HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2025

BEFORE

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

WRIT PETITION NO. 34642 OF 2025 (T-RES)

BETWEEN:

M/S EXCELLENCE4U RESEARCH
SERVICES PVT LTD
NO F709, RAHEJA RESIDENCY
RAHEJA F BLOCK,
KORAMANGALA, 3RD BLOCK
BENGALURU 560034
REP BY ITS DIRECTOR
MR MADHU RAO
(UNDER REGISTRED COMPANIES ACT 1956)

...PETITIONER

(BY SRI. SUSHEN S., ADVOCATE)

AND:

1. ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES
DGSTO 4, CABIN NO 06, 5TH FLOOR
BMTC BUILDING, 80 FEET ROAD
6TH BLOCK, KORMANGALA
BANGALORE- 560095

2. THE JOINT COMMISSIONER OF
COMMERCIAL TAXES (APPEALS)-4
NO 640, 6TH FLOOR, BMTC BUILDING
80 FEET ROAD, 6TH BLOCK
KORMANGALA- 560095

...RESPONDENTS

(BY SMT. JYOTI M MORADI, HCGP)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO-QUASH THE

FOLLOWING ORDERS; A. ORDER NO. ACCT (AUDIT) 4.5/DGSTO-4/S-74-56/23-24 DATED 21.12.2023 BY THE RESPONDENT NO.1 (ANNEXURE-A); B. ORDER NO. ZD290325100718D PASSED IN PROCEEDINGS NO. GST.AP.493/2023-24 DATED 21.03.2025 BY THE RESPONDENT NO.2 (ANNEXURE-B); C. RECTIFICATION ORDER NO. ZD290325103133U PASSED IN PROCEEDINGS NO. GST.AP.493/2023-24 DATED 29.03.2025 BY THE RESPONDENT NO.2 (ANNEXURE-C); D. RECTIFICATION ORDER NO. ZD2909251006761 IN PROCEEDINGS NO. GST.AP.493/2023-24 DATED 25.08.2025 BY THE RESPONDENT NO.2 (ANNEXURE-D); AND REMAND THE MATTER BACK TO THE RESPONDENT NO.2 FOR A FRESH CONSIDERATION IN THE LIGHT OF THE DOCUMENTS PRODUCED AT ANNEXURE-J.

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

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

ORAL ORDER

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

"Issue a WRIT OF CERTIORARI and quash the following orders:

a. *Order No.ACCT (Audit) 4.5/DGSTO-4/S-74-56/23-24 dated 21.12.2023 by the respondent No.1 (Annexure A)*
b. *Order No: ZD290325100718D passed in proceedings No.GST.AP.493/2023-24 dated 21.03.2025 by the Respondent No.2 (Annexure B),*

c. Rectification Order No: ZD290325103133U passed in proceedings No. – GST.AP.493/2023-24 dated 29.03.2025 by the respondent No.2 (Annexure C),

d. Rectification Order no.ZD2909251006761 in proceedings No.GST.AP.493/2023-24 dated 25.08.2025 by the Respondent No.2 (Annexure-D)

And remand the matter back to the Respondent No.2 for a fresh consideration in the light of the documents produced at Annexure-J."

2. Heard the learned counsel for the parties and perused the material on record.

3. A perusal of the material on record would indicate that in the first instance, the respondent No.1 passed an order dated 21.12.2023, which was assailed by the petitioner before the second respondent - appellate authority, which dismissed the appeal vide order dated 21.03.2025. Subsequently, the respondent No.2, suo-moto initiated rectification proceedings and passed an order dated 29.03.2025. Subsequent to which the

petitioner filed an application seeking rectification under Section-161 of the Karnataka Goods and Services Tax Act 2017 and Central Goods Services Tax Act 2017, which culminated in the impugned rectification order at Annexure-D, dated 25.08.2025. Aggrieved by the aforesaid orders passed by the respondent Nos.1 and 2 the petitioner is before this Court by way of the present petition.

4. The learned counsel for the petitioner would reiterate various contentions urged in the petition and invite my attention to the documents produced by the petitioner including documents relating to foreign inward remittance certificate / bank realization certificate issued by the petitioner, in favour of the petitioner which is produced by the petitioner along with the representation at Annexure-J, dated 14.07.2025.

5. It is submitted that though the petitioner produced the details and the documents to indicate foreign

inward remittance made by the petitioner, the second respondent has rejected the rectification application filed by the petitioner without considering the said documents produced along with Annexure-J, dated 14.07.2025 and has erroneously rejected the rectification application by passing the impugned order at Annexures-D dated 25.08.2025, which deserves to be set aside.

6. Per contra, the learned HCGP for the respondents submits that there is no merit in the writ petition and the same is liable to be dismissed and also supports the impugned order and submits that since the petitioner did not produce the requisite documents before respondent No.2, the question of interfering with the impugned order would not arise in the present petition and is liable to be dismissed.

7. As rightly contended by the learned counsel for the petitioner while rejecting the claim of the petitioner for rectification, the second respondent held as under:

"According to guidelines from the Reserve Bank of India (RBI) and letters circulated by FEDAI (Foreign Exchange Dealers Association in India), the following 2 documents can be issued by A.D (Authorized Dealer) Category 1 banks in India as proof of foreign transfers to India.

Physical Foreign Inward Remittance Certificate (FIRC)

A physical FIRC may be issued only for inward remittances covering Foreign Direct Investment (FDI) / Foreign Institutional Investment (FII). Payments for these purposes are only allowed through banking channels as per RBI guidelines.

Electronic FIRC (e-FIRC)

According to the RBI, AD Category 1 banks must report all money transfers to India (inward remittances) to Export and Data Monitoring Systems (EDPMS). This includes any advances or outstanding transfers they've received for the export of goods or services, Banks that receive these kinds of transfers will issue an electronic FIRC to EDPMS when the exporter asks them to.

Foreign Inward Remittance Advice

If the transfer doesn't fall in either of these 2 categories above, one can apply for a Foreign Inward Remittance Advice (certificate of inward remittance) from the partner bank that processed the transfer. Advice is only available for businesses

7.15. In the case of Commnr. Of Customs (Import), Mumbai vs M/S. Dilip Kumar And Company on 30 July, 2018, vide CIVIL APPEAL NO. 3327 OF 2007, the Hon'ble Supreme Court of India has held that;

"Interpretation of tax exemption Notification/Statutory Provisions and their applicability in the case of ambiguity-correctness of the ratio in Sun Expor corporation, Bombay V. Collector of Customs, Bombay 1997 (7) TMI 117, held

that it is the law that any ambiguity in a taxing statute should ensure to the benefit of the assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue and such exemption claims, the burden of proof is cast upon the assessee who claims exemptions. The tax authorities can ask for any supporting documents which they consider as necessary for verification to safeguard the revenue.

7.16. The appellant has failed to prove that the services are exported out India, hence the respondent has considered the turnover declared as zero rated turnover other than for which proof of foreign inward remittance is received as outward taxable supply other than zero rated, NIL rated, and exempted supply and levied KGST 9% and CGST @ 9% on the same. Due to lack of documentary evidence, the claim of the appellant that he has exported services cannot be accepted and levy of tax, interest and penalty by the respondent is in order.

7.17. Non-submission of Bank Realization Certificate (BRC) or Foreign Inward Remittance Certificates (FIRC), required in case of Export of Services as per rule 89(2) (c) of the CGST Rules, 2017 has resulted in rejecting the wrongly claimed refund and as well as wrongly declared outward supplies as Zero rated supplies and for the determination of tax components by the Respondent in the impugned Order.

7.18. The detailed discussion already been made in the original appeal order by considering the all documents submitted by the appellant. Further the case laws referred by the appellant are verified and facts of the cases are different from the case in hand and there is no mistake apparent on record to rectify the original appeal order."

8. As can be seen from the aforesaid findings recorded by the second respondent, it has come to the conclusion that relevant documents were not produced by the petitioner. A perusal of the representation and the documents produced by the petitioner at Annexure-J would indicate that the said documents were actually produced by the petitioner, as can be seen from the representation and the documents which are as under:

"TO

The Joint Commissioner
of Commercial Taxes (Appeals)-4
No.640, 6th Floor, BMTC Building
80 Feet Road, 6th Block Koramangala
Bengaluru-560095

Dear Madam

Sub: Submission of export realisation details in respect of certain invoice

Ref: Company Name: Excellencu4U Research Services Private Limited

GSTIN 29AACCE9903F1ZK FY 2017-18

With Reference to the above please find attached the below details

1) Service Now Invoice #22: Ledger Statement, Invoice raised, Bank realisation advice and Bank statement reflecting the specific transaction. We have also attached

a consolidated letter from the bank about the realisation of specific invoices- ATTACHED AS ANNEXURE-1

2) GLG Invoice # 41: Ledger Statement, Invoice raised, and Bank statement reflecting the specific transaction. ATTACHED AS ANNEXURE-2

3) GLG Invoice # 45: Ledger Statement, Invoice raised, and Bank statement reflecting the specific transaction. We have also attached a specific letter from the bank about the realisation of specific invoices. ATTACHED AS ANNEXURE-3

4) Netop Invoice #51 Ledger statement showing the accounting of invoice and the ledger statement showing the write off of the specific amount, OTTOCHED AS ANNEXURE-4

Request you to take the above on records and allow the same

For, S.R.Rarnesh & Co,

Chartered Accountant,
Sd/-
CA Ramesh SR
M No.206309
Place : Bengaluru"

9. In addition thereto this Court in the case of M/S. NOKIA SOLUTIONS AND NETWORKS INDIA PRIVATE LIMITED VS. THE PRINCIPAL COMMISSIONER OF CENTRAL TAX AND OTHERS, disposed of on 22.08.2024, held as under:

"ORAL ORDER

In this petition, petitioner seeks for the following reliefs:-

(a) Issue a writ, order or directions in the nature of certiorari or any other writ, order or direction of like nature quashing the impugned order dated 18.05.2022 bearing reference OIA No.39-42/2022-23/JC-AII/GST (Annexure-A) passed by the respondent No.2;

(b) Issue a writ, order or directions in the nature of certiorari or any other writ, order or direction of like nature quashing the impugned SCN dated 06.09.2021 bearing File No.GEXCOM/ADJN/GST/ADC/104/2021-ADJN-COMMR-CGST-Bengaluru (N) (Annexure-B) issued by the respondent No.4;

(c) Issue a writ, order or directions in the nature of certiorari or any other writ, order or direction of like nature quashing the impugned SCN dated 07.07.2022 bearing File No.GEXCOM/ADJN/GST/ADC/50/2021-ADJN-COMMR-CGST-BENGALURU (N) (Annexure-C), issued by the respondent No.5;

(d) For such further and other reliefs, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

2. A perusal of the material on record will indicate that the petitioner is engaged in the business of providing information and technology software and related support services both inside India as well as outside India. It is contended that the petitioner is

registered with Karnataka GST Authorities. In the regular course of business and in order to provide services to overseas customers, petitioner entered into contracts with their overseas related entities to provide services on principal–to–principal basis and in order to establish this, petitioner has produced contracts and agreements dated 10.06.2016 and 17.05.2018 respectively. It is contended that the petitioner is rendering software services and related support services to the overseas entity by developing software on its own account by the petitioner and providing services to its overseas entity on principal-to-principal basis.

3. On 23.03.2020, the petitioner filed 4 applications seeking refund of unutilised Input Tax Credit (ITC) of tax paid on input services for providing export services for the periods from April 2018 to March 2020. It is contended that in relation to the aforesaid four applications filed by the petitioner in respect of the aforesaid periods, referred to supra, the 3rd respondent passed four orders dated 24.04.2020, 28.05.2020, 29.07.2020 and 03.10.2020 partially sanctioning the refund in favour of the petitioner.

4. The respondents – revenue filed appeals before the 2nd respondent – appellate authority challenging the aforesaid refund orders interalia contending that the petitioner had not submitted Bank Realisation Certificates (BRCs) / Foreign Inward Remittance Certificates (FIRCs) before the 3rd respondent. The revenue also contended that in the FIRAs(Foreign Inward Remittance Advices) submitted by the petitioner, the location of the beneficiary is mentioned as Gurgaon which is different from the petitioner's location at Bengaluru and the purpose of remittance is mentioned as 'against intercompany receipt'. It was also contended that the Invoices submitted by the petitioner mentioned that the payments are to be made in Bank of America, New Delhi Account No.36574019 whereas the FIRAs showed the Account Number as 36574085. It was further contended that the services provided by the petitioner were "intermediary services" in respect of which the petitioner

was not entitled to seek refund and that the refund orders are to be set aside on this ground also.

5. During the pendency of the appeal, the 4th respondent issued the impugned Show Cause Notice (SCN) at Annexure-B dated 06.09.2021 seeking to recover the refund sanctioned in favour of the petitioner. The petitioner submitted a reply dated 30.09.2021 to the said SCN and also filed written submissions – cum- cross objections dated 06.05.2022 before the 2nd respondent – appellate authority.

6. By the impugned order vide Annexure-A dated 18.05.2022, the 2nd respondent set aside the refund sanction order passed by the 3rd respondent, pursuant to which, the 5th respondent issued the impugned 2nd SCN at Annexure-C dated 07.07.2022 to the petitioner calling upon it to show-cause as to why recovery should not be made from the petitioner in terms of the orders passed by the 2nd respondent – appellate authority.

7. In the first instance, the petitioner filed the present petition assailing the impugned show cause notices and the impugned order by preferring the present petition on 21.07.2022. During the pendency of the petition, the 5th respondent passed the impugned ex-parte order at Annexure-AG dated 26.07.2022 reiterating the earlier impugned order dated 18.05.2022, pursuant to which, the petitioner filed an amendment application I.A.2/2022 incorporating additional pleadings and prayers, which was allowed by this Court vide order dated 25.08.2022. Under these circumstances, the petitioner is before this Court by way of the present petition.

8. The respondents have filed their statement of objections disputing and denying the various contentions urged by the petitioner and seek to support the impugned orders and notices and have sought for dismissal of the petition.

9. The petitioner has filed its rejoinder to the statement of objections disputing the various contentions urged by the respondents. Along with the rejoinder,

petitioner also filed additional documents in support of its claim.

10. Heard learned Senior counsel for the petitioner and learned counsel for the respondents – revenue and perused the material on record.

11. I have given my anxious consideration to the rival submissions made by both the parties.

12. A perusal of the impugned order dated 18.05.2022 passed by the 2nd respondent and impugned order dated 26.07.2022 passed by the 5th respondent will indicate that the claim of the petitioner for refund has been rejected by assigning the following reasons:

(i) Petitioner had not submitted BRCs/FIRCs along with the refund claim to indicate proof of receipt of foreign exchange for export of service and had failed to comply with the Circular No.125/44/2019-GST dated 18.11.2019.

(ii) Petitioner had not realised any payment for service supplied in convertible foreign exchange and therefore, the supply of service by the petitioner did not qualify to be "export of services" under Section 2(6) of IGST Act and "Zero rated supply" under Section 16(1)(a) of the IGST Act.

(iii) In the FIRA, the location of the beneficiary mentioned as Gurgaon which is different from the petitioner's location at Bengaluru.

(iv) In the FIRC, the purpose of remittance is mentioned as "against intercompany receipt" which is not same as remittance for zero rated supply.

(v) Petitioner had not followed the prescribed provisions for claiming refund which was in violation of Sections 54(1) and (4) of the CGST Act r/w Rule 89(2)(c) of the CGST Rules and the Circular dated 18.11.2019.

(vi) That the services provided by the petitioner qualify to be "intermediary services" within the meaning of Section 2(13) of the IGST Act.

13. In my considered opinion, the impugned orders and SCNs are illegal, arbitrary and contrary to the material on record as well as the provisions of the CGST Act and IGST Act apart from being without jurisdiction or authority of law and the same deserve to be quashed for the following reasons:

(i) A perusal of the material on record will indicate that respondents 2 and 5 failed to consider and appreciate that issuance of FIRC had been discontinued by the Reserve Bank of India as can be seen from the RBI Circular No.74 at Annexure-H dated 26.05.2016; on the other hand, the petitioner had produced FIRAs which would clearly establish the receipt of the export proceeds before the 3rd respondent who had considered and accepted the same, while passing the refund sanction order; so also, subsequent to sanction of refund, the petitioner had submitted the eBRCs as can be seen from the email at Annexure-J dated 15.01.2021 submitted by the petitioner; similarly, petitioner had also produced the requisite CA certificate which co-related to the FIRAs already produced by the petitioner along with the refund applications. The cumulative effect of the aforesaid documents, facts and circumstances clearly establish the receipt of export proceeds by the petitioner and mere non-submission of FIRCs along with the refund application could not have been made the basis by the respondents 2 and 5 to set aside the refund sanction order which had been correctly and properly passed by the 3rd respondent after careful consideration and appreciation of the material on record.

(ii) The respondents 2 and 5 failed to consider and appreciate that in the FIRAs, the location was mentioned by the petitioner as Haryana instead of Bengaluru only for the purpose of administrative convenience and the said circumstance also could not be a ground to dispute receipt of foreign exchange; so also, the purpose of remittances mentioned as "against intercompany receipt" on FIRAs was only in order to follow global finance system and the said entry would also be neither relevant nor material for the purpose of considering the refund

claim of the petitioner and consequently, the said reasoning and findings recorded by the respondent are clearly fallacious / erroneous and the same deserve to be set aside.

(iii) The respondents 2 and 5 also erred in setting aside the refund sanction order on the ground that the Invoices submitted by the petitioner show that the payments are to be made to Account bearing No.36574019 at Bank of America, New Delhi, while the FIRAs show the Account Number as No.36574085 at Bengaluru; in this context, the respondents failed to appreciate that both the aforesaid Accounts belonged to the petitioner and this variance in the Account Numbers was neither relevant nor material for the purpose of considering the refund claim of the petitioner and on this ground also, the impugned orders passed by the respondents 2 and 5 deserve to be set aside.

(iv) The respondents 2 and 5 erred in failing to appreciate that once the eBRCs, FIRAs and other corroborative documents had been produced by the petitioner, thereby establishing that export proceeds were realised for export of services made by the petitioner to its overseas entity, merely because all the documents had not been produced before the 3rd respondent along with the refund claim, the said circumstance could not have been made the basis to either dispute receipt of foreign exchange or reject the refund claim of the petitioner, especially when sufficient proof of such receipt was available on record and as such, the impugned orders passed by respondents 2 and 5 deserve to be quashed.

(v) In ***Abb India vs. Union of India - 2020 (373) ELT 205 (Kar)****, this Court held as under:*

> *8. The High Court of Bombay while considering an identical issue, where the bill of export has not been filed and authorization number not disclosed in ARE-1s, in lieu of the same, communication of certificate of resultant export product was*

enclosed, held that the fact of the export of the product can be ascertained from the duly supplied copies of the ARE-1s forms, it is only a further technical objection, of the said form not mentioning the advanced authorization number in the initial copies of the same but supplied later on, could have been condoned. It is neither ARE-1s have not been filed nor there is a doubt about copy of ARE-1s or the authenticity or genuineness thereof. The decision of the Policy Relaxation Committee insisting on the bill of export was not countenanced for the reason that in the earlier occasions, Policy Relaxation Committee was ready and willing to consider the decision provided there is a proof of fulfillment of export obligation.

9. In this regard, it is beneficial to refer to the order of the Policy Relaxation Committee in some of the cases where the decision has been taken to waive the requirement of bill of export for discharge of export obligation against advance authorization provided there is a corroborative evidence i.e., ARE-1/excise attested invoice bearing the details of advance authorization/file number under which goods were removed for discharge of export obligation is made available, the RA is directed to accept such documents in lieu of bill of export. RA is also directed to ensure that the drawback has not been claimed either by the supplier or recipient against such supply.

10. In the light of the judgment of the Hon'ble High Court of Bombay as well as the earlier decision of the Policy Relaxation Committee, the consumption certificate placed on record by the petitioner before the RA as well as the Policy Relaxation

Committee has not been properly appreciated. The said consumption certificate indicates the details of consumption namely, the supplier name, consignee name, customer LOA No./PO No., SEZ notification number and date, co-relates with the SEZ notification number and the advance license number and date. In the backdrop of these documents, RA as well as the Policy Relaxation Committee would have examined the consumption certificate/'Certificate of Receipt of Supply' to ascertain the genuineness of the discharge of the export obligation more particularly, the statutory authorities namely, the Range Superintendent of Central Excise and the Development Commissioner, SEZ have appended their signature on these certificates. These Statutory Authorities would not have appended their signature and allowed the endorsement or the affixation of a stamp, unless they were satisfied that these are the very ARE-1 forms issued at the relevant point of time which co-related with advance authorization and its number and date. On examining these consumption certificates, the Authorities could have condoned requirements of generating the bill of export and raising an objection that ARE-1 forms submitted without the number and date, would be hyper-technical. In the circumstances of the case where substantial material was placed on record to establish the factum of the export as contemplated under the Act and Rules or in other words, complying with the requirement contemplated under the Act and Rules, supplying the goods from the domestic tariff area to SEZ, considered to be equivalent to an export of goods physically from this country to abroad requires consideration.

(vi) In ***Handicrafts and Handlooms Exports Corporation of India Ltd v. Jt. Secretary to the Govt of India - 2018 (359) ELT 170 (Mad.),*** *the Hon'ble Madras High Court held as under:-*

> *2. The petitioner is a Government of India Company and they had exported a consignment of power loom readymade garments for a value of Rs. 3,01,624/- through the Port of Chennai under shipping bill No. 37 dated 12.01.1997. On the goods so exported, the petitioner was eligible to claim drawback as per the Drawback Schedule published by the Government of India as export incentive. Accordingly, the petitioner claimed a drawback of Rs. 63,341/-, while filing their shipping bill. On scrutiny, the said amount was sanctioned and payment was made on 06.01.1998.*
>
> *3. While so, on 01.01.2003, a show cause notice was issued to the petitioner calling upon them as to why the drawback granted should not be recovered in the absence of receipt of sales proceeds for the goods exported. The fact remains that the petitioner had realised the sale proceeds, but there was some delay in obtaining the bank certificate of export and realisation. Though personal hearing was fixed to adjudicate the show cause notice, by then the petitioner's premises was shifted and they had no notice of the proceedings and the 3rd respondent passed an order on 14.07.2004 confirming the demand raised on the petitioner. On the petitioner receiving the copy of the order passed by the 3rd respondent in the new address, they addressed the Deputy Commissioner of Customs [Drawback], vide letter dated 03.09.2004, submitting the bank certificate of export and realisation. After*

nearly a month, they received a reply stating that the petitioner has to file the appeal. But by then, the period of limitation was over and the Commissioner [Appeals] having no power to extend the period of limitation, dismissed the appeal. This order was affirmed by the 1st respondent on a revision filed by the petitioner, which order dated 25.07.2005 is impugned in this Writ Petition. Thus, the petitioner has been non-suited on technical grounds.

4. The original authority had no opportunity to examine as to the correctness of the stand taken by the petitioner that the bank certificate of export and realisation has been obtained by them. Since it was an ex parte proceedings, the appellate and the revisional authority did not embark upon such exercise and they dismissed the appeal/revision on technical grounds. Thus, the petitioner having come into possession of the bank certificate of export and realisation should not be non-suited on technical grounds and therefore, this Court is inclined to issue necessary directions in this regard.

(vii) So also in ***Commissioner of Customs v. Jindal Drugs Ltd., - 2018 (360) ELT 988 (Bom.),*** *the Hon'ble Division Bench of the Bombay High Court held as under :-*

9. Even assuming that Clause-9 of the refund application requires production of certain documents, it is purely a procedural requirement and only on the basis of non-production of documents the claim of refund could not have been rejected. If the refund claim could be decided on the basis of available material on record, the same ought to have been decided without mechanically insisting upon the production of documents listed in Clause-9. In fact, as stated earlier,

perusal of the orders-in-original and the order in appeal shows that the refund applications were rejected only on the ground of non-production of documents without even considering whether the refund claims could be decided on the basis of other material on record. Therefore, we find no merit in the appeal. No substantial question of law arises. The appeal is dismissed.

(viii) So also in ***Zandu Chemicals Ltd. v. Union of India - 2014 SCC OnLine Bom 5002,*** *the Bombay High Court held as under:-*

8. *With the assistance of the learned counsel appearing for both sides, we have perused the Writ Petition and all Annexures thereto. We have perused both orders. The Commissioner of Income Tax (Appeals) has referred to the arguments of the petitioners that in the instant case, the original and duplicate copies of ARE-1 were lost after export of the consignment. A police complaint was also lodged by the petitioners. The documents could not be recovered. The Commissioner of Income Tax (Appeals) has referred to the order of the lower authority rejecting the claim only on the ground that the documents, namely, ARE-1 are not placed on record. He took the view that the condition of submission of original as well as duplicate copies of this form is not mandatory but directory. However, the Commissioner of Income Tax (Appeals) has referred to the procedure prescribed by a Notification that envisages handing over of original and quadruplicate copies of the ARE-1. These are handed over to the exporter by the office of the customs after completion of export procedure. A duplicate copy has to be sent by it to the Rebate Sanctioning*

Authority either by post or through the exporter. The triplicate copy of this ARE-1 is forwarded to the Rebate Sanctioning Authority by the Jurisdictional Central Excise Officer. Therefore, a comparison has to be undertaken by the authority with the original, duplicate and triplicate copies of ARE-1 and if satisfied that the claim is in order, he has to sanction the refund. The details of the duty payment are there on all copies of ARE-1. The difference has been noted in the copies and the original by the Commissioner and he held that the former carry the endorsement certificate of the Customs Officer regarding physical export of the goods. However, even if these originals and duplicate copies are not submitted, then, there were other documents like shipping bill dated 31st October, 2005 on which ARE-1 No. 57, dated 29th October, 2005 was mentioned. The details of shipping bill, rotation number, sailing date were got verified by the adjudicating authority from the concerned customs range office and they were found to be correct. Hence, the rejection of the rebate claim only due to non-submission of original and photocopy of ARE-1 was not upheld by the Commissioner of Income Tax (Appeals). We do not see how the revisional authority could have interfered with such an order. The scope of revisional proceedings is now well settled. The powers have to be exercised so as to correct a jurisdictional error. In the absence of a conclusion that the findings are vitiated by an error of jurisdiction or the jurisdiction has been exercised with material irregularity resulting in manifest injustice, the revisional authority should not have interfered with the orders under challenge. That is not a power to interfere with factual findings and when

they are supported by enough materials. The findings of fact consistent with the materials on record would bind the revisional authority unless they are demonstrated to be perverse or vitiated by any error of law apparent on the face of the record. There is no warrant to interfere with the same unless these tests are satisfied. We find that paras 9.1, 9.2 and 9.3 of the revisional order refer to nothing but the procedural requirement. It has been settled by a series of judgments of the Hon'ble Supreme Court and this Court that a purely procedural requirement cannot be held to be mandatory. The procedural provisions are capable of' substantial compliance. There is no requirement of insisting on strict compliance therewith. If there is material on record which shows compliance with such procedural requirement as furnishing of ARE-1 form in original or duplicate and there is other proof of exports of the goods, then, insistence on compliance with the filing of original or duplicate ARE-1 was totally uncalled for and unjustified. Precisely, the Division Bench of this Court held this in UM Cables Ltd. (supra). The judgment in the field and delivered on 24th October, 2013 was not available and possibly that could be the justification for the view taken by the revisional authority. However, the Division Bench has held as under:—

> *"10. Rule 18 of the Central Excise Rules 2002 empowers the Central Government by a notification to grant a rebate of duty paid on excisable goods or on materials Used in the manufacture or processing of such goods, where the goods are exported. The rebate under Rule 18 shall be subject to such conditions or limitations if any, and the fulfilment of such procedure as may be*

specified in the notification. Rule 18, it must be noted at the outset, makes a clear distinction between matters which govern the conditions or limitations subject to which a rebate can be granted on the one hand and the fulfilment of such procedure as may be prescribed on the other hand. The notification dated 6 September 2004 that has been issued by the Central Government under Rule 18 prescribes the conditions and limitations for the grant of a rebate and matters of procedure separately. Some of the conditions and limitations are that the excisable goods shall be exported after the payment of duty directly from a factory or warehouse, except as otherwise permitted by the C.B.E. & C. that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as may be allowed by the Commissioner; that the market price of the excisable goods at the time of export is not less than the amount of rebate of duty claimed and that no rebate on duty paid on excisable goods shall be granted where the export of the goods is prohibited under any law for the time being in force. The procedure governing the grant of rebate of central excise duty is specified in the same notification dated 6 September 2004 separately. Broadly speaking the procedure envisages that the exporter has to present four copies of an application in form ARE-1 to the Superintendent of Central Excise. The

Superintendent has to verify the identity of the goods and the particulars of the duty paid and after sealing the packet or container, he is required to return the original and duplicate copies of the application to the exporter. The triplicate copy is to be sent to the officer with whom a rebate claim is to be filed either by post or by handing it over to the exporter in a tamper proof sealed cover. After the goods arrive at the place of export, they are presented together with the original and duplicate copies of the application to the Commissioner of Customs. The Commissioner of Customs after examining the consignment with the particulars cited in the application is to allow the export if he finds that the particulars are correct and to certify on the copies of the application that the goods have been duly exported. The claim for rebate of duty is presented to the Assistant or Deputy Commissioner of Central Excise who has to compare the duplicate copy of the application received from the officer of customs with the original copy received from the exporter and the triplicate received from the central excise officer.

11. The Manual of Instructions that has been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original copy of the ARE-1, the invoice and self attested copies of the shipping bill and the bill of lading. Paragraph 8.4 specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant

ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

12. The procedure which has been laid down in the notification dated 6 September 2004 and in CBEC's Manual of Supplementary Instructions of 2005 is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two fold requirement of the goods having been exported and of the goods bearing a duty paid character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations on the one hand subject to which a rebate can be granted and the procedure governing the grant of a rebate on the other hand. While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory.

13. A distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has

been made in a judgment of the Supreme Court in Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner. The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve at paragraph 11. The Supreme Court held as follows :

"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

14. The particulars which are contained in Form ARE-1 relate to the manufacturer of the goods, the number and description of the packages, the weight, marks and quantity of the goods and the description of the goods. Similarly, details are provided in regard to the value, duty, the number and date

of invoice and the amount of rebate claimed. Part A contains a certification by the central excise officer to the effect inter alia that duty has been paid on the goods and that the goods have been examined. Part B contains a certification by the officer of the customs of the shipment of the goods under his supervision."

9. *In view of this authoritative pronouncement of the Division Bench of this Court and nothing contrary thereto being pointed out, we are of the opinion that the order passed by the Revisional authority is unsustainable. It is manifestly illegal and erroneous. It is also vitiated by a non-application of mind to the vital materials, namely, the shipping bills and which contain the endorsement necessary for recording a finding that the goods were indeed exported by the petitioners. The date of the ARE-1 has also been mentioned there with other details. In such circumstances, the view taken by the revisional authority cannot be sustained. The Writ Petition is allowed. The order passed, namely, Order In Original and which is confirmed by the revisional authority on 16th August, 2011 are both quashed and set aside. The order of the Commissioner of Income Tax (Appeals) dated 14th September, 2009 is restored. The Writ Petition is allowed in these terms. Rule made absolute accordingly. No orders as to costs.*

(ix) Similarly in ***Adwaith Lakshmi Industries Limited v. Ministry of Finance - 2017 SCC OnLine Mad 22146,*** *the Madras High Court held as under:-*

7. *The petitioner was originally sanctioned with a drawback amount of Rs. 54,623/- in*

respect of Shipping Bill No. 38 dated 03.01.2008. Thereafter, proceedings were initiated against the petitioner, calling upon them to produce the documentary evidence as a proof of receipt of export proceeds, as contemplated under Rule 16A of the said Rules. According to the petitioner, they filed the Bank Realisation Certificate and Bank Advice Certificate issued by the Indian Bank, Coimbatore as a proof of realisation of export proceeds. When the Adjudicating Authority rejected the contention of the petitioner, they challenged the same before the First Appellate Authority in Appeal No. 28 of 2011. The First Appellate Authority, by order dated 18.10.2011, disposed the appeal by remitting the matter back to the Original Authority with a further direction to the petitioner to produce the Bank Realisation Certificate to the lower Authority for verification and with a further direction to the lower Authority to verify the Bank Realisation Certificate, as per the guideline given in paragraph 04.1 and allow the duty drawback if any as per law. The relevant portion of the said order is extracted hereunder:

> *"In the instant appeal, the appellants have exported their goods and submitted the Bank realization Certificate and Bank Advice Certificate for the realization of their sale proceeds. The lower authority has stated that the appellants have produced Bank Realization Certificate which was not in the prescribed format and Foreign Inward Certificate from the bankers as a proof for receipt is not a valid and acceptable document under CBEC Board's Circular No. 05/2009-Cus dated 02.02.2009. Only the Bank Realization Certificate will be acceptable according*

to the prescribed format, is only valid document. But the appellants have produced the BRC, which was not in a prescribed format. If all required particulars available in the BRC (bank realization Certificate) though not in prescribed format, the same can be accepted as a proof of export and the lower authority is directed to verify the same in the above guidance and allow the duty drawback amount if otherwise eligible as per law.

In view of the above discussion, the following order is passed.

ORDER

06(a) The appellants are directed to produce the BRC to the lower authority for verification.

(b) The lower authority is directed to verify the same as per the guidance given in para 04.1 and allow the duty drawback if any as per law.

(c) The appeal is disposed of on the above terms."

8. *Perusal of the above order would show that the Bank Realisation Certificate produced before the said Appellate Authority was directed to be accepted as a proof of export, if all required particulars are available therein. The Appellate Authority has also pointed out that such Certificate produced, though not in a prescribed form, can be accepted as a proof of export.*

9. *Admittedly, the Revenue has not challenged the said order and on the other hand, after such remand, the Original*

Authority conducted the denovo proceedings and once again ordered recovery of the drawback amount without accepting the case of the petitioner.

10. *Perusal of the order of the Original Authority would show that there is no discussion or finding given with regard to the Bank Realisation Certificate referred to by the Appellate Authority in his order dated 18.10.2011, especially, when such Authority has directed the Adjudicating Authority to verify the same and allow the duty drawback as per law. No doubt, the Original Authority has given a finding that the petitioner has not satisfied the requirement of Rule 16A. It is also found by the Original Authority that the negative certificate issued by the Chartered Accountant is not confirming that the realisation was made within the stipulated/extended time. But at the same time, it is evident that the Original Authority has not adverted to the particular Bank Realisation Certificate produced by the petitioner and considered the same, especially when the Appellate Authority has specifically directed to do so. Therefore, I am of the view that confirmation of such order passed by the Original Authority in the further appeal and revision also cannot be sustained, unless the Original Authority consider the Bank Realisation Certificate produced by the petitioner and give a specific finding as to whether those Bank Realisation Certificates are containing the required particulars for allowing the duty drawback.*

11. *Therefore, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Original Authority viz., the second respondent herein for passing fresh order in*

the light of the order passed by the Appellate Authority in Appeal No. 38/2011 dated 18.10.2011. The petitioner should also be given an opportunity of personal hearing. The Original Authority shall pass such fresh order within a period of four weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.'

(x) In the Circular dated 18.11.2019, the respondents themselves had issued guidelines on various issues relating to refund claims. At paragraph-48 of the said Circular, the respondents have clarified as under: -

> *48. It is clarified that the realization of consideration in convertible foreign exchange, or in Indian rupees wherever permitted by Reserve Bank of India, is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89 (2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realization Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices is required to be submitted along with the claim for refund. It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.*

(xi) A perusal of the aforesaid facts and circumstances comprising of the material on record and

the principles enunciated in the aforementioned judgments and the Circular dated 18.11.2019 is sufficient to come to the conclusion that respondents 2 and 5 clearly fell in error in setting aside the refund sanction order passed by the 3rd respondent and rejecting the refund claim of the petitioner and making a demand from him by passing the impugned orders which are illegal, arbitrary and without jurisdiction or authority of law and the same deserve to be set aside.

(xii) The respondents 2 and 5 have come to the conclusion that the services provided by the petitioner are in the nature of 'intermediary services' as contemplated in Section 2(13) of the IGST Act and the place of supply of such intermediary services by the petitioner shall be location of the supplier of services i.e., the petitioner which is located in India and consequently, the refund claim of the petitioner was liable to be rejected. In this context, respondents 2 and 5 failed to appreciate that the material on record clearly establish that the services provided by the petitioner was on principal–to–principal basis and did not involve any 3rd party and there was no principal / agency relationship between the petitioner and the overseas entity.

(xiii) A perusal of the agreements entered into between the petitioner and the overseas entity will indicate that services provided by the petitioner cannot be construed or treated as intermediary services as is evident from the relevant covenants/clauses of the Agreement, which reads as under-

BACKGROUND

WHEREAS, Recipient is the operational headquarter of Networks business within Nokia Group as well as the business principal, responsible for developing, improving, maintaining. protecting and funding of portfolio of the intellectual assets related to Networks Network business;

WHEREAS, Provider is the wholly owned subsidiary of Nokia Solutions and Networks BV. Netherlands and engaged in Networks business in India. Provider is also providing

software development support services (hereinafter referred to as the "Services") to the Recipient from the Technology Centre located in Bangalore, Karnataka (India) and is willing to provide the Services to Recipient on continuous basis pursuant to the terms of this Agreement;

WHEREAS, Provider has recently entered into a unilateral Advanced Pricing Agreement ("APA") with the Central Board of Direct Taxes, India ("CBDT") on March 28, 2016 and has agreed on the arm's length price of the Services provided to Recipient. The terms and conditions of the APA are binding on the Provider and are effective from April 1, 2009 through March 31, 2018 in respect of the covered transaction involving provision of the Services to Recipient;

WHEREAS, as of April 1, 2007, Parties had entered into Research and Development Subcontracting Agreement relating to the provision Services (the "Original Agreement") subsequently revised w.e.f. 1 April 2008 till December 2010 and further extended w.e.f. 1 January 2011;

WHEREAS, pursuant to APA entered between Provider and CBDT, Parties are desirous of giving effect to the terms of the APA and accordingly, intend to amend and restate the Original Agreement to read as set forth herein with effect from April 1, 2009.

NOW, THEREFORE, based on the above premises and in consideration of the mutual covenants and agreements contained herein, Parties agree as follows:

TERMS AND CONDITIONS OF THE AGREEMENT

1. SCOPE OF SERVICES

1.1. All the work performed by the Provider for Recipient shall be governed by this Agreement. Further, details and special provisions may be set forth in specific Project Agreement(s). which may be drawn up in respect of individual software development projects between the Parties. Project Agreements will normally concentrate on software development process. targets and management. Where no separate Project Agreements exists, the terms of this Agreement is applied on the Services provided by the Provider together with the global management product and customer process procedures of Recipient.

1.2. In the event of a conflict between this Agreement and individual Project Agreements, this Agreement shall prevail.

1.3. Provider shall use reasonable skill and care, and carry out all work under this Agreement and individual Project Agreements expeditiously.

1.4. Provider shall make available any such reports to Recipient of the Services as specified in the Project Agreements and otherwise in accordance with the planning and reporting procedures laid down by Recipient and its R&D function management or, if not specified therein, as Recipient may from time to time request as its sole discretion.

1.5. ROLES AND RESPONSIBILITIES OF THE PARTIES

1.5.1. Recipient shall be responsible for conceptualising and determining the characteristics/ functionalities of the

software/software module to be developed by the Provider.

1.5.2. Recipient shall provide the software module specifications, project/ product specifications for the software to be developed/ tested by the Provider. On a need basis, the Provider will provide its inputs in the requirement analysis phase of the software development process. Recipient shall be fully responsible for the specifications and the requirements of the software to be developed/tested by the Provider. Services performed by the Provider will be based on the statement/ schedule of work issued by Recipient.

1.5.3. Provider shall undertake the coding and documentation function with respect to the software modules that it will develop. Coding shall primarily consist of writing and documenting the software module being developed.

1.5.4. Provider shall be fully responsible for the project management activities and fully control and supervise the entire process in relation to the end deliverable of the software module(s) being developed/tested by it and shall provide regular update to the Recipient for it to analyse the progress of the project against the project plan. Recipient shall not have any rights to access the facilities of the Provider, unless specifically authorised by the Provider.

1.5.5. Provider shall be responsible to undertake all quality control procedures with respect to the software modules developed/tested by it, in accordance with the standard guidelines provided by Recipient on the quality control procedures to be adopted for the rendition of the Services.

1.5.6. Provider shall perform unit testing' on the software modules developed by it and

shall prepare test reports. After testing each individual module, all the tested modules will be sent to Recipient for integration and validation. Recipient shall, then, carry out system testing and various other tests in a specially designed testing environment.

1.6.CONTROL AND THE PROJECT MANAGEMENT

1.6.1. Recipient's standard processes/ practices for provision of services covered within the scope of this Agreement shall be applied by the Provider for the purpose of the work done under the scope of this Agreement.

1.6.2. Recipient has decide on the R&D projects, their start and termination. The Provider shall assist the Recipient in making these decisions.

1.6.3. Provider shall undertake project management activities and control/ supervise the entire process in relation to the development/ testing of the software module(s) and shall provide regular update to the Recipient for it to analyse the progress of the project against the project plan.

1.6.4. Provider shall promptly report to Recipient if it appears that any change in the project scope, timelines and costs, is desirable, or if it appears that the work will not meet the project schedule or total cost of the project, or of any relevant phase. Any modifications to the project scope, project schedule or payments have to be accepted by both parties in writing.

1.7. PROPRIETARY RIGHTS

1.7.1. Recipient shall become the sole owner of all results of the Services provided by the Provider. All documents, drawings, models or any other materials, in whatever form, which have been provided to the Provider by Recipient or which the Provider creates, produces, builds, or has created, produced or built in the course of any work under this Agreement including all intellectual property rights therein shall rest in and remain Recipient's property and Recipient is entitled to take possession of them, at any time.

1.7.2. Recipient shall be entitled to take possession of the materials referred to in Clause 1.5. It is expressly understood that the Provider shall use such documents, drawings, models or any other materials only for the purpose of providing the Services under this Agreement and for no other purpose whatsoever and that such materials are subject to confidentiality as set out in Clause 12.

1.7.3. No license to the Provider under any trademark, patent, copyright or any other intellectual property right is either granted or implied by the conveying of any documents, drawings, models or any other materials in whatever form to the Provider (in respect of any rights of Recipient) save for the purpose of carrying out the Services under this Agreement.

2. CONSIDERATION, INVOICING AND PAYMENT TERMS

2.1. CONSIDERATION

2.1.1. In consideration for the performance of the Services by the Provider under this Agreement, the Recipient shall pay service fee ("Service Fee") to the Provider as follows,

unless otherwise agreed in writing by the Parties.

2.1.2. Service Fee shall be calculated as the Costs incurred by the Provider in the provision of the Services plus a Service Mark-up as defined below. The total Consideration shall be calculated as follows:

Consideration = Costs x (1 + Service Mark-up); where

Costs include

- *Operating expenses incurred by the Provider in connection with provision of Services under this Agreement including depreciation and amortisation expenses relating to the assets used in the provision of the Services. Cost will also include any foreign exchange loss, either directly identifiable or reasonably allocable towards the Services under this Agreement. For the removal of doubt, it is clarified that in case of foreign exchange gain (either directly identifiable or reasonably allocable towards the Services), the same shall be reduced from the Service Fee for the purpose of invoicing to the Recipient.*
- *In addition, where any stock based compensation plan has been extended to the employees of the Provider engaged in the provision of the Services by the ultimate parent entity of Nokia Group or the Recipient or any other Nokia Group entities responsible for such stock based compensation plan, Provider will include the annual estimate cost/expense related to such stock based compensation plan in the cost base for purpose of applying Service Mark-up and billing to the Recipient, unless and until such provision (or estimate thereof) is already included in the operating expenses of the Provider.*

Costs exclude:

- *Interest expense, pre-operating expenses, extra-ordinary expenses, expenses on account of income-tax, loss on sale of assets or investments, or any other expenses not related to the provision of the Services under this Agreement*

Service Mark-up *for the Services is* ***17.50 percent.***

2.1.3. Costs, as defined under clause 2.1.2 and for the purpose of computation of Service Fee, shall be determined in accordance with the generally accepted accounting standards in India (Indian GAAP) regularly followed by the Provider in the preparation of financial statement for local statutory reporting.

2.2. INVOICING AND PAYMENT TERMS

2.2.1. Provider shall provide Recipient with monthly activity and cost report in accordance with the Recipient's instructions and practice. In addition, when requested by Recipient, Provider shall provide any such additional information, in the form separately agreed, of the costs incurred and the allocation of the costs together with supporting materials to the Recipient, as may be required by the Recipient.

2.2.2. For all of the Services under this Agreement, Provider shall prepare a detailed action plan and cost and investments plan in accordance with the Nokia Group's planning process. Such plan shall be subject to approval within the Provider's legal entity and regional management for the purposes of corporate authorization on behalf of the Provider. The approval and adoption of Recipient's relevant R&D management group

and relevant operational units short term plans shall constitute approval of the R&D action plan on behalf of Recipient, as well as a purchase order for the Services under this Agreement. Any activities added or materially changed during the year shall be approved by corresponding bodies in accordance with applicable procedures of Nokia Group prior to implementation of any changes.

2.2.3. Provider will raise monthly invoice of the Service Fee on the Recipient as per Consideration methodology defined under clause 2.1 above. The invoice will be raised in Euros on the Recipient before the end of every month following the relevant month in which Services has been provided and the invoice is to be raised.

2.2.4. All the invoices under this Agreement shall be due and payable within a period of Ninety (90) days from the date of invoice. Where the weighted average period of realisation of invoices for a particular financial year is more than Ninety (90) days, the Provider shall be entitled to receive interest at the rate of I percent per month on the aggregate invoice amount of the financial year for excess realisation period. For the purpose of calculation of interest on late realisation, a month shall be assumed to comprise of 30 days.

2.2.5. Financial year ("FY") means twelve (12) month period starting April 1 of the calendar year and ending on March 31 of the following calendar year, as followed by the Provider for its local statutory and tax reporting.

2.2.6. This Agreement is effective April 1, 2009 and supersedes the terms of the Original Agreement. In lieu of this, as per the APA terms agreed by the Provider, for FY

2009-10 to 2014-15 (for which statutory books of accounts are already closed) and period of FY 2015-16 before the date of signing of the APA, the Provider shall raise additional invoice(s) (hereinafter referred to as the "Additional Invoice(s)") on the Recipient of the Service Fee equivalent to the difference between the terms of Consideration defined under clause 2.1 of this Agreement vis-à-vis the Consideration already invoiced as per the terms of the Original Agreement or otherwise till the date of signing of APA, by the Provider on the Recipient.

2.2.7. Provider shall ensure collection of payment against the Additional Invoice(s) raised under Clause 2.2.6 above from the Recipient by June 30, 2016. Recipient shall provide due support to the Provider in this regard.'

(ix) In this regard, it is significant to refer to the relevant portions of CBIC Circular No.159/15/2021-GST dated 21.09.2021, which reads as under:-

3. Primary Requirements for intermediary services *The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below:*

3.1 Minimum of Three Parties: *By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can,*

therefore, NOT be considered as an intermediary service. An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.

3.2 Two distinct supplies: *As discussed above, there are two distinct supplies in case of provision of intermediary services; (1) Main supply, between the two principals, which can be a supply of goods or services or securities; (2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply. A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.*

3.3 Intermediary service provider to have the character of an agent, broker or any other similar person*: The definition of "intermediary" itself provides that intermediary service provider means a broker, an agent or any other person, by whatever name called….". This part of the definition is not inclusive but uses the expression "means" and does not expand the definition by any known expression of expansion such as "and includes". The use of the expression "arranges or facilitates" in the definition of "intermediary" suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.*

3.4 Does not include a person who supplies such goods or services or both

or securities on his own account*: The definition of intermediary services specifically mentions Circular No. 159/15/2021-GST 3 that intermediary "does not include a person who supplies such goods or services or both or securities on his own account". Use of word "such" in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of "intermediary".*

3.5 Sub-contracting for a service is not an intermediary service: *An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the 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 between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, Annual Maintenance of tools and machinery to 'B'. 'A' subcontracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i.e. to 'B' on behalf of 'A'. Though 'C' is dealing with the customer of 'A', but 'C' is providing main supply of Annual Maintenance Service to 'A' on his own account, i.e. on principal to principal basis. In this case, 'A' is providing*

> *supply of Annual Maintenance Service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, supply of service by 'C' in this case will not be considered as an intermediary.*
>
> *3.6 The specific provision of place of supply of 'intermediary services' under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.'*

(x) As can be seen from the aforesaid Circular, the scope and requirements of intermediary services are; (i) minimum of three parties (ii) Two distinct supplies (iii) character of an agent, broker or any other similar person (iv) does not include persons who supplies goods and services or both on his own account.

(xi) In the instant case, none of the aforesaid criteria / requirement is fulfilled by the petitioner who provides services to its overseas entity on its own account and consequently, the services provided by the petitioner clearly cannot be construed or treated as intermediary services as wrongly held by respondents 2 and 5 in the impugned orders, which deserve to be set aside. In other words, the material on record clearly establishes that the activities of the petitioner is of software development and support as well as project management which are rendered by the petitioner on its own account and cannot be considered as intermediary services since the same are not services of arranging or segregating any other supply.

(xii) In ***Genpact India (P) Ltd. v. UOI - 2022 SCC OnLine P&H 425,*** *the Hon'ble Punjab & Haryana High Court held as under:-*

> *29. As per definition of "intermediary" under Section 2(13) of the IGST Act the following three conditions must be satisfied for a person to qualify as an "intermediary";-*
>
> *First, the relationship between the parties must be that of a principal-agency relationship. Second, the person must be*

involved in arrangement or facilitation of provisions of the service provided to the principal by a 3rd party. Third, the person must not actually perform the main service intended to be received by the service recipient itself. Scope of an "intermediary" is to mediate between two parties i.e. the principal service provider (the 3rd party) and the beneficiary (the agents principal) who receives the main service and expressly excludes any person who provides such main service "on his own account".

30. A bare perusal of the recitals and relevant clauses of the MSA reproduced hereinabove do not in any manner indicate that petitioner is acting as an "intermediary" so as to fall within the scope and ambit of the definition of "intermediary" under Section 2(13) of the IGST Act. Such clauses cannot also be interpreted to conclude that the petitioner has facilitated the services. The said clauses are in relation to the modalities of how the actual work would be carried out and do not in any manner establish that the petitioner was required to arrange/facilitate a 3rd party to render the main service which has actually been rendered by the petitioner.

(xiii) So also the Hon'ble Division Bench of the Delhi High Court in ***M/s Ernst and Young Ltd. v. Commr., CGST - 2023 SCC OnLine Del 1764****, held as under:-*

23. It is apparent that the Adjudicating Authority has interpreted the last limb of the definition of 'intermediary' under Section 2(13) of the IGST Act as controlling the definition of the term. We are unable to agree with this interpretation. The limb of Section 2(13) of the IGST Act reads as "but does not include a person who supplies such

goods or services or both or securities on his own account" but this does not control the definition of the term 'intermediary'; it merely restricts the main definition. The opening lines of Section 2(13) of the IGST Act expressly provides that an intermediary means a broker, agent or any other person who "arranges or facilitates supply of goods or services or both or securities between two or more persons". The last line of the definition merely clarifies that the definition is not to be read in an expansive manner and would not include a person who supplies goods, services or securities on his own account. There may be services, which may entail outsourcing some constituent part to a third party. But that would not be construed as intermediary services, if the service provider provides services to the recipient on his own account as opposed to merely putting the third party directly in touch with the service recipient and arranging for the supply of goods or services

24. Thus, even if it is accepted that the petitioner has rendered services on behalf of a third party, the same would not result in the petitioner falling within the definition of 'intermediary' under Section 2(13) of the IGST Act as it is the actual supplier of the professional services and has not arranged or facilitated the supply from any third party.

(xiv) Similarly, in ***Ohmi Industries Asia (P) Ltd. v. Commr. (CGST) - 2023 SCC OnLine Del 2029****, reiterating the view held in* ***Ernst & Young (supra),*** *the Delhi High Court held as under:-*

15. *The term intermediary is defined under Section 2(13) of the IGST Act as under:*

"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."

16. *It is also apparent form the plain language of Section 2(13) of the IGST that intermediary is one that arranges or facilitates supply of goods and services. In the present case, there is no dispute that the petitioner had rendered market research services on its own; there is no allegation that it had arranged supply of such services from a third party.*

17. *It is also relevant to refer to the Circular dated 20-9-2021 (Circular No. 159-15-2021-GST) issued by the Central Board of Indirect Taxes. The said circular makes it clear that the concept of intermediary services contemplates minimum of three parties. The said circular explains as under:*

> *"By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, not be considered as an intermediary service. An intermediary essentially 'arranges or facilitates' another supply (the 'main supply', between two or more other persons and, does not himself provide the main supply."*

> ***18.*** *Admittedly, in the present case, the petitioner is rendering the market research services directly to OHMI, Japan. Therefore, insofar as providing market research services is concerned, the petitioner cannot be held to be an intermediary.*

(xv) So also, in ***Xilinx India Technology Services (P) Ltd. v. Commr.,- 2023 SCC OnLine Del 5628****, the Delhi High Court held as under:-*

> ***9.*** *The petitioner is a separate entity and it is settled law that identity of an incorporated company is separate from that of its shareholders. This fundamental proposition was reiterated by the Constitution Bench of the Supreme Court in Bacha F. Guzdar v. Commissioner of Income-Tax, AIR 1955 SC 74.*
>
> ***10.*** *The services rendered by a subsidiary of a foreign company to its holding are not covered under Section 2(6)(v) of the IGST Act and the same is beyond any pale of controversy in view of the Circular dated 20.09.2022 issued by the CBIC. The said circular, in unambiguous terms, clarifies as under:*
>
> > *"5.1. In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation I in section 8".*

5.2. Therefore, supply of services by a subsidiary/sister concern/group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act, 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation I of section 8 of IGST Act 20 I7. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act, 2017. Such supplies, therefore, would quality as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act."

11. *It is clear from the above that the impugned order has been passed without application of mind and in disregard of the provisions of law. The relevant circular was brought to the notice of the respondents by the petitioner. But respondent no. 1 completely ignored the same and proceeded to pass the order mechanically.*

12. *Although, it is mentioned that the petitioner is an intermediary but there is no ground whatsoever for holding the said view.*

> *The terms of the Agreement are unambiguous. The petitioner has provided services on principal-to-principal basis. The services provided by the petitioner are on its own count and not facilitated by provision of services from any third-party services provider. As stated above, the petitioner is a registered EOU for the services as exported by it.*
>
> ***13.** We, accordingly, allow the present petition and direct the respondents to forthwith process the petitioner's claim for refund along with interest.*

*(xvi) The Delhi High Court examining the requirements of an 'intermediary' in **Boks Business Services (P) Ltd. v. Commr. (CGST) - 2023 SCC OnLine Del 5312**, held as under:-*

> ***10.** It is clear from the aforesaid terms, that the petitioner is not an intermediary, inasmuch, as the petitioner is neither facilitating the provision of services by a third entity nor acting as a middleman for procuring such services for its affiliate. The petitioner is, in fact, contracted to provide the services, and is the principal service provider in the context of the services provided by it - book keeping, payrolls, and accounts through the use of cloud technology.*
>
> ***11.** In case of intermediary services, there are three entities - one providing the principal service, one receiving the principal service, and an intermediary who acts as an agent or a broker for facilitating or arranging such services for the service recipient.'*

14. The aforesaid facts and circumstances and the principles enunciated in the aforesaid judgments clearly

establish that respondents 2 and 5 committed an error in setting aside the refund sanction order passed by respondent No.3 and rejecting the refund claim of the petitioner by passing the impugned orders and SCNs which are illegal, arbitrary and contrary to law and facts and without jurisdiction or authority of law warranting interference by this Court in the present petition.

15. In the result, I pass the following:

ORDER

(i) Petition is hereby allowed.

(ii) The impugned orders at Annexure-A dated 18.05.2022 passed by 2nd respondent, the impugned show cause notice at Annexure-B dated 06.09.2021 issued by 4th respondent, impugned show cause notice at Annexure-C dated 07.07.2022 issued by the 5th respondent and the impugned order at Annexure-AG dated 26.07.2022 passed by the 5th respondent are hereby quashed.

10. In view of the aforesaid judgment passed by this Court in the case of M/S. NOKIA SOLUTIONS AND NETWORKS INDIA PRIVATE LIMITED VS. THE PRINCIPAL COMMISSIONER OF CENTRAL TAX AND OTHERS, referred to supra has not been considered by the second respondent while passing the impugned order.

11. Under these circumstances, I'am of the considered opinion that the impugned order at Annexure-D, deserves to be set aside and the matter be remitted

back to the second respondent for reconsideration of the rectification application filed by the petitioner afresh in accordance with law.

12. In the result, I pass the following:

ORDER

(i) Petition is hereby partly allowed.

(ii) The impugned order at Annexure-D dated 25.08.2025 passed by 2nd respondent, is hereby quashed.

(iii) The matter is remitted back to the second respondent for reconsideration of the rectification application filed by the petitioner afresh in accordance with law, bearing in mind Annexure-J, dated 14.07.2025 and documents produced by the petitioner along with the said representation, as well as the judgment of this court in the case of M/S. NOKIA SOLUTIONS AND NETWORKS INDIA PRIVATE LIMITED VS.

THE PRINCIPAL COMMISSIONER OF CENTRAL TAX AND OTHERS supra.

(iv) Petitioner shall appear before the second respondent on 15.12.2025 without expecting Notice in this regard.

(v) Liberty is reserved in favour of the petitioner to produce additional pleadings, documents etc., which shall be considered by the second respondent, who shall provide sufficient and reasonable opportunity to the petitioner and pass appropriate orders in accordance with law.

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

JJ
List No.: 3 Sl No.: 13