

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

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 88238 OF 2019

[Arising out of Order-in-Appeal No: NA/CGST/A-1/MUM/91/19-20 dated 30th July 2019 passed by the Commissioner of CGST & Central Excise (Appeals-I), Mumbai.]

Eisner Amper (India) Consultants Pvt Ltd

A 1101/1102, Lotus Corporate Park
Off: Western Express Highway, Goregaon (East)
Mumbai – 400 063

... Appellant

versus

Commissioner of CGST & Central Excise

Mumbai East

9th Floor, Lotus, Parel, Lotus Infocentre
Parel East, Mumbai – 400 012

...Respondent

APPEARANCE:

Shri Pankaj Jain, Consultant for the appellant

Shri SBP Sinha, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 86988/2025

DATE OF HEARING: 22/12/2025
DATE OF DECISION: 22/12/2025

This appeal challenges the order¹ of Commissioner of CGST &

¹ [order-in-appeal no NA/CGST/A-1/MUM/91/19-20 dated 30th July 2019]

Central Excise (Appeals-I), Mumbai affirming the order rejecting the claim of M/s Eisner Amper (India) Consultants Pvt Ltd for refund of accumulated credit for the period from July 2016 to June 2017 preferred under rule 5 of CENVAT Credit Rules, 2004.

2. Learned Consultant appearing for the appellant submitted that the claim for four quarters, amounting to ₹ 40,60,332, had been denied on the ground that, owing to non-conformity with 'export' as set out in rule 6A of Service Tax Rules, 1994, the appellant herein was not entitled to the said refund and despite not initiating any proceedings for recovery of tax as services of 'intermediaries' are deemed to be rendered in India in terms of rule 9 of Place of Provision of Service Rules, 2012. He further submitted that the activity of the appellant did not fit within the scope of 'intermediary', as set out in rule 2 of Place of Provision of Service Rules, 2012, and the decision of the Tribunal in *Evalueserve.com Pvt Ltd v. Commissioner of Service Tax, Gurgaon* [2019 (365) ELT 546 (Tr. Chan)], on near identical facts, had held that

'11. On going through the agreement placed before us, the appellants are themselves engaged in providing of services to their client and the facilitating their clients for providing those services by third party. In that circumstance, it is to be seen whether the provider of services is covered as intermediary or not. We have gone through the impugned order also. In the impugned order, the Commissioner (Appeals) has fell in error holding that the appellant provided services on behalf of Evalueserve Ltd., Bermuda. In fact, the appellant has provided

the services to customers of their client and having no direct nexus with the customers of their client has been provided by the appellant to their client and nowhere has facilitated or arranged for the services provided to their client by third party. Furthermore, the appellant has themselves provided the services to their client as the main service provider principal to principal basis, therefore, the activity undertaken by the appellant does not qualify intermediary as defined in Rule 2(f) of Place of Provision of Services Rules, 2012. Similar view was taken by the Advance Rulings Authority of India in the cases of Universal Services India Pvt. Ltd. (supra) and GoDaddy India Web Services Pvt. Ltd. (supra), wherein the Advance Rulings Authority of India has observed as under :

10. The definition of “intermediary” as envisaged under Rule 2(f) of POPS [Rules] 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 services” to WWD US and on his own 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 portion is extracted as under;

Similarly, persons such as call centers, 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 centers, 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.

11. Applicant proposes to provide support services in relation to marketing, branding, offline marketing, oversight of quality of third party customer care centre and payment processing, on principal to principal basis. These services are proposed to be provided with the sole intention of promoting

the brand GoDaddy US in India and thus augmenting its business in India. Therefore, these services proposed to be provided by the applicant, would support the business interests of GoDaddy US in India.

12. It has been submitted by the applicant that services to be provided by the applicant are not peculiar only in applicant's case but are provided by various Indian entities to their overseas customers in India as a single package. Further, supporting the business of GoDaddy US in India is the main service and processing payments and oversight of services of third party Call Centers are ancillary and incidental to the provision of main service, i.e., business support service. Further, applicant would provide said services as a package and the payment for the entire package would be a consolidated lump sum payment. Applicant submits that in view of all these indicators, service provided by them to GoDaddy US is a bundle of services, which is bundled in normal course of business. This point has not been controverted by the Revenue. We agree with the submissions of the applicant that proposed services are a bundle of services, bundled in normal course of business and not intermediary service.

13. In view of above, we rule as under;

In the facts and circumstances, the various support services proposed to be provided by the applicant to GoDaddy US are a "bundle of Services" being naturally bundled in the ordinary course of business and accordingly is a single service, being business support service, in terms of Section 66F of the Finance Act?

Question 2 : If the answer to Question 1 is positive, whether, in the facts and circumstances of the case, the place of provision of business support service by the applicant, is outside India in terms of Rule 3 of the Place of Provision of Services Rules, 2012 (hereinafter referred to as "POPS"). If the services provided by the applicant are not considered as naturally bundled then in the facts and circumstances enumerated in Annexure I, which of the individual service shall qualify for classification under Rule 3 of the POPS as service provided by a service provider located in India to a service recipient located outside India?

3. Learned Authorized Representative submitted that first appellate authority had rendered clear finding after examination of the service agreement and the activity is squarely that of 'intermediary' in Place of Provision of Service Rules, 2012.

4. Under the empowerment in Finance Act, 1994, any 'service' which is not an export would, owing to operation of section 66B of Finance Act, 1994, be taxable in India. It would appear that, in determining the outcome of a refund application referred to in rule 5 of CENVAT Credit Rules, 2004, the lower authorities have also determined taxability even though no recovery was ordered. Such is not within the scope of empowerment conferred on service tax authority in procedure for grant of refund of accumulated credit. There is no evidence that, simultaneously, tax liability has been fastened on the appellant herein in separate proceedings.

5. It is also seen that

'8.5 assistance with Consulting engagements for HLW's clients'

is, admittedly, only one among the contracted activities and the lower authorities have not identified the consideration attributable to performance of the particular part of the contract and, while admitting the existence of other aspects, appear to have treated the consideration in entirety from the particular client as limited to such. In the absence of disaggregation of the receipts from abroad as those of 'intermediary' service, such as it is, the rejection of claim, solely on ground of non-compliance under rule 6A of Service Tax Rules, 1994, is inappropriate.

6. The appellant herein has also not demonstrated that their activity

is not 'intermediary' service and nor cited any decision other than that in *re Evalueserve.com Pvt Ltd* which was not before the lower authorities. It would, therefore, be appropriate for a fresh evaluation of the refund claim in the light of the above decision and any other subsequent decisions on the nature and scope of 'intermediary' service to be undertaken

7. To enable, that the impugned order is set aside and the application is restored before the original authority for a fresh decision in accordance with law as enacted and as settled by judicial decisions.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)