



# Tax Flash News

1 April 2024

## Providing services to an overseas entity on a principal-to-principal basis cannot be classified as 'intermediary services'

The Supreme Court of India dismissed the appeal<sup>1</sup> thereby confirming the CESTAT ruling which had held that remuneration received cannot be taxed as intermediary services in cases where an Assessee procures orders from foreign buyers for the export of goods from Indian exporters and renders a bouquet of services to such foreign buyer on principal-to-principal basis.

### Facts of the case

- During the period October 2014 to March 2016, Assessee was engaged in procuring orders from overseas buyer. After procuring the order, it would direct the seller/manufacturer in India to export the garments to the overseas buyer. It would then raise an invoice on the overseas buyer towards export sales commission. The quantum of the commission was based on a percentage of the FOB value of the export goods.
- The Department issued a show cause notice demanding service tax along with interest and penalty on the contention that the service provided by the Assessee would be covered under the definition of 'intermediary' in terms of rule 2(f) of Place of Provision of Services Rules, 2012. The show cause notice was subsequently adjudicated.
- Aggrieved by the order in original, the Assessee filed an appeal before the Tribunal, Chennai Bench. The Tribunal allowed the appeal in favour of the Assessee.
- Aggrieved by the order of the Tribunal, the Department filed an appeal before the Supreme Court which dismissed the appeal on merits.

### Petitioner's contentions before the Tribunal

- The impugned activity would not fall within the ambit of the definition of 'intermediary service' as Assessee had rendered a bouquet of services (such as procurement of goods, selection of vendors, monitoring the quality of goods, designing and live testing of samples and carrying out various other quality checks till the final dispatch to the foreign buyer) to the foreign buyer on a principal-to-principal basis.
- As the activity is on a principal-to-principal basis, the activity of promotion of products and solicitation of orders is an export of services.

### Revenue's contentions before the Tribunal

- The impugned activity of the Assessee would be covered under the definition of 'intermediary services' since the Assessee facilitates the provision of supply of goods between two persons; it cannot alter the value of goods supplied; commission is identifiable from the value of exported goods; and, as per the agreement with the buyer, Assessee is authorised to act on behalf of the foreign buyer.
- The services are for procurement of goods. The expression 'arranges or facilitates' in the definition of 'intermediary' would cover within its ambit a host of marketing and sales promotion activities that are provided in relation to the arrangement and/or facilitation of a main service/supply of goods. Thus, the services are not provided on a principal-to-principal basis.

<sup>1</sup> *Commissioner of G.S.T. and Central Excise v. SNGS International Socks Pvt. Ltd.* [(2024) 16 Centax 413 (S.C.)]

- The impugned activity does not fall under the excluded categories of intermediary i.e., person who provides the main service or supplies the goods on his account.
- The services rendered by the Assessee do not qualify as 'export of service' since the condition of rule 6A of the Service Tax Rules, 1994 i.e., 'the place of provision of service should be outside India' is not fulfilled.

### **Tribunal's decision**

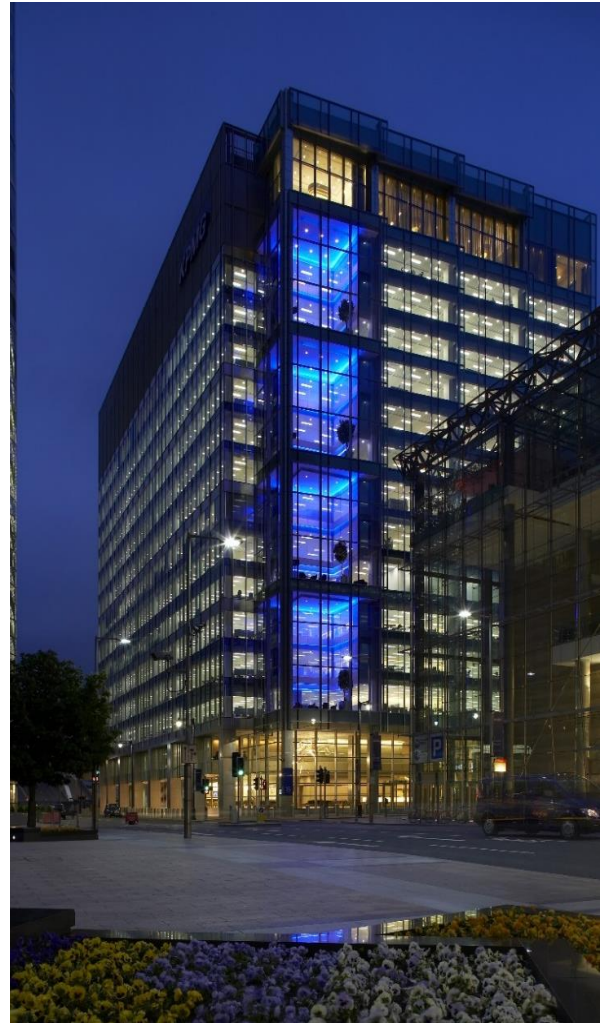
- The Tribunal after analysing several other judgements and CBEC's Education Guide, held that the services of the Assessee cannot be categorised as intermediary services. Merely because the remuneration for this service was computed on the FOB value of goods exported would not make the Assessee an intermediary. Further, the impugned activity will be an export of service since all the conditions prescribed in rule 6A of the Service Tax Rules, 1994 relating to the export of services are fulfilled.

### **Supreme Court's decision**

- The Supreme Court of India dismissed the appeal of the Revenue. It held that Assessee would not fall within the scope and ambit of the definition of 'intermediary'.

### **Our comments**

This judgment is delivered in the context of the erstwhile service tax era. However, the principle laid down in this judgement can be applied to the transaction in the GST regime. It would be important to analyse the facts of each case in comparison with the facts of this case which finally held that the services offered by the Assessee were a bouquet of services and not just services of an agent/broker.



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