

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 60241 of 2022**

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-04&05-2021-22 dated 18.04.2022 passed by the Commissioner (Appeals), CGST, Chandigarh]

**Sunrise Immigration Consultants Private Limited** .....Appellant

SCO 86-87, Sector 8-C,  
Chandigarh 160009

*VERSUS*

**Commissioner of Central Excise and Central Goods & Service Tax, Chandigarh** .....Respondent

Central Revenue Building,  
Plot No. 19, Sector 17-C,  
Chandigarh 160017

**WITH**

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Central Revenue Building,  
Plot No. 19, Sector 17-C,  
Chandigarh 160017

**APPEARANCE:**

Sh. Atul Kumar Gupta, C.A. with Sh. Kuldeep Singh, Advocate for the Appellants

Sh. Aneesh Dewan with Sh. Shivam Syal, Authorized Representatives for the Respondent

**CORAM:**

**HON'BLE Sh. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Sh. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 60512-60513/2024**

DATE OF HEARING: 09.05.2024  
DATE OF DECISION: 06.09.2024

**PER : S. S. GARG**

These two appeals are directed against a common impugned order dated 18.04.2022 passed by the Commissioner (Appeals) Central Goods & Service Tax, Chandigarh, whereby the learned Commissioner (Appeals) has upheld the Order-in-Original dated 21.10.2021 and confirmed the demand of service tax along with interest and penalties. Since the issue involved in both the appeals is identical and there is a common impugned order, therefore, both the appeals are taken up together for discussion and decision. Details of both the appeals are given herein below:

| <b>Appeal No.</b> | <b>SCN and date</b>   | <b>Period involved</b>      | <b>Demands</b>  |
|-------------------|---|-----------------------------|---|
| ST/60242/2022     | No.-I-V(GST)Adj/<br>Sunrise/9/18/185<br>dated<br>20.04.2018 | April 2015 to<br>March 2016 | Service tax of<br>Rs.37,07,121/-<br>along with<br>interest u/s 75<br>and equal<br>penalty u/s 78 of<br>the Finance Act,<br>1994.                  |
| ST/60241/2022     | No. ADJ2/2/2019<br>-HQ-GST-CHD<br>dated<br>22.04.2019       | April 2016 to<br>June 2017  | Service tax of<br>Rs.1,27,10,335/-<br>along with<br>interest u/s 75<br>and penalty of<br>Rs.12,71,034/-<br>u/s 76 of the<br>Finance Act,<br>1994. |

2. Briefly stated facts of the present case are that the Appellant are registered with the Service Tax department and are engaged in

providing Visa Consultancy Services to its clients who wishes to settle down in the foreign countries. Inquiries were initiated against the Appellant by the department with respect to the various services rendered by the Appellant. On the basis of the information gathered, it was alleged by the department that the Appellant are rendering the services which are exigible to service tax and the Appellant are not paying the service tax; accordingly, the Appellant were issued two show cause notices for the different periods as stated in the above table. The Appellant filed detailed reply to both the show cause notices and explained their stand. After following the due process, the learned Adjudicating Authority confirmed the demands proposed in both the show cause notices along with interest u/s 75 of the Finance Act, 1994 and also imposed penalties u/s 76 and 78 *ibid*. Aggrieved by the adjudication order, the Appellant filed appeal before the Commissioner (Appeals) who vide the impugned order upheld the demands as confirmed by the Order-in-Original. Hence, the present appeals.

3. Heard both the parties and perused the material on record.

4.1 The learned Consultant appearing for the Appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed contrary to the facts and the law; and binding judicial precedents on the identical issue in the Appellant's own case as well as in other cases.

4.2 He further submits that the referral service of the Appellant provided to Canadian Bank and foreign universities does not amount

to 'Intermediary Service' as alleged by the department. He further submits that in the Appellant's own case for the prior period, this issue has already been decided in favour of the Appellant by this Tribunal vide **Final Order No. 62221/2018 dated 16.03.2018** as reported in **2018 (5) TMI 1417 CESTAT Chandigarh**. He further submits that the Appellant's services remained exactly same with same terms and conditions for the period April 2009 to March 2014 vis-à-vis for the impugned period (April 2015 to June 2017) and therefore, the decision is squarely applicable to present case also. He further submits that the said decision of the Tribunal in Appellant's own case was later on referred in the similar cases as cited herein below:

- ***M/s Raaga Associates Pvt. Ltd. vs. CCE & ST, Faridabad-I - 2022 (1) TMB 1125 CESTAT Chandigarh***
- ***Verizon India Pvt. Ltd. vs. Commissioner of Service Tax. Delhi - 2021 (45) GSTL 275 (Tri-Del.)***

4.3 He further submits that the services provided by the Appellant to the foreign universities qualify as 'Export of Services' and cannot be treated as 'Intermediaries' service under Rule 2(f) of the Place of Provision of Service Rules, 2012 as held in the following cases:

- ***M/s Medway Educational Consultant P. Ltd. vs. Commissioner of CGST, Delhi West - 2024 (3) TMI 1178 CESTAT New Delhi***
- ***M/s Krishna Consultancy vs. Commissioner of CGST, Nagpur - 2023 (10) TMI 503 CESTAT Mumbai***
- ***M/s Study Overseas Global (P) Ltd. vs. CST, Delhi - 2017 (5) TMI 887 CESTAT New Delhi***

- ***M/s Valmiki Consultants Pvt. Ltd. vs. Commissioner of Customs, Central Tax, Hyderabad – 2018 (11) TMI 1085 CESTAT Hyderabad***

4.4 He further submits that the service provided by the Appellant does not fall under the definition of 'Intermediaries' as envisaged under Rule 2(f) of the Place of Provision of Service Rules, 2012 because the said definition does not include a person who provides the main service on his own account and this aspect has been considered in the following judgments:

- ***Genpact India (P) Ltd. vs. Union of India - 2023 (68) G.S.T.L. 3 (P&H)***
- ***Principal Commissioner of CGST, Delhi South vs. Comparex India Pvt. Ltd. - 2021 (47) G.S.T.L. 355 (Tri-Del.) affirmed by Supreme Court in as cited in 2021 (50) G.S.T.L. J9 (S.C.).***
- ***Evalueserve .Com Pvt. Ltd vs. CST, Gurgaon - 2018 (3) TMI 1430 CESTAT Chandigarh***

4.5 He further submits that the learned Commissioner (Appeals) has not followed the decision of this Tribunal even after noting the fact that the same issue in the Appellant's own case has already been decided by this Tribunal vide Order dated 16.03.2018, wherein the demand proposed for the period 2009 to 2014 was dropped. The learned Commissioner (Appeals) has passed the impugned order by violating the principles of natural justice because the decision rendered by the Tribunal is binding on the lower authorities. The learned Commissioner (Appeals) has failed to follow the judicial discipline by ignoring the judicial precedents. He also submits that the service tax demand in the impugned order has been computed

wrongly which led to confirmation of demand on the higher side. Hence, the service tax demand upheld in the impugned order is not tenable. In this regard, he relies on the following case-laws:

- ***XL Health Corporation India Pvt. Ltd. vs. UOI – 2018 (9) G.S.T.L. 611 (Kar.)***
- ***UOI vs. Kamlakshi Finance Corporation Ltd. - 1991 (55) E.L.T. 433 (S.C.)***

4.7 He further submits that extended period of limitation has wrongly been invoked in the present case to confirm the demand of service tax whereas it is a fact that the activities carried on by the Appellant were in knowledge of the department and were shown in the books of accounts and records maintained by them. In this regard, he relies on the following decisions:

- ***Nizam Sugar Factory vs. CCE - 2006 (197) ELT 465 (S.C)***
- ***Commissioner vs. Tetra Pack India Ltd - 2015 (321) ELT A65 (SC)***

4.8 As regards imposition of interest and penalties, he submits that when the demand of service tax itself is not sustainable, therefore, the question of interest and penalties does not arise.

5. On the other hand, the learned Authorized Representative for the department has filed the written submissions and reiterates the findings of the impugned order. He submits that the Commissioner (Appeals) has rightly confirmed the demand under 'Intermediary Service' as defined under Rule 2(f) of the Place of Provision of Service Rules, 2012. He further submits that the services provided by the Appellant do not fall under the definition of 'Export of Services'. He

also justifies the invocation of extended period of limitation to confirm the demand, interest and penalties imposed by the impugned order.

6. We have considered the submissions made by both the parties and perused of the material on record. We find that the only issue involved in the present case is whether the services provided by the Appellant fall under the ambit of 'Export of Services' and are exempted from service tax; or are classifiable under 'Intermediary Service' as defined under Rule 2(f) of the Place of Provision of Service Rules, 2012 read with Rule 9 of the Place of Provision of Service Rules, 2012.

7. First of all, we will deal with the issue whether the services provided by the Appellant are covered under the definition of 'Intermediary Service' or not? Before we give findings on the issue of 'Intermediary Service' allegedly provided by the Appellant, it will be appropriated to reproduce the definition of 'Intermediary Service' as defined under Rule 2(f) of the Place of Provision of Service Rules, 2012, which is reproduced herein below:

*"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.*

8. Further, we find that CBIC Circular No. 159/15/2021 dated 20.09.2021 explains the concept of Intermediary Services as below:

Intermediary services — Scope of — Clarification on doubts

Circular No. 159/15/2021-GST, dated 20-9-2021

F. No. CBIC-20001/8/2021-GST

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Indirect Taxes & Customs,  
New Delhi

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-S.T., 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-a-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’ sub-contracts 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.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

9. Further, we find that Hon'ble Punjab & Haryana High Court in the case of **Genpact India Pvt. Ltd.** (supra) has held that the following three conditions must be satisfied primarily for a person to qualify as an Intermediary:

- the relationship between the parties must be that of a principal-agency relationship.
- the person must be involved in arrangement or facilitation of provisions of the service provided to the principal by a 3rd party.
- the person must not actually perform the main service intended to be received by the service recipient itself. Scope of an "intermediary" is to mediate between two parties i.e. the principal service provider (the 3rd party) and the beneficiary who receives the main service and expressly excludes any person who provides such main service "on his own account.

10. Further, we find that the Tribunal in the case of **Orange Business Solutions Pvt. Ltd. 2019 (27) GSTL 523 (Tri. Chan.)** has held that:

**"10.** From the above Guidance Note of C.B.E. & C. dated 20-6-2012 and definition of intermediary, the following conclusion has drawn :-

- (a) An intermediary arranges or facilitates a provision of a 'main service' between two more persons;
- (b) An intermediary is involved with two supplies at any one time (i) the supply between the principal and the third

party; and (ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged;

(c) An intermediary cannot influence the nature or value of service, the supply of which he facilitates on behalf of his principal, although the principal may authorize to negotiate a different price;

(d) The consideration for an intermediary is separately identifiable from the main supply of service that he is arranging and is in the nature of fee or commission charged by him;

(e) The test of agency must be satisfied between the principal and the agent i.e. the intermediary. The Guidance Note states that the intermediary or the agent must have documentary evidence authorizing him to act on behalf of the provider of the main service;

(f) The payment for such services is received by way of commission;

(g) The Principal must know the exact value at which the service is supplied (or obtained) on his behalf.

**11.** From the agreement placed before us and arguments adduced before us, we find that the activity of computer networking is networking service which is an application running at the network application layer and above, that provides data storage, manipulation, presentation, communication or other capability which is often implemented using a client-server or peer-to-peer architecture based on application layer network protocols.

**12.** In view of the above, we do not find any arrangement or facilitation of the main service between two parties by a third person under the category of computer networking services.

**13.** We further find that the mandate from the group involves various companies more than two. So it is delivered to third entity on the direction of one M/s. Equant Network Services International Limited (ENSIL) and they act as intermediary. The appellants are 'processing equipment supply order's including liaison/coordination', so the liaison/coordination is also equivalent to solicitation and is more near to intermediary nature than the act of solicitation. Each mandate where there are two or more than two companies are involved would not automatically be termed as intermediary merely on the ground of involvement of two or more companies. To be intermediary, the criteria laid

down has been discussed hereinabove. We hold that the respondent is not intermediary.

**14.** We further take note of the fact that the activity of the appellant is routine back office process outsourcing activities and are completely based on instructions/guidelines provided by ENSIL/AEs in this regard. The Revenue has not produced any evidence as to why providing of back office process outsourcing should be treated as intermediary."

11. Further, we find that the Tribunal in the case of **Lubrizol Advanced Materials India Pvt. Ltd.- 2019 (1) TMI 720 CESTAT Mumbai** has held as under:

*"On perusal of the contracts, I find that the service fee charged by the appellant its overseas group entities for provision of service has no direct nexus with the supply of goods by the overseas group entities to its customers in India. Further, the appellant had provided the service to the overseas entities on principal to principal basis. Thus, the appellant cannot be termed as an intermediary between the overseas entity and the Indian customers. It is an admitted fact on record that the consideration received by the appellant for providing the services was based upon cost plus mark-up and is nowhere connected with the main supply of goods. In other words, the main supply may or may not happen and thus, cannot be directly correlated with the service provided by the appellant. Thus, the appellant is not acting as a bridge between the overseas group entities and supplies made to their customers in India and accordingly, it cannot be said that the appellant has provided intermediary service and should be governed under the provisions of Rule 9 of the rules."*

12. Further, we find that the Principal Bench of the Tribunal in the case of **Verizon India Pvt. Ltd. – 2021 (45) GSTL 275 (Tri. Del.)** has held that:

**"30.** We find that the said stand of Revenue is wholly mis-construed and erroneous. Firstly, no demand notice was issued on the appellant refusing or questioning the

*status of the export of service to Verizon US, as declared in their ST-3 Returns. Further, we find that the Hon'ble Delhi High Court has held, that its findings applied to post-Negative List also i.e. from July, 2012 onwards, as held by the Hon'ble High Court in its aforementioned judgment particularly in para-54 (supra). Further, admitted facts are that the appellants have provided output services and raised invoices on principal to principal basis. The appellant has not been acting as intermediary between another service provider and Verizon US. This fact is also supported from the fact that the appellant has raised their bills for the services provided on the basis of cost plus 11% mark-up. As the services have been provided by the appellant under contract with Verizon US, who are located outside India and have raised their invoices, for such services and have received the remittance in convertible foreign exchange, the appellant satisfies all the conditions, as specified under Rule 6A of Service Tax Rules, 1994, inserted w.e.f. 1-7-2012."*

13. Further, we find that in the Appellant's own case for the same impugned services for the earlier period this Tribunal vide Final Order dated 16.03.2018 has allowed the appeal of the Appellant and has held that the services rendered/provided by the Appellant do not fall in the definition of 'Intermediary Services'. The Tribunal has also held that the services rendered by the Appellant satisfy the conditions prescribed for the 'Export of Services' and therefore, the Appellant are not liable to pay service tax on the services rendered by them.

14. We also find that the decision of the Tribunal in the Appellant's own case has been relied upon in various cases to hold that the services rendered by the similarly placed assesseees are held to be 'Export of Services' and not 'Intermediary Services'. Relevant findings of the Tribunal in the Appellant's own case are reproduced herein below:



**7.** *The appellant is only disputed their liability on referral service post 01.07.2012 and submits that the appellant is not intermediary, therefore, they are not liable to pay service tax post 01.07.2012.*

**8.** *In these set of facts, following issues emerges:*

*(A) Whether the appellant is intermediary in terms of Rule 2(f) of POPS Rules, 2012 or not?*

*(B) Whether the referral service in question rendered by the appellant amount to export of service or not?*

*(C) Whether the extended period of limitation is invocable or not?*

**9.** *For better appreciation, the definition of intermediary has been defined under Rule 2(f) of POPS Rules, 2012 which is reproduced here as under:*

*"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provisions 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."*

**10.** *We find that the appellant is nowhere providing services between two or more persons. In fact, the appellant is providing services to their clients namely banks/colleges/university who are paying commission/fees to the appellant. The appellant is only facilitating the aspirant student and introduced them to the college and if these students gets admission to the college, the appellant gets certain commission which is in nature of promoting the business of the college and for referring investors borrow loan from foreign based bank to the people who wishes settled in Canada on that if the deal matures, the appellant is getting certain commission. So the nature of service provided by the appellant is the promotion of business of their client, in terms, he gets commission which is covered under Business Auxiliary Service which is not the main service provided by the main service providers namely banks/university. As the appellant did not arrange or facilitate main service i.e. education or loan rendered by colleges/banks.*

**11.** *In that circumstances, the appellant cannot be called as intermediary in the light of the judgment issued by the Advanced Ruling Authority in the case of Universal Services India Pvt. Ltd. reported in 2016 (42) STR 585 (AAR) and Godaddy India Web Services Pvt. Ltd. reported in 2016 (46) STR 806 (AAR) wherein it has been observed as under:*

*"10. The definition of "intermediary" as envisaged under Rule 2(f) of POS does not include a person who provides the main service on his own account. In the present case, applicant is providing main service, i.e. "business Support Service" to WWD US and on his account. Therefore, applicant is not an "intermediary" and the service provided by him is not intermediary service. Further, during arguments, applicant drew our attention to one of the illustration given under paragraph 5.9.6 of the Education Guide, 2012 issued by C.B.E. & C. Relevant is extracted as under; Similarly, persons such as call canters, who provide services to their clients by dealing with the customers of the client on the client's behalf, but actually provided these services on their own account', will not be categorized as intermediaries. Applicant relying on above paragraph submitted that call centres, by dealing with customers of their clients, on client's behalf, are providing service to their client on their own account. Similarly, applicant is providing business support service such as marketing and other allied services like oversight of quality of third party customer care centre operated in India and payment processing services, on behalf of GoDaddy US. Therefore, these services provided by the applicant to GoDaddy US cannot be categorized as intermediary or services, as intermediary service."*

**12.** *We further take note of the fact that the provisions of Rule 6A of the POPS Rules, 2012 has been declared ultra virus by the Hon'ble High Court of Delhi in the case of Association of Tour Operators (Supra). In that circumstance, also the appellant is not liable to pay services for referral service, therefore, the issue no. 1 is answered in favour of the appellant.*

**Issue No. B:** *Whether the referral services in question rendered by the appellant amount to export of service or not?*

**13.** *As discussed hereinabove in the proceedings paragraphs that the appellant is not an intermediary and the appellant is providing Business Auxiliary Service to their clients, who are located outside India, therefore, the services rendered by the appellant duly qualified as export of service in terms of Rule 3 of POPS Rules, 2012. Therefore, the issue no. 2 is also answered in favour of the appellant.*

**14.** *As in this case issue relates to the interpretation of the POPS Rules, 2012, therefore, the extended period of limitation is not invocable. Consequently, the demands pertain to extended period of limitation was also not sustainable.*

**15.** *In view of the above analysis, we hold that demands against the appellant are not sustainable with regard to the referral service, therefore, the impugned order is modified as under:*

*(A) The appellant is liable to pay service tax on visa facilitation service post 01.07.2012*

*(B) The appellant is not liable to pay service tax on referral services.*

*(C) No penalty is imposable on the appellant in the facts and circumstances of the case. In these terms, the appeal is disposed off."*

15. Since the issue involved in the present case has already been decided by this Tribunal vide Final Order dated 16.03.2018 in favour of the Appellant holding that the services provided by the Appellant amount to 'Export of Services' and not 'Intermediary Services'. The said decision of the Tribunal was appealed by the Revenue before the Hon'ble High Court but later on the appeal was withdrawn on monetary limit under CBIC instructions dated 22.08.2019.

16. As regards the invocation of extended period of limitation is concerned, we find that the activities carried on by the Appellant were in the knowledge of the department because for the previous period also, the extended period of limitation was invoked and the Tribunal vide Order dated 16.03.2018 cited supra, has held that the demand is barred by limitation; therefore, invocation of extended period is bad in law in the present case also.

17. The question of interest and penalties does not arise because the demand of service tax itself is not sustainable as discussed above.

18. Keeping in view our discussion above and following the ratios of the various decisions cited above on identical issue as well as the Appellant's own case, we are of the considered opinion that the impugned order is not sustainable in law and is liable to be set aside and we do so by allowing both the appeals of the appellant with consequential relief, if any, as per law.

(Order pronounced in the court on 06.09.2024)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**