

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

**Service Tax Appeal No 60440 of 2019**

(Arising out of Order-in-Appeal No. 244/ST/CGST-APPEAL-GURUGRAM/SG/2018-19 dated passed 12.12.2018 by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax,)

**Commissioner of Central Excise And Service Tax.**

**Appellant**

Plot No. 36-37 Sector 32,  
Near Medanta Hospital,  
Gurgaon (Haryana) 122001.

*VERSUS*

**M/s Orange Business India Solutions Pvt Ltd.**

**Respondent**

8<sup>th</sup>Floor, DLF, Infinity Tower, Tower-B  
DLF Cyber City, Phase-II, Sector-25,  
Gurugram (Haryana) -12202.

**APPEARANCE:**

Mr, Bhasha Ram, Authorised Representative for the Appellant  
Mr, B.L Narasimhan and Tushal Mittal, Advocates for the Respondent

**CORAM:**

**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 60138/2022**

**Date of Hearing: 20.04.2022**

**Date of Decision: 12.10.2022**

**AJAY SHARMA:**

This appeal has been filed by the Revenue assailing the order dated 13/12/2018 passed by the Commissioner, CGST (Appeals) Gurugram by which the learned Commissioner allowed the appeal filed by the appellant and set aside the Order-in-

Original No. 50/Refund/CGST/Div-East-1/2017-18 passed by the Adjudicating Authority.

2. The issue to be decided is whether the services provided by the respondent-assessee falls within the category of "Intermediary Services". The facts related to filing of the appeal are that the respondent is registered under the category of "*Business Auxillary Service*". They had filed three refund claims the details are as under:

Period	Amount
(I) October 2016 - December 2016	2,47,90,605/-
(II) January 2017 – March 2017	2,99,13,277/-
(III) April 2017 - June 2017	3,75,64,681/-

Total refund claim amounting to Rs 9,22,68,563/- for the period October, 2016 to June, 2017 was sought by the respondent of un-utilised Cenvat Credit on input service used in providing taxable service of the nature of "*Business Auxillary Service*" exported to respondent's clients located outside India. A Show Cause Notice dated 24/07/2018 was issued to the appellant as tow hy the refund claim be not rejected and the Adjudicating Authority vide Order-in-Original dated 29/08/2018 rejected the entire refund claim on the ground that the respondent has not fulfilled the condition for export. On appeal filed by the respondent – assessee, the learned Commissioner following his decision in respondent's own case for the period July, 2012 to September, 2016 allowed the appeal filed by the appellant.

8. *The sole allegation of the Revenue is that the respondent provided intermediary service, therefore the benefit of export services is not available to them.*

*"Para 5.9.6 what are intermediary services?"*

*The supply of his own service (agency service) to his principal, for which a fee or commission is usually charged."*

*For the purpose of this Rule, an intermediary in respect of goods (such as commission agent i.e. buying or selling agent or a stock holder) is excluded by definition. Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the Rule as "the main service"), but provides the main service on his own account. In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-*

*Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.*

*Separation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".*

*Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable."*

*10. From the above Guidance Note of C.B.E.&C. dated 20.6.2012 and definition of intermediary, the following conclusion has drawn:-*

- (a) An intermediary arranges or facilitates a provision of a 'main service' between two more persons;*
- (b) An intermediary is involved with two supplies at any one time (i) the supply between the principal and the third party; and (ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged;*
- (c) An intermediary cannot influence the nature or value of service, the supply of which he facilitates on behalf of his principal, although the principal may authorize to negotiate a different price;*
- (d) The consideration for an intermediary is separately identifiable from the main supply of service that he is arranging and is in the nature of fee or commission charged by him;*
- (e) The test of agency must be satisfied between the principal and the agent i.e. the intermediary. The Guidance Note states that the intermediary or the agent must have documentary evidence authorizing*

*him to act on behalf of the provider of the main service;*

*(f)*

*The payment for such service is received by way of commission;*

*(g) The Principal must know the exact value at which the service is supplied (or obtained) on his behalf.*

*11. From the agreement placed before us and arguments*

*adduced before us, we find that the activity of computer networking is networking service which is an application running at the network application layer and above, that provides data storage,*

*manipulation, presentation, communication or other capability which is often implemented using a client-server or peer-to-architecture based on application layer network protocols.*

*12. In view of the above, we do not find any arrangement or facilitation of the main service between two parties by a third person under the category of computer networking services.*

*13.*

*We further find that the mandate from the group involves various companies more than two. So it is delivered to third entity*

*on the direction of one M/s. Equant Network Services International Limited (ENSIL) and they act as intermediary. The appellants are 'processing equipment supply order's including liaison/coordination', so the liaison/coordination is also equivalent to solicitation and is more near to intermediary nature that the act of solicitation.*

*Each mandate where there are two or more than two companies are involved would not automatically be termed as intermediary merely on the ground of involvement of two or more companies. To be intermediary, the criteria laid down has been discussed herein above. We hold that the respondent is not intermediary.*

*14.*

*We further take note of the fact that the activity of the appellant is routine back office process outsourcing activities and are completely based on instructions/guidelines provided by ENSIL/AEs in this regard. The Revenue has not produced any evidence as to why providing of back office process outsourcing should be treated as intermediary.*

*15. In view of above discussion, we hold that the responder is not providing any intermediary service, therefore, no service tax is payable by the respondent. The Commissioner (Appeals) has examined the issue and sanctioned the refund claim.*

*16. We have gone through the impugned order and do not find any infirmity in the impugned and the same is upheld and the appeal filed by the Revenue is dismissed. Therefore, the respondent is entitled to consequential relief as per impugned order.*

*17. In the result, the appeal filed by the Revenue is dismissed and the cross objections are disposed of in the above terms."*

4. We have gone through aforesaid decision of the Tribunal in respondent's own case for the earlier period and concur with the same. As the same has not been stayed or set aside in any appeal, as we can gather from the case records, therefore there is no reason for us to take a contrary view. Since the issue involved herein is no more *res integra* in view of the decision (*supra*), therefore following the same we do not find any merit in the appeal filed by the Revenue and the same is accordingly dismissed.

(Pronounced in the open court on 12.10.2022)

**(AJAY SHARMA)**  
**Member(Judicial)**

**(P.V. SUBBA RAO)**  
**Member(Technical)**