IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.6678, 6687, 6696, 6700, 6693, 14305, 14310, 14313, 14318
14765 and 23191 of 2021
and
W.M.P.Nos.7238, 7240, 7254, 7247, 7251, 7230, 7244, 7242,
15193, 15209, 15654, 15205, 15213, 24496, 24494,
15194, 15200, 15198, 15206, 15655 of 2021

W.P.No.6678 of 2021

Twin Disc Power Transmission Pvt. Ltd.,
Represented by its Country Manager and
Financial Controller Ms.Indira Bongarala ... Petitioner

Vs.

1.The Deputy Commissioner (ST),
GST Appeals,
Zone VI, Chennai,
4th Floor, PJM Building,
Greams Road, Chennai – 06.

2.The Assistant Commissioner (ST),
Valluvarkottam Assessment Circle,
10, Palaniyappa Maaligai,
Greams Road, Chennai – 600 006.

3.The Assistant Commissioner of GST &

Central Excise,
Triplicane Division,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ... Respondents

Prayer in W.P.No.6678 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order passed by the 1st respondent vide Order No.AP/GST/7/2019 dated 31.07.2020 rejecting the refund claim made for the month of August, 2017, from the files of the 1st respondent herein, quash the same, and further direct the respondents to sanction the refund claim made by the petitioner.

For Petitioner (In all W.Ps)	:	Mrs.Aparna Nandakumar for Mr.J.Nandakumar
For Respondents (In all W.Ps)	:	
For R1 and R2	:	Mr.T.N.C.Kaushik Additional Government Pleader
For R3	:	Mr.M.Santhanaraman Senior Standing Counsel

COMMON ORDER

By this Common Order, all these Writ Petitions are being disposed of.

2. I have considered the arguments advanced by the learned counsel

for the Petitioner, learned Additional Government Pleader for the 1st and 2nd Respondents and the learned Senior Standing Counsel for the 3rd Respondent.

3. The Petitioner is a Private Limited Company engaged in the business of Engineering Design Support Services, Sourcing Support Services and Marketing Support Services and had exported services to its holding Company namely "Twin Disc Incorporated" situated at United States of America (USA) and a group Company called "Twin Disc (Far East) Pte. Ltd.," situated at Singapore. The Petitioner had made exports to these Companies under two separate "Support Service Agreements" both dated 01.11.2011 signed with the respective Companies.

4. On the exports made by the Petitioner, the Petitioner had claimed refund of "Input Tax Credit" as defined in Section 2(63) of CGST Act availed on the "input service" as defined in Section 2(60) of CGST Act, utilized for effecting export of services, which qualified as "Zero Rated Supply" within the meaning of Section 16 of the Integrated Goods and Services Tax (IGST) Act, 2017 (hereinafter referred to as "IGST Act"), as

it stood during the period in dispute. Section 16(3) of IGST Act reads differently during the period in dispute. Section 16(3) of IGST Act as it read during the period in dispute and as it reads now are extracted hereunder:-

Section 16. Zero rated supply	**Section 16. Zero rated supply (Substituted by the Finance Act, 2021 with effect from 01.10.2023)**
(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.	(3) A registered person making zero rated supply shall be eligible to claim refund of unutilized input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act or the rules made thereunder; subject to such conditions, safeguards and procedure as may be prescribed: Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this subsection along with the applicable interest under Section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1992

Section 16. Zero rated supply	**Section 16. Zero rated supply (Substituted by the Finance Act, 2021 with effect from 01.10.2023)**
	(42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed.

5. The refund claims of the Petitioner were filed under Section 54 of CGST Act, 2017 read with Rule 89 of the Central Goods and Services Tax (CGST) Rules, 2017 on the aforesaid export of service made by the Petitioner which were rejected by the 2nd Respondent.

6. In these Writ Petitions, the Petitioner has challenged the Order No.AP/GST/7/2019 dated 31.07.2020 of the 1st Respondent, Rejection Orders and Show Cause Notices issued by the 2nd Respondent and the Deficiency Memos issued by the 2nd Respondent with regard to the refund claim of the Petitioner.

7. There are 4 categories of cases in the present batch of Writ Petitions. 1st category of cases pertain to the Rejection Order of the 1st

Respondent on the appeal preferred by the Petitioner. 2nd category of cases pertain to the Rejection Orders passed by the 2nd Respondent on the refund claims made by the Petitioner. 3rd category of cases pertain to Deficiency Memos issued by the 2nd Respondent against the refund claims of the Petitioner and the 4th category of cases pertains to the Show Cause Notices issued to the Petitioner by the 2nd Respondent.

8. Details of the Rejection Orders/Show Cause Notices/Deficiency Memos/Orders passed by the Respondents and the subject matter of challenge in these Writ Petitions are given below:-

Sl. No.	**W.P.No.**	**Month of Refund Claim**	**Proceedings**	**Amount of Refund Claimed (Rs.)**
1	6678 of 2021	August, 2017	1st Respondent, AP/GST/7/2019 dated 31.07.2020	67035.00
2	6687 of 2021	September, 2017	1st Respondent, AP/GST/7a/2019 dated 31.07.2020	1,22,948.00
3	6693 of 2021	August, 2018	2nd Respondent, Refund rejected vide Order dated 21.11.2020	1,95,347.00
4	6696 of 2021	September, 2018	Deficiency Memo dated 03.12.2020	1,12,503.00

Sl. No.	W.P.No.	Month of Refund Claim	Proceedings	Amount of Refund Claimed (Rs.)
5	6700 of 2021	October, 2018	Deficiency Memo dated 03.12.2020	1,15,346.00
6	14313 of 2021	November, 2018	Deficiency Memo dated 28.04.2021	1,94,769.00
7	14318 of 2021	December, 2018	Deficiency Memo dated 29.04.2021	1,43,336.00
8	14305 of 2021	September, 2018	2nd Respondent, Show Cause Notice dated 17.06.2021	1,12,503.00
9	14310 of 2021	October, 2018	2nd Respondent, Refund Rejection Order dated 18.06.2021	1,15,436.00
10	14765 of 2021	September, 2018	2nd Respondent, Show Cause Notice dated 05.07.2021	1,12,503.00
11	23191 of 2021	January 2019	Deficiency Memo dated 08.10.2021	1,06,296.00

9. By the Impugned Order dated 31.07.2020, the 1st Respondent dismissed the appeals filed by the Petitioner under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") and confirmed the Orders of rejection passed by the 2nd respondent for months of August, 2017 and September, 2017.

10. Relevant portion of the Impugned Orders in W.P.No.6678 of 2021 and W.P.No.6687 of 2021 read as under:-

Impugned Order bearing No.AP/GST/7/2019 dated 31.07.2020	**Impugned Order bearing No.AP/GST/7a/2019 dated 31.07.2020**
From the above facts, it can be seen that the judgements relied on by the Appellants are not applicable to the facts of the case. 1) The Decision of the Appellate Tribunal Delhi, in the case of **GAP International Sourcing (India) Pvt Ltd.,** Vs. **CST Delhi** in which it was held on facts of the case that sourcing support service qualifies as Business Auxiliary Service and those services should be treated as delivered outside India. 2) The Authority of Advance Ruling in AAR/ST/08/2016 in the case of M/s. Go Daddy India Web Services Pvt Ltd., it was held by the AAR that Marketing Support Services provided by Go Daddy India Web Services Pvt Ltd., to Go Daddy US) does not qualify as intermediary service and will be construed as Export of Service. This is also differs from the facts of the case and the issue of distinct person has not be dealt.	From the above facts, it can be seen that the judgements relied on by the Appellants are not applicable to the facts of the case. 1) The Decision of the Appellate Tribunal Delhi, in the case of **GAP International Sourcing (India) Pvt Ltd.,** Vs. **CST Delhi** in which it was held on facts of the case that sourcing support service qualifies as Business Auxiliary Service and those services should be treated as delivered outside India. 2) The Authority of Advance Ruling in AAR/ST/08/2016 in the case of M/s. Go Daddy India Web Services Pvt Ltd., it was held by the AAR that Marketing Support Services provided by Go Daddy India Web Services Pvt Ltd., to Go Daddy US) does not qualify as intermediary service and will be construed as Export of Service. This is also differs from the facts of the case and the issue of distinct person has not be dealt.

Impugned Order bearing No.AP/GST/7/2019 dated 31.07.2020	**Impugned Order bearing No.AP/GST/7a/2019 dated 31.07.2020**
3) In the case of **Microsoft Corporation (India)** Vs. **Cue, Delhi III**, the Appellate Tribunal had a occasion to consider the following three question i. Whether the Marketing Support Services (MSS) provided by the Appellant to Microsoft Singapore during the relevant period qualify as export of service under the Export of Service Rules, 2005 and therefore the consideration including reimbursements received by the Appellant from Microsoft Singapore is not taxable? ii. Whether the reimbursement received in relation to Product Support Services (PSS) rendered by the Appellant is not taxable for the period from 09.07.2004 to 31.03.2005? iii. Whether certain foreign currency expenditure incurred by the Appellant from April 2006 till March 2009 is not taxable under the Act? And as all the issues were to be decided only on facts and the facts were not properly discussed by the Adjudicating Authority, the answer to all the three questions were remanded to the Adjudicating Authority	3) In the case of **Microsoft Corporation (India)** Vs. **Cue, Delhi III**, the Appellate Tribunal had a occasion to consider the following three question i. Whether the Marketing Support Services (MSS) provided by the Appellant to Microsoft Singapore during the relevant period qualify as export of service under the Export of Service Rules, 2005 and therefore the consideration including reimbursements received by the Appellant from Microsoft Singapore is not taxable? ii. Whether the reimbursement received in relation to Product Support Services (PSS) rendered by the Appellant is not taxable for the period from 09.07.2004 to 31.03.2005? iii. Whether certain foreign currency expenditure incurred by the Appellant from April 2006 till March 2009 is not taxable under the Act? And as all the issues were to be decided only on facts and the facts were not properly discussed by the Adjudicating Authority, the answer to all the three questions were remanded to the Adjudicating Authority

Impugned Order bearing No.AP/GST/7/2019 dated 31.07.2020	**Impugned Order bearing No.AP/GST/7a/2019 dated 31.07.2020**
for fresh consideration. The issue for consideration was only whether the same was liable to tax or not and it was not with reference to whether it is eligible for refund or not.	for fresh consideration. The issue for consideration was only whether the same was liable to tax or not and it was not with reference to whether it is eligible for refund or not.
Therefore all the above decisions cannot be applied to the case on hand on facts as stated supra.	Therefore all the above decisions cannot be applied to the case on hand on facts as stated supra.
On fact the taxable person has paid tax on the import of service from Twin Disc Incorporated, USA for the **Expenses Reimbursement** for the month of **July 2017** under RCM for **import of services**. **Reimbursement of expenses** takes place only between two distinct entities in accordance with Explanation 1 in Section 8 of the IGST Act 2017.	On fact the taxable person has paid tax on the import of service from Twin Disc Incorporated, USA for the **Cost Sharing Charges** for the month of **August 2017** under RCM. **Cost Sharing Charges** takes place only between two distinct entities in accordance with Explanation 1 in Section 8 of the IGST Act 2017.
Therefore, the value **IGST** of **Rs.4,025/-**, **CGST** of **Rs.31,505/-** and **SGST** of **Rs.31,505/-** are not eligible for refund as the services covered in the Invoices do not qualify for export of services. Therefore the Refund Rejection Order passed by the Assistant Commissioner, Valluvarkottam as per the provisions of the TNGST Act/CGST Act and IGST Act 2017 calling for no intervention.	Therefore, the value **IGST** of **Rs.26,582/-**, **CGST** of **Rs.48,183/-** and **SGST** of **Rs.48,183/-** are not eligible for refund as the services covered in the Invoices do not qualify for export of services. Therefore the Refund Rejection Order passed by the Assistant Commissioner, Valluvarkottam as per the provisions of the TNGST Act/CGST Act and IGST Act 2017 calling for no intervention.

11. Thereafter, the 2nd Respondent rejected the refund claims for the

succeeding months from August, 2018 to January, 2019 by passing the Impugned Rejection Order dated 21.11.2020 and issued Deficiency Memos for the months of September, 2018 and October, 2018.

12. Section 54 of CGST Act and Rule 89 of CGST Rules, 2017 reads as under:-

Section 54 of CGST Act, 2017	Rule 89 of CGST Rules, 2017
54. Refund of tax (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed: Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of Section 49, may claim such refund in such form and manner as may be prescribed. (2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United	**89. Application for refund of tax, interest, penalty, fees or any other amount** (1) Any person, except the persons covered under notification issued under Section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file, subject to the provisions of Rule 10B, an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner. Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of Section

<table>
<tr><th>Section 54 of CGST Act, 2017</th><th>Rule 89 of CGST Rules, 2017</th></tr>
<tr><td>Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under Section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of two years from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

i. zero-rated supplies made without payment of tax;

ii. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies other than nil rated or fully exempt supplies, except supplies of goods or services or both as may be</td><td>49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be:

Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the-

(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for the authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.

Provided also that in respect of supplies regarded as deemed exports, the application may be filed by,-

(a) the recipient of deemed export supplies; or

(b) the supplier of demand export supplies in cases where the recipient does not avail of input tax credit on such supplies and</td></tr>
</table>

Section 54 of CGST Act, 2017	Rule 89 of CGST Rules, 2017
notified by the Government on the recommendations of the Council. Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subject to export duty. Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.	furnishes an undertaking to the effect that the supplier may claim the refund. Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under Section 27 at the time of registration, shall be claimed in the last return required to be furnished by him. (1A) Any person, claiming refund under Section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner. Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date

Section 54 of CGST Act, 2017	**Rule 89 of CGST Rules, 2017**
	on which this sub-rule comes into force.

13. The case of the Petitioner is that the Petitioner was originally under the Central Authority and for the export made during the month of July 2017, the Central Authority had also rightly allowed the refund claim of the Petitioner in terms of Section 54 of CGST Act read with Section 16 of IGST Act.

14. However, for the exports made during the subsequent months, namely August and September 2017, the 2nd Respondent rejected the refund claims by two separate Orders dated 11.06.2018 which culminated in the appeal Order dated 31.07.2020 of the 1st Respondent which are impugned in W.P. Nos. 6678 and 6687 of 2021.

15. It is the further case of the Petitioner that on the identical exports made by the Petitioner, the 2nd Respondent has also granted refund of Input

Tax Credit during the interregnum for the period between October 2017 and July 2018. However, the 2nd Respondent rejected the refund claim for the succeeding months from August 2018 to January 2019 either by passing the Rejection Order dated 21.11.2020 and the Rejection Order dated 18.06.2021 which are subject matter of challenge in W.P. No.6693 of 2021 and W.P. No.14310 of 2021 or by issuing Deficiency Memos which are the subject matter of challenge in W.P. Nos. 6696, 6700, 14313, 14318 and 23191 of 2021.

16. The thumb rule under Section 13(2) of IGST Act is that the place of supply of service shall be the location of the recipient of service except in the circumstances specified in Section 13(3) of IGST Act. Sub-Section 3 to Section 13 of IGST Act reads as under:-

> "**13. Place of supply of services where location of supplier or location of recipient is outside India**
>
> (1)...
>
> (2)...
>
> (3) The place of supply of the following services shall be the location where the services are actually performed, namely:-
>
> (a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of

services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services.

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.

(b) services supplied to an individual, represented either as the recipient or services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services."

17. The issue in these Writ Petitions centres around the interpretation of the definition of "export of services" as in Section 2(6) of IGST Act. The stand of the Department in these proceedings is that the Petitioner has not satisfied the requirements of Clause (iii) and Clause (v) to Section 2(6) of IGST Act. For the sake of clarity, Section 2(6) of IGST Act is reproduced below:-

"**2. Definitions**

(1)...

(2)...

(3)...
(4)...
(5)...
(6) "export of services" means the supply of any service when,-
i. the supplier of service is located in India;
ii. the recipient of service is located outside India;
iii. the place of supply of service is outside India;
iv. the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
v. the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8."

18. As far as Clause (v) to Section 2(6) of IGST Act is concerned, the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8 of IGST Act. The issue also stands covered against the Respondents in terms of **Paragraph 5.1** of **Circular No.161/17/2021-GST dated 20.09.2021** issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing, Department of Revenue, Ministry of Finance, Government of India.

19. The above Clarification of the Board in **Paragraph 5.1** of **Circular No.161/17/2021-GST dated 20.09.2021** reads as under:-

"5.1. In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in Section 8".

5.2 Therefore, supply of services by a subsidiary/sister concern/group concern, etc., of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act, 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of Section 8 of IGST Act, 2017. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of Section 8 of IGST Act, 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of Section 2 of IGST Act.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow."

20. In view of the above, the objection of the Respondents insofar as the failure of the Petitioner to satisfy the condition in Section 2(6)(v) of IGST Act has to be overruled and answered in favour of the Petitioner.

21. In any event, this issue has also been answered by this Court in **Vuram Technology Solutions (P.) Ltd.,** Vs. **Additional Commissioner of GST (Appeals)** vide Order dated **10.04.2024** in **W.P (MD) No.15092 of 2022** wherein, the Court has ultimately held as under:-

> *"13.In my view, the above interpretation placed by the first respondent is incorrect.* ***Admittedly, the petitioner and its subsidiary are two distinct entities and therefore, it cannot be said that the petitioner has not satisfied the requirements of Section 2(6)(v) of IGST Act, 2017****. The doctrine of the authority for advance Ruling in Segoma Imaging Technologies India Pvt. Ltd., reported in 2019 (20) GSTL 611 (AAR-GST) cannot be applied to the facts of this case.*
>
> *14.It cannot be said that the petitioner and its subsidiary are not merely establishment of a distinct person in accordance with the explanation I in Section 8 of the IGST Act, 2017. The issue now stands clarified by Circular No.161/17/2021-GST dated 20.09.2021 bearing Ref.F.No.CBIC-20001/8/2021-GST, content of, which has been extracted above.*
>
> *15.This view has also been followed by the Delhi*

High Court in Xilinx India Technology Services (P) Ltd.(supra). ***That apart, the Revenue cannot argue against its own circular, although such clarification in Circular of the Board are much binding on the petitioner nor on this Court. The view expressed in the said circular is correct and clarifies the legal position and therefore, this Court is not inclined to take a different view, though such a circular is not binding on this Court***.

16.Since the view taken by the Board is correct, the impugned order is liable to be set aside. Consequently, the second respondent is directed to process the re-fund claim of the petitioner together with interest payable in accordance with the provisions of the Act as expeditiously as possible, preferably within a period of 12 weeks from the date of receipt of a copy of this order.

17.The Writ Petition stands allowed, with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed."

22. As far as the other requirements regarding place of supply of service to be outside India in Section 2(6)(iii) of the Act is concerned, it has to be read along with Section 13(2) of IGST Act. For the sake of clarity, Section 2(6)(iii) and Section 13(2) of IGST Act are extracted hereunder:-

Section 2(6)(iii) of IGST Act	Section 13(2) of IGST Act
2. Definitions In this Act, unless the context otherwise requires,-	**13. Place of supply of services where location of supplier or location of recipient is outside**

Section 2(6)(iii) of IGST Act	Section 13(2) of IGST Act
(1) ... (2) ... (3) ... (4) ... (5) ... (6) "export of services" means the supply of any service when,- i. ... ii. ... iii. the place of supply of service is outside India.	**India** (1) ... (2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

23. According to the Respondents Department, service provided by the Petitioner to its holding Company and the group Company under the 2 Service Agreements would come within the definition of "intermediary service" as defined in Section 2(13) of IGST Act and therefore, supply of service in the case of the Petitioner shall be the location of the Petitioner itself in terms of Section 13(8)(b) read with Section 13(2) and the definition in Section 2(13) of IGST Act. Section 2(13), Section 13(2) and Section 13(8)(b) of IGST Act are extracted below:-

Section 2(13) of IGST Act	Section 13(2) of IGST Act	Section 13(8)(b) of IGST Act
2. Definitions	**13. Place of supply of**	**13. Place of supply of**

Section 2(13) of IGST Act	**Section 13(2) of IGST Act**	**Section 13(8)(b) of IGST Act**
In this Act, unless the context otherwise requires,- (13) "Intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.	**services where location of supplier or location of recipient is outside India** (1) ... (2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.	**services where location of supplier or location of recipient is outside India** (8) The place of supply of the following services shall be the location of the supplier of services, namely:- (a) ... (b) intermediary services

24. Sub-Section 13 to Section 13 of IGST Act is attracted. The definition of "intermediary" in Section 2(13) of IGST Act, makes it clear that it applies to a broker, an agent, or any other person, by whatever name called, who arranges or facilitates the supply of goods or service or both, or securities, between two or more persons. Section 2(13) of IGST Act is extracted hereunder:-

"**2. Definitions**

In this Act, unless the context otherwise requires,-

(13) "Intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."

25. The definition excludes a person, who supplies such goods or services or both or securities from his own account. Thus, it cannot be said that the Petitioner acted as a broker or an agent or any other person who arranged or facilitated the supply of goods or services or both between two or more persons.

26. In this context, it is to be borne in mind that the Petitioner has an independent Support Service Agreements both dated 01.11.2011 with its holding Company namely Twin Disc Incorporated situated in USA and group Company namely Twin Disc (Far East) Pte. Ltd situated in Singapore.

27. A reading of the Support Service Agreements both dated 01.11.2011 entered between the Petitioner and its holding company makes

it clear that the services provided by the Petitioner to these two Companies which are holding and the group Companies are from its own account and not on its broker, agent or any other person who arranged or facilitated the supply of goods or services or both between two or more persons.

28. Therefore, there is no legal basis on which, the benefit of rules that is available for export of service as defined in Section 2(6) of IGST Act can be denied to the Petitioner.

29. Under these circumstances, the Impugned Orders passed by the 1st Respondent and the Impugned Rejection Orders passed by the 2nd Respondent and the Impugned Deficiency Memos and the Show Cause Notices issued by the 2nd Respondent are liable to be quashed, and are accordingly quashed with consequential relief to the Petitioner.

30. The 2nd Respondent is directed to refund the amount claimed by the Petitioner on the exports made by the Petitioner to its holding Company and the group Company within a period of 30 days from the date of receipt of a copy of this order.

31. These Writ Petitions are allowed. No costs. Connected Writ Miscellaneous Petitions are closed.

13.12.2024

Neutral Citation : Yes / No

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To:

1.The Deputy Commissioner (ST),
GST Appeals,
Zone VI, Chennai,
4th Floor, PJM Building,
Greams Road, Chennai – 06.

2.The Assistant Commissioner (ST),
Valluvarkottam Assessment Circle,
10, Palaniyappa Maaligai,
Greams Road, Chennai – 600 006.

3.The Assistant Commissioner of GST &
Central Excise,
Triplicane Division,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

C.SARAVANAN, J.

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W.P.Nos.6678 of 2021 etc., batch

13.12.2024