

IMPORTANT GST UPDATES

Issued in case of M/s. Krishna Consultancy by CESTAT Mumbai
Final Order No. 86769/2023 | Date: 11-10-2023

Ruling

Services Provided to Universities in Foreign Countries as Export of Services Cannot Be Treated as 'Intermediaries' and Not Subject to Service Tax.

Observations & Findings

The appellant, M/s. Krishna Consultancy is a service provider offering guidance to Indian students seeking admission to foreign universities. The appellant does not charge prospective students for their services but instead has contracts with overseas universities. Under these agreements, when a student guided by the appellant secures admission and pays a fee to the foreign university, a portion of that fee is paid to the appellant as a commission.

The appellant initially paid a significant sum in service tax, totaling Rs. 48,06,310/- in cash and Rs. 2,66,831/- through their Cenvat account between May 4, 2013, and February 7, 2014. However, they later realized that the service tax was only applicable to services provided within India, and there was no tax on services offered outside India. Consequently, they filed a refund claim of Rs. 50,73,141/- on April 7, 2014.

A show cause notice was issued to the appellant on June 27, 2014, alleging that they had not revised their ST-3 return for the period from October 2012 to March 2013 and that they had declared their activities as domestic services during that period. The notice also contended that the appellant was acting as an intermediary, as defined in Rule 2(f) of the Place of Provision of Services Rules, 2012. Additionally, the notice stated that the appellant had not provided proof of receiving the entire consideration in convertible foreign exchange.

The refund claim was then adjudicated, and the original authority rejected the appellant's contentions. The appellant appealed this decision to the Commissioner (Appeals), who upheld the original order, leading to the current appeal before the Tribunal.

During the proceedings, the appellant cited a similar case involving Sunrise Immigrations Consultants Pvt. Ltd., where it was held that organizations providing free consultations to Indian students should not be treated as intermediaries. The appellant argued that since they did not receive any consideration from prospective students and received their income in convertible foreign exchange, their services should be considered as exports.

In light of the evidence and arguments presented, the Tribunal concluded that the appellant's services were indeed exports and not subject to service tax. The Tribunal also agreed with the appellant's argument that they should not be classified as intermediaries. The appellant decided to forego the refund for a specific period, reducing the refund claim to Rs. 24,30,172/-. However, the Tribunal directed the appellant to provide all foreign inward remittance certificates related to this reduced refund claim to the original authority, who would then allow the refund for transactions with supporting FIRC's.

As a result, the Tribunal set aside the impugned order, remanding the matter to the original authority for further processing based on the provided FIRC's.