
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 5144 OF 2022
WITH
WRIT PETITION NO2774 OF 2024

IDP Education India Pvt Ltd

.. Petitioner

Versus

Union of India & Ors

.. Respondents

Mr. Prasad Paranjape, with *Mr. Bhavya Varma i/b Lumiere Law Partners, Advocates for the Petitioner* in WP.5144/22 and WP.2774/24.

Mr. Vijay H. Kantharia, with *Mamta Omle, Advocates for the Respondents* in WP.5144/22 and WP.2774/24.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: MAY 5, 2025

P. C.

1. Heard learned counsel for the parties.
2. Rule. Respondents waive service. Rule is made returnable forthwith and heard finally by consent of parties.
3. These two Petitions raise a common question as to whether the Petitioners qualify as “Intermediary” under Section 13 (8) read with Section 2

(13) of the Integrated Goods and Services Tax Act, 2017 (“**IGST Act**”) and therefore are being taken up together for disposal.

4. Writ Petition No. 5144/2022 is for the period March 2019 to April 2020, where IGST of Rs.5,87,01,143 paid by the Petitioner on services supplied by them to IDP Australia, calling it to be export of service, under Section 2 (6) of the IGST Act, is rejected. Similarly, Writ Petition No. 2774/2024 is for the period April 2020 – March 2021, where IGST of Rs.3,86,43,301, paid on services supplied to IDP Australia, claiming it to be export, is rejected.

5. At the outset, the Petitioner is not pressing prayer clause (a) in Writ Petition No. 5144/2022 and prayer clauses (d) and (e) in Writ Petition No. 2774/2024, by which challenge was set up the vires of certain provisions under the IGST Act.

6. The facts in brief are that the Petitioner is a subsidiary of IDP Education Ltd., a company set up in Australia (“**IDP Australia**”). IDP Australia enters into agreements with various foreign universities for providing assistance to students in getting recruitment for education courses in those universities. For providing such services, foreign universities pay

IDP Australia certain percentage of fees charged to the students as student placement services fee.

7. In order to meet its obligation towards the foreign universities, IDP Australia has in turn entered into Support Services Agreement dated 1st July 2017 with the Petitioner. The Petitioner under the said agreement is obliged to provide support services to IDP Australia with respect to Indian students intending to opt for courses offered by the foreign universities. For this purpose, IDP Australia shares certain percentage of fee received by it from the foreign universities with the Petitioner. The Petitioner does not have any contractual obligation with the universities or with the students and does not raise any invoice or receive any consideration from the universities or the students. It is the case of the Petitioner that the services rendered by them to IDP Australia are on a principal-to-principal basis under a bi-partite contract.

8. It is also the case of the Petitioner that for the period prior to introduction of the GST regime, the same issue was agitated by the Revenue and the issue came to be settled in favour of the Petitioner vide CESTAT's Final Order dated 28th October 2021 covering the period April 2014 to

September 2015. This Order of CESTAT was challenged before the Delhi High Court and was dismissed due to delay.

9. Further, the Petitioner submits that the CBIC, vide its Circular No.159/15/2021-GST dated 20.09.2021, has clarified that the concept of intermediary was borrowed in GST from the Service tax regime and broadly there is no change in the scope of intermediary services in the GST regime vis-a-vis the Service tax regime. There being no change in the facts under the GST regime, basis the CESTAT order which has attained finality, the Petitioner should not be held as an intermediary and should be granted refund as claimed by them, is the submission. The Petitioner has also placed on record, orders of other jurisdictions in their own case where refund has been granted to them under the GST regime and those orders have also attained finality.

10. On the other hand, the learned Counsel for the Respondents submits that based on the findings given in the impugned order, the Petitioner squarely falls within the term “intermediary” and therefore, the refund claimed by them has been rightly rejected.

11. We have perused the records and find that in identical facts and circumstances in the Petitioner's own case, the CESTAT vide its Order dated 28th October 2021 has given a categorical finding that the Petitioner is not an intermediary. While an attempt has been made to differentiate the CESTAT Order on the basis that the agreement examined by CESTAT was a different agreement, we find that it is only due to periodical renewal of the agreement the reference of the agreement differs, whereas, the scope of the services remained the same. Since the CESTAT order has now attained finality, we see no reason to take a different view in the present case. Also, we find force in the submissions of the counsel for the Petitioner that the issue is squarely covered by the CBIC Circular dated 20.09.2021, in as much as it is clarified that the provisions of law for intermediary under the service tax regime and the GST regime broadly remain the same. In view of the above, the Respondents cannot be now allowed to take a different view. We thus, hold that the Petitioner is not an "intermediary" and is entitled to a refund as claimed by them. We, therefore, remand the matter back to the adjudicating authority for processing the refund claim in terms of this order along with applicable interest within a period of 4 weeks from the date of uploading of this order.

12. Rule is made absolute in the aforesaid terms and the Petitions are also disposed of in terms thereof. However, there shall be no order as to costs.

13. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]