ITEM NO.78 COURT NO.5 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) Nos.21104-21105/2025

[Arising out of impugned final judgment and order dated 03-03-2025 in WP No. 3914/2024 03-03-2025 in WP No. 4069/2024 passed by the High Court of Judicature at Bombay at Nagpur]

THE UNION OF INDIA & ORS. Petitioner(s)

VERSUS

KC OVERSEAS EDUCATION PVT LTD NAGPUR Respondent(s)

FOR ADMISSION

Date : 25-08-2025 These petitions were called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

For Petitioner(s) :Mr. S Dwarakanath, A.S.G.
Mr. Rupesh Kumar, Sr. Adv.
Mr. Gurmeet Singh Makker, AOR
Mr. Udai Khanna, Adv.
Mr. Navanjay Mahapatra, Adv.
Mr. Piyush Beriwal, Adv.
Mr. Rajat Vaishnaw, Adv.
Mr. Mudit Bansal, Adv.

For Respondent(s) :Mr. V Sridharan, Sr. Adv.
Mr. Ayush Agarwal, Adv.
Ms. Neha Choudhary, Adv.
Mr. Sahil Parghi, Adv.
Mr. Shreyash Agrawal, Adv.
Ms. Nitum Jain, Adv.
Ms. Umang Motiyani, Adv.
Mr. Swastik Mishra, Adv.
Ms. Medha Sinha, Adv.
Ms. Charanya Lakshmikumaran, AOR

UPON hearing the counsel the Court made the following

O R D E R

Having regard to the judgment dated 06.05.2025 passed by this Court in Civil Appeal Nos.10815-10819/2014 (Commissioner of Service Tax III, Mumbai Vs. M/s. Vodafone India Ltd.)

contd..

and connected matters, these special leave petitions also stand dismissed.

We also bear in mind the dictum of this Court dated 04.11.2024 in SLP (C) No. 25992/2024 (Commissioner, Central Excise, CGST-Delhi South Commissionerate and Anr. Vs. Blackberry India Pvt. Ltd.)

Pending application(s) shall also stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(AKSHAY KUMAR BHORIA)
COURT MASTER (NSH)

2025:BHC-NAG:2166-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, AT NAGPUR.

WRIT PETITION NO. 3914 OF 2024
(KC Overseas Education Pvt.Ltd.Nagpur Vs. The Union of India and ors)
AND
WRIT PETITION NO. 4069 OF 2024
(KC Overseas Education Pvt.Ltd.Nagpur Vs. The Union of India and ors)

Office Notes, Office Memoranda of Coram, Court's orders of directions and Registrar's orders | Court's or Judge's orders appearances,

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Mr. V. Sridharan, Sr. Advocate a/b Mr. Saurabh Malpani Adv, & Mr. Agrawal, Advocate for petitioner.
Mr. S.N. Bhattad, Advocate for respondent Nos. 3 and 4.

CORAM : AVINASH G. GHAROTE & ABHAY J. MANTRI, JJ.
DATED : 03-03-2025

Both these petitions raises common issue and therefore, are decided by common judgment.

2. Only contention raised by Mr. Bhattad, the learned Counsel for respondents, is that sub-clause 3 of sec 2(6) of the IGST Act is not complied with. Section 2(6) of the IGST Act defines the expression “export of services”, one of the ingredients of which is “when the place of supply of service is outside India”. We however find that the entire definition, has to be read as a whole and not in a piecemeal manner and will have to be read in the background of what the statute defines a ‘recipient’ to mean as indicated in section 2(6)(ii), as defined in Section 2(93) of the GST Act in conjunction with Sec.13(2). All these provisions, in light of the definition of ‘intermediary’ as defined in Section 2(13) of the IOGST Act has been considered by the learned Division Bench of the Delhi High Court in Ernst

& Young Ltd Vs. Add. Com. CGST 12023 (73) GSTL 161 (Del.), which also considers, the circular dtd 20.9.2021 bearing No. 159/15/21-GST issued by the Central Board of Indirect Taxes
and Customs.

3. We have perused the reasons and conclusion in Ernst & Young Ltd Vs. Add. Com. CGST and upon hearing the contention of Mr. Bhattad, learned Counsel for respondent Nos. 3 and 4, do not see any ground made out for us to take a different view.

4. It is also necessary to note, that the function, which the petitioner is performing under the agreement with the foreign university is also considered by the Service Tax Appellate Tribunal in Service Tax Appeal No. 85867/16 in the order dtd 11.10.2023, in the case of the petitioner itself, which has held that the appellant is providing service to universities located in foreign countries who are paying consideration to the appellant on account of which in view of the definition of service it has been held that the appellant was not providing service to the students in India by recommending their names to the foreign university for being enrolled as students. It is not disputed by learned counsel Mr. Bhattad that the definition of 'intermediary' in service tax regime as well as the GST regime are identical.

5. We have also perused the impugned decision dtd 7.3.2024 by the Addl. Commissioner Appeals and the discussion and findings as recorded therein. We however in view of what has been held in Ernst & Young Ltd Vs. Add. Com. CGST (supra) which considers a similar position and similar provisions, are unable to agree with the reasons stated therein. We are unable to hold, that considering the definition of 'recipient' as contained in sec 2(93) of the GST Act, which holds an

entity to be a recipient in case their consideration is payable supply of services, is the person who is liable to pay that consideration and the language of Sec 13(2) r/w sec 2(6) of IGST in light of the definition of intermediary as contained in sec 2(13) as indicated above, that the petitioner would not fall within that definition and therefore, would be entitled to a refund of the GST paid by the petitioner to the department subject to receipt of the consideration in foreign currency. We therefore, quash and set aside the impugned decision dated

7.3.2024 and allow the petitions in the above terms. Considering the circumstances, there shall be no costs.

(ABHAY J. MANTRI, J.) (AVINASH G. GHAROTE, J.)

Belkhede