration payable if no student is enrolled. The agreement referred to Global Reach as "Education Agent" with responsibilities including promotion, finding students, and recruitment. The West Bengal State Advance Ruling Authority held that in that case, the Appellant Global Reach promoted courses of Foreign Universities in India, found suitable prospective students, and assisted in recruitment. Consideration was paid as a percentage of fees paid by admitted students (commission-based). No fixed retainer or no consideration payable if no student is enrolled. The agreement referred to Global Reach as "Education Agent" with responsibilities including promotion, finding students, and recruitment. The West Bengal State Advance Ruling Authority held that Global Reach was an intermediary and the services were not export of services. The West Bengal State Advance Ruling Authority held that the Appellant promotes the courses of the University, finds suitable prospective students to undertake the courses, and, in accordance with university procedures and requirements, recruits and assists in the recruitment of suitable students, and hence, the Appellant is to be considered as an intermediary in terms of Section 2(13) of the IGST Act.

It is contended by the Learned Counsel for the Appellant that the case Airbus Group India (Supra) has a similarity with the Dow agreement, as in both cases one subsidiary provides procurement support services to the foreign holding company, including identifying vendors, quality monitoring, technical advisory and marketing intelligence. However, it is submitted that the outcome is opposite. In this case, the Advance Ruling authority held that the Principal to Principal relationship is not relevant to determine whether the services are intermediary services or otherwise. Similarly, it was argued by the Learned Counsel appearing for the Appellant that in the case of Global Reach Education (Supra), the relevance lies in the commission-based structure and the fact that no consideration was paid if no student was admitted, which is similar to the success-fee arrangements as in the present case.

9. Heavy reliance has been placed by the special counsel appearing for the Respondent on the ruling of Columbia Sportswear India Sourcing Pvt. Ltd. (Supra), which appears to be taking the contrary view to the view discussed above taken by the two States' Advance Ruling Authorities. In Columbia Sportswear India Sourcing Pvt. Ltd., (Supra), the Petitioner, entered into a Buying Support Services Agreement with Columbia Sportswear Company, USA. The Services included: surveying the market to identify the best suppliers, identifying and visiting factories, monitoring production, ensuring timely shipment, tracking shipments, and documentation support. Consideration 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. 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.

- 10.** The matter came before the Hon'ble High Court of Karnataka, and as per their judgment dated 26.04.2025, the Hon'ble High Court of Karnataka held that:

"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 chose 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."

- 11.** The Learned Counsel appearing for the Respondent stated that the present case as well as the case cited by her, involves "Buying Support Services Agreement" where an Indian entity assists a foreign buyer to identify suppliers, etc., but in the present case, the foreign entity assists the Indian company to identify suppliers, monitor production, track shipments, etc. Both expressly state an independent contractor relationship, and they have no authority to bind the principal. In the reported case, the principal is located outside India, but the present case before us the principal is located in India.
- 12.** 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, SERTA 7/2023 dated 12.07.2023. The facts of the aforesaid case reveal that Blackberry India (formerly Research in Motion India Pvt. Ltd.) entered into an Agreement with Blackberry Singapore Pte Ltd. (formerly Research in Motion Singapore Pte) for providing Marketing Administration and Support Services. Services described in Schedule A to the Agreement as "promotional and marketing; technical marketing assistance; and other related services." Blackberry India received consideration on a cost-plus basis, raised invoices in US dollars, and had no authority to represent or bind Blackberry Singapore. Blackberry India filed refund claims for unutilized CENVAT Credit amounting to Rs. 8,55,34,345/- for periods April-June 2012, April-June 2013, and July-September 2013. Department rejected claims on the grounds that Blackberry India was an

"intermediary" under Rule 2(f) of POPS Rules, 2012. CESTAT allowed Blackberry India's appeal. CESTAT held it to be an export. Revenue appealed to the Delhi High Court.

After considering the facts of the case, the Delhi High Court ruled as follows:

"19. The learned CESTAT had examined the Agreement and had concluded as under:

30. It would therefore transpire from the Agreement that:

(i) The appellant is engaged in providing marketing, administrative and support service to Blackberry Singapore, as an independent contractor;

(ii) The appellant is not an agent or broker of Blackberry Singapore. There is no relationship of principal and agent between Blackberry Singapore and the appellant. The arrangement between the appellant and Blackberry Singapore is on a principal-to-principal basis. Further, the appellant does not have any authority to represent or bind Blackberry Singapore, which further supports the fact that the appellant is not an agent of Blackberry Singapore and, therefore, is not an intermediary;

(iii) The appellant is not engaged in facilitating any supply between Blackberry Singapore and its Customers. The Agreement is only between the appellant and Blackberry Singapore wherein the appellant is providing the aforesaid services to Blackberry Singapore. The customers of Blackberry Singapore are not a part of the contract and the appellant at no point in time is involved in providing

any service to the customers of Blackberry Singapore. The appellant does not even have any knowledge about the final customers of Blackberry Singapore;

(iv) The appellant receives consideration on a Cost-Plus basis. The consideration is not dependent on the sale made by the Blackberry Singapore to their customers; and

(v) The appellant raises invoices on Blackberry Singapore for the services provided by it in US dollars." It is further held that "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". "It is clear from the aforesaid Circular that BlackBerry India cannot be considered as an intermediary in the context of the services rendered by it under the agreement"

- 13.** In both the aforesaid cases, the Indian Party to the agreement was exporting services. The High Courts considered such activity as export services and not intermediary services to facilitate purchases, supplies, etc., to Blackberry Singapore / Columbia USA. A similar view has been taken by the Punjab & Haryana High Court in the case of Genpact India (P) Ltd., v. Union of India, [2022] 144 taxmann.com 201 (Punjab & Haryana).

- 14.** Thus, from the aforesaid rulings available on this issue, two streams of legal opinion are forth coming, cases involving provision of services by an Indian Company to a sister company located abroad, and by company located abroad to a sister company located in India has been treated differently by the Revenue. The Revenue in all these cases has treated any services provided by the India Company to its counterpart outside India as intermediary service and not export of services and therefore, levied GST, holding India to be the place of supply. At the same breath, the Revenue has treated any services provided by the foreign company to an Indian Company as import of services and not intermediary services and levied GST on it, holding the place of supply to be in India. We are of the opinion that both the views cannot be taken. One view is to be taken.
- 15.** If there is a contradiction between the findings and rulings passed by the High Court Judicature and Advance Ruling Authority, then ruling of the High court has to be preferred in view of Article 228 of the Constitution of India. However, such recognition of a Ruling of the Advance Ruling Authority is not available especially in view of Section 103 (1)(a) of the CGST Act, which provides that an advance ruling pronounced by the Authority or the Appellate authority shall be binding only on the applicant and concerned officer in the respect of the Applicant. In view of the Section 103 of the CGST Act, the rulings pronounced by the State Advance Ruling Authority and National Appellate Authority under Chapter XVII of the CGST Act may be taken as persuasive ruling and have no binding effect.
- 16.** In applying the Provision in the present case, we have carefully examined the different provisions of law and for the better appreciation we quote the same. Section 2 (13) and Section 13 (8) (b) of the IGST Act 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;

13. Place of supply of services where location of supplier or location of recipient is outside India.

(8) The place of supply of the following services shall be the location of the supplier of services, namely:

- (a) xxx
- (b) intermediary services;
- (c) xxx

[Section 13(8)(b) was omitted by Finance Act, 2026 (4 of 2026), dated 30.03.2026].

- 17.** The circular issued by the CBDT and CBIC are having binding character as far as its officers are concerned not as far as judicial authorities like High Court exercising jurisdiction under Article 226 or 227 of the Constitution of India. We are also of the opinion that since the Tribunal is not department under CBIC any circular issued by the CBIC does not have a binding effect on Tribunal. However, it can be looked into for the purpose of interpretation, having persuasive role.

In this connection, we rely upon two judgments.

- 1. K.P. Varghese v. ITO [1981] 7 Taxman 13/131 ITR 597 (SC),
- 2. Ellerman Lines Ltd. v. CIT [1971] 82 ITR 913 (SC)

- 18.** In interpreting these provisions and in order to clarify, the CBIC vide Circular No. 159/15/2021-GST dated 28.09.2021 elaborated the scope of intermediary services, which is quoted below in verbatim: -

Circular No. 159/15/2021-GST dated 28.09.2021

Subject: Clarification on doubts related to scope of “Intermediary”-reg.

Representations have been received citing ambiguity caused in interpretation of the scope of “Intermediary services” in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues in succeeding paragraphs.

2. Scope of Intermediary services

2.1 ‘Intermediary’ has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST” Act) 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.”

2.2 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;”

2.3 From the perusal of the definition of “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.

3. Primary Requirements for intermediary services

The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below:

3.1 Minimum of Three Parties: By definition, an intermediary is someone who arranges or facilitates the supplies 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. An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.

3.2 Two distinct supplies: As discussed above, 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.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

3.3 Intermediary service provider to have the character of an agent, broker or any other similar person: The definition of “intermediary” itself provides that intermediary service provider *means a broker, an agent or any other person, by whatever name called....*”. This part of the definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

3.4 Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary *“does not include a person who supplies **such** goods or services or both or securities on his own account”*. Use of word “**such**” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of intermediary”.

3.5 Sub-contracting for a service is not an intermediary

service: An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. 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.

3.6 The 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.

4. Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following illustrations:

Illustration 1

'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid

by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

Illustration 2

‘A’ is a software company which develops software for the clients as per their requirement. ‘A’ has a contract with ‘B’ for providing some customized software for its business operations. ‘A’ outsources the task of design and development of a particular module of the software to ‘C’, for which ‘C’ may have to interact with ‘B’, to know their specific requirements. In this case, ‘C’ is providing main supply of service of design and development of software to ‘A’, and thus, ‘C’ is not an intermediary in this case.

Illustration 3

An insurance company ‘P’, located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by ‘P’ to the clients. For processing insurance claims, ‘P’ decides to outsource this work to some other firm. For this purpose, he approaches ‘Q’, located in India, for arranging insurance claims processing service from other service providers in India. ‘Q’ contacts ‘R’, who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by ‘R’ to ‘P’. ‘Q’ charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by ‘R’ to ‘P’. In such a case, main supply of insurance claims processing service is between ‘P’ and ‘R’, while ‘Q’ is merely arranging or facilitating the supply of services between ‘P’ and ‘R’, and not himself providing the main supply of services. Accordingly, in this case, ‘Q’ acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration 4

‘A’ is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, ‘A’ is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. ‘A’ decides to outsource the task of providing customer care services to a BPO firm, ‘B’. ‘B’ provides customer care service to ‘A’ by interacting with the customers of ‘A’ and addressing / processing their queries / complains. ‘B’ charges ‘A’ for this service. ‘B’ is involved in supply of main service ‘customer care service’ to ‘A’, and therefore, ‘B’ is not an intermediary.

5. The illustrations given in para 4 above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the

meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.

- 19.** We apply these principles to the case at hand. The first is that there has been a written agreement between Dow India and Dow Europe. In fact, when the transaction that take place involves it three parties, i.e. Dow Europe identifies the parties to supply, fixes the price, quantity, quality, etc. Dow India purchases the same and manufactures the product. Such purchases have been made from a supplier identified by Dow Europe. So, in essence, it involves three parties. In this connection, we are of a different opinion on the factual aspect than the judgment rendered by the Hon'ble Karnataka High Court in the case of Columbia Sportswear (Supra) appears to be different. Factually the case before us is different from the case before the Karnataka High Court. But at this point, we come to the conclusion that the first consideration of a minimum of three parties is satisfied in this case.
- 20.** Coming to the second requirement of two distinct supplies in case of provision of intermediary services, i.e. (1) Main supply, between the two principals, which can be a supply of goods or services, (2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. In this present case, it is submitted that there are two distinct supplies, (i) main supply of the goods or services between the supplier and the Appellant and (ii) ancillary supply of services in the nature of facilitating or arranging the above main supply by Dow Europe between the Appellant and the supplier.
- 21.** In this context, we are of the considered of the opinion that the second consideration is not satisfied because of the fact that both the Dow Europe and Dow India are, either direct or indirect, subsidiaries of one company, i.e. "Dow INC", which is collectively, known as "Dow Group".

Dow Europe, a company located in Switzerland, functions as the Centralized Procurement Hub for the entire Dow Group and thereby giving a core service to the entire Dow Group located throughout the world.

- 22.** So we are of the view that the view taken by the First Appellate Authority that actually services provided by Dow Group are not in the nature of ancillary supply of services, rather it is a service for which Dow Europe does exist. Moreover, as in the cases of Columbia and Blackberry (Supra), we are of the opinion that the Dow Europe renders services on his own account to the service receivers located in India, and the acts of the said foreign company are those of an independent contractor, and it does not represent or bind the Indian client in the course of its services.
- 23.** In that view of the matter, we are of the opinion that services received by Dow India are in the nature of an import and the place of supply shall be in India, not in Europe. Thus, it will not come within the purview of Section 13(8)(b) of the IGST Act, and definition provided in Section 2 (13) of the IGST Act.
- 24.** Before parting, we may note here that the First Appellate Authority held that the Appellant has paid the GST dues, and as afterthought, has come with a plea that it is an intermediary service and, therefore, the Appeal has no merit. This view is incorrect in view of the fact that Section 54 of the CGST Act provides for refund of taxes within a specific time limit, Rule 89 of the CGST Rules, 2017 provides for the particulars to be given in an application for refund of tax penalty.
- 25.** If such provisions are there in this statute, it cannot be stated that every application for refund of tax, paid to the revenue under a misconception, will be hit by the principles of action arising as an afterthought. To this extent, we disagree with the First Appellate Authority.

- 26.** Thus, on a conspectus of facts involved in this case and in the law, guiding the cases of this nature, we are of the opinion that services provided by Dow Europe cannot be termed as “intermediary service” and as it is not in the nature of the ancillary service, rather it is a core service provided by it to one of its sisters concerned, who is operating under the global concern, i.e., “Dow INC”. Accordingly, all the questions framed by us are answered against the Appellant and in favour of the Revenue. In the result the appeals are dismissed and the orders passed by the first Appellate Authority are hereby confirmed.

Dr. S. K. Mishra

Shri Anil Kumar Gupta

Date- 04.06.2026