



NC: 2025:KHC:54744
WP No. 11624 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 11624 OF 2024 (T-RES)

BETWEEN:

M/S KIMBERLY CLARK INDIA PVT. LTD.,
74/2, LINFOX LOGISTICS INDIA PVT LTD,
GUALAKANAHALLI, CHIKKABALLAPURA TALUK,
BENGALURU-562 101.
(REPRESENTED BY SHRI TULIKA JAY GENERAL COUNSEL)
PURSUANT TO SUB SECTION (2) OF SECTION 7 OF THE
COMPANIES ACT 2013 AND RULE 8 OF THE COMPANIES
(INCORPORATION) RULES, 2014)

...PETITIONER

(BY SRI SIDDARTH BARLE, SRI SAMRUDDHI SHETTY &
SRI RAVI RAGHAVAN, ADVOCATE)

AND:

1. THE ADDITIONAL COMMISSIONER OF GST (APPEALS-II),
TRAFFIC TRANSIT MANAGEMENT CENTRE,
BMTc BUILDING, 4TH FLOOR, ABOVE BMTc BUS STAND,
DOMLUR, OLD AIRPORT ROAD, BANGLAORE-560 071.
2. THE DEPUTY COMMISSIONER OF CENTRAL TAX,
NORTH DIVISION-9, BENGALURU NORTH
COMMISSIONERATE, HMT BHAVAN, GANGA NAGAR,
BELLARY ROAD, BENGALURU-560 032.

...RESPONDENTS

(BY SRI JEEVAN J NEERALGI, ADVOCATE FOR R-1 & R-2)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER -
IN - APPEAL NO. 267/23-24/ADC-AII/GST DATED 05.01.2024 PASSED BY
R1 AT ANNEXURE-A ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER
WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

Digitally signed
by CHANDANA
B M
Location: High
Court of
Karnataka



ORAL ORDER

In this petition, petitioner seeks the following reliefs:

"WHEREFORE it is respectfully prayed that this Hon'ble Court may be pleased to:

- a. issue a writ in the nature of Certiorari or any other appropriate writ or order or direction quashing the impugned Order-in-Appeal No. 267/2023-24/ADC-All/GST dated 05.01.2024 passed by Respondent No.1 at Annexure-A;*
- b) Hold that the support services provided by the Petitioner to KCS are not in the nature of intermediary' under Section 2(13) of the IGST Act and Circular No. 159/15/2021-GST dated 20.09.2021;*
- c) Hold that the support services provided by the Petitioner to KCS qualifies as 'export of service' under Section 2(6) of the IGST Act*
- d) Issue a Writ of Mandamus directing Respondent No.2 to sanction refund of Rs. 1,34,23,507/-, being the IGST paid on support services exported to KCS for the period May 2020 along with applicable interest;*
- e) pass such further order(s) and other reliefs as the nature and circumstances of the case may require."*

2. Heard learned counsel for the petitioner, learned counsel for respondents and perused the material on record.



3. A perusal of the material on record will indicate that pursuant to the refund application dated 07.01.2021 submitted by the petitioner seeking refund of IGST for May 2020, respondent No.2 issued a show cause notice dated 01.02.2021 proposing to reject the entire refund claim of the petitioner. The petitioner submitted a reply dated 24.02.2021 to the show cause notice subsequent to which respondent No.2 passed the refund rejection order dated 25.02.2021 which was challenged by the petitioner by way of an appeal before the respondent No.1 Appellate Authority, which was also dismissed by the respondent No.1 Appellate Authority, vide impugned order dated 05.01.2024, which is assailed in the present petition.

4. The issue in controversy involved in the present petition is directly and squarely covered by the order of this Court in W.P. No. 22966/2025 dated 17.12.2025 in the petitioner's own case wherein this Court held as under:

"In this petition the petitioner seeks for the following reliefs:

a) Issue a writ in the nature of Certiorari or any other appropriate writ or order or direction quashing the impugned Show Cause Notice



No.54/2025-26 dated 25.06.2025 passed by Respondent No.1 at Annexure-A.

b) Hold that the support services provided by the Petitioner to KCS are not in the nature of 'intermediary' under Section 2(13) of the IGST Act.

c) Hold that the support services provided by the Petitioner to KCS qualifies as 'export of service' under Section 2(6) of the IGST Act.

d) Hold that the invocation of Section 74 of the CGST Act in the present facts and circumstances is factually and legally unsustainable.

e) Hold that the impugned consolidated show cause notice issued for multiple assessment years is bad in law;

f) Pass such further order(s) and other reliefs as the nature and circumstances of the case may require.

Learned counsel for the petitioner would reiterate the various contentions urged in the petition and on instruction submits that though the impugned show cause notice was issued by the respondent pursuant to audit objection/observation in relation to 16 issues, the challenge in the present petition may be restricted to audit objection/observation No.15 i.e., non payment of GST on intermediary services provided to M/s.Kimberly Clark Services, US incorporated which was the recipient of the services and in the light of the following judgments:

(a) M/s.Athene Technologies India LLP vs. State of Karnataka reported in 2025(6) TMI 88-Karnataka High Court.

(b) Nokia Solution & Networks India Pvt. Ltd., vs. Pr. Commissioner of Central Tax reported in 2025-VIL-415-KAR.



(c) *M/s. Columbia Sportswear India Sourcing Pvt. Ltd., vs. Union of India & others reported in 2025(5) TMI 2139-Karnataka High Court.*

(d) *Amazon Development Centre India Pvt. Ltd., vs. Addl. Commissioner of Central Tax reported in 2025-VIL-409-KAR.*

and followed in M/s.Wind River Systems International Inc., it is submitted that insofar as the remaining 15 audit objections/observations are concerned, the petitioner would submit a reply along with documents and the respondents may be directed to consider the same and proceed further in accordance with law.

3. *The 16 audit objections/observations are here as under:*

SL.NO.	Audit objection	Amount(Rs.)
1	Excess IT availed in GSTR-3B in comparison with books of accounts	20,876
2	ITC availed on invoices where suppliers have not filed GSTR-3B	1,46,566
3	Non-payment of GST on reverse charge basis in terms of GSTR-2A	45,478
4	Excess ITC availed in GSTR-3B in comparison with GSTR-2A	95,81,998
5	ITC availed beyond time limit prescribed under Section 16(4) of the CGST Act	4,508
6	ITC availed irregularly under wrong head	29,55,470
7	General penalty under Section 125 of the CSGT Act	50,000
8	Non-reversal of ITC under Section 18(4) and 17(2) of the CGST Act	17,66,491
9	Interest on non-payment of consideration to suppliers within 180 days in terms of proviso to Section 16(2) of the CGST Act	16,81,484



10	ITC availed without receipt of goods in terms of Section 16(2)(b) of CGST Act	9,14,599
11	Non-reversal of ITC on damaged goods	6,83,248
12	Short-reversal of ITC on damaged goods	7,22,298
13	Penalty for non-generation of E-way bills	20,000
14	Irregular reduction in tax liability by issuance of ineligible credit notes	5,65,64,134
15	Non-payment of GST on intermediary services provided to KCS	153,52,62,292
16	ITC availed on ineligible goods/services in terms of Section 17(5) of the CGST Act	37,54,748
	TOTAL	161,24,23,336

4. *Per contra, learned counsel for the respondents would reiterate the various contentions urged in the statement of objections and submit that even insofar as audit objection/observation No.15 is concerned, the petitioner is an intermediary and therefore, would be liable to pay GST and as such there is no merit in the petition even in relation to the said audit objection No.15 and the same is liable to be dismissed.*

5. *As rightly contented by the learned counsel for the petitioner, out of total 15 audit objections/observations contained in the impugned show cause notice, audit observation No.15 which is found in paragraph 17 of the impugned show cause notice relates to non payment of GST on intermediary services that is business support services to foreign customers. The said issue is directly and squarely covered by the aforesaid judgments, wherein this Court has come to the conclusion that under identical circumstances petitioner is not an intermediary and would not be liable to pay GST as demanded by the respondents towards intermediary services since there is no supply of intermediary services and petitioner is involved in export of services.*



6. *The aforesaid judgment of this Court in M/s. Columbia Sportswear India Sourcing Pvt. Ltd., vs. Union of India & others (W.P.No.12116/2024 & connected matters dated 26.04.2025) were reiterated in M/s.Wind River Systems International Inc reads as follows:*

5. A perusal of the material on record will indicate that under identical circumstances in the case of ***M/s.Columbia Sportswear India Sourcing Pvt. Ltd., vs. Union of India & others – W.P.No.12116/2024 & connected matters Dated 26.04.2025***, this Court came to the conclusion that the petitioner was not an 'intermediary' under Section 2(13) of the IGST Act and provisions of the Finance Act, 1994 and the services provided by the petitioner to its overseas service recipients / entities are that of an independent service provider which qualify as export of services under the service tax provisions and 2(6) of the IGST Act and allowed and disposed of the petitions as hereunder:-

11. *A conspectus of the above discussion would indicate that the legal position regarding what would constitute intermediary services vis-a-vis a principal to principal relationship can be summarised as under:*

- *In terms of Section 2(13) of the IGST Act, 2017, the definition of what is an intermediary would show that it would mean a broker or agent or any other person and the name by what he is called is not important or relevant; what is important/relevant is the function he provides and that would be arranging or facilitating the supply of goods or services or both or of securities; such facilitation or arrangement should be between two or more persons; further, he should not make this supply on his own account;*
- *In terms of the above, it is clear that if a person acts as an intermediary, apart from him, at least two persons should be involved and the intermediary would facilitate supply between two or more of them. Therefore, there should be (i) a minimum of three parties (ii) two distinct supplies, where principal will supply the goods or services to a third party as one supply and such a transaction should be facilitated or arranged by one party who*



HC-KAR

NC: 2025:KHC:54744
WP No. 11624 of 2024

is then called an intermediary rendering the second supply to the principal (iii) such a transaction would therefore, mean that one person actually represents the principal as an agent and therefore (iv) does not do his service on his own account.

- *The agreement, therefore, should clearly indicate that he is acting as such facilitator between two or more persons and therefore, at least three parties would then be involved as pointed out by the Apex Court in **Bharati Cellular's case supra** stating that it should be a triangular relationship, though the third party need not be identified in the agreement itself but it would be apparent from the agreement that there is a triangular relationship being established in such agreement.*

- *Four essential features stand out in an agency relationship which are set out by the Apex Court as under :*

a) The essential characteristic of an agent is the legal power vested with the agent to alter his principal's legal relationship with a third party and the principal's co-relative liability to have his relations altered;

b) As the agent acts on behalf of the principal, one of the prime elements of the relationship is the exercise of a degree of control by the principal over the conduct of the activities of the agent. This degree of control is less than the control exercised by the master on the servant, and is different from the rights and obligations in case of principal to principal and independent contractor relationship;

c) The task entrusted by the principal to the agent should result in a fiduciary relationship. The fiduciary relationship is the manifestation of consent by one person to another to act on his or her behalf and subject to his or her control, and the reciprocal consent by the other to do so;

d) As the business done by the agent is on the principal's account, the agent is liable to render accounts thereof to the principal. An agent is entitled to remuneration from the principal for the work he performs for the principal.



HC-KAR

NC: 2025:KHC:54744
WP No. 11624 of 2024

- *Absence of these ingredients would show that the relationship was not really one of agency but of an independent service provider. This is clear from the circular set out for data hosting services where it is clear that when a person does data hosting services for a foreign company and the foreign company uses this to store third party data, the person providing such services is doing it without any contact with the third party and therefore, cannot be called an intermediary as he does not facilitate or arrange. He is only doing the said services on his own account to the foreign company who could store any data on that platform.*
- *Therefore, even if there are three parties, one should clearly see whether the agreement casts an obligation on the service provider to act on someone else's behalf in respect of such supply and only then it would be an intermediary services. For example, where one party to a contract with another party, sub contracts a portion of his work to a third party, it does not mean that an intermediary relationship is established. Sub contractors would very well be doing the said work on their own account as is often the case with software development or research work carried out in India on contract basis.*
- *It is also axiomatic that absence of three persons would straightaway rule out the agreement from the scope of intermediary services as the agreement would then be a service provider-service receiver relationship without the service provider doing any facilitating or arranging. Therefore, in a given agreement, if there is no scope for the service provider to act on behalf of the service receiver, then the agreement is one on principal to principal basis where services are provided on own account.*
- *It would be necessary to consider that the definition of "intermediary" is far more restricted than that of an "agent". The term "agent" is not defined in the IGST Act, 2017 but it is defined in the CGST Act, 2017 under Section 2(5) to mean, a person who carries on the business of supply or receipt of goods or services or both on behalf of another person and he could be a factor, broker,*



commission agent, arhatia, del credere agent, auctioneer or any other mercantile agent by whatever name called. Therefore, the fine distinction that is there between these two is that while the agent supplies or receives goods or services on behalf of another person, the intermediary only arranges or facilitates supply on behalf of another person without himself supplying the same. This distinction also has to be kept in mind as the definition of intermediary calls him an agent who only does facilitation or arrangement and therefore, while he is an agent and acts for another, his job is to only facilitate or arrange supplies between his principal and a third party.

- *The position in service tax remains identical as set out in the decisions extracted in **Amazon's case supra**.*

12. In the light of the principles that emerge from the aforesaid Judgments, Circulars, Notifications etc., in the facts and circumstances obtaining in the instant cases as set out supra analyzing the said agreements, I am of the considered opinion that the petitioner is not an 'intermediary' under Section 2(13) of the IGST Act and provisions of the Finance Act, 1994 and the services provided by the petitioner to its service recipients are that of an independent service provider which qualify as export of services under the service tax provisions and 2(6) of the IGST Act and consequently, the impugned orders and demand of the respondents deserve to be quashed by issuing further directions in this regard for the following reasons:

- (i) There are only two persons in the subject agreements;*
- (ii) The petitioner renders services on its own account to the service receiver located outside India and it does not enable supply between the foreign recipient and the third parties;*
- (iii) The acts of the petitioner are that of an independent contractor and it does not represent or bind the foreign client in the course of executing its services.*



(iv) *The foreign recipient, therefore, remunerates the petitioner by way of a service fee for the services rendered which is on a cost plus mark up basis and not based on percentage of success, etc. which is common in agency agreements.*

(v) *The foreign recipient is free to chose from whom he would procure and the petitioner's recommendations are not final and binding on it and the petitioner cannot also represent that it is doing something on behalf of the foreign recipient.*

(vi) *The host of services rendered by the petitioner is more akin to business support services to enable efficient procurement of garments and a continuing business relationship rather than enabling procurement of orders on a commission basis.*

13. *In view of the aforesaid facts and circumstances, I am of the view that the impugned orders and demands made by the respondents deserve to be quashed.*

XXXXXXXXXXXXXXXXXXXXX

7. *In view of the aforesaid facts and circumstances and the judgments of this Court referred to Supra, I deemed it just and appropriate to quash the impugned show cause notice only insofar as audit objection/observation No.15 and dispose of the petition, reserving liberty in favour of the petitioner to submit a reply along with documents to the remaining audit objections/observations and directing the respondent No.2 to proceed further in accordance with law.*

8. *In the result the following:*

ORDER

(i) *The petition is **Partly allowed**.*



(ii) The impugned show cause notice only insofar as it relates to the restricted/limited extent in relation to audit observation No.15 i.e., non-payment of GST on intermediary services i.e., business support services to foreign customers is hereby quashed.

(iii) Liberty is reserved in favour of the petitioner to submit replies along with documents to the impugned show cause notice dated 25.06.2025 (Annexure-A) in relation to the remaining 15 audit objections/observations.

(iv) Pursuant to the petitioner filing a reply along with documents in relation to the remaining audit objections/observations the respondents shall consider the same and provide sufficient and reasonable opportunity to the petitioner as well as an opportunity of personal hearing and proceed further in accordance with law.

(v) The petitioner is granted a period of eight (8) weeks from the date of receipt of copy of this order to file reply along with documents as stated supra."

5. In view of the aforesaid facts and circumstances and the order of this Court in the petitioner's own case upholding the refund claim of the petitioner, I deem it just and appropriate to quash the impugned order at Annexure A and the petitioner would be entitled to refund of IGST as claimed in the refund application along with applicable interest, if any, in accordance with law.



6. In the result, I proceed to pass the following:

ORDER

- (i) Petition is hereby allowed.
- (ii) The impugned Annexure-A dated 05.01.2024 passed by respondent No.1 is quashed.
- (iii) It is held that the petitioner is entitled to refund along with applicable interest, if any, in accordance with law, in relation to the refund claim put forth by the petitioner vide refund application dated 07.01.2021.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE