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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision 25th September, 2025

\+ **W.P.(C) 10189/2025 & CM APPL. 42299/2025**

COMMISSIONER OF DELHI GOODS AND SERVICE TAX DGST DELHI .....Petitioner

Through: Mr. Sameer Vashisht, SSC with Ms. Urvi Mohan, Mr. Naman Jain with Mr. Deepak Kumar, Advs.

versus

GLOBAL OPPORTUNITIES PRIVATE LIMITED THROUGH ITS AUTHORIZED REPRESENTATIVE .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv with Mr. Sparsh Bhargava, Ms. Ishita Farsaiya, Ms. Vanshika Taneja & Ms. Riddhi Vasistha, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The present petition has been filed under Articles 226 and 227 of the Constitution of India, *inter alia,* seeking to set aside orders *i.e.,* Forms GST APL-04 dated 10th August, 2024 and 4th October, 2024 passed by the Appellate Authority (Delhi GST)/Additional Commissioner, Department of Trade and Taxes, Delhi granting tax refund to the Respondent claimed for export of its services.

3. The short questions that arise in the present writ petition are:

- Whether the Respondent's services qualify as *export of services* in terms of the agreements which the Respondent enters into with Foreign Educational Institutions (hereinafter, *'FEI'*)?
- Whether the Respondent can be construed as an *'intermediary'* in terms of Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (hereinafter, *'IGST Act'*)?

Brief Background:

4. The Respondent is engaged in the business of providing educational consultation to Indian students who intend to travel abroad *inter alia*, to pursue their higher education in foreign universities. The Respondent is based in Delhi and has entered into agreements with foreign universities for providing such counselling and consulting services. As per the said agreements entered into between the Respondent and the Universities concerned, students who avail such services of the Respondent apply and seek admission in the relevant Universities. If the University accepts the said students for admission for any particular course, the Respondent is paid a commission in terms of the agreement executed between them.

5. The dispute that arises in the present petition is therefore two-fold;

- Whether the Respondent is acting as an agent of the concerned Universities?
- Whether the Respondent is liable to pay Goods and Services Tax (hereinafter, *'GST'*) in respect of the commission received from the Universities?

6. The case of the Delhi Good and Service Tax Department (hereinafter, *'Department'*) is that the Respondent is nothing but an '*intermediary'* in terms of Section 2(13) of the IGST Act. The Respondent acting as an '*intermediary'*

is not qualified for exemption from payment of GST under Section 5 of the IGST Act as the Respondent's services do not constitute *export of services*.

7. The submission by Mr. Vashisht, ld. SSC appearing for the Department is that since the Respondent is nothing but an agent of the Principal *i.e.,* the University, it ought to be deemed as if the University itself is receiving the amount and, therefore, there is no person to whom the services are provided by the Respondent. It is submitted that in order for a service to constitute export of services, the relationship ought to be one of Principal to Principal and not Principal and Agent.

8. Mr. Vashisht, ld. SSC also highlights the fact that in the case of the Respondent, there are various clauses which would show that in the Agreements entered into by the Respondent, it is referred to as the agent and under these circumstances, the Respondent cannot claim to be the principal. To illustrate the same, reference is made to an agreement between the Respondent and Macquarie University. The same is an international agency agreement where the Respondent is referred to as an *'agent'* in Clause 6 and 7 of the said agreement. Ld. SSC further argues that the ***Circular No. 159/15/2021-GST*** dated 20th September, 2021 issued by Central Board of Indirect Taxes and Customs (hereinafter, *'CBIC'*) also makes it very clear that if the person is providing intermediary services, then GST would be liable to be paid by such person. Finally, Mr. Vashisht, ld. SSC relies upon the finding of the Order-in-Original dated 20th January, 2025 passed by the Office of the Commissioner of Central Goods and Service Tax, Delhi South Commissionerate where the Adjudicating Authority also came to the conclusion that the Respondent was not discharging its tax liability and, accordingly, penalties were imposed. Reference is made to paragraph 32.1 and paragraph 35 of the said Order-in-

Original.

9. On the basis of these submissions, it is argued that the orders dated 10th August, 2024 and 4th October, 2024 passed by the Appellate Authority granting refund to the Respondent are not sustainable. According to Mr. Vashisht, ld. SSC, the Appellate Authority has not conducted any discussion on the role of the Respondent and has merely come to the conclusion that it is not an *'intermediary'* without any basis.

10. On the other hand, Mr. Gulati, ld. Sr. Counsel appearing for the Respondent submits that the issue which is to be decided in this case is no longer *res integra*. Ld. Sr. Counsel relies upon the following judgments:

i. ***Verizon Communication India Pvt. Ltd. v. Asstt. Commr., S.T., Delhi-III, 2018 (8) 32 (Del.)***

ii. ***Ernst & Young Ltd v. Add. Commr. CGST Appeals-II, Delhi, 2023 (73) G.S.T.L. 161 (Del.),***

iii. ***K.C. Overseas Education Pvt. Ltd. v. Union of India, 2025:BHC-NAG:2166-DB***

iv. ***The Union of India & Ors. v. K.C. Overseas Education Pvt. Ltd., Petition(s) for Special Leave to Appeal (C) Nos. 21104-21105/2025***

v. ***M/s Krishna Consultancy v. Commissioner of CGST, Nagpur Service Tax Appeal No. 85867/2016 decided on 11th October, 2023 by CESTAT, Mumbai,***

vi. ***Commissioner of Central Excise and Service Tax, Chandigarh-I v. Oceanic Consultant Pvt. Ltd., (2025) 30 Centax 434 (SC)***

vii. ***Commissioner of Service Tax v. Vodafone India Ltd., 2025 INSC 914***

11. Mr. Gulati, ld. Sr. Counsel for the Respondent submits that in

Commissioner of Central Excise and Service Tax, Chandigarh-I (Supra), the Supreme Court dismissed the SLP wherein under similar circumstances, CESTAT had held that there is no contract with the foreign university. Therefore, the Respondent could not have rendered any services that were utilised or consumed in India.

Analysis and Findings

12. The short point to be decided is whether the Respondent is entitled to refund or not. The Respondent had filed multiple refund applications seeking refund on the tax paid by the Respondent on export of services. However, the same have been rejected *vide* Refund Rejection Orders dated 1st February, 2021, 16th June, 2021, 8th September, 2021, 12th November, 2021 and 6th February, 2024 refusing to grant the refund to the Respondent. The refund has been refused to the Respondent *vide* order dated 1st February, 2021 on the following grounds:

> *" Whereas, M/s GLOBAL OPPORTUNITIES PRIVATE LIMITED has filed RFD-01 vide acknowledgment no* ***AA0701200212336*** *dated* ***10/01/2020*** *for the month March 2017-2018 and GST Refund 02 acknowledgment for refund has been issued on 18.03.2020.*
>
> *Whereas, M/s GLOBAL OPPORTUNITIES PRIVATE LIMITED has claimed refund of Rs. 74,29,976/-in support of export of services.*
>
> *Whereas, GST RFD-08 (Show Cause Notice) was issued to dealer on 18-03-2020 digitally signed by the GSTO(W-88) and opportunity is given to the dealer to explain within 15 days that why his claim of Rs. 74,29,976/- may not be rejected.*
>
> ***Whereas, the dealer has replied to the show cause notice in form of GST Rfd-09 dated 05-08-2020. The reply filed by the Taxpayer was examined and was***

not found satisfactory, on the following ground
1. The services provided by the Taxpayer to foreign universities cannot be said to export of services as the Taxpayer falls under the definition of intermediary services as per Section 2(13) of the IGST Act, 2017 read with Section 13(8) of IGST Act, 2017.
2. The application filed by the taxpayer is time barred i.e. beyond 2 years of the date of export of services, hence keeping in view of the Section 54(1) of CGST Act, 2017, the application could not accepted.
3. The taxpayer filed the refund application under the category of other specify) instead of head of export of services with payment of tax.

Keeping in view of the above, I hereby reject the entire refund claim of Rs. 74,29,976"

Thus, the Adjudicating Authority held that the Respondent is an intermediary and the services rendered by it do not constitute *Export of Services*.

13. These Refund Rejection Orders were challenged by the Respondent before the Appellate Authority which reversed and held that the Refunds were liable to be granted. The findings of the Appellate Authority are as under:

Order dated 2nd August, 2024 (Forms GST APL-04 dated 4th October, 2024 and 10th August, 2024)

"10. I have gone through the entire records/documents placed on record and considered the facts and circumstances of the case as well as the relevant law positions. After having perused the impugned orders and other documents such as agreements and provisions thereof, I am of the considered view that the services provided by the Appellant do not qualify as an intermediary as per Section 2(13) of the IGST Act, as the Appellant is not acting as an agent on behalf of the FEI and FEI reserves the right of admission to the students. ***The relationship between the Appellant and FEI is of principal-to-***

principal basis, and the Appellant thus provides marketing services to the FEI, which duly qualifies as export of services under Section 2(6) of the IGST Act.
The assessing authority passed the impugned orders in an arbitrary manner without application of mind and without considering the records of the appellant. The proper Officer instead of rejecting the refund claims should have examined the merits of the claim. Thus, it appears that there are errors being committed by the Proper Officer in rejecting the refund claims of the Appellant.
11. I am therefore of the considered view that the impugned rejection orders passed by the proper officer appears to be not justified and not tenable in accordance with the provisions of the CGST/DGST and rules made therein under. Accordingly, the appeal preferred by the Appellant is allowed and hence all the impugned rejection orders of refund for the period of 2021-22 dated 06.02.2024 are hereby set aside. This is in accordance with the prescribed procedure under the GST Act and Rules."

Order dated 2nd August, 2024 (Forms GST APL-04 dated and 10th August, 2024)

"8. I have gone through the entire records/documents placed on record and considered the facts and circumstances of the case as well as the relevant law positions. After having perused the impugned other documents such as agreements and provisions thereof, I am of the considered view that the services provided by the Appellant do not qualify as an intermediary as per Section 2(13) of the IGST Act, as the Appellant is not acting as an agent on behalf of the FEl and FEl reserves the right of admission to the students. The relationship between the Appellant and FEl is of principal-to-principal basis, and the Appellant thus provides marketing services to the FEl, which duly qualifies as export of services under Section 2(6) of the

> *IGST Act. The assessing authority passed the impugned orders in an arbitrary manner without application of mind and without considering the records of the appellant. The proper Officer instead of rejecting the refund claims should have examined the merits of the claim. Thus, it appears that there are errors being committed by the Proper Officer in rejecting the refund claims of the Appellant.*
>
> *9. I am therefore of the considered view that the impugned rejection orders passed by the proper officer appears to be not justified and not tenable in accordance with the provisions of the CGST/DGST and rules made therein under. Accordingly, the appeals preferred by the Appellant are allowed and hence all the impugned rejection orders of refund for the period of 2018-19 dated 16.06.2021 are hereby set aside. This is in accordance with the prescribed procedure under the GST Act and Rules."*

These orders of the Appellate Authority dated 2nd August, 2024 *i.e.,* Forms GST APL-04 dated 4th October, 2024 and 10th August, 2024 are under challenge in the present writ petition.

14. The period for which the refunds are sought in the present case are between Financial Years 2018-19 to 2021-2022. The manner in which the services are provided by the Respondent is that students who intend to pursue education abroad contact the Respondent for its consulting services. The Respondent after providing the said services would recommend students for admissions into certain foreign universities. The Respondent has entered into several agreements with various foreign universities who upon the admission being given to the students, pay a commission to the Respondent. The question is whether the GST would be liable to be paid or not on the said commission amount.

15. The definition of *'export of services'* under Section 2(6), *'intermediary'* under Section 2(13) of the IGST Act and the Section 13(8) of the IGST Act which stipulates the place of provision of services reads as under:

> "***Section 2. Definitions***
>
> *XXXX XXXX XXXX*
>
> *(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; 3 [or in Indian rupees wherever permitted by the Reserve Bank of India]; and*
>
> *(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;*
>
> *XXXX XXXX XXXX*
>
> *(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;*
>
> *XXXX XXXX XXXX*
>
> ***Section 13. Place of supply of services where location of supplier or location of recipient is outside India.***
>
> *XXXX XXXX XXXX*
>
> *(2) 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:*
>
> *Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.*
>
> *XXXX XXXX XXXX*

> *(8)* ***The place of supply of the following services shall be the location of the supplier of services****, namely:---*
>
> *(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;*
>
> *(b)* ***intermediary services****;*
>
> *(c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.*
>
> *Explanation.---For the purposes of this sub-section, the expression,---*
>
> *(a) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;*
>
> *(b) "banking company" shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);*
>
> *(c) "financial institution" shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);*
>
> *(d) "non-banking financial company" means,---*
>
> *(i) a financial institution which is a company;*
>
> *(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or*
>
> *(iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify."*

16. The Department's stand is that in the case of intermediary services, even though the Respondent may be earning foreign exchange from the said

Universities by way of commission, under Section 13(8) of the IGST Act, the location of the supplier of services is deemed to be the place of supply. Therefore, the Respondent does not qualify for its services being treated as export of services. This particular issue has been considered in the context of various forms of consultancy services.

17. In the decision in ***Ernst & Young Ltd (Supra),*** a Co-ordinate Bench of this Court, while dealing with intermediary services, observed as under:

> *"18. The principal question to be addressed is whether the Service rendered by the petitioner to EY Entities in terms of the service agreement constitutes services as an 'intermediary'.*
>
> *19. The term 'intermediary' is defined under Section 2(13) of the IGST Act.*
>
> > *"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;"*
>
> ***20. A plain reading of the aforesaid definition makes it amply clear that an intermediary merely "arranges or facilitates" supply of goods or services or both between two or more persons. Thus, it is obvious that a person who supplies the goods or services is not an intermediary. The services provided by the intermediary only relate to arranging or facilitating the supply of goods or services from the supplier. In the present case, there is no dispute that the petitioner does not arrange or facilitate services to EY entities from third parties; it renders services to them. The petitioner had not arranged the said supply from any third party.***
>
> *21. It is important to note that the Adjudicating Authority had also accepted that the petitioner has*

> *provided the Services. As noted hereinbefore, the Adjudicating Authority had returned a categorical finding that "the party provides services on behalf of E&Y Ltd., UK in India to its (E & Y Ltd., UK) overseas client". The Adjudicating Authority had reasoned that since the petitioner provides services on behalf of E&Y Limited (the petitioner's head office), it was an intermediary. This reasoning is fundamentally flawed. The Adjudicating Authority has misunderstood the expression 'intermediary' as defined under Section 2(13) of the IGST Act. A person who provides services, as opposed to arranging or facilitating of goods from another supplier, is not an intermediary within the definition of Section 2(13) of the IGST Act."*

18. In the above decision it has been categorically held that a person who supplies the goods and services is not an *'intermediary'*. It is only a person who arranges or facilitates the said services who would be considered as an *'intermediary'*. Thus, since the recipient of the services provided by the Petitioner therein, was located outside India, the services provided by the Petitioner therein were held to be *export of service* under Section 2(6) of the IGST Act.

19. This judgment of the Co-ordinate Bench of this Court was considered by the Bombay High Court in ***K.C. Overseas Education Pvt. Ltd. (Supra).*** In a short and pithily worded judgment, the Division Bench of the Bombay High Court has followed the principles laid down in ***Ernst & Young Ltd (Supra)*** and has observed as under:

> *"2. Only contention raised by Mr. Bhattad, the learned Counsel for respondents, is that sub-clause 3 of sec 2(6) of the IGST Act is not complied with. Section 2(6) of the IGST Act defines the expression "export of services", one of the ingredients of which is "when the place of*

supply of service is outside India". We however find that the entire definition, has to be read as a whole and not in a piecemeal manner and will have to be read in the background of what the statute defines a 'recipient' to mean as indicated in section 2(6)(ii), as defined in Section 2(93) of the GST Act in conjunction with Sec.13(2). All these provisions, in light of the definition of 'intermediary' as defined in Section 2(13) of the IOGST Act has been considered by the learned Division Bench of the Delhi High Court in ***Ernst & Young Ltd Vs. Add. Com. CGST 12023 (73) GSTL 161 (Del.)****, which also considers, the circular dtd 20.9.2021 bearing No. 159/15/21-GST issued by the Central Board of Indirect Taxe and Customs.*

3. We have perused the reasons and conclusion in ***Ernst & Young Ltd Vs. Add. Com. CGST*** *and upon hearing the contention of Mr. Bhattad, learned Counsel for respondent Nos. 3 and 4, do not see any ground made out for us to take a different view.*

4. It is also necessary to note, that the function, which the petitioner is performing under the agreement with the foreign university is also considered by the Service Tax Appellate Tribunal in Service Tax Appeal No. 85867/16 in the order dtd 11.10.2023, in the case of the petitioner itself, which has held that the appellant is providing service to universities located in foreign countries who are paying consideration to the appellant on account of which in view of the definition of service it has been held that the appellant was not providing service to the students in India by recommending their names to the foreign university for being enrolled as students. It is not disputed by learned counsel Mr. Bhattad that the definition of 'intermediary' in service tax regime as well as the GST regime are identical.

5. We have also perused the impugned decision dtd 7.3.2024 by the Addl. Commissioner Appeals and the discussion and findings as recorded therein. We however in view of what has been held in ***Ernst &***

> ***Young Ltd Vs. Add. Com. CGST*** *(supra) which considers a similar position and similar provisions, are unable to agree with the reasons stated therein. We are unable to hold, that considering the definition of 'recipient' as contained in sec 2(93) of the GST Act, which holds an entity to be a recipient in case their consideration is payable supply of services, is the person who is liable to pay that consideration and the language of Sec 13(2) r/w sec 2(6) of IGST in light of the definition of intermediary as contained in sec 2(13) as indicated above, that the petitioner would not fall within that definition and therefore, would be entitled to a refund of the GST paid by the petitioner to the department subject to receipt of the consideration in foreign currency. We therefore, quash and set aside the impugned decision dated 7.3.2024 and allow the petitions in the above terms. Considering the circumstances, there shall be no costs."*

20. This decision of the Bombay High Court which relates to identical education consultancy services was challenged before the Supreme Court in ***Union of India v. K.C. Overseas Education Pvt. Ltd. (Supra)*** wherein the Supreme Court, dismissed the said SLP in the following terms:

> *" Having regard to the judgment dated 06.05.2025 passed by this Court in Civil Appeal Nos. 10815-10819/2014 (Commissioner of Service Tax III, Mumbai Vs. M/s. Vodafone India Ltd.) and connected matters, these special leave petitions also stand dismissed.*
>
> *We also bear in mind the dictum of this Court dated 04.11.2024 in SLP (C) No. 25992/2024 (Commissioner, Central Excise, CGST-Delhi South Commissionerate and Anr. Vs. Blackberry India Pvt. Ltd.)*
>
> *Pending application(s) shall also stand disposed of."*

Thus, the Supreme Court reiterated its decisions in ***Vodafone India Limited*** [1] and ***Blackberry India Pvt Ltd***[2].

21. A similar situation has arisen in the case of ***Commissioner of Central Excise and Service Tax, Chandigarh-I (Supra)*** wherein the Supreme Court dismissed the SLP against a decision by CESTAT wherein it was held that when services are rendered to students in India, foreign universities which pay the commission to such a person as the Respondent cannot be considered as an *'intermediary'*. Similar is the view taken by CESTAT, Mumbai Bench in ***M/s Krishna Consultancy (Supra)*** wherein the CESTAT has observed as under:

> *"Appellant is engaged in giving guidance to prospective students to seek admissions in universities located outside India. The appellant does not collect any consideration from prospective students. Appellant has entered into contracts with the universities abroad and arrangements are that when a student guided by the appellant secures admission in university in the foreign country and pays fee, a part of the fee is paid to the appellant as commission. Appellant paid Rs. 48,06,310/- in cash and through cenvat account Rs. 2,66,831/- towards service tax on the said activity during the period from 04.05.2013 to 07.02.2014. After making the above payments towards service tax, appellant realized that the service tax was leviable on services provided within India and there was no service tax leviable on services which are provided outside India. On realization that their services were export of service, they filed on 07.04.2014 a claim for refund of already paid service tax amounting to Rs. 50,73,141/-. Appellant was issued with a show cause notice dated 27.06.2014. The show cause notice contended that the appellant had not uploaded the revised ST-3 return for*

[1]Commissioner of Service Tax v. Vodafone India Ltd., 2025 INSC 914
[2] SLP(C) No. 25992/2024 titled Commissioner, Central Excise, CGST-Delhi South Commissionerate & Anr. v. Blackberry India Pvt. Limited dated 4th November, 2024

the period from October 2012 to March 2013 and that for the period from October 2012 to March 2013, the appellant had disclosed their transaction as domestic service. It was further contended in the said show cause notice that the appellant was providing service to Indian students who were beneficiaries of the activities of the appellant. It was further contended that the appellant was functioning like intermediary defined under Rule 2(f) of Place of Provision of Services Rules, 2012. The said show cause notice also stated that the appellant has not provided proof of having received entire consideration in convertible foreign exchange. The refund application was adjudicated through order-in-original dated 12.05.2015. Appellant's contentions were not accepted by the original authority and the refund was rejected. Appellant preferred appeal against the said order before learned Commissioner (Appeals) who did not interfere in the original order and, therefore, the appellant is before this Tribunal.

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5. We have carefully gone through the record of the case and submissions made. We note that the appellant is providing guidance to Indian students without charging any consideration from them. In view of the definition of service, we hold that the appellant is not providing any service to prospective students in India. We hold that the appellant is providing service to universities located in foreign countries who are paying consideration to the appellant. We, therefore, hold that the services covered by these proceedings are export of services. *We have also gone through the decision of this Tribunal in the case of Sunrise Immigrations Consultants Pvt. Ltd. decided by Chandigarh Bench of this Tribunal. We note that this Tribunal has held that such organisations cannot be treated as intermediaries under the definition of Rule 2(f) of Place of Provision of Service Rules, 2012. We, therefore, hold that the contention of Revenue that the*

appellant is an intermediary is not in accordance with law. We further note that the appellant has foregone the refund of Rs. 26,43,969/-. Therefore, now the refund claim works out to the tune of Rs. 24,30,172/-. We note that the appellant has not provided all the foreign inward remittance certificates covering the transactions involving service tax of Rs. 24,30,172/-. We, therefore, remand the matter to the original authority with a direction not to rake up any other issue but to collect foreign inward remittance certificates from the appellant in respect of those transactions which involve refund of Rs. 24,30,172/- out of the refund claim of Rs. 50,73,141/- and allow the refund out of Rs. 24,30,172/- in respect of such transactions where FIRCS get produced by the appellant before the original authority. We direct the appellant to produce all FIRCS concerned with the refund amount of Rs. 24,30,172/- before the original authority. For the said purpose, we set aside the impugned order."

22. Coming to the facts of the present case, the Respondent is clearly engaged in educational consultancy services. The Respondent does not act on behalf of any FEI. The Respondent is in fact, engaged by the said FEI for providing consultancy services to students in India and upon the said students obtaining education, the Respondent raises invoices in either Indian Rupees or foreign currency upon the said university/FEI. The Respondent then receives foreign exchange payment from the said university. This relationship between the Respondent and the university or the FEI cannot be held to be an *intermediary service* as the Respondent is working as an educational consultant and may be rendering services which may further the cause of the FEI but is not an agent of the said FEI.

23. The decision of the Bombay High Court in ***K.C. Overseas Education***

Pvt. Ltd. (Supra), the view taken in ***Commissioner of Central Excise and Service Tax, Chandigarh-I (Supra)*** and in ***M/s Krishna Consultancy (Supra)*** would be correct. Accordingly, this Court holds that the Respondent's services when rendered to foreign universities and the earnings being in foreign exchange would not constitute intermediary services.

24. The order of the Supreme Court in ***K.C. Overseas Education Pvt. Ltd. (Supra)*** refers to decision in ***Blackberry India Pvt. Limited (Supra)*** and also in ***M/s Vodafone India Pvt. Limited (Supra)*** which in effect upholds the decision of this Court in ***Verizon Communication India Pvt. Ltd. v. Asstt. Commr., S.T., Delhi-III, 2018 (8) G.S.T.L 32 (Del).*** In ***Verizon Communication India Pvt. Ltd. (Supra)***, this Court had observed as under:

> *"46. The position does not change merely because the subscribers to the telephone services of Verizon US or its US based customers 'use' the services provided by Verizon India. Indeed in the telecom sector, operators have network sharing and roaming arrangements with other telecom service providers whose services they engage to provide service to the former's subscribers. Yet, the 'recipient' of the service is determined by the contract between the parties and by reference to (a) who has the contractual right to receive the services; and (b) who is responsible for the payment for the services provided (i.e., the service recipient). This essential difference has been lost sight of by the Department. In the present case there is no privity of contract between Verizon India and the customers of Verizon US. Such customers may be the 'users' of the services provided by Verizon India but are not its recipients.*
>
> *XXXX XXXX XXXX*
>
> *50. The decision of larger Bench of CESTAT in* ***Paul Merchants Ltd v. CCE, Chandigarh*** *(supra) may be referred to at this stage. The period with which the dispute in that case related to was between 1st July,*

2003 and 30th June, 2007. It involved, therefore, the interpretation of the ESR 2005 as amended and applicable during the said period. There the Assessees were intermediary agents providing money transfer services to foreign travellers who were the end user on behalf of their principals. The contention of the Department that this did not qualify as 'export of service' was rejected by the CESTAT. It noted that the CBEC had to issue a clarification letter No. 334/1/2010-TRU dated 26th February, 2010 acknowledging the difficulties that were faced by the trade in complying with the condition that the services had to be 'used outside India'. It was clarified that "as long as the party abroad is deriving benefit from service in India, it is an export of service.

51. In the considered view of the Court, the judgment of the CESTAT in ***Paul Merchants Ltd v. CCE, Chandigarh*** *(supra) is right in holding that "The service recipient is the person on whose instructions/orders the service is provided who is obliged to make the payment from the same and whose need is satisfied by the provision of the service." The Court further affirms the following passage in the said judgment in Paul Merchants Ltd v. CCE, Chandigarh (supra) which correctly explains the legal position:*

> *"It is the person who requested for the service is liable to make payment for the same and whose need is satisfied by the provision of service who has to be treated as recipient of the service, not the person or persons affected by the performance of the service. Thus, when the person on whose instructions the services in question had been provided by the agents/sub-agents in India, who is liable to make payment for these services and who used the service for his business, is located abroad, the destination of the services in question has to be treated abroad. The destination has to be decided on the basis of the place of consumption, not the*

> *place of performance of Service."*
>
> *52. In **Vodafone Essar Cellular Ltd. v. CCE** (supra), the CESTAT explained the arrangement lucidly in the following words:*
>
> > *"Your customer's customer is not your customer. When a service is rendered to a third party at the behest of your customer, the service recipient is your customer and not the third party. For example, when a florist delivers a bouquet on your request to your friend for which you make the payment, as far as the florist is concerned you are the customer and not your friend."*
>
> *53. The Department was also not justified in characterising the arrangement of provision of services as one between related persons viz., Verizon India and Verizon US. In doing so the Department was applying a criteria that was not stipulated either under the ESR or Rule 6A of the ST Rules."*

25. Moreover, recently, owing to the confusion that was being caused, the GST Council in its 56th meeting held at New Delhi has also recommended omission of Clause (b) of Section 13(8) of the IGST Act to help Indian exporters to claim export benefits. The relevant portion of the said recommendation reads as under:

> *"**6. Amendment in place of supply provisions for intermediary services under section 13(8) of the IGST Act:** The Council recommended omission of clause (b) of section 13(8) of IGST Act 2017. Accordingly, after the said law amendment, the place of supply for "intermediary services" will be determined as per the default provision under section 13(2) of the IGST Act, 2017 i.e. the location of the recipient of such services. This will help Indian exporters of such services to claim export benefits."*

Thus, *'intermediary services'* are no longer services for which the place of location of the supplier would be deemed as the place of supply. Even for such services the place of the recipient of the services would be place of supply as per Section 13(2) of the IGST Act. The confusion that was prevalent relating to intermediaries and their entitlement to claim benefits on the basis of export of services is eliminated.

26. Under these circumstances, the present writ petition does not deserve to be entertained and is, accordingly, dismissed. The refund in terms of the Appellate Authority's orders be processed and be granted to the Respondent along with the applicable statutory interest in accordance with law within two months.

27. The petition is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

SEPTEMBER 25, 2025
dj/ck
(corrected & released on 4th October, 2025)