IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13176 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
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INFODESK INDIA PVT. LTD.
Versus
UNION OF INDIA & ORS.

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Appearance:
MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1
DEEPAK N KHANCHANDANI(7781) for the Respondent(s) No. 2,3
PARAM V SHAH(9473) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 27/11/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Heard learned advocate Mr. Anand Nainawati for the petitioner and learned advocate Mr. Param Shah for the respondents.

2. Rule returnable forthwith. Learned advocate Mr. Param Shah waives service of notice of rule on behalf of the respondents.

3. Having regard to the controversy arising in the writ petition with narrow compass with the consent of learned advocates, the matters are taken up for hearing.

(i) This petition is filed challenging the Order-in- Appeal whereby the appeals preferred by the petitioner are dismissed confirming the Order-in-Original.

(ii) The petitioner is registered under provisions of the Central Goods and Services Tax Act, 2017 (For Short "CGST Act") and is engaged in the business of content integration by adding insight (smart data which is run through AI techniques and human curation) that helps resolve challenges in business.

(iii) The petitioner is a wholly owned subsidiary of Info Desk. Inc. situated at USA and is established exclusively for the purpose of servicing its parent organizations' technical requirements and for that purpose, the petitioner has developed products and services for InfoDesk. Inc. It is the case of the petitioner that it manages IT infrastructure, editorial and content creation activities, customer support and custom usage report generation for the clients of its parent company.

(iv) The services agreement dated 21st February 2011 was entered between the petitioner and its parent company providing information services and consultancy in the business of software development, editorial services and IT services.

(v) It is the case of the petitioner that in pursuance of the

services agreement, the parent company raises its requirements and queries which are assigned to the petitioner in form of "JIRA tickets' which is a software application and a service desk platform. The JIRA tickets have a detailed description of the kind of service required by InfoDesk. Inc. from the petitioner. It is the case of the petitioner that it has hired employees for providing these Software Consultancy Services to its parent company which provides remuneration to these employees in exchange of these services. The employees of the petitioner are assigned with the task of methodically engaging with the raised queries of parent company on the common platform of JIRA tickets.

(vi) The petitioner has also regularly raised tax invoices for providing software consultancy services to its parent company and for providing such services, the petitioner had received various inputs and input services and availed Input Tax Credit (ITC) on the aforesaid inputs and input services.

(vii) According to the petitioner, services provided to its parent company are in nature of 'export of service' in terms of provisions of Integrated Goods and Service Tax Act, 2017 (for short 'IGST Act') as the petitioner fulfills the requirements of Section 2(6) of IGST Act, being 'zero-rated supply in terms of Section 16 of IGST Act.

(viii) The petitioner, therefore, filed refund application in accordance with the procedure prescribed vide Circular No.17/17/2017-GST dated 15th November 2017 and Circular No.24/24/2017-GST dated 21st December 2017 issued by the Central Board of Indirect Taxes and Customs (CBITC).

(ix) Respondent No.3 issued a notice dated 6th September, 2023 proposing to reject the refund application filed by the petitioner on the ground of that such application was beyond the period of limitation as per Section 54(1) read with explanation (2)(c)(i) of the CGST Act and on the ground that the Software Consultancy Services purportedly rendered by the petitioner was an 'intermediary service' under Section 2(13) of IGST Act and not an 'export of service' under Section 2(6) of IGST Act.

(x) The petitioner, by email dated 5th October, 2023, submitted the reply inter alia that the services provided by the petitioner to its parent company are in the nature of 'export of services' and refund application is not time- barred as it is filed within two years from the relevant date.

(xi) Respondent No.3, by order dated 13th October, 2023, rejected the refund application by passing a detailed order-in-original in Form GST RFD-06 on the ground that on the date of filing of refund claim as per acknowledgment, the petitioner was not entitled to the benefit of supply of service of export under Section 2(6) of IGST Act as the software consultancy services provided by the petitioner was more in nature of intermediary services to its parent company.

(xii) Being aggrieved by the order-in-original, the petitioner preferred an appeal before the Joint Commissioner, CGST & Central Excise (Appeals), Vadodara, who, by order dated 27th September, 2024, rejected the appeal filed by the petitioner, upholding the rejection of the refund application by respondent No.3. Thereafter, a summary of

demand in Form GST APL-04 was issued.

(xiii) *As the Appellate Tribunal in terms of Section 110 of CGST Act is not available, the petitioner has challenged the order passed by the Appellate Authority by preferring these petitions.*

4. Learned advocate Mr. Anand Nainawati for the petitioner submitted that the petitioner is in the business of providing services to its parent company on principal to principal basis and therefore, the same cannot be considered as intermediary service as per Section 2(13) of the IGST Act. By referring to the definition of intermediary service as provided in Section 2(13) of the IGST Act, it was submitted that the petitioner is neither a broker, an agent or any other person, who is responsible for arranging or facilitating the supply of services between two or more persons, but, on the contrary, the petitioner is providing services to its own parent company on its own account. Reliance was also placed on Circular No.159/15/2021-GST dated 20th September 2021 issued by CBITC.

5. It was submitted by learned advocate Mr. Anand Nainawati for the petitioner that as per the terms of the service agreement between the petitioner and its parent

company, more particularly clause 1.1.1 read with clause 4.4, it cannot be said that the petitioner is providing intermediary services. It was, therefore, submitted that both the authorities below have committed error in interpreting the clauses of the service agreement by literally interpreting the same instead of interpreting the same in substance in which the agreement was executed.

6. It was submitted that as per Circular No.159/15/2021-GST dated 20th September, 2021 issued by CBITC, none of the requirements as stipulated in para 3 thereof are fulfilled so as to hold that the services provided by the petitioner to its parent company are in nature of intermediary services.

7. Learned advocate Mr. Anand Nainawati for the petitioner invited the attention of the Court to the effect emerging from the service agreement to demonstrate the description of the service provided by the petitioner on its own capacity and not as a capacity of agent or broker or intermediary of its parent company.

8. It was submitted that the service agreement executed by the petitioner with its parent company is a *bipartite* agreement, which involves only two parties and not three parties as

required for bringing the services provided by the petitioner within the scope of intermediary services. It was further submitted that the petitioner is providing only main service of the software consultancy and there is no ancillary service provided by the petitioner between the petitioner and its parent company. It was submitted that on perusal of the service agreement, it is apparent that the petitioner is not engaged in providing ancillary services to its parent company. It was submitted that the petitioner had already filed its refund claim within a period of two years as prescribed by Section 54(1) of the CGST Act and merely because the same refund application was uploaded along with the details subsequently would not debar the petitioner on the ground of limitation.

9. In support of the submission, reliance is placed on the decision in the case of *Charomotolab and Biotech Solutions vs. Union of India,* reported in *2022 (67) G.S.T.L. 160 (Guj.)* holding as under:

> *"5.4 Respondents relied on Circular dated 15.11.2017, which in its clause 2.4 provides that application for refund of unutilised input tax credit on inputs or input services used in making zero-rated supplies shall be filed in FORM GST RFD01A in the common portal and the amount claimed as refund shall get debited in accordance with Rule 89(3) of the CGST Rules from the amount in the electronic credit ledger*

to the extent of the claim. The said circular lays down the procedure to file an application physically.

5.5 The total case of the respondents is thus that since the physical submission of the application along with documents was on 17.10.2019, it was beyond the period of two years and therefore time barred, counted from the relevant date.

5.6 Now, it is not in dispute that the petitioners filed their refund application in the common portal on 28.12.2018 and ARN was generated. Until the application with documents were physically submitted on 17.10.2019, the respondents did not do anything on the application, which was filed as per the mechanism adopted by the respondents, on 28.12.2018. It is not in dispute that the refund claim of the petitioner otherwise satisfied all requirements of Section 54 of the CGST Act and the attendant Rules and the petitioner was eligible to seek refund. The refund claim was however considered as time barred stating that the application was liable to be treated to have been filed on 17.10.2019 and not on 28.12.2018.

5.7 The respondents have relied on Circular dated 15.11.2017, which stipulates procedure to refund of IGST to Special Economic Zone developer or a Special Economic Zone unit. Relevant paragraph 2.3 of the said circular which is pressed into service to justify the rejection of the claim for refund is extracted as under,

> *"2.3 The application for refund of integrated tax paid on zero-rated supply of goods to a Special Economic Zone developer or a Special Economic Zone unit or in case of zero-rated supply of services (that is, except the cases covered in paragraph 2.2 above and para 2.4 below) is required to be filed in FORM GST RFD- 01A (as notified in the CGST Rules vide notification No. 55/2017 by the supplier on the common portal and a print out of the said form shall be submitted before the jurisdictional proper officer along with all necessary documentary evidences as applicable (as per the details in statement 2 or 4 of Annexure to FORM GST RFD-01), within the time stipulated for filing of such refund under the CGST Act."*

> *5.8 What is provided in the circular is that the refund claim application in FORM GST RFD-01A as per Rules is required to be filed by supplier on the common portal and the printout of the said form shall be submitted to the jurisdictional officer with the necessary documents. Now the petitioner has filed the application on the common portal within time, but the documents to be physically furnished along with the application was physically submitted on 17.10.2019. It is on this count that the claim of the petitioner is treated beyond limitation.*
>
> *5.9. The Circular provided for procedure of filing application and filing of physical application with documents cannot have an overriding operation to the detriment of the assessee, who filed the refund application in the common portal of the respondents, which was acknowledged and ARN was also generated. The date of application filed on the portal has to be treated as one to reckon whether it was filed within two years as contemplated under Section 54 of the CGST Act."*

10. It is not in dispute that the petitioner has submitted physical application and the date of such submission is required to be considered by the respondent authority.

11. In support of his submission with regard to the denial of refund claim by considering supply of service to its parent company to its intermediary, it was submitted that the petitioner has provided the service on principal to principal basis to its parent company as per the terms of the service agreement and therefore, the provision of Section 2(13) of the IGST Act would not be applicable so as to levy the GST on the

services provided to the petitioner to its parent company.

12. In support of his submission, reliance was placed on the decision of the Punjab and Haryana High Court in case of *Genpact India Pvt. Ltd. vs. Union of India and others,* reported in *2022 (11) TMI 743* and the decision of the Delhi High Court in case of *M/s. Ohmi Industries Asia Private Limited vs. Assistant Commissioner, CGST*, reported in *2023 (4) TMI 425*. He has also referred the relied upon the decision of the Delhi High Court in case of *M/s. Ernst and Young Limited vs. Additional Commissioner, CGST Appeals-II, Delhi and another,* reported in *2023 (3) TMI 1117*.

13. On the other hand, learned advocate Mr. Param Shah made only one line submission that the petitioner is working as an intermediary for hiring export of service for the benefit of its parent company.

14. Having heard learned advocates for the respective parties, it would be germane to refer to the relevant provisions of IGST Act for the purpose of explaining as to what is intermediary services:

> *"2(6) "export of services" means the supply of any service when, ––*
> *(xiv) the supplier of service is located in India;*

(xv) the recipient of service is located outside India;

(xvi) the place of supply of service is outside India;

(xvii) 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"1; and 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;

2(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;"

15. Section 16 of IGST Act provides for zero rated supply. Section 16 defines the 'zero rated supplies' of export of goods or services or both. Therefore, the short question which is required to be answered is as to whether the service provided by the petitioner should be considered as export of service or intermediary service under provisions of IGST Act.

16. As per Section 2(13) of the IGST Act, intermediary means a broker, an agent or any other person, 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. We have therefore to consider the terms and

conditions of the service agreement between the petitioner and its parent company. Relevant terms of the agreement are as under:

> *"1.1.1 To assist the US entity in carrying on the business of providing information services and consultancy in business of software development, editorial services, customer support, sales and marketing of the InfoDesk suite of information management products. To set up consultations and meetings between globally based experts and globally based clients. To participate in any business of consultants, agents, sub-agents, liaison agents/liaison sub-agents for US entity and foreign clients/principals for the above mentioned activities.*
>
> *1.1.2 To assist the US entity with consultancy related to designing and developing programs with documentation, material sample files, system analysis and design word processing for problems related to technical operations, administration etc.*
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> *4.2 Party B shall submit to Party A a monthly invoice, in a form that details work completed during the previous month for such Services Fee incurred in the previous period. Party A shall pay to Party B the amounts shown on each such invoice within thirty (30) days after receipt thereof. Party A shall pay Party B, fee equal to cost incurred by Party B in running its operations plus eight (8)% mark up on costs.*
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> *4.4 The Services Fee stipulated in Article 4.2 shall be the full amount that Party A shall pay Party B for its Services, and Party B shall not charge for any other payments, reimbursement, charges or taxes from Party A except the Services Fee stipulated in Article 4.1. All costs, payment, charges, taxes arising from the Services shall be for Party B own account, including but not limited to transportation fee, communications fee, accommodation fee, catering fee, salary, transportation fee, communications fee, accommodation fee, catering fee, salary, allowance, social insurance fee, taxes and other governmental impositions resulting from Party B's activities under this Agreement."*

17. On perusal of the above terms of the service agreement in question, it is apparent that the petitioner is required to assist the US entity in carrying on the business of providing information and consultancy in business of software development and for that purpose, the petitioner is required to set up consultations and meetings between globally based experts and globally based clients and to participate in any business of consultants, agents, sub-agents, liaison agents/liaison sub-agents for its parent company and foreign clients for such activities. The petitioner is also to provide advisory services for expansion of business, marketing, advertisement, publicity, personnel accounting to its parent company. Therefore, on conjoint reading of the scope of services to be provided by the petitioner, it cannot be said that the petitioner is only to work as an agent or a broker between parent company and its customers without supplying any goods or services on its own account. Moreover, on terms of payment, payment is to be received by the petitioner from its parent company on monthly basis and fee equal to cost incurred by the petitioner plus 8% mark up on costs. Meaning thereby, the petitioner is also earning the profit of 8% on the cost incurred by it in providing services to its parent company. Clause 4.4 of the agreement clearly stipulates that the

petitioner is not entitled to receive any other amount for providing services and it has to bear its all expenses including taxes, etc. Moreover, clause 7.2 of the service agreement also provides for settlement of disputes between the petitioner and its parent company arising out of the agreement to be amicably settled through friendly negotiation and in case no settlement of the dispute, then the same should be resolved through India International Economic and Trade Arbitration Commission, South India Sub- Commission for arbitration in accordance with the Rules of Arbitration of India International Economic and Trade Arbitration Commission in effect at the time of applying for arbitration, which reads as under:

> *"7.2 All disputes arising from the execution and performance of or in connection with this Agreement shall be settled amicably through friendly negotiation. In case no settlement of the dispute can be reached through negotiation, the case in dispute shall then be submitted to India International Economic and Trade Arbitration Commission, South India Sub-Commission for arbitration in accordance with the Rules of Arbitration of India International Economic and Trade Arbitration Commission in effect at the time of applying for arbitration. The arbitration tribunal shall take place in India. The arbitral award is final and binding upon the Parties."*

18. In view of the above terms of the agreement executed between the petitioner and its parent company, it cannot be said that the petitioner was not exporting services but was working as an intermediary for its parent company. The petitioner is an

independent company incorporated in India having distinct entity and in such circumstances, the service provided by the petitioner to its parent company was in independent capacity and not in the capacity of either agent or broker or any other person.

19. The Delhi High Court in case of *M/s. Ernst and Young Limited vs. Additional Commissioner, CGST Appeals-II, Delhi and another*, reported in *2023 (3) TMI 1117* has held as under:

> *"33. In terms of Sub-section (8) of Section 13 of the IGST Act, the place of supply of certain services would be the location of the supplier of the services. In terms of Clause (b) of Sub-section (8) of Section 13 of the IGST Act, the place of supply of intermediary services is the location of the supplier of services. In the present case, the place of supply of services has been held to be in India on the basis that the petitioner is providing intermediary services. As discussed above, 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 entities is required to be determined on basis of the location of the recipient of the Services. Since the recipient of the Services is outside India, the professional services rendered by the petitioner would 2023:DHC:2116-DB fall within the scope of definition of 'export of services' as defined under Section 2(6) of the IGST Act.*
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> *34. There is no dispute that the recipient of Services - that is EY Entities - are located outside India. Thus, indisputably, the Services provided by the petitioner would fall within the scope of the definition of the term 'export of service' under Section 2(6) of the IGST Act."*

20. The Punjab and Haryana High Court in case of *Genpact India Pvt. Ltd. vs. Union of India and others*,

reported in *2022 (11) TMI 743* has held as under:

> *"In the pre-GST regime the term "intermediary services" was defined under Rule 2 (f) of the Place of Provision of Service Rules 2012. Under the 2012 Rules "intermediary services" were defined to mean a broker/an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service on his account.*
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> *A perusal of the definition of "intermediary" under the service tax regime vis-a-vis the GST regime would show that the definition has remained similar. Even as per circular dated 20.09.2021 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (GST Policy Wing), the scope of "intermediary" services has been dealt in para 2 thereof. In para 2.2 it stands clarified that the concept of "intermediary" was borrowed in GST from the Service Tax Regime. The circular after making a reference to the definition 35 of 42 of "intermediary" both under Rule 2 (f) of the Place of Provision of Service Rules 2012 and under Section 2 (13) of the IGST Act clearly states that there is broadly no change in the scope of "intermediary" services in the GST regime vis-a-vis the service tax regime except addition of supply of securities in the definition of "intermediary" in the GST law.*
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> *We also find that in the impugned order dated 15.02.2021 (Annexure P-18) there has been a clear misreading of the ruling in the case of Infinera (supra) while observing that there has been a material change in the definition of "intermediary" under the GST regime. To the contrary a bare perusal of the ruling in the case of Infinera (Supra) which stands reproduced by the Appellate Authority in the impugned order itself would show that the definition of the term "intermediary" had been noticed both under the pre-GST regime as also under the GST regime and it had been observed as under:-*
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> > *"From the above definitions, in essence, there does not seem to be any difference between the meaning of the term "intermediary" under the GST regime and pre-GST regime. In the pre-GST regime, an intermediary referred to a person who facilitates the*

> *provision of a main service between two or more person but did not include a person who provided the main service on his account. Similarly, in the GST regime, an intermediary refers to a person who facilitates the supply of goods or services or both between two or more persons but excludes a person who supplies such goods or services or both on his own account.*

Accordingly, in the light of such position wherein there is no 36 of 42 change in the legal position i.e. with regard to the scope and ambit of "intermediary" services under the service tax regime vis-a-vis the GST regime and there being no change of facts as it is the MSA of 2013 (Annexure P-1) which continues to operate, the department cannot take a different view for different periods. In M/s Radhasoami Satsang Soami Bagh, Agra Versus Commissioner of Income Tax (1992) 1 SCC 659, even though it had been observed that res judicata dopes not apply to income tax proceedings, yet it was observed as follows:-

> *16. We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.*
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> *17. On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter - and if there was no change it was in support of the assessee - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income 37 of 42 derived by the Radhasoami Satsang was entitled to exemption under Sections 11 and 12 of the Income Tax Act of 1961".*

21. In view of the above foregoing reasons, we are of the opinion that both the authorities below have committed an error in holding that the petitioner was providing intermediary service to its parent company in the facts of the case. The respondents are directed to process the refund claim in accordance with the law considering the services provided by the petitioner as export of service to its parent company and refund claims are filed within the limitation. Such exercise shall be completed within twelve weeks from the receipt of this judgment. The impugned order is therefore, accordingly quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)

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