

GIB/GUJ/MATERIAL RECYCLING/24-07-2020/HC-123

High Court Category : Intermediary Services

State : Gujarat

Order No.: GIB/GUJ/MATERIAL RECYCLING/24-07-2020/HC-123

Name of Entry :

Material Recycling Association of India Vs. Union of India

Date : 24-07-2020

Breif Issue :

Facts & Issue of The Case:

- The petitioner has challenged the constitutional validity of Section 13(8)(b) of the Integrated Goods Service Tax Act, 2017. It was submitted that Section 13(8)(b) of the IGST Act, 2017 contributes to tax cascading and double taxation contrary to the objectives of the GST.
- The petitioner is an association comprising of recycling industry engaged in manufacture of metals and casting etc., for various upstream industries in India. also act as an agent for scrape, recycling companies based outside India engaged in providing business promotion and marketing services for principals located outside India. Also facilitate sale of recycled scrap goods for their foreign principals in India and other countries.
- member of the petitioner association receives only the commission upon receipt of sale proceeds by its foreign client in convertible foreign exchange.
- according to the petitioner, the transaction entered into by the members of the petitioner association is one of export of service from India and earning valuable convertible foreign exchange for the same.

Decision of Advance Ruling Authority :

Decision

- It was held that, Intermediary services is defined in Section 2(13) of IGST Act, 2017 which 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

and accordingly, when intermediary services are provided by brokers, the place of supply could be either the location of service provider or the service recipient.

- There is no distinction between the intermediary services provided by a person in India or outside India. Only because, the invoices are raised on the person outside India with regard to the commission and foreign exchange is received in India, it would not qualify to be export of services, more particularly when the legislature has thought it fit to consider the place of supply of services as place of person who provides such service in India. Therefore, this being a consistent stand of the respondents to tax the service provided by intermediary in India, the same cannot be treated as “export of services” under the IGST Act, 2017.
- The contention of the petitioner that it would amount to double taxation is also not tenable in eyes of law because the services provided by the petitioner as intermediary would not be taxable in the hands of the recipient of such service, but on the contrary a commission paid by the recipient of service outside India would be entitled to get deduction of such payment of commission by way of expenses and therefore, it would not be a case of double taxation. In view of the foregoing reasons, it cannot be said that the provision of Section 13(8)(b) read with Section 2(13) of the IGST Act, 2017 are ultra vires or unconstitutional in any manner.
- It would however, be open for the respondents to consider the representation made by the petitioner so as to redress its grievance in suitable manner and in consonance with the provisions of CGST and IGST Act.
- The petition is, therefore, disposed of accordingly.