CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60243 of 2023

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-LDH-APP-08-2022-23 dated 10.02.2023 passed by the Commissioner (Appeals), CGST, Chandigarh]

M/s Pyramid E Services Pvt Ltd **......Appellant**
Near Old Agriculture Office, Bus Stand Road,
Jalandhar, Punjab 144001

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Chandigarh **......Respondent**
Plot No. 19, Central Revenue Building,
Sector 17-C, Chandigarh 160017

<u>APPEARANCE:</u>

Ms Aakriti, Advocate for the Appellant

Shri Narinder Singh, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60395/2025

DATE OF HEARING: 07.03.2025
DATE OF DECISION: 07.03.2025

<u>S. S. GARG</u> :

The present appeal is directed against impugned order dated 10.02.2023 passed by the Commissioner (Appeals), CGST, Chandigarh, whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly stated facts of the present case are that the appellant is engaged in rendering services to overseas educational universities/colleges for admission of prospective students; and is engaged in export of service to overseas educational universities/colleges. The Revenue entertained a view that the appellant is rending intermediary services to the foreign universities/colleges, accordingly, a show cause notice dated 05.12.2017 was issued to the appellant. After following the due process, the Original Authority confirmed the demand of service tax alongwith interest and penalty. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) who has rejected the same; hence the present appeal.

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

4.1 The learned Counsel 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 without properly appreciating the facts and the law; and binding judicial precedents.

4.2 She further submits that the appellant is en exporter of services and is not liable for the payment of service tax under the Act and Rules made thereunder because the appellant is rendering services to overseas educational universities/colleges for admission to prospective students and the consideration against the said services is received from such universities/colleges only and no payment in any manner is received from the students in India.

4.3 She further submits that the consideration with regard to educational services is directly credited into the account of the overseas universities/colleges which shows that the recipient of services of the appellant is located outside India and the benefit of such services also accrues outside India.

4.4 She also refers to Rule 6A of Service Tax Rules, 1994 and submits that all the conditions prescribed in Rule 6A are complied with in the present case.

4.5 She also submits that place of origin and termination of service is decisive factor to determine whether the nature of service is export or not. The service tax being a destination-based tax, is leviable only on service providers within the country.

4.6 She further submits that the issue involved in this case is no more *res integra* and has been settled by this Tribunal in favour of the assessee in the case of ***M/s Sunrise Immigration Consultants Private Limited vs. CCE & ST, Chandigarh*** vide its ***Final Order No. 62221/2018 dated 16.03.2018*** as reported in ***2018 (5) TMI 1417 CESTAT Chandigarh*** wherein it was held that the assessee who was providing services of referral for foreign universities is an 'export of service' and not an 'intermediary service'.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that the appellant is rendering services to foreign universities/colleges and is getting commission when the students get admission. Further, we find that the services rendered by the appellant comply with the conditions prescribed under Rule 6A ibid which lays down the criteria for determining whether a service is an 'export of service' or not. We find that conditions laid down under Rule 6A ibid are fulfilled in the present case because –

a) The appellant (service provider) is located in the taxable territory, Jalandhar, Punjab, India.

b) The foreign universities/colleges (service recipient) are located outside India

c) The service provided i.e. a marketing is not a service specify in Section 66D of the Act.

d) The place of provisions of service is outside India i.e. the location of the foreign universities/colleges.

e) The payment of the service has been received by the appellant in foreign exchange.

f) The appellant (service provider) and the service recipient (foreign universities/colleges) are not establishment of a distinct person under item (b) of explanation 2 of clause (14) of Section 65B of the Act.

7. Further, we find that identical issue has been considered by the Chandigarh Bench of the Tribunal in the case of ***M/s Sunrise Immigration Consultants Private Limited*** (supra) wherein the Tribunal has held that the service provided by the appellant who is providing services of referral for foreign universities is an 'export of service' not an 'intermediary service'. 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. The relevant extract of the said decision of the Tribunal in the case of ***M/s Sunrise Immigration Consultants Private Limited*** (supra) is reproduced herein below:

> ***"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.*
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> ***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 service*

> *tax for referral service, therefore, the issue is answered in favour of the appellant."*

8. We find that the ratio of the decision of the Tribunal in the case of ***M/s Sunrise Immigration Consultants Private Limited*** (supra) is squarely applicable in the present case, accordingly, by following same, we are of the considered opinion that the impugned order is not sustainable in law, therefore, we set aside the same and allow the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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