CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH, COURT NO. 3

Service Tax Appeal No. 20607 of 2023

(Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-YCS-230-2022-23 dated 07.03.2023 passed by the Commissioner of Central Tax (Appeals), Mysore.)

Vcreate Logic Pvt. Ltd.,
No. 1139, Maruthi Complex, 3rd Floor,
3rd Stage, BEML Layout, Rajarajeswarinagar,
Halagevaderahally,
Bengaluru – 560 085. ....**Appellant(s)**

Versus

The Commissioner of Central Tax,
Bengaluru West Commissionerate,
BMTC Bus Stand Complex, First Floor
Banashankari,
Bengaluru. ....**Respondent(s)**

APPEARANCE:

Mr. Sughosh, Advocate for the Appellant.
Mr. Rajesh Shastry, Superintendent (AR) for the Respondent.

CORAM:

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20351 / 2025

DATE OF HEARING: 12.03.2025
DATE OF DECISION: 12.03.2025

Per : R. BHAGYA DEVI

Briefly the facts are that the appellant M/s. Vcreate Logic Pvt. Ltd. has filed this appeal against Order-in-Appeal No. MYS-EXCUS-000-APP-YCS-230-2022-23 dated 07.03.2023 passed by the Commissioner Central Tax, Central Excise and Service Tax

(Appeals), Mysuru. On verification of the income tax returns filed by the appellant, it was found that there was a difference in the gross value declared in the income tax return for the year 2014-15 as compared to the taxable value declared in the ST-3 returns. Accordingly, notice was issued to demand service tax of Rs.38,80,436/- on the differential value invoking extended period of limitation. This was contested by the appellant stating that the differential value was an account of sale of goods and export of services. However, the same was rejected by the original authority on the ground that the export services were, in fact, intermediary services and hence, service tax was liable to be paid. He also confirms service tax for the services rendered to Special Economic Zone (SEZ) unit for having failed to file documents/declarations claiming the exemption. On appeal, the Commissioner (Appeals) set aside the demand on the services rendered to SEZ unit but confirmed the demand on intermediary services only for the normal period on the ground that the appellant had accepted that they are providing the intermediary services.

2. The Learned Counsel for the appellant submitted that they had contested that the service was not an intermediary service on the ground that there was no agreement to consider the activity as intermediary services. It is also submitted that the commission was paid only for facilitating sale of goods between the foreign seller and Indian buyer. Further, it is contested that the appellant has only passed on the prospective customers information to its USA and Korean entities, based on which the products are sold to the customers in India for which the payments are done directly by the Indian customers. Based on successful sale of product, the appellant receives the commission and therefore, they cannot be considered as an intermediary service.

3. The Learned Authorized Representative (AR) reiterating the findings of the Commissioner (Appeals) stated that the demand is confirmed only from October 2014 onwards on the commission received by the appellant as an intermediary service, hence, the same needs to be sustained.

4. Heard both sides. The Commissioner (Appeals) in the impugned order at Para 5.1 observes that *"as there is no dispute with regard to nature of services and as the Appellant has accepted that they are providing the 'intermediary services', I do not dwell into the intricacies of the nature of service and the liability of service tax on the Appellant."* The Commissioner (Appeals) having observed that the appellant is only facilitating the sale of goods between foreign sellers and Indian buyers; and his services are in the nature of business facilitator cannot confirm the demand as an 'intermediary service' since there are large number of decisions wherein it has been held that the Scope of an "intermediary" is to mediate between two parties i.e. the principal service provider (the 3rd party) and the beneficiary (the agents principal) who receives the main service and expressly excludes any person who provides such main service on his own account. In the instance case, there is no dispute that the appellant had received the commission from the customer located outside India in convertible foreign exchange for facilitating sale of goods between foreign seller and any India buyer. Therefore, the services rendered by him is only export of service. This Tribunal in the case of **M/s. Textron India Private Limited vide Final Order No. 21642-21643 /2024 dated 18.12.2024** observed as follows:

> "8. We find that recently Board has issued a circular bearing No.159/15/2021-GST dated 20.09.2021 clarifying who should be considered as an 'intermediary' in the context of GST, which is borrowed from the definition of Rule 2(f) of the POPS Rules, 2012.

The said circular has been noted in various judgments of this Tribunal and which are referred in the case of Commissioner of CG&ST &CE, Delhi South Vs. Grant Thornton Advisory Pvt. Ltd. [2024(10) TMI 147 – CESTAT NEW DELHI]. The relevant portion of the order reads as follows: -

> "15. The relevant clauses of the Cost Reimbursement Agreement do not indicate that Grant Thornton, India was to act as an 'intermediary'. The activities undertaken by Grant Thornton, India are for promoting the brand name of Grant Thornton in India. Grant Thornton in India had to provides services on its own account and merely because Grant Thornton, India outsourced certain services would not mean that it became an 'intermediary'.
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> 16. The transaction would, therefore, not be covered by rule 9 of the 2012 Rules. Under rule 3 of the 2012 Rules, which would be applicable in the present case, the place of provision of service shall be the location of the recipient of service. The recipient of service is Grant Thornton, London, which is outside India. There is no dispute that the payment for the services had been received by Grant Thornton, India in convertible foreign currency. Thus, the conditions set out in rule 6A of the Service Tax Rules 1994 stand satisfied. Thus, there can be no manner of doubt that the services provided by Grant Thornton, India to Grant Thornton, London would be 'export of services'.
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> 17. This issue was examined by the Tribunal in Sunrise Immigration Consultants Private Limited vs. Commissioner of Central Excise and Service Tax, Chandigarh [2018-TIOL1849-CESTAT-CHD]. The Tribunal considered whether the assessee would be an 'intermediary' with reference to the services provided to universities, colleges and banks and whether any service tax could be levied. The observations of the Tribunal are as follows:
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> > *"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. In that circumstances, the appellant cannot be called as intermediary."

(emphasis supplied)

18. The definition of 'intermediary services' in section 2(13) of the Integrated Goods and Service Tax Act, 2017 is pari-materia with the definition of 'intermediary services' in rule 2 (f) of the 2012 Rules. The meaning of 'intermediary services' has been considered by the Punjab and Haryana High Court in Genpact India Pvt. Ltd. vs. Union of India [2023 (68) GSTL 3 (P&H)]. The issue that arose for consideration before the High Court was whether the services rendered by the petitioner under the agreement could be treated as 'intermediary services' under the provisions of the IGST Act. The observations of the High Court are as follows:

"28. As per definition of "intermediary" under Section 2(13) of the IGST Act the following three conditions must be satisfied for a person to qualify as an "intermediary"; -

29. First, the relationship between the parties must be that of a principal-agency relationship. Second, the person must be involved in arrangement or facilitation of provisions of the service provided to the principal by a 3rd party. Third, 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 (the agents principal) who receives the main service and expressly excludes any person who provides such main service "on his own account".*

30. A bare perusal of the recitals and relevant clauses of the MSA reproduced hereinabove do not in any manner indicate that petitioner is acting as an "intermediary" so as to fall within the scope and ambit of the definition of "intermediary" under Section 2(13) of the IGST Act. Such clauses cannot also be interpreted to conclude that the petitioner has facilitated the services. The said clauses are in relation to the modalities of how the actual work would be carried out and do not in any manner establish that the petitioner was required to arrange/facilitate a 3rd party to render the main service which has actually been rendered by the petitioner.

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36. In the pre-GST regime the term "intermediary services" was defined under Rule 2(f) of the Place of Provision of Service Rules, 2012. Under the 2012 Rules "intermediary services" were defined to mean 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 on his account.

37. A perusal of the definition of "intermediary" under the service tax regime vis-a-vis the GST regime would show that the definition has remained similar. Even as per circular dated 20-9-2021 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (GST Policy Wing), the scope of "intermediary" services has been dealt in Para 2 thereof. In

> *Para 2.2 it stands clarified that the concept of "intermediary" was borrowed in GST from the Service Tax Regime. The circular after making a reference to the definition of "intermediary" both under Rule 2(f) of the Place of Provision of Service Rules, 2012 and under Section 2(13) of the IGST Act clearly states 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." (emphasis supplied)*

19. The Delhi High Court in Ernst and Young vs. Additional Commissioner, CGST, Delhi [2023 (73) GSTL 161] also considered whether the services claimed were actually exported and convertible foreign exchange was received by the party in lieu of the said export of services. The observations of the High Court are as follows:

> *"33. In terms of sub-section (8) of Section 13 of the IGST Act, the place of supply of certain services would be the location of the supplier of the services. In terms of clause (b) of sub-section (8) of Section 13 of the IGST Act, the place of supply of intermediary services is the location of the supplier of services. In the present case, the place of supply of services has been held to be in India on the basis that the petitioner is providing intermediary services. As discussed above, the Services rendered by the petitioner are not as an intermediary and therefore, the place of supply of the Services rendered by the petitioner to overseas entities is required to be determined on basis of the location of the recipient of the Services. Since the recipient of the Services is outside India, the professional services rendered by the petitioner would fall within the scope of definition of 'export of services' as defined under Section 2(6) of the IGST Act.*
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> *34. There is no dispute that the recipient of Services- that is EY Entities - are located outside India. Thus, indisputably, the Services provided by the petitioner would fall within the scope*

of the definition of the term 'export of service' under Section 2(6) of the IGST Act."

20. This issue was also examined by the Tribunal in M/s Medway Educational Consultant P. Ltd. vs. Commissioner, CGST Commissionerate, Delhi-West [2024 (3) TMI 1178 – CESTAT New Delhi] and it was observed:

"13. Coming to "export of service" post 1st July, 2012, the basic principle to be seen is who is the recipient of the service, whether the place of provision of service is outside India and the party abroad is deriving benefit from the service in India. The High Court of Delhi in Verizon Communication India Private Limited vs. Assistant Commissioner, ST, Delhi [2018 (8) GSTL 32 (Del.)] observed that the recipient of the service is determined by the contract between the parties and who has the contractual right to receive the service and who is responsible for the payment for the service and the department has lost sight of this essential difference. The High Court of Delhi then considered the decision of the Larger Bench of the Tribunal in Paul Merchants Ltd. vs. CCE, Chandigarh [2012 (12) TMI 424-CESTAT-DEL.-LB], which was rendered with reference to ESR, 2005 where the assessees were intermediary agents, providing money transfer services to foreign travellers, who were the end user on behalf of their principals and the contention of the department that this did not qualify as export of service was rejected referring to the CBEC clarification letter no. 334/1/2019- TRU dated 26.02.2010 that as long as the party abroad is deriving benefit from service in India, it is an export of service."

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16. Needless to mention, as per the agreement between the appellant and the foreign university the services were delivered outside India as the recipient of service is the foreign universities who are located outside India and the benefit of service rendered by the appellant also accrued outside India, *coupled with the fact that the appellant received the payment against establishment of distinct person. It is thus evident that the appellant met the criteria under Rule 6A(1) of the ST Rules and therefore being "export of service" was not amenable to service tax.*

17. We may now consider the stand of the department that the services rendered by the appellant has to be treated as "intermediary services" defined under Rule 2(f) of the Rules, 2012. From the definition of "intermediary services", we find that activity between two parties cannot be considered as an intermediate service as intermediary essentially arranges or facilitates the main supply between two or more persons, which is not the case here. Further, the definition of intermediary service excludes any person who has provided the service on their own account. Here from the facts, it is evident that the appellant has provided the service on his own account to the recipient of service, i.e. the foreign university placed beyond the taxable territory of India. Referring to Rule 6 of Rules, 2012, the learned Counsel submitted that they were providing services relating to specific event, i.e. recruitment of students for admission in educational institution/universities, i.e. recipients located outside India and therefore the place of provision of service shall be the place where the event is actually held. On the other hand, "intermediary services" are broader category and is not applicable to specific category. We find force in the submission of the learned counsel."

21. In Verizon Communication India Private Limited the Delhi High Court had observed:-the services in convertible foreign exchange and the appellant and the recipient of service are independent legal identities and are not merely

"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."

22. In Vodafone Essar Cellular Ltd. vs. CCE, Pune-III [2013 (7) TMI 178 – CESTAT- MUMBAI] the Tribunal explained the arrangement 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."

23. The aforesaid discussion leads to the inevitable conclusion that Grant Thornton, India is not an 'intermediary' and that the services provided by it to Grant Thornton, London are 'export of services'.

9. The basic requirement to be an intermediary is that there should be at least three parties; an intermediary is someone who arranges or facilitates the supply of goods or services or securities between two

or more persons. In other words, there is main supply and the role of the intermediary is to arrange or facilitate another supply between two or more other persons and, does not himself provide the main supply.

5. In view of the above, services rendered by the appellants are not intermediary services but only export of service; the demand is set aside. Consequently, the impugned order is set aside and the appeal is allowed.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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