CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70147 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-800-20-21, dated - 16/10/2020 passed by Commissioner (Appeals) Central Goods & Service Tax, Noida)

Commissioner, Central Tax, Noida .....Appellant
(C-56/42, Sector-62, Noida (U.P)

VERSUS

M/s U.V. Graphics Technologies Pvt. Ltd. ....Respondent
(Plot No.15, Sector-140A, Noida)

<u>APPEARANCE:</u>
Shri Manish Raj, Authorized Representative for the Appellant
Ms. Rupali Singh, Advocate for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO<u>.-70036/2025</u>

DATE OF HEARING : 17.01.2025
DATE OF DECISION : 17.01.2025

<u>SANJIV SRIVASTAVA:</u>

This appeal has been filed by Revenue and is directed against Order-in-Appeal No.NOI-EXCUS-001-APP-800-20-21, dated-16/10/2020 passed by Commissioner (Appeals) Central Goods & Service Tax, Noida. By the impugned order Commissioner (Appeals) has upheld the order of the Original Authority dropping the demand raised against the Respondents treating the services provided by the Respondents to their overseas clients as export of services.

2.1 Respondents have entered into an agreement with their overseas client for the purpose of identification of prospective customers for sale of their goods. After identification and introduction, all other dealings in relation to the supply of goods i.e. agreement of sale, supply and remuneration for the same is between the overseas supplier and Indian buyers. Respondent claimed that they have no role to play.

2.2 On the basis of the audit objection raised Show Cause Notice was issued to the Respondent by treating the Respondents as intermediary and by application of Rule 9 of Place of Provision of Service Rules, 2012 there service were said to be supplied in India hence benefit of export of service was sought to be denied.

2.3 The present proceedings are in respect of the statement of demand issued as a consequence of Show Cause Notice issued previous for the period 2013-14 to 2014-15.

2.4 Original Authority dropped the demand. Revenue filed the appeal before the First Appellate Authority who upheld the order of the Original Authority. Accordingly, Revenue has filed this Appeal.

3.1 We have heard Shri Manish Raj, learned Authorized Representative for the Revenue and Ms. Rupali Singh learned Advocate for the Respondent.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 The entire details of the transactions have been noted by the Commissioner (Appeals) in Para 4.2 of his Order and the same is reproduced below for ready reference:-

> *"4.2 The respondent vide their defense reply cited the agreement dated 27.09.2012 between them and SRAG, and submitted that their job was merely to identify a potential buyer for SRAG and if SRAG was able to sale the goods to the potential buyer they could earn some amount. The potential buyer dealt with the SRAG directly and it was SRAG who sold the goods and received the payment directly from the buyer. The role of the appellant was quite limited ie, identification of the buyer only. They were providing services on their own account. Further, they were engaged in the promotion and marketing of the products manufactured by the SRAG and helping to SRAG to develop its brand in the Indian market and also doing various activities like solicit orders and promotion of the distribution of the product of the SRAG within the Indian territory and developing market for the SRAG in India. They were supposed to investigate about the solvency of the customers who intend to purchase the product of the SRAG. They were not supposed to enter*

into any commitment with the buyers on the behalf of the SRAG without mutual agreement in this regard. The title of the goods remained with the SRAG till it was delivered to the buyer. The price of the goods was determined by the SRAG and respondent was not supposed to alter terms and condition fixed by SRAG. They were further not supposed to make formal quotes or issue proforma invoice to the buyer. The respondent was providing gamut of services to the SRAG including brand promotion marketing, checking solvency of the buyer etc. These services were being provided to the SRAG on principle to principle basis and as such in outside the definition of the intermediary as the main service has been provided by the respondent on their account. It was clear from the said agreement that the appellant was providing the services to the SRAG with the principle objective to advance the business to SRAG in India and also established its brand in the territory of India. The appellant was also augmenting business of India and was only promoting the product and as such they were providing support of business and do fall under the category of business support services."

4.3 The arrangement between the Respondent and their overseas clients and Indian buyers of the goods are not in dispute. All the facts as stated clearly points out that there is only a by-party agreement with regards to the identification and introduction of prospective buyers for their foreign clients. We do not find any tripartite agreement.

4.4 Explanation to the content of the definition of intermediary in the education guide issued it being clearly said that there should be a tripartite agreement between the supplier, receiver and the intermediary. The relevant para's of the said education guide is reproduced below:-

"5.9.6 What are "Intermediary Services"?
Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, 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.
For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition.

Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the rules as "the main service"), but provides the main service on his own account.

In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value: *An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal. Separation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".*

Identity and title: *The service provided by the intermediary on behalf of the principal is clearly identifiable. In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services':-*

(i) Travel Agent (any mode of travel)

(ii) Tour Operator

(iii) Commission agent for a service [an agent for buying or selling of goods is excluded]

(iv) Recovery Agent

Even in other cases, wherever a provider of any service acts as an intermediary for another person, as identified by the guiding principles outlined above, this rule will apply. Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the 'main service'."

4.5 Mumbai Bench has in case of IDEX India Pvt. Ltd [2023 (73) G.S.T.L. 82 (Tri. - Mumbai)] has held as follows:

"6. I have heard Learned Counsel for the appellants and Learned Authorised Representative for the Revenue and perused the case records including the written submission and the case laws placed on record by the respective sides. The term 'intermediary' has been defined under Rule 2(f) of Place of Provision of Services Rules, 2012 which is reproduced hereunder :

"'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."
A plain reading of the aforesaid provision makes it clear that to attract the said definition there should be two or more persons besides the service provider. In other words an "intermediary" is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus necessary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (main supply) and one arranging or facilitating the said main supply. Therefore, an activity between only two parties cannot be considered as an intermediary service. An intermediary essentially arranges or facilitates the main supply between two or more persons and does not provide the main supply himself. The intermediary does not include the person who supplies such goods or services or both on his own account. Therefore there is no doubt that in cases wherein the person supplies the main supply either fully or partly, on principal to principal basis, the said supply cannot come within the ambit of "intermediary". Sub-contracting for a service is also not an intermediary service. The supplier of main service may decide to outsource the supply of 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 not an intermediary. Who is an 'intermediary' and what is 'intermediary service' has been clarified by Central Board of Indirect Taxes and Customs (C.B.I. & C.) vide Guidance Note dated 20-6-2012 and under GST regime also a clarification has been issued

by C.B.I. & C. on 20-9-2021 both of which are in line with the discussions made hereinabove about 'intermediary'. In view of the facts involved herein the appellant cannot be termed as an 'intermediary.'"

4.6 In case of Cube Highways And Transportation Assets Advisor Pvt. Ltd. [2023 (77) G.S.T.L. 387 (Del.)], Hon'ble Delhi High Court observed as follows:

"42. *It is, thus implicit in the concept of an 'Intermediary' that there are three parties, namely, the supplier of principal service; the recipient of the principal service and an intermediary facilitating or arranging the said supply. Where a party renders advisory or consultancy services on its own account and does not merely arrange it from another supplier or facilitate such supply, there are only two entities, namely, service provider and the service recipient. In such a case, rendering of consultancy services cannot be considered as 'Intermediary Services' or services as an 'Intermediary'.*

4.7 In absence of any such tripartite agreement we do not find any merits in the appeal filed by the Revenue.

5.1 Appeal is dismissed.

(Dictated and pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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