CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

Service Tax Appeal No.50666 of 2024

[Arising out of Order-in-Original No.28/Commr./Delhi-East/PK/2023-24 dated 20.02.2024 passed by the Commissioner (Adjudication), Central Tax, GST, Delhi East]

M/S.Sannam S-4 Management Services India Pvt. Ltd., APPELLANT
3rd Floor, Unit No.301 & 302,
EROS Corporate Tower, Nehru Place,
New Delhi-110 019.

Versus

The Commissioner of CGST, RESPONDENT
Delhi East Commissionerate,
1st Floor, CR Building, I.P. Estate,
New Delhi-110 109.

Appearance:
Present for the Appellant : Shri B.L. Narsimhan, Ms. Shagun Arora and Shri Kunal Agarwal, Advocates
Present for the Respondent: Shri Aejaz Ahmad, Authorised Representative

With

ST/50667/2024, ST/50668/2024

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Final Order Nos.50537-50539/2025

Date of Hearing : 04.03.2025
Date of Decision: 29.04.2025

BINU TAMTA:

1. Challenge in these three appeals is to the Order-in-Original dated 20.02.2024, confirming the demand of service tax, including interest and penalty under the provisions of the Finance Act, 1994[1], treating the services

[1] Act, 1994

rendered by the appellant under the definition of 'intermediary' as defined under Rule 2(f)of the Place of Provision of Service Rules, 2012[2].

2. The appellant is engaged in providing range of consultancy services including exploring development opportunities in Indian market to international educational organizations. For carrying out this activity, the appellant has entered into an agreement with various universities all over the world, whereby the appellant agrees to enlighten the prospective students in India with the opportunities abroad. In some cases, the appellant enters into agreement with its own group entities located outside India, who have existing arrangement or agreements with foreign universities and these foreign group entities have subcontracted its entire exercise to the appellant. In both the cases, the appellant is paid consultation fees in convertible foreign exchange either by the foreign universities or by the group entities on the basis of the cost incurred by the appellant. The appellant was classifying its activities as export of services in its ST-3 Returns and was, therefore, not paying any service tax.

3. Pursuant to an investigation, show cause notice dated 19.07.2022 was issued for the period October 2016 – June 2017, on the allegation that appellant is acting in representative capacity for its customers, i.e., the foreign universities, while dealing with the students and was, therefore acting as an agent or broker. According to the Department, the appellant has been carrying out the activity of arranging /facilitating of enrolment of students in foreign universities and was actually operating as an 'intermediary' within the definition of 2(f)of POPS Rules. Consequently, in terms of Rule 9(c) of the POPS Rules, the place of provision of service is in India and hence the amount

[2] POPS Rules

received in lieu of the services of arranging/facilitation was chargeable to service tax under the Act. It was also alleged that the agreement between the appellant and the group entities involved more than two parties as designated advisers have been appointed by the appellant in India who were representing and reporting to the universities abroad. Thus, under the agreement, appellant is providing services relating to facilitating the educational services between the foreign universities and the Indian students. On adjudication, the demand was confirmed, holding that the appellant is operating as an 'intermediary' in terms of Rule 2(f) of POPS Rules and since the location of the appellant is in India, the provision of service is in the taxable territory, which will be taxable in the hands of the appellant. Being aggrieved, the appellant has preferred the present appeals before this Tribunal.

4. Heard Shri B.L. Narasimhan along with Ms. Shagun Arora and Shri Kunal Agarwal Advocates and Shri Aejaz Ahmad, the Authorised Representative for the Department.

5. Having perused the records of the case, we find that the issue involved for our consideration is whether the service rendered by the appellant to the foreign universities amounts to "export of service" as claimed by the appellant or "intermediary service" as alleged by the Revenue. At the outset, the learned Counsel for the appellant has submitted that the issue is no longer *res integra* and has been decided in several decisions of this Tribunal. Before considering the decisions cited, we need to consider the provisions of law as are relevant to the present controversy. Section 66B of the Act provides for charging of service tax on the services which are provided in the taxable territory.

In exercise of the powers under Section 66C, the Central Government framed the Place of Provisions Service Rules, 2012 (POPS Rules), which provided for the place of provision of services. The general rule for determining the place of provision of service is provided under Rule 3. Rule 4 to 12 provides the place of provision of specified services. Rule 14 provides for order of application of rules and therefore, Rules 4 to 12 were to apply first to ascertain whether a service would fall under either of these specific rules or else the general rule 3 would be applicable. In the present case, as per the appellant, it is rule 3 which is applicable which in general terms provides that the place of provision of service is the location of the service recipient, whereas according to the revenue it is Rule 9(c) of the Rules which provides that the place of provision of the intermediate services shall be the location of the service provider, is applicable. The provision for export of service has been separately provided under Rule 6A which has been introduced by the Service Tax (Second Amendment) Rules 2012 by replacing Export Service Rules, 2005. In terms thereof, the basic facts to be ascertained is that the service recipients are foreign entities and they are located outside India and payment for such services has been received in foreign currency.

6. The CESTAT, Chandigarh in **Sunrise Immigration Consultants P. Ltd. versus CCE & ST** [3] has held that the appellant is not an intermediary and is providing Business Auxiliary Service to their clients, who are located outside India, therefore, the services rendered by the appellant qualified as export of service in terms of Rule 3 of POPS Rules, 2012. Thereafter, series of decisions have been passed by various Benches of the Tribunal.

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[3] 2018 (5) TMI 1417

7. The issue has also been examined by this Bench on the earlier occasion in the case of **Medway Educational Consultants (P) Ltd versus Commissioner, CGST Commissionerate, CGST Delhi** [4] , where after considering the relevant provisions and the case law on the subject, it was concluded:-

> "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 the services in convertible foreign exchange and the appellant and the recipient of service are independent legal identities and are not merely 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."

8. The appellant has entered into an agreement with the foreign universities/foreign group entities, whereby it is evident that the services rendered by the appellant is for promotion and marketing of foreign universities among the Indian students. Therefore, the foreign universities or group entities are service recipients which are located outside India. The consideration is received by the appellant from the foreign universities or group entities in convertible foreign exchange. In so far as the Indian students are concerned, the appellant has no agreement with them and no consideration is received from the Indian students and there cannot be any taxable service without any consideration. Thus, the Indian students cannot be termed as service recipients of the services provided by the appellant. Applying Rule 3 of POPS Rules, the foreign universities, being the service recipient located

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[4] 2024 (3)TMI 1178

outside the taxable territory cannot be subjected to service tax on the simple principle as provided in section 66B of the Act that for service tax to be levied in terms of Chapter V of the Act, the service has to be provided within the taxable territory. Coming to the next aspect of the services being provided outside the taxable territory, where the service provider is in India and the recipient of service is located outside India, the Apex Court in **All India Federation of Tax Practitioners versus Union of India**[5] observed that in normal parlance, it would be 'export of service'. Further, it has been settled that the destination has to be decided on the basis of place of consumption and not the place of performance of service as laid down by the Larger Bench in **Paul Merchants Ltd versus CCE, Chandigarh** [6] and affirmed by the High Court of Delhi in **Verizon Communication, India Pvt Ltd versus Assistant Commissioner, ST, Delhi** [7] . Hence we reiterate the conclusion that the appellant satisfies the criteria as per Rule 6A of the Service Tax Rules, 1994 and cannot be imposed service tax on the services provided.

9. Coming to the second issue, whether the appellant can be treated as an 'intermediary', we may refer to its definition under Rule 2(f) of the POPS Rules which provides that a person being a broker or agent, must arrange or facilitate the provision of a service or supply of goods in order to qualify as an 'intermediary' under the Rules. One of the conditions is that the provision of such service shall not be made by that person himself, on his account. In other words, an intermediary is a person who while dealing with a third-party, acts for another person.

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[5] 2007 (7) STR 625 (SC)
[6] 2012(12) TMI 424 –CESTAT-DEL-LB
[7] 2018 (8) GSTL 32 (Del.)

The learned Counsel on the scope of 'intermediary services' has relied on the decisions of the Punjab and Haryana High Court in **Genpact India Pvt. Ltd. Vs. Union of India**[8] and the Delhi High Court decision in the case of **Ernest and Young Ltd. Vs. Addl. Commissioner, CGST** [9] with reference to the definition of 'intermediary services' under section 2(13) of the IGST Act which is *pari materia* with the definition of 'intermediary services' in Rule 2(f)of the POPS Rules. The principle enunciated was that 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 is required to be determined on basis of the location of the recipient of the services and 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. Further, reliance has been placed on the decision of the Mumbai Bench of the Tribunal in **Chevron Phillips Chemicals India P. Ltd** [10]**,** which has been affirmed by the Apex Court rejecting the appeal filed by the Commissioner of Central Tax & Central Excise, Navi Mumbai.

10. Following the principles of law settled on the issue, we may now examine whether the appellant is amenable to service tax as an 'intermediary'. The undisputed fact is that the appellant has entered into agreements with the foreign universities/foreign group entities for promotion and marketing services to them on principal to principal basis. The role played by the appellant is in the nature of promotional

[8] 2022 (11) TMI 743 – P & H High Court
[9] 2023 (3) TMI 1117 –Delhi High Court
[10] 2022 (12) TMI 1489 –CESTAT Mumbai

and marketing services, which is altogether an independent activity from providing education and admitting students for pursuing the courses. Under the agreement, the appellant was required to provide services to the universities, which implies that the service provider is located in India and the recipient of services were located outside India. Referring to the agreement between Sannam S4 Management Services India Pvt Ltd. and Victoria University, Australia dated May 5, 2016, we find that the title of the agreement is "Consultancy Services Agreement" and Clause 6.2 refers to the nature of relationship, which is quoted below:-

> **"6.2** Form of Relationship, Description of Services and Business Cards.
> **6.2.1.**The legal relationship between the Client and Sannam S4 arising pursuant to this Agreement shall be that of an independent contractor. Nothing in this Agreement shall be construed as to render the relationship between the Client and Sannam S4 to be that of an employer/employee, principal/agent, partnership or joint venture. Unless authorized in writing by the client, Sannam S4 shall not have the right or authority to assume or create any obligation or responsibility, express or implied on behalf of or in the name of the Client, or to bind the client in any manner whatsoever except as may be specifically approved by the Client."

11. Further, Schedule-D provides the nature of services as under:-

> "**Consulting Services:**
> The Consulting services will have a particular focus on recruiting high quality, genuine students from the Indian sub-continent; identifying and developing parthways with Indian tertiary institutions, providing market intelligence, including but not exclusive to that relating to competitor activities, market opportunities and possible risk; providing expert advice and support to increase the University's efforts to increase its reputation and brand recognition in the Indian subcontinent; and as requested supporting any transnational education or student mobility activities in market."

Similarly, the overall purpose of the Recruitment Advisor, South Asia and the major duties basically specifies the activities ensuring the recruitment of students consistent with the Universities international strategy. For example, in clause 3 it is provided "attend and coordinate student recruitment activities throughout South Asia, primarily India, including interview programs and education fairs, providing prospective students and other stakeholders with relevant and accurate advice regarding Victoria Universities offer.

12. We find that almost identical agreements are executed with the University of British Columbia, Canada and further with Sannam S4, UK, the foreign entity. These agreements are broadly similar in material aspects for providing service of recruitment of prospective students interested in enrolling in various programmes/courses conducted by the foreign universities. In furtherance of providing the services as enumerated above, the appellant makes the prospective students aware about the course fee and other associated cost and ensures payment of the requisite fees to the universities. If the prospective students decide upon taking admission to any course, the appellant provides all necessary information and assistance in completing the forms and submitting them to the respective universities. It is an undisputed fact that the main activity of providing education is undertaken by the universities, for which the universities process applications and extends admission to students whereas the appellant neither provides education nor extends admission to the students. The appellant is only required to undertake the promotional activities of foreign universities in India. All the activities performed by the

appellant are part of the contract with the foreign universities located outside India. As noted above, the various clauses of the agreement clearly points out that the service provider, the appellant and the recipient of service, the foreign university were working on principal to principal basis and therefore, the appellant is not 'facilitating' any service of the university to the students so as to fall within the definition of 'intermediary services'. In this regard, it may also be appreciated that the final decision of admitting a student is that of the foreign university. The appellant on the other hand is acting in its independent capacity as a business promoter and does not act as an agent of the university. The fact that the appellant is rendering services on its own account, it cannot be treated as an 'intermediary'. On the conclusion that appellant is not an 'intermediary' , Rule 9 of POPS Rules will not be applicable and consequently Rule 3 would apply.

13. The present appeal also relates to the agreements between the appellant and the foreign group entities which, according to the Revenue is the main service provider and the appellant is only facilitating the provision of services by foreign group entities to its clients, i.e., foreign universities. The learned Counsel for the appellant has explained the arrangement of foreign group entity and the appellant under the agreement between them, whereby the foreign group entity has subcontracted the entire exercise to the appellant. It has been further explained that foreign group entity has entered into agreements with various foreign universities across the world and when these foreign universities approach foreign group entity for the purpose of support services, foreign group entity, subcontracts the entire activity to local offices, situated in different countries from where the support

services are provided. Appellant is one such local office situated in India. In other words, it is submitted that the appellant is not facilitating the provision of service of foreign group entity but has undertaken the entire service which was otherwise to be performed by the foreign group entities for the foreign universities. The agreement between Sannam S-4 India (Contractor) and Sannam S-4, U.K. (Client) clarifies the relationship of the two, which is set-out below:-

> "**B. WHEREAS** client is a United Kingdom based provider of similar services as that of Contractor, i.e. advisory services pertaining to doing business, assistance in identification of target jurisdiction, assistance in setting up the business, etc."

Further Clause 8.1 shows that the relationship is on principal to principal basis between the appellant and the foreign group entity, which is quoted hereunder:-

> "**8.1** It is hereby expressly provided that by virtue of this Agreement, Contractor and the Client have agreed to enter into a service agreement and nothing contained in this Agreement or any of the SOWs for a Project executed in terms of this Agreement shall be construed so as to render the relationship between the Contractor and the Client, or the end-user to be that of principal-agent, partnership, joint-venture or any other mutual association. Unless authorized by the Client in writing, Contractor shall not have the right or authority to assume or create any obligation or responsibility, express or implied on behalf of or in the name of the client or the end-user or to bind the Client or the end-user in any manner whatsoever, except as may be specifically approved by the Client in writing."

The services rendered to foreign group entities has been considered by the Tribunal in the case of **M/s IDP Educational India Pvt. Ltd. versus Additional Director General of Central Excise Intelligence,**

New Delhi [11], where the appellant was a subsidiary of M/s IDP, Australia. The Australian Universities entered into an agreement with M/s. IDP, Australia, and paid a percentage of the tuition fee, which they received from the students to IDP Australia for its services. IDP Australia inturn had entered into "Student Recruitment Services Agreement" with the appellant to help the recruitment of students from India. In these facts, the Bench concluded as under:-

> **"8.** We have gone through the records of the case and considered the submissions on both sides. It is undisputed that the appellant has an agreement only with IDP Australia. The appellant recruits or facilitates students in India, but does not get any remuneration from Australian universities. For the students who are recruited or admitted by the university in Foreign Country, recommended by appellant in India, IDP Australia gets paid by the Australian/Foreign universities. A share of that commission is given to the appellant by IDP Australia. This scheme of arrangement clearly shows that the IDP Australia is providing services to the foreign universities and is receiving consideration for the same. Insofar as recruitment of students in India is concerned, IDP Australia has created the appellant as a fully owned subsidiary, and has sub-contracted the work to the appellant. Nothing has been brought on record in the show cause notice or in the order to show that the appellant has a direct contract with the foreign universities. There is nothing on record to show that the appellant is liasioning or acting as intermediary between the foreign universities and IDP Australia. All that is evident from the records is that the appellant is providing the services which have been sub-contracted to it by M/s IDP Australia. As a sub-contractor, it is receiving commission from the main contractor for its services. The main contractor - IDP Australia, in turn, is receiving commission from the foreign universities who pay a percentage of the tuition fee to IDP Australia. From the records, we find that Revenue has not established that the appellant is acting as an intermediary between M/s IDP Australia and the foreign universities, as alleged or held in the impugned order and the show cause notice. Hence, we find in favour of the appellant on merits."

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[11] 2021(10) TMI 1174

The said decision has been subsequently followed by the Chandigarh Bench in **M/s Oceanic Consultants Pvt. Ltd. versus Commissioner Central Excise & Service Tax, Chandigarh** [12] and on the principle that the primary requirement of existence of three parties in the scheme of things is absent in the instant case, held that the appellant is not an intermediary between the Indian students and the universities or the Indian students and M/s OCA. The Chandigarh Bench had also considered the Circular No. 159/15/2021 – GST dated 20.0 9.2021, which has been issued with reference to the definition of 'intermediary service' under the CGST Act, which clarified that in respect of intermediate services, there should be a minimum of three parties and two distinct supplies, i.e., main supply and ancillary supply. It was also clarified that a person involved in supply of main supply on principal to principal basis to another person cannot be considered as a supplier of intermediary service. The facts of the present case are absolutely identical to the said two decisions, and there is no reason to differ from the same.

14. We would also like to discuss the decision in the case of **M/s.Arcelor Mittal Projects India Pvt. Ltd. versus Commissioner of Service Tax, Mumbai-II** [13]**,** where the transaction is quite alike in the present case. The issue before the Larger Bench was whether the services provided by **Arcelor Mittal Projects India Pvt. Ltd.** would be export of service under the Export Rules, 2005. Briefly stated, **Arcelor India** was the subsidiary of **Arcelor France**, a commission agent for steel mills situated outside India, for procuring sale orders for the products manufactured by these mills from customers across the world.

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[12] 2024 (8) TMI 399-Cestat- Chandigarh
[13] 2023 (8) TMI 107 CESTAT Mumbai-LB

A part of the commission received by Arcelor France as the main agent from the foreign Mills was paid to Arcelor India as sub-agent. Relying on the Circular dated 29.04.2009, which clarified that the relevant factor is the location of the service receiver and not the place of performance, the relationship of service provider and service recipient between Arcelor India and Arcelor France was examined in the facts that for procuring sale orders for the products manufactured by the foreign mills, the request of prospective customers identified by Arcelor India is forwarded to the foreign mills, who thereafter directly get in touch with the Indian customer to determine the terms and conditions and for this, Arcelor India receives consideration from Arcelor France in convertible foreign exchange. The relevant para of the decision is quoted below:-

> "**50.** Arcelor France and Arcelor India act as main agent and subagent for foreign mills and not as an agent or service provider for the customers in India. There is no contractual relationship between Arcelor India and the customers in India. Therefore, even though the goods in the form of steel products are being supplied to customers in India, the actual recipient of BAS provided by Arcelor India is Arcelor France. Arcelor France has used the services of Arcelor India to provide services a main agents to the mills located outside India."

15. Following the decision referred above interpreting the provisions of law, we hold that the services rendered by the appellant to the foreign university/foreign group entity do not fall under the category of "intermediary services" and the appellants are eligible for the benefit of 'export of services'. In that view, the demand confirmed by the impugned order is unsustainable and is hereby set aside. All the three appeals are, accordingly, allowed.

[Order pronounced on 29th April, 2025]

(Binu Tamta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

Ckp.