CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

Service Tax Appeal No. 52609 OF 2019

(Arising out of Order–in-Appeal No. 342/Central Tax/Appl-II/Delhi/2018 dated 31.01.2019 passed by the Commissioner of Central Tax, Delhi)

Commissioner of Central Tax, Central Excise & Service Tax ...Appellant
Delhi-South Commissionerate,
New Delhi- 110019

versus

M/s Singtel Global India Private Limited ...Respondent
148, Statesman House, 5th Floor,
A Block, Connaught Place,
New Delhi-110001

WITH

Service Tax Appeal No. 52682 OF 2019

(Arising out of Order–in-Appeal No. 43/Central Tax/Appl-II/Delhi/2019 dated 05.07.2019 passed by the Commissioner of Central Tax (Appeals-II), Delhi)

Commissioner of Central Goods & Service Tax ...Appellant
Delhi-South Commissionerate,
3rd Floor, E.I.L. Annexe Building
Bhikaji Cama Place, Nehru Place - 110066

versus

M/s Singtel Global India Private Limited ...Respondent
1307, 13th Floor, B-Wing,
Statesman House,
Barakhamba Road, New Delhi – 110001
(earlier registered at:-
148, Statesman House, 5th Floor,
A Block, Connaught Place,
New Delhi-110001

AND

Service Tax Appeal No. 50023 OF 2020

(Arising out of Order–in-Appeal No. 98/Central Tax/Appl-II/Delhi/2019 dated 01.11.2019 passed by the Commissioner of Central Tax (Appeals-II), Delhi)

Commissioner of Central Goods & Service Tax ...Appellant
Delhi-South Commissionerate,
3rd Floor, E.I.L. Annexe Building

Bhikaji Cama Place, Nehru Place - 110066

versus

M/s Singtel Global India Private Limited ...Respondent
1307, 13th Floor, B-Wing,
Statesman House,
Barakhamba Road, New Delhi – 110001
(earlier registered at:-
148, Statesman House, 5th Floor,
A Block, Connaught Place,
New Delhi-110001

APPEARANCE

Shri Ravi Kapoor, Authorized Representative for the Department.
Shri Krishna Rao & Ms. Akansha Wadhani, Advocates for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 24.11.2022
Date of Decision: 07.12.2022

FINAL ORDER NO. 51147-51149/2022

JUSTICE DILIP GUPTA:

These three appeals have been filed by the department to assail the orders dated 31.01.2019, 05.07.2019 and 31.10.2019 passed by the Commissioner of Central Tax (Appeals) Delhi[1].

2. The order dated 31.01.2019 passed by the Commissioner (Appeals) upholds the order dated 18.06.2018 passed by the Assistant Commissioner by which the refund claim of Rs. 1,32,70,532/- was sanctioned in favour of M/s. SingTel Global India Private Limited[2] and the appeal filed by the Revenue has been dismissed.

3. The order dated 05.07.2019 passed by the Commissioner

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1. **the Commissioner (Appeals)**
2. **SGIPL**

(Appeals) sets aside the order dated 23.10.2018 passed by the Assistant Commissioner by which the refund claim of Rs. 8,69,82,565/- filed by SGIPL was rejected and the appeal that was filed by the SGIPL has been allowed.

4. The order dated 31.10.2019 passed by the Commissioner (Appeals) sets aside the order dated 23.07.2019 passed by the Assistant Commissioner by which the refund claim of Rs. 3,30,37,934/- filed by the SGIPL was rejected and the appeal filed by the SGIPL has been allowed.

5. The issue involved in all these appeals is regarding the refund claimed by SGIPL under rule 5 of the CENVAT Credit Rules 2004[3] read with the Place of Provision of Service Rules 2012[4] of the unutilized input service credit of input services used by SGIPL to export telecommunication services to Singapore Telecommunications Ltd.[5] (located in Singapore) in terms of the contract dated 14.07.2011. The order passed by the Commissioner (Appeal's) while granting the refund, has primarily placed reliance upon the judgment of the Delhi High Court in **Verizon Communication India Pvt. Ltd.** versus **Asstt. Commr. S. T., Delhi-III**[6].

6. It needs to be noted that the period involved in Service Tax Appeal No. 52609 of 2019 is from July 2015 to September 2015 and the refund claim pertaining to the said period was allowed by the Assistant Commissioner by order dated 18.06.2018 after holding that SGIPL was not an intermediary. However, the refund claim for the period October 2015 to December 2016, which is the subject matter

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3. the 2004 Credit Rules
4. the 2012 Rules
5. SingTel
6. 2018 (8) G.S.T.L. 32 (Del.)

of Service Tax Appeal No. 52682 of 2019, and the refund claim for the period from January 2017 to June 2017, which is the subject matter of Service Tax Appeal No. 50023 of 2020, was rejected by the Assistant Commissioner by orders dated 23.10.2018 and 23.07.2019 on the ground that SGIPL was an intermediary since it was procuring services from other telecom operators like Bharti Airtel and providing the same without any alteration to SingTel and acted as a conduit between two other principals.

7. The department had filed an appeal before the Commissioner (Appeals) against the order dated 18.06.2018 passed by the Assistant Commissioner, while SGIPL had filed two appeals before the Commissioner (Appeals) against the orders dated 23.10.2018 and 23.07.2019 passed by the Assistant Commissioner. As noticed above, the Commissioner (Appeals) decided all the three appeals in favour of SGIPL holding that it was not an intermediary since it provided services to SingTel on its own account.

8. The dispute relates to the refund claims filed by SGIPL under rule 5 of the 2004 Credit Rules. The relevant portion of rule 5 is, therefore, reproduced below:

> **"5. Refund of CENVAT Credit:**
>
> A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:

Refund amount=(Export turnover of goods+ Export turnover of services) x Net CENVAT credit
Total turnover

xxxxxx xxxxxx xxxxxx

Explanation 1: For the purpose of this rule,-

(1) "export service" means a service which is provided as per rule 6A of the Service Tax Rules, 1994."

9. Since "export service" means a service which is provided as per rule 6A of the Service Tax Rules 1994[7], the said rule is reproduced:

"6A. Export of services.-

(1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

(a) the provider of service is located in the taxable territory,

(b) the recipient of service is located outside India,

(c) the service is not a service specified in the section 66D of the Act,

(d) the place of provision of the service is outside India,

(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act

(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification."

10. As noticed above rule 6A of the 1994 Rules deals with export of services and sub-clause (d) of sub-rule (1) provides that the provision of service shall be treated as export of service when the place of provision of service is outside India. The place of provision of service is determined under the 2012 Rules. Rule 3 deals with place

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7. the 1994 Rules

of provision generally. It is as follows:

> **"3. Place of provision generally.-**
>
> The place of provision of a service shall be the location of the recipient of service:
>
> Provided that in case of services other than online information and database access or retrieval services, where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service."

11. It would be seen that in terms of the rule 3 of the 2012 Rules, the place of provision of a service shall be the location of the recipient of service.

12. Rule 9, however, deals with place of provision of specified services and is as follows:

> **"9. Place of provision of specified services.-**
>
> The place of provision of following services shall be the location of the service provider:-
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> (a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;
>
> (b) online information and database access or retrieval services;
>
> (c) Intermediary services;
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> (d) Service consisting of hiring of all means of transport other than, -
>
> (i) aircrafts, and
>
> (ii) vessels except yachts,
>
> upto a period of one month."

13. In view of the provisions of rule 9 (c) of the 2012 Rules, the place of provision for 'intermediary services' would be the location of the service provider.

14. According to the department, since the service provider i.e. SGIPL is an intermediary, the place of provision of service by SGIPL would be the location of the service provider under rule 9(c) of the

2012 Rules. According to SGIPL, the place of provision of service shall be the location of the recipient of service as provided under rule 3 of the 2012 Rules.

15. It is, therefore, necessary to determine whether SGIPL provides 'intermediary service'.

16. The concept of "intermediary" was introduced in the 2012 Rules. 'Intermediary' has been defined in rule 2(f) as follows:

> "**2(f)** 'intermediary' means 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 or supplies the goods on his account."

17. The communication dated 16 March 2012 by the Department of Revenue (Tax Research Unit) dealing with the Union Budget 2012 deals with 'intermediary services' and is as follows:

> **"3.7.7 What are "Intermediary Services"?**
>
> An "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, 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.
>
> For the purpose of this rule, an 'intermediary' in respect of goods (commission agent i.e a buying or selling agent) is excluded by definition.
>
> 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 are clearly identifiable.

In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services:-

(i) Travel Agent (any mode of travel)
(ii) Tour Operator
(iii) Stockbroker
(iv) Commission agent [an agent for buying or selling of goods is excluded
(v) Recovery Agent

Even in other cases, wherever a provider of any service acts as an agent for another person, as identified by the guiding principles outlined above, this rule will apply."

18. Rule 2(f) of the 2012 Rules, as noticed above, defines an "intermediary" to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service to be 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 or supplies the goods on his own account. The communication dated 16 March 2012 referred to above, also clarifies that an intermediary service is involved with two supplies at any one time namely:

(i) the supply between principal and the third party;

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

19. The said communication also mentions that in order to determine whether a person is acting as an intermediary or not, three factors namely nature and value, separation of value and identity and title have to be examined. In regard to the "nature and value", it states that 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. Regarding "separation of value", it states that the value of service provided by an intermediary is invariably identifiable from the main supply of service that he is arranging. Generally, the amount charged by an agent from his principal is referred to as "commission". In regard to "identity and title", it provides that the service provided by the intermediary on behalf of the principal are clearly identifiable and example of a travel agent, a tour operator, stock broker, commission agent and a recovery agent have been given.

20. In order to appreciate the contentions advanced by Shri Ravi Kapoor learned authorized representative appearing for the department and Shri Krishna Rao assisted by Ms. Akansha Wadhani learned counsel for SGIPL, the Agreement dated 14.07.2011 entered into between SGIPL and SingTel has to be examined. The agreement would determine whether the services provided by SGIPL would fall in the category of 'intermediary service'.

21. The relevant clauses of the Agreement are, therefore,

reproduced below:

SGIPL Supply Agreement

Date: This Agreement is made this 14th day of July 2011

Parties:

(1) SingTel Global (India) Private Limited, a company incorporated in India and having its registered office at 5th Floor, Statesman House, 148, Connaught Place, New Delhi-110001 (hereinafter referred to as "SGIPL") on the one part, AND;

(2) Singapore Telecommunications Limited, a corporation organized and existing under and by virtue of the laws of Singapore, Company Registration Number 199201624D, having its registered office at 31 Exeter Road, Singapore (239732) (hereinafter referred to as "SingTel") on the other part.

Recitals:

(A) **WHEREAS** SingTel is a licensed telecommunication services provider in the Republic of Singapore and provides or can procure certain telecommunication services in Singapore. SingTel, on its own or through one or more of its affiliates or suppliers, has the capability to provide, or assist to procure from local operators, Service(s) in the Territories in accordance with the terms and conditions of this Agreement.

(B) **WHEREAS** SGIPL is a licensed provider of certain telecommunication services in India and provides, or can procure, certain telecommunication services in India.

(C) **WHEREAS Sing Tel has customers in the Territories** (hereinafter referred to as "Customer") **who desire to have the telecommunications services** (hereinafter referred to as " Services" as set out in Schedule B) **between India and the territories listed in Schedule** A and as may be varied by SingTel from time to time (hereinafter referred to as

"Territories");

(D) **WHEREAS SingTel wishes to procure from SGIPL and SGIPL wishes to supply SingTel all services necessary and ancillary to enable SingTel to provide to Customers seamless global telecommunication services upon the terms set out in this Agreement.**

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3. Scope of Agreement

3.1 **SGIPL agrees to supply and SingTel agrees to procure from SGIPL the Service in accordance with the terms and conditions of this Agreement.**

3.2 SingTel shall place an order for such Services in the format mutually agreed by both parties from time to time.

4. Responsibilities of SGIPL

4.1 SGIPL shall provide or use its reasonable endeavors to procure Service in India as ordered by SingTel.

4.2 **SGIPL shall provide the Services when SingTel's Customers require the services originating in Territories and terminating in India.**

4.3 **SGIPL shall provide at its own expense, all facilities and resources whatsoever necessary to enable SGIPL to provide the Services to SingTel.**

4.4 SGIPL shall provide to SingTel customer care, customer support (including assistance to a Customer in matters relating telecommunications access, data entry and data retrieval to and from the Services provided hereunder) and other services as may be reasonably required by SingTel from time to time.

4.5 SGIPL shall maintain detailed records and other supporting documentation associated with the provision of the Services.

4.6 **SGIPL shall provide the Services in accordance with the terms and conditions of**

its telecom licenses and all applicable laws.

4.7 **SGIPL shall bill on SingTel for the Services provided by SGIPL.**

5. Responsibility of Singtel

5.1 SingTel shall, whether itself or through its distributors or suppliers, provide, operate, maintain and manage all ILCs and network equipment in the Territories.

5.2 SingTel shall also bear the exchange risk realizable and arising from any transactions transacted in foreign currency and similarly will be remunerated fully for any realised exchange gains attributable to SGIPL.

5.3 When SingTel submits an order for the Services, SingTel must submit a Letter of Undertaking signed by the End User Customer in India in the form attached as [Schedule C] attached.

5.4 SingTel and SGIPL shall each be responsible for all planning, design and capacity management activities required for its respective network, including associated bandwidth, to support the launch and delivery of Services. This includes responsibility for any future enhancements and changes to the network.

6. Charges and Payment

6.1 **Service provided by SGIPL will be charged at market prices exclusive of any applicable indirect tax, which will be separately levied and payable by SingTel.**

6.2 **SGIPL will invoice SingTel for the Services by the end of the month following the month of the provision of Services.**

6.3 **SingTel will be required to pay such monthly invoices within 30 days of the date of such monthly invoices** (or upon such other basis as the parties may mutually agree from time to time).

6.4 The invoice shall be in US dollars and shall be accompanied by a statement detailing the Services to which the invoice relates. Any changes to SGIPL's prices must be notified in writing to

SingTel and will be applicable to those Services supplied after the date of serving such notice.

6.6 **Notwithstanding that the above invoices are rendered, both parties agree that transfer pricing adjustments to prices may be made at any time in order to ensure that prices are at acceptable arm's length in accordance with transfer pricing legislation in the applicable country.** Such transfer pricing adjustments may be computed on an aggregated basis (rather than identified to a specific transaction). When such adjustments are made by SGIPL to increase the price. SingTel agrees to pay the additional amounts including any applicable indirect taxes. Where such adjustments result in a lower price, SGIPL will refund the applicable amounts to SingTel.

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19. Independent Contractor

19.1 **The Relationship of the parties to this Agreement shall always and only be that of independent contractors and nothing in this Agreement shall create or be deemed to create a partnership or the relationship of principal and agent or employer and employee between the parties.**

(emphasis supplied)

22. According to the department, as SGIPL procured services from other service providers in India and supplied the same to SingTel without any alteration, SGIPL would be an 'intermediary' under rule 9(c) of the 2012 Rules and, therefore, the place of provision of service shall be the location of the service provider i.e. in India. According to SGIPL, the place of provision of services shall be the location of the recipient of the service as provided under rule 3 of the 2012 Rules.

23. In the present case, what transpires from the aforesaid Agreement dated 14.07.2011 is that SingTel is a licensed telecommunication service provider in Singapore. It, on its own or through one or more of its affiliates or suppliers, has the capability to provide services in foreign territories. SGIPL is a licensed provider of certain telecommunication services in India and provides, or can procure, certain telecommunication services in India. SGIPL had desired to supply and SingTel had agreed to procure from SGIPL services necessary and ancillary to enable SingTel to provide to its customers seamless global telecommunication services upon the terms set out in the Agreement. The responsibilities of SGIPL are contained in clause 4 of the Agreement. Clause 4.3 provides that SGIPL shall provide, at its own expense, all facilities and resources whatsoever necessary to enable it to provide services to SingTel. In terms of clause 4.7, SGIPL shall bill on SingTel for the services provided by it. The responsibilities of SingTel are contained in clause 5 of the Agreement. Clause 6 of the Agreement deals with charges and payment. It provides that SGIPL will invoice SingTel in US dollars for the services by the end of the month following the month of the provision of services and SingTel will be required to pay such monthly invoices within 30 days of the date of such monthly invoices. Both the parties also agreed on the transfer pricing adjustments to prices at any time in order to ensure that prices are at acceptable at arm's length. Clause 19 of the Agreement specifically provides that the relationship of the parties to the Agreement shall always and only be that of independent contractors and nothing in the Agreement shall create or be deemed to create a partnership or the relationship of

principal and agent or employer and employee between the parties.

24. The Agreement executed between SGIPL and SingTel leaves no manner of doubt that SGIPL is not an intermediary. There is no contract between SingTel and the operators in India like Airtel. SGIPL may have used the services of telecom operators in India but this would not mean that these telecom operators are providing services to SingTel. Such steps have been taken by SGIPL in terms of the Agreement entered with SingTel. What is also important to notice is that SGIPL has to provide, at its own expenses, all facilities and resources necessary to enable SGIPL to provide the services to SingTel. It is SGIPL which bills SingTel for the services provided by it in US dollars and SingTel has to make the payment within 30 days of the date of such monthly invoices. The Agreement also specifically provides that the relationship of the parties to the Agreement shall always and only be that of independent contractors and nothing shall create or be deemed to create a partnership or the relationship of principal and agent or employer and employee between the parties. The terms of the Agreement also perse do not create any relationship of principal and agent or employer and employee. An agent is a person employed to do any act for another or to represent another in dealing with third persons. The persons for whom such act is done, or who is so represented, is the principal. A broker is a middleman or an agent who, for a commission on the value of the transaction, negotiates for others the purchase or sale of stocks, bonds, commodities, or a property. These two situations do not arise in the present case.

25. An intermediary is a person who arranges or facilitates

provision of the main service between two or more persons. SGIPL is not involved in the arrangement or facilitation of the supply of service. In fact, it has entered into two Agreements; one with SingTel and the other with the Indian telecommunication service providers. It needs to be noted that SingTel had entered into Agreements with end customers for providing telecommunication services and it is for the provision of this telecommunication services that SingTel entered into an Agreement with SGIPL on a principal to principal basis. SGIPL entered into agreements with the Indian telecommunication service providers for providing bandwidth so as to enable it to provide the required services to SingTel for its customers. Thus, the two Agreements are distinct and independent from each other. SGIPL provides the main service i.e. telecommunication service to SingTel on its own account. The telecommunication service provided by SGIPL qualify for export since it is providing telecommunication services to SingTel which is outside India and is receiving convertible foreign exchange for such services. SGIPL is not a privy to the Agreement entered into between SingTel and its end customers. Merely because SGIPL is charging handling fee on SingTel would not mean it is an intermediary.

26. The Commissioner (Appeals) had relied upon the decision of the Delhi High Court in **Verizon Communication India Pvt. Ltd.** versus **Asstt. Commr., S.T. Delhi-III**[8]. It is seen from a perusal of the aforesaid judgment that Verizon India had entered into a Master Supply Agreement with Verizon US for rendering connectivity services for the purpose of data transfer. Verizon US was engaged in the

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8. 2018 (8) G.S.T.L. 32 (Del.)

provision of telecommunication services for which it entered into contracts with the customers located globally. Since Verizon US did not have the capacity to provide such services across the globe, it utilized the services of Verizon India to provide connectivity to its customers. The issue, therefore, that arose before the Delhi High Court was whether the telecommunication services provided by Verizon India during the period April 2011 to September 2014 to Verizon US would qualify as 'export of services'. The department believed that the said services would not qualify as 'export of services'.

27. The Delhi High Court noted that in the process of gathering the data from the entities in India for transmission to Verizon US, Verizon India availed services of Indian telecommunication service providers like Vodafone and Airtel. These service providers raised invoices on Verizon India and Verizon India paid these service providers the requisite charges. Verizon India thereafter raised an invoice on Verizon US for the 'export of services' provided by it to Verizon US. Since the recipient of the service (Verizon US) was outside India, Verizon India treated it as an export of service and understood that it was exempted from service tax under the Export of Service Rules 2005. Verizon US, in turn, raised invoices on its customers in the US. The refund claims of Verizon India pertained to the period January 2011 to September 2014. The Delhi High Court pointed out that the 'recipient' of services is determined by the contract between the parties and this would depend on who has the contractual right to receive the services and who is responsible for the payment for the services provided to the service recipient; there

was no privity of contract between Verizon India and the customers of Verizon US; such customers may be the 'users' of the services provided by Verizon India but were not its recipients; Verizon India may have been using the services of a local telecom operator but that would not mean that the services to Verizon US were being rendered in India; and the place of provision of such service to Verizon US remains outside India.

28. In this connection, the Circular dated 24.02.2009 was relied upon which is as follows:

> "For the services that fall under category III [Rule 3(1)(iii)], the relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for Category III service [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the benefits of these services accrue outside India..."

29. The summary of the conclusions noted by the Delhi High Court are as follows:-

> **"54. To summaries the conclusions:**
>
> (i) It made no difference that Verizon India may have provided 'telecommunication service' and not 'business support services' since to qualify as export of service both had to satisfy the same criteria.
>
> (ii) **The provision of telecommunication services by Verizon India during the period January, 2011 till 1st July, 2012 complied with the two conditions stipulated under Rule 3(1)(iii) of the ESR to be considered as 'export of service'. In other words, the payment for the service was received by Verizon India in convertible foreign**

exchange and the recipient of the service was Verizon US which was located outside India.

(iii) **That Verizon India may have utilised the services of Indian telecom service providers in order to fulfil its obligations under the Master Supply Agreement with Verizon US made no difference to the fact that the recipient of service was Verizon US and the place of provision of service was outside India.**

(iv) The subscribers to the services of Verizon US may be 'users' of the services provided by Verizon India but under the Master Supply Agreement it was Verizon US that was the 'recipient' of such service and it was Verizon US that paid for such service. That Verizon India and Verizon US were 'related parties' was not a valid ground, in terms of the ESR or the Rule 6A of the ST Rules, to hold that there was no export of service or to deny the refund.

(v) The Circular dated 3rd January, 2007 of the C.B.E. & C. had no application to the case on hand. It did not pertain to provision of electronic data transfer service. It was wrongly applied by the Department. With its total repeal by the subsequent Circular dated 23rd August, 2007, there was no question of it applying to deny the refund for the period January, 2011 till September, 2014.

(vi) **Even for the period after 1st July, 2012 the provision of telecommunication service by Verizon India to Verizon US satisfied the conditions under Rule 6A(1)(a), (b), (d) and (e) of the ST Rules** and was therefore an 'export of service'. The amount received for the export of service was not amenable to service tax."

(emphasis supplied)

30. The aforesaid judgment of the Delhi High Court in **Verizon Communication** squarely applies to the facts of the present case. The Commissioner (Appeals) correctly appreciated the position in the impugned orders in holding that SGIPL was not intermediary and had

provided export of service to SingTel. The relevant portion of the order passed by the Commissioner (Appeals) in the appeal filed by the department is reproduced below:

> "(ii) It is noted that the pleadings of appellant are based upon the fact that the respondent have procured services from various service providers and only such services have been provided to their overseas client. In other words, the appellant have emphasized the fact that the respondent have merely procured the services for their overseas client. However, such pleadings are not agreeable for the reasoning that the respondent have provided such services on their own account. Various input service providers of respondent raise invoices of value of taxable services on the respondent. The respondent pay the same. In turn, they raise invoices on their overseas client. **The intermediary essentially excludes any person who has provided the service on their own account. Also, the issue in hand is squarely covered by the judgment in Verizon Communications India Pvt. Ltd. Vs ACST [2018 (8) GSTL-32 (Del)]** where in the Hon'ble High Court has clearly held that for the period post July 2012, the telecommunication service falls under Rule 3 of Place of Provision of Services Rules, 2012 (para 49 of this judgment refers). In the present case, it is undisputed that the service provided by the respondent merits classification under telecommunication service. Hence, in view of reasoning stated above and also considering the ratio of judgment as aforecited, the appeal fails."
>
> **(emphasis supplied)**

31. It would also be appropriate, to refer to the decision of the Tribunal in **Verizon India Pvt. Ltd.** versus **Commissioner of Service Tax, Delhi**[9]. The Tribunal held that as the appellant had provided services under a contract to Verizon US which was located outside India and had raised invoices for such services and received

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9. 2021 (45) G.S.T.L. 275 (Tri.-Del.)

remittance in foreign exchange, the appellant would satisfy the conditions set out in rule 6A of the 1994 Rules. The relevant portion of the decision is reproduced below:

> "30. xxxxxxxxxx Further, we find that the Hon'ble Delhi High Court has held, that its findings applied to post-Negative List also *i.e.* from July, 2012 onwards, as held by the Hon'ble High Court in its aforementioned judgment particularly in para-54 (supra). **Further, admitted facts are that the appellants have provided output services and raised invoices on principal to principal basis. The appellant has not been acting as intermediary between another service provider and Verizon US. This fact is also supported from the fact that the appellant has raised their bills for the services provided on the basis of cost plus 11% mark-up.** As the services have been provided by the appellant under contract with Verizon US, who are located outside India and have raised their invoices, for such services and have received the remittance in convertible foreign exchange, the appellant satisfies all the conditions, as specified under Rule 6A of Service Tax Rules, 1994, inserted w.e.f. 1-7-2012. xxxxxxxxxxxx
>
> 31. **From perusal of the aforementioned ruling, it is evident that the services of the appellant to Verizon US do not merit classification under the category of 'intermediary services'.** Further, the Hon'ble High Court has held in the appellant's own case (supra) that the agreement between the related parties does not have any impact on the export of services. Further, the findings of the Commissioner (Appeals) that the service provided by the appellant do not qualify as export, as such services provided to the customers, have been consumed in India, is directly in conflict with the ruling of this Tribunal in the case of *Paul Merchants Ltd.* (supra). **Accordingly, we hold that the appellants have rendered services to Verizon US as principal service provider and not as an intermediary. Accordingly, we hold that the appellants are**

> **entitled to refund under Rule 5 of the Cenvat Credit Rules, 2004 read with the notification.** Thus, these appeals are also allowed with consequential benefit and the impugned orders are set aside."
>
> **(emphasis supplied)**

32. Learned counsel for the SGIPL also placed reliance upon a decision of the Chandigarh Bench of the Tribunal in **Service Tax Appeal No. 61877 of 2018** decided on 08.08.2022 [10]. After reproducing the definition of 'intermediary', the Bench observed that:

> "5. A plain reading of the aforesaid provision makes it clear that to attract the said definition there should be two or more persons besides the service provider. In other words an "intermediary" is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus necessary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (main supply) and one arranging or facilitating the said main supply. Therefore, an activity between only two parties cannot be considered as an intermediary service. **An intermediary essentially arranges or facilitates the main supply between two or more persons and does not provide the main supply himself. The intermediary does not include the person who supplies such goods or services or both on his own account. Therefore there is no doubt that in cases wherein the person supplies the main supply either fully or partly, on principal to principal basis, the said supply cannot come within the ambit of "intermediary".** Sub-contracting for a service is also not an intermediary service. The supplier of main service may decide to outsource the supply of main service, either fully or partly, to one or more sub- contractors. Such sub-contractor provides the main supply, either fully or a part thereof and does not merely arrange or facilitate the main supply

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between the principal supplier and his customers and therefore clearly not an intermediary. xxxxxxxxxxx

6. What we have gathered from the perusal of the agreement as well as submission of the learned Counsel is that the Support Services in relation to creation of clients account is limited to the performing of services on HLX systems and that too as a backend process. It is the specific case of the appellants that HLX does not have any clients in India. Maintenance, support or troubleshooting function, if any, the appellant is required to perform on requisition from HLX in order to ensure seamless access of services which means there is no requirement of any interaction, whatsoever with the clients of HLX and for performing all these services on behalf of HLX, the appellant receives a pre-agreed consideration from HLX in convertible foreign exchange. Commission is being paid to an intermediary not the transfer pricing, whereas the appellant herein was getting transfer pricing. **There is nothing on record to show that the appellant is liasioning or acting as intermediary between the HLX and its clients. Therefore, the finding of the lower authorities that the appellant is an "intermediary" is misplaced.** We are astonished to notice that although for earlier periods the then adjudicating authority allowed the refund claim of the appellant, but without looking into those orders and without giving any reason for not following the earlier orders, this time the concerned Authorities held otherwise by denying the credit."

(emphasis supplied)

33. Learned authorized representative appearing for the department however placed relied upon the decision of the Mumbai Bench of the Tribunal in **Commissioner of Service Tax** vs. **Lamhas Satellite Services Ltd.**[11] to contend that SingTel is an intermediary. The respondent therein had filed refund claims under rule 5 of the 2004 Credit Rules for claiming refund of accumulated credit against

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the export of services. It is on a consideration of the agreement entered into between **Lamhas Satellite Services** and **Globecast Asia PTE Ltd.** that the Tribunal concluded that the services were covered by the term 'intermediary' defined under rule 2(f) of the 2012 Rules. The relevant portion of the decision is reproduced below:-

> "5.7 From the agreement referred above it is quite evident that the agreements provide in detail the responsibilities of the parties to the agreement. It also provides for payments for various activities and manner of payment to. As per this agreement for certain services, i.e.-
>
> i. Channel Carriage, the claimant enters into agreement with the Channel Distribution Partner on and behalf of GlobeCast. The Channel Distribution Agreement is entered into only after written prior approval of the agreement by Globecast.
>
> ii. Channel Carriage Fees paid by the GlobeCast is as per the agreement entered into with the channel distribution agreement and the claimant receives the same from GlobeCast, and is obliged to pay it to the concerned Channel Distribution Partner within 24 hrs of receipt and in any case prior to the appointed date as per the Channel Distribution Agreement.
>
> iii. For rendering all such services like maintaining the list of eligible channel distribution partners etc, GlobeCast pays a LAMHAS Professional Fees to the claimant.
>
> iv. For monitoring the Channel Carriage, by the Channel Distribution Partner and reporting any outage to them, for maintaining all the documents in respect of such monitoring of channel carriage and submitting reports to GlobeCast, a service fees called LAMHAS Service Fees @ US$ 400 per month is paid to the claimant.
>
> xxxxxxxxxx

> In the present case the Channel Carriage for which Channel Carriage Fees is paid by GlobeCast, to Channel Distribution Partner through claimant is the main service which has been provided by the Channel Distribution Partner and not the claimant who has acted only to mediate the provision of service by the Channel Distribution Partner to GlobeCast. This service has in no manner been provided by the claimant to the GlobeCast. In our view the services of mediation of this nature are covered by the term "intermediary" as defined by Rule 2(f) of the Place Of Provision of Services Rules, 2012. Since these services are covered by the term intermediary, in term of Rule 9 ibid, the place of provision of these services will be the location of the service provider that is in India. Hence these services cannot be considered as export of service as per Rule 6A of Service Tax Rules, 1994."

34. The decision of the Tribunal in **Lamhas Satellite Services** was in the context of the agreement between **Lamhas Satellite Services** and **Globecast Asia PTE Ltd**. The appellant acted only to mediate the provision of service by the channel distribution partner to GlobeCast and the service was not provided by the appellant to GlobeCast. It is in such circumstances that the Tribunal observed that the service would an intermediary service. The decision of the Delhi High Court in **Verizon India** was distinguished for the reason that the agreement was entirely different. The distinguishing factor was noticed in paragraph 5.10 in the following manner:

> "From the schemes as depicted above it is very clear that, the head office of the recipient of service was located outside India and was billed by the entity located in USA. Hence the services were held to be provided in USA. In the present case the except for routing the payment through LAMHAS, who have entered into the Channel Distribution Agreement with Channel Distribution Partners, the services of Channel Carriage were provided by the Channel Distribution Partners to TV-NOVOSTI directly.

> Hence the services provided by the LAMHAS in this respect qualify as "intermediary services"."

35. The said decision of the Tribunal in **Lamhas Satellite Services** would not, therefore, help the revenue and it is the judgment of the Delhi High Court in **Verizon India** that would apply to the facts of these appeals.

36. Thus, for all the reasons stated above, all the three Service Tax Appeals, namely Service Tax Appeal No. 52609 of 2019, Service Tax Appeal No. 52682 of 2019 and Service Tax Appeal No. 50023 of 2020 filed by the department deserve to be dismissed and are dismissed.

(Order pronounced on **07.12.2022**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

JB