HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 9933/2024

Idp Education India Pvt. Ltd., Having Its Registered Office At 3Rd Floor, International Business Centre, K-14, Ashok Marg, C-Scheme, Jaipur - 302005 Through Its Authorised Representative Ms. Pallavi Sood, D/o Yash Pal Sood, Aged About 42 Years, And R/o Flat No. 131, Kamal Vihar C G H S Plot No. 5, Sector-7, Opposite Telephone Exchange Dwarka, Dwarka Sector-6, South West Delhi, Delhi, 110075

----Petitioner

Versus

1. The Union Of India, Through Its Secretary, Department Of Revenue, Ministry Of Finance, Government Of India, Central Secretariat, North Block, New Delhi - 110001
2. Joint Commissioner (Appeals), C.e. And Cgst Jaipur, Ncrb, Statue Circle, Jaipur - 302005
3. Deputy Commissioner, Cgst Division-H, Central Excise Building, Sector-10, Vidhyadhar Nagar, Jaipur - 302039
4. The State Of Rajasthan, Through Principal Secretary Finance, Department Of Finance, Government Secretariat, Jaipur.

----Respondents

Connected With

D.B. Civil Writ Petition No. 9967/2024

Idp Education India Pvt. Ltd., Having Its Registered Office At 3Rd Floor, International Business Centre, K-14, Ashok Marg, C-Scheme, Jaipur - 302005 Through Its Authorised Representative Ms. Pallavi Sood, D/o Yash Pal Sood, Aged About 42 Years, And R/o Flat No. 131, Kamal Vihar C G H S Plot No. 5, Sector-7, Opposite Telephone Exchange Dwarka, Dwarka Sector-6, South West Delhi, Delhi, 110075

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----Respondents

For Petitioner(s)	:	Mr. Prasad Pranjape with Mr. Nitin Jain
For Respondent Nos.1 to 3	:	Mr. Sandeep Pathak with Mr. Palash Gupta
For Respondent No.4	:	Mr. Bharat Vyas, AAG assisted by Ms. Niti Jain Bhandari

HON'BLE THE CHIEF JUSTICE MR. K.R. SHRIRAM
HON'BLE MR. JUSTICE MANEESH SHARMA
JUDGMENT

REPORTABLE

04/09/2025

(Per: Chief Justice)

1. Both petitions involved common issues and, therefore, we are disposing both by this common order.

2. The issue involved is whether the services supplied by petitioner during the relevant period i.e. 2019-20 in D.B. Civil Writ Petition No. 9933/2024 and 2020-21 in D.B. Civil Writ Petition No.9967/2024 qualifies as "intermediary" as alleged by the Department or do they qualify as "export" as the place of provision of services being outside taxable territory.

FACTS:

3. Petitioner is a subsidiary of IDP Education Ltd., a publicly listed Australian Company (IDP Australia). IDP Australia has entered into agreements with various Foreign Universities, *inter alia*, to assist aspiring students with enrolment with these Foreign Universities. A copy of specimen student's recruitment agreement is at page 79 of Writ Petition No. 9933/2024, which enlists the services which are rendered by IDP Australia to universities. IDP Australia is paid certain percentage of the student's fee as consideration, for providing such services to Foreign Universities.

3.1. To meet its obligation towards the Foreign Universities, IDP Australia has further entered into a separate service agreement with petitioner, a copy of which is exhibited at page 123 of Writ Petition No. 9933/2024. Under the said agreement, petitioner provides services with regard to student's placement, providing information and guidance of courses, qualification requirement, counseling, enrollment services etc., to the students aspiring to join Foreign Universities. As per the agreement, IDP Australia remains the ultimate authority for finalizing of the admission process. A certain percentage (77%) of the application processing fee received by IDP Australia is paid to petitioner as consideration for the services rendered by it to IDP Australia.

3.2. The services provided by petitioner to IDP Australia are on principal-to-principal basis and the final authority to decide on a student's admission is with IDP Australia without petitioner having any say about the same. The entire arrangement is akin to sub-contracting of services by IDP Australia to petitioner which IDP Australia is obliged to provide to Foreign Universities.

3.3. Petitioner classified the services supplied by it to IDP Australia as export of services as defined under Section 2(6) of the Integrated Goods and Services Tax Act, 2017 (for short ' the IGST Act') and was claiming refund of IGST paid for such zero-rated supply as per Section 16(3)(b) of the IGST Act.

3.4. The Original as well as the Appellate Authority held a view that petitioner's services qualify as intermediary, and therefore, the place of its supply would be the location of petitioner, that is in India and hence denied export status and consequently denied

refund of IGST claimed by petitioner. In addition to other grounds justifying invocation of writ remedy such as judicial indiscipline, due to absence of GST Tribunal Petitioner has moved this Hon'ble High Court under Article 226 of the Constitution of India.

3.5. Before alluding to the submissions, it is significant that for the pre-GST period, *i.e.*, the period April 2014 – September 2015, Petitioner was confronted with a similar dispute with Respondent where the Ld. CESTAT *vide* its Order dated 28.10.2021 categorically held that the services rendered by Petitioner did not qualify as intermediary and upheld the export status of the same. Further, the CBIC vide its Circular dated 20th September 2021 has observed (para 2.3) that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis Service Tax regime. Petitioner did rely upon CESTAT Order dated 20th October 2021 read with Circular dated 20th September 2021 before the lower authorities to justify its claim of export, which was not considered favourable, resulting in the present Writ Petition.

4. Mr. Prasad Pranjape, counsel for petitioner submitted as under:

a. The definition of the term 'intermediary' under Section 2 (13) of the IGST Act, makes it clear that only that person who is a broker, agent or by whatever name called who arranges or facilitates, *inter alia*, the supply of services between two or more persons qualifies as intermediary. The definition specifically excludes a person who supplies any service on his own count. In the present case Petitioner is not engaged in arranging or facilitating any service but is engaged in providing service by itself

to IDP Australia and, therefore, they are outside the ambit of the term 'intermediary', as defined under the IGST Act.

b. Further, in petitioner's own case, the Ld. CESTAT vide Order dated 28th October 2021, examining the very same agreement has come to a conclusion, petitioner is not an intermediary. The law under the Service Tax regime as under the GST regime with respect to intermediaries has remained the same as admitted by CBEC Circular dated 20th September 2021. Further, the Revenue has accepted the CESTAT Order dated 28.10.2021. Further, in certain other jurisdictions in the GST regime, petitioner has been held to be exporter of services. In view of this, denial of the refund claim of petitioner in the present case is unsustainable in law.

c. Petitioner also relies on the decision of the Hon'ble Bombay High Court in **IDP Education India Pvt. Ltd. Vs. Union of India & Ors**.[1], wherein it was held that the rationale of the order of the CESTAT Order dated 28th October 2021 is equally applicable in the GST Regime, more so since there is no change in the legal or factual position in the nature and scope of services between petitioner and IDP Australia. We are informed that the revenue has sanctioned the refund of petitioner in pursuance of the Bombay High Court *vide* a Refund Sanctioning Order No. ZD270625013490L dated 04th June 2025, along with applicable interest.

5. Mr. Pathak submitted that Clause 1.3(b) of the agreement dated 1st July 2017 between petitioner and its principals provide that all fees for the purposes of the agreement are inclusive of any

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tax required to be paid by IDP India to the tax authorities in India in relation to the relevant supply including any goods and services tax or value added tax and hence, petitioner is not entitled to zero rated supply as per Section 16(3)(b) of the IGST Act.

6. We cannot accept this submission of Mr. Pathak because it is quite clear that petitioner will be entitled to refund of IGST paid unless petitioner falls under the category of "Intermediary".

7. Having considered the documents and also having considered the judgment of the Hon'ble Bombay High Court in petitioner's own case in **IDP Education India Pvt. Ltd.** *(supra)* with which we respectfully agree, it is clear that the services provided by petitioner are qua IDP Australia under specific contract or arrangement with it. Not more than two parties are involved in this arrangement, namely, petitioner and IDP Australia. For someone to be called an "Intermediary", there needs to be existence of three parties in the contract, in the absence of which, petitioner cannot be called as "Intermediary". In the present case, the services rendered by petitioner are only to IDP Australia and, therefore, certainly qualifies to be "Export" as held by CESTAT in the order referred above and the Hon'ble Bombay High Court.

8. We agree with petitioner's case that the impugned order has incorrectly concluded that petitioner has facilitated and arranged placement services between the Foreign Universities, IDP Australia and the students. Petitioner has no say in the final admission process nor do they have any contractual arrangement with the Foreign Universities or the students and hence, their services are only rendered to IDP Australia under a *bi partite* arrangement.

9. It will be apposite to reproduce paragraph No.11 of the judgment passed in **IDP Education India Pvt. Ltd.** *(supra):*

> *"11. We have perused the records and find that in identical facts and circumstances in the Petitioner's own case, the CESTAT vide its Order dated 28th October 2021 has given a categorical finding that the Petitioner is not an intermediary. While an attempt has been made to differentiate the CESTAT Order on the basis that the agreement examined by CESTAT was a different agreement, we find that it is only due to periodical renewal of the agreement the reference of the agreement differs, whereas, the scope of the services remained the same. Since the CESTAT order has now attained finality, we see no reason to take a different view in the present case. Also, we find force in the submissions of the counsel for the Petitioner that the issue is squarely covered by the CBIC Circular dated 20.09.2021, in as much as it is clarified that the provisions of law for intermediary under the service tax regime and the GST regime broadly remain the same. In view of the above, the Respondents cannot be now allowed to take a different view. We thus, hold that the Petitioner is not an "intermediary" and is entitled to a refund as claimed by them. We, therefore, remand the matter back to the adjudicating authority for processing the refund claim in terms of this order along with applicable interest within a period of 4 weeks from the date of uploading of this order."*

10. In view of the above, when petitioner has been considered as an exporter in other State jurisdictions, there is no reason for respondents to take a different view before us.

11. Petitions, therefore, allowed. There shall be no order as to costs.

12. The matter is remanded to the Adjudicating Authority for processing the refund claim in terms of this order and pay the refund amount along with applicable interest within a period of four weeks from the date this order is uploaded.

(MANEESH SHARMA),J (K.R. SHRIRAM),CJ

N.GANDHI/RAJAT/28-29