



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF NOVEMBER, 2025

BEFORE

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

WRIT PETITION NO.25598 OF 2024 (T-RES)

BETWEEN:

M/S EXCELPOINT SYSTEMS (INDIA) PVT LTD.,
304-306, 2ND FLOOR, OXFORD TOWERS,
OLD AIRPORT ROAD, DOMLUR,
BANGALORE – 560 008
(REP. BY NITIN WATTS DIRECTOR),
(INCORPORATED UNDER THE COMPANIES ACT, 1956)
...PETITIONER
(BY SRI. RAVI RAGHAVAN AND
SMT. SAMRUDDHI SHETTY, ADVOCATES)

AND:

1. JOINT COMMISSIONER OF CENTRAL TAX (APPEALS-I)
4TH FLOOR, TTMC-BMTC BUS STAND BUILDING,
HAL AIRPORT ROAD, DOMLUR,
BANGALORE – 560 071.
2. ASSISTANT COMMISSIONER OF CENTRAL TAX,
EAST DIVISION - 2, GST EAST COMMISSIONERATE,
BENGALURU EAST, 6TH FLOOR,
TTMC-BMTC BUS STAND BUILDING,
OLD AIRPORT ROAD, DOMLUR,
BANGALORE – 560 071
...RESPONDENTS
(BY SRI. JEEVAN J. NEERALGI, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO SET ASIDE AND QUASH
ANNEXURE-A ORDER-IN-APPEAL NO.06/2024-25/GST JC/A-1
DATED 12.06.2024 ISSUED BY RESPONDENT NO.1 AND ETC.,

THIS PETITION, COMING ON FOR *ORDERS*, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:





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

ORAL ORDER

In this petition, petitioner seeks the following reliefs:-

- "i. Set aside and quash Annexure-A Order-in-Appeal No.06/2024-25/GST JC/A-1 dated 12.06.2024 issued by respondent No.1.*
- ii. Hold that the Marketing Support Services and Technical Support Services provided by the petitioner to Excel point Singapore under the Agreement dated 01.04.2021 vide Annexure-B1 do not amount to intermediary services under Section 2(13) of the IGST Act, and consequently, the said services qualify as export of services under Section 2(6) of the IGST Act;*
- iii. Hold that the petitioner is entitled to refund of Rs.18,92,697/- in terms of Refund Application dated 05.01.2023 vide Annexure-F;*
- iv. Direct Respondent No.1 to process and sanction the above-mentioned refund claims of the petitioner at the earliest;*
- v. Pass such other order(s) and other reliefs as the nature and circumstances of the case may require."*

2. Heard learned counsel for the petitioner and learned

counsel for the respondents and perused the material on record.



3. A perusal of the material on record will indicate that petitioner having filed a refund claim of Rs.18,92,697/- for the period April 2021 to March 20022 on 05.01.2023, the same came to be rejected vide Order-in-original dated 02.03.2023 as hereunder:

"Discussion and findings:-

5. On scrutiny of their refund application it was observed that they have declared to have Services Agreement dated 01.04.2021 entered between the claimants and M/s. Excelpoint exported marketing support services and technical support services, as per the Management systems (PTE) Ltd. Singapore. The services supplied are declared to be export of services without payment of tax. However. During the verification of the export invoices and service agreement related to Marketing and Sales Support Services provided by the claimant, it is observed that the services provided

(A) relates to marketing support services includes of the followings:

- a) data collection, statistical and business analysis, in relation to Excelpoint Systems (PTE)Ltd.'s products/customers market and sending across the data/reports to Excelpoint Systems (PTE) Ltd*
- b) educating potential customers identified by Excelpoint Systems (PTE) Ltd or the suppliers of Excelpoint Systems*



(PTE) Ltd, with a view to promote the products of Excelpoint Systems (PTE) Ltd,

- c) providing potential customers with information on the benefits and features of Excelpoint Systems (PTE) Ltd's products, through presentation and demonstrations, and*
- d) execute specific advertising strategy formulated by Excelpoint Systems PTE) Ltd to facilitate the sale of the products.*

(B) relates to technical support services include of the following:

- (a) Advisory support in relation technical queries/clarifications requested for, by Excelpoint Systems (PTE) Ltd.*

6. From the Master service agreement, it is noticed that M/s Excelpoint Systems(India) Pvt Ltd., and M/s Excelpoint Systems PTE, Singapore are conducting business under their brand and Excelpoint Systems(India) Pvt Ltd., has been appointed by them to provide the services of Marketing Support Services and Technical support service of the parent company products. It is noticed from the Service agreement that both the parties are related parties as described in Section 2(84) of IGST Act, 2017 Basically, these transactions are between related intermediary parties. When parties are related, the prices are controlled and they would not sometimes be the prices that would have otherwise place between unrelated parties. The claimant being the service provider is located with in ise been charged, had the transaction taken India. In order to



treat the transactions between related parties under GST law, when such a supply be taxable and valued as per GST laws, the concept of Related persons is defined u/s 2(84) of CSGT Act where in it is stated that persons shall be deemed to be related if they fall under any of the categories below:

- i. Officer/director of one business is the officer/ director of another business*
- ii. Businesses are legally recognized as partners*
- iii. An employer and an employee Any person holds at least 25% of shares in another company either directly or indirectly*
- iv. One of them controls the other directly or indirectly***
- v. They are under common control or management*
- vi. The entities together control another entity*
- vii. They are members of the same family*
- viii. Persons include a legal person who can be individuals, HUF, company, firm, LLP. co-operative society, body of individuals, local authority, government etc or an artificial juridical person. It also includes entities incorporated outside India. Persons who are associated with one another's business or is a sole agent or sole distributor or sole concessionaire shall be deemed to be related.*

On a plain reading of the aforesaid Section, it is observed that the claimant and its parent/Holding company is a related company which provides services on behalf of their parent Company Excelpoint Systems PTE, Singapore' and receives the consideration with 10% mark up of the total cost, as stated in Service Agreement. M/s Excelpoint



Systems (India) Pvt. Ltd., India is the related Indian subsidiary of M/s.Excelpoint Systems, Singapore. This related Indian subsidiary is engaged in the activity of Marketing Support Service & technical support Service. They are reimbursing the expenses incurred from the global parent company M/s. Excelpoint Systems, Singapore. The place of supply of intermediary service is usually the location of the supplier. This situation includes the export of intermediary services as well. However, as per the general rule, the place of supply of export is outside India and therefore exports are zero rated. Since there is a specific rule, it will prevail over the general rule, and accordingly, in case of export of intermediary services, the place of supply will be within India. As per Sec 2(6) of IGST Act, 2017, the supply of any service is considered an export of service, where all the above conditions are met.

Analysis as Intermediary service:

7. An intermediary service defined under the GST Law means a broker or agent or any other person who facilitates the supply of goods and services between two or more persons. However, it excludes the supply of such goods or services on one's own account. For instance, intermediary as he is responsible for affecting the supply of goods and will ultimately bear the a person who is buying from one party and selling it to another cannot be termed a profit or loss of such supply. In the terms of section 2(13) of IGST Act.

“intermediary” means a broker, an agent or any other person, by whatever name called 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,

However, it may be noted that a person acting as an intermediary cannot change the nature of supply provided by person on whose behalf he is acting as an intermediary. In short "Intermediary" essentially involves three or more persons as

- (a) Supplier of service/goods,*
- b) Principle on whose behalf service is rendered/goods supplied and*
- (c) Persons who actually receives the service/goods (ie. customers of the principal)*

However, where a person is providing services or supplies goods on his own account to his customers, it cannot be termed as an intermediary as per Section 2(13) of IGST Act, 2017 Hence it is clear from the above definition that there is required to be an arrangement of facilitation of the supply of goods, services or securities In addition to the definition, in order to qualify as an intermediary, there should be two supplies at any one time;

- a. The supply between the principal and the third party,*
- b. The supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.*

7.1. The operative part of the definition of intermediary is two arranges or facilitates the supply of goods or services or both or securities. Thus, an intermediary is one who



arranges or facilitates supply of goods or services or both, belonging to the principle. Therefore, the nature of goods or services supplied by the intermediary must be same as goods or services supplied by the principal. If the nature of supply of goods or services by some person is different from the supply of principal, it cannot be said that the person is merely arranging or facilitates supply of goods or services. An intermediary cannot alter the nature or value of supply, which he facilitates on behalf of his principal Further, a person can arrange facilitates supply of goods or services belonging to some other person only when she has been authorised by the principal. The consideration for an intermediary's supply is separately identifiable from the main supply that he is arranging and is in the nature of fee or commission charged by him. It is not necessary that the intermediary must receive consideration from principal only, instead can be received form the third party also. In simple words, an intermediary is like an agent or broker, acting as an agent for parties who wish to buy or sell stocks, bonds, real or personal property, commodities, or services. A distinguishing feature between an agent and a broker is that a broker acts as a middleman. The GST Act clubs all intermediaries as 'agent who carries on the business or supply or receipt of goods and/or services on behalf of another and clubs these entities together with commission agents, brokers etc. In this connection it is noticed that the supply of service does not qualify for export of services as laid down under Section 2(6) (ii) (iv)(v) read with section 13 of IGST Act, 2017.



7.2 The place of supply of intermediary service is usually the location of the supplier. This situation includes the export of intermediary services as well. However, as per the general rule, the place of supply of export is outside India and therefore exports are zero rated. Since there is a specific rule for deciding place of supply in case of intermediary services, it will prevail over the general rule, and accordingly, in case of export of intermediary services, the place of supply will be within India. When applied these provisions to intermediary service where both the seller of goods and buyer is outside India, the location of the supplier i.e., the location of the intermediary becomes the place of supply. This transaction gets covered under GST despite the fact that the origin and the consumptions of goods are occurring outside India. To perform the above services the claimant was to be paid a fee corresponding to the that the above services squarely falls under the category of an intermediary as per sub-section same is 15% as per the agreement effective from 01.04.2020. From the above, it is observed (113) of section 2 of the Integrated Goods and Service Tax Act 2017 which reads as "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 person who supplies such goods or services or both or securities on his own account."

7.3 In terms of Section 2(6) of the Integrated Goods and Services Tax (IGST) Act, 2017,



"export of services" means the supply of any service when,

- (i) the supplier of service is located in India
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

In terms of Section 2(15)(a) of the Integrated Goods and Services Tax Act, 2017;

"location of the supplier of services" means,

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business,

In terms of Section 13 (8)(b) of the Integrated Goods and Services Tax (IGST) Act, 2017;

the **place of supply** of the following Services shall be the **location of the supplier of Services**, namely:

- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) intermediary services;"

.....



7.4 On careful examination of the above provisions of the CGST/IGST Acts, 2017, I find that since the impugned services are intermediary in nature, the place of supply of such services is the location of the service provider in terms of Section 13(8)(b) of the Integrated Goods and Services Tax (IGST) Act, 2017. The location of the service provider in this case is in India/taxable territory, in terms of Section 2(15)(a) of the Integrated Goods and Services Tax Act, 2017, as taxpayer are registered with GST in India. Therefore, it is evident that the place of supply of the impugned services is in the taxable territory. Going by the terminology coined in the agreement on Marketing support services and Technical Support Service, it is obvious that the claimant arrange or facilitate the supply of services to Indian customers on behalf of the foreign client, thereby act as an intermediary of their foreign client. The intermediary services' is not Ltd., to an agent as it encompasses not only an agent, but also any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both. In this backdrop, there is no scope/reason to accept the claimant's contention that the services/supplies rendered by the claimant to their foreign client is on principal to principal basis and on their individual capacity.

7.5 On perusal of the service agreement dated 01.04.2021 and the reply furnished evident that that there is existence of three parties. The oversees entity(Excelpoint Systems. PTE, Singapore), the Claimant and the customers of the overseas entity, whose queries ect., the claimant is



*supposed to attend to, pre/post the provision of the main supply be the Proprietary hardware and software products which are supplied by the overseas entity. Also there are clearly **2 distinct supplies**, the main supply of the proprietary software and hardware products of overseas entity, which is sold to various customers and the ancillary supply of technical consulting service being rendered by the claimant to such customers with respect to such products. Also, such technical and consulting services are clearly to facilitate the supply of main service. Further, it is clear from the submissions, that the claimant is not a supplier of the main supply i.e. the sale of proprietary software/hardware products of overseas entity to the end customers on its own account. The claimant in its reply has submitted that he does not act as an agent/ broker etc., however from the terms of engagement, stated in the Agreement dated 01.04.2021, it can be made out that the claimant facilitates some other supply, and does not himself provides the main supply and thereby it is covered under the clause of agent/ broker/ by whatever name it may be called for the purpose of intermediary Based on the above discussion, with respect to services' being rendered by the claimant, it can be concluded that the conditions stipulated in the Circular No.159/15/2021-GST dated 20.09.2021. for being an intermediary are met. Therefore, I find that impugned services falls under the definition of intermediary services. These services are clearly in the nature of facilitation of the main supply (i.e. supply of software products/equipment, which is proprietary owned by the overseas entity),*



therefore, I find that such services fall under the definition of intermediary services. Further, as the services supplied by the claimant, is construed as to be intermediary services for the reasons discussed above, the place of supply of services will be the location of the Service provider as per Section 13(8)(b) of IGST Act, 2017.

8. services in as much as the place of supply of such services is in the taxable territory and not Further, the impugned services provided by the claimant do not qualify as export of outside India, thus not fulfilling the condition under Section 2(6)(ii) of the Integrated Goods and Services Tax (IGST) Act, 2017. The services provided by the claimant who is an intermediary(located in India) to the recipient located outside India in lieu of fee/commission charged for the said services of Marketing support services and technical support Service amounts to supply of services. Therefore, the transaction between the claimant and Recipient will not be covered within the definition of export of services as provided in Section 2(6) of IGST Act, 2017, as it is not satisfying one of the conditions of place of supply being outside India. From, the foregoing, I find that the place of supply of the impugned services of Marketing support services and Technical Support Service is in the taxable territory only and hence do not qualify as export of services in terms of Section 2 (6) of the Integrated Goods and Services Tax (IGST) Act, 2017. Therefore, going by the strict interpretation of Section 13(8) of IGST Act, 2017, the supply of services by the Intermediaries to the recipients outside India are not export of services. It is clear from the



activities rendered by the claimant under the service agreement dated 01.04.2021, that the claimant is acting on behalf of their clients in India and has no right to act independently in the matter. They, therefore act as a person akin to an agent of Indian customer, by acting as an intermediary between the Indian Customers and their foreign Banks. Thus, the claimant's contention that they are not a broker or agent and the meaning of the term "any other person should be restricted to the words "broker" or "Agent" by applying the principle of "Ejusdem Generis", is not tenable in as much claimant, is mandated by Indian customers to undertake all the activities of facilitating the transfer in India and to act according to the terms and policies of their clients. The charges payable as consideration for the said services also is specifically agreed upon. It is not mandated in law that the fee charged should not be on cost plus markup basis. The value of intermediary services provided by Claimant in India to their clients is clearly distinguishable/identifiable the main supply. Hence, the contention of the claimant that they provide the main service on their own account is not tenable. Therefore, the claimant's contention that the impugned services provided by them to their foreign clients is not Intermediary services is not tenable and unsustainable.

8.1 In view of the above provisions of the CGST/IGST Acts, I find that for the impugned services, the place of supply of such services is the location of the service provider in terms of Section 13(8) of the IGST Act. The location of claimant, the service provider in India/taxable territory in terms of on



Section 2(15)(a) of the IGST Act, as claimant are registered with GST in India. Therefore, it is evident that the place of supply of the impugned services in the taxable territory. Also, to qualify a transaction of supply of services as export of services that transaction has to satisfy all five ingredients of the definition of export of services. simultaneously. However, in the instant case. I find that the condition at Section 2(6)(iii) of IGST Act, 2017, is not satisfied.

9. *Further, the claimant has emphasized on the Hon'ble CESTAT order Nos.20109-20114/2022 dt:28/03/2022 passed in his own case wherein services provided by them has been allowed as export of service. However, on perusal of the said order it is seen that the issue of 'intermediary services' under dispute pertains to the erst while law (under the provisions of The Finance Act, 1994) and on the basis of service agreement dated 01/04/2014, which may not be considered under current law (GST regime) and for the export agreement dated 01/04/2021. I also find that all the previous refund claim of the claimant filed under the CGST Act, 2017, for the period from July-17 to March-21 has been rejected by the competent authority on the similar grounds i.e., services provided by the applicant falls under the category of intermediary service. I also find that further appeal against said refund rejection orders for the period July-17 to March-19, filed by the applicant before the next level of appellate authority, have been rejected by considering impugned services provided by the claimant to the entities located outside India is not eligible to be treated*



as export of service under Section 2(6) of the IGST Act, 2017, thus to be treated as intermediary service.

In view of the above discussions and findings and following the judicial discipline, I hold that the supplies made by the claimant under the name of **'Marketing Support Services and Technical Support Services'** are taxable services provided in India i.e. Domestic Supply of Services and not considered as export of service under Section 2(6) of the IGST Act, 2017,

10. Time Limit: The Claimant has realized payment for services exported in convertible foreign exchange in different FIRAs for different periods. Out of the copies of FIRAs and export invoices submitted by the Claimant, the first realization was received on 19.04.2021 and filed the refund claim online on 05.01.2023. Hence, it is found out that the said refund is filed within two years from the relevant date.

11. Whether the taxpayer has filed the valid returns due till the time of filing the claim: The claimant has filed valid GSTR-1 and GSTR 3B returns due till the time of filing the claim.

12. Breakup of amount claimed and debited: The claim is for a total amount of **Rs.1892697/-** and the details as mentioned below:

Details	IGST	CGST	SGST	Others	Total
Amount claimed	458644	717026	717027	0	1892697
Amount debited	458644	717026	717027	0	1892697



The above amount has been debited from the electronic credit ledger vide reference no DI2901230008255 dated 05.01.2023.

13. Whether the claimant has claimed drawback:

The claimant has declared that they have not claimed drawback in respect of Central Tax, Integrated Tax, State/Union Territory Tax or claimed refund of Integrated Tax on zero rated supplies as required under 3 proviso to Section 54(3) of the CGST Act, 2017.

14. Letter of Undertaking/Bond Details: *The claimant has declared that the zero-rated supplies of Services made without payment of tax during the period of April 2021 to March 2022 was made under LUT or Bond issued vide ARN-AD2903210057269*

15. Export of Services: *As per section 2(6) of the IGST Act, 2017, the term "export of services" means the supply of any service when,-*

a) The supplier of service is located in India: *M/s. Excelpoint Systems (India) Pvt Ltd (referred to as the claimant), 2nd Floor, 304-306 Oxford Towers, Old Airport Road, Domulur, Bangalore-560008 GSTIN 29AACCE0004D1ZE is located in India as evident from FORM-GST-REG6 (Registration Certificate) and GSTR-3B returns filed by the claimant:*



b) The recipient of services is located outside India: The recipient of service is located outside India as evident from the export invoice submitted by the claimant;

c) The place of supply of service is outside India: As per master agreement dated 01.04.2021, in case of invoices raised for Marketing Support Services and Technical Support Services' which is in relation to the support services, qualify as intermediary services and thus in terms of Section 2(71)a of CGST Act 2017 and Section 13(8) of the IGST Act 2017, the place of supply of service is not outside India.

d) The payment of such service has been received by the supplier of service in convertible foreign exchange: The claimant has submitted the FIRAs for Payment for the relevant claim period which shows that the remittance for the export of services has been received in convertible foreign exchange.

e) The supplier of service and the recipient of service are not merely establishments of a distinct person: The supplier and the recipient are separate legal entities registered in their respective countries as is evident from the export invoice submitted by the claimant, therefore the supplier of service and recipient of service are not merely establishments of a distinct person.

As above, since the place of supply of services falls within the taxable territory(India), the services provided by the claimant valued of Rs. 17,67,80,587/- does not qualify as export of service/Zero rated supplies.



16. NET ITC: The claimant has declared ITC of Rs.1892697/- in both GSTR-3B and RFD-01 filed online. However, as verified from GSTR-3B & GSTR-2A, ITC availed & available for the period April-21 to March-22 is Rs.3047127/- which is more when compared with RFD-01 filed. Claimant has provided Annexure-B along with details of products of inputs/input services and the same has been verified against HSN codes and GSTR 2A submitted by the applicant and found to be in order. Claimant has also submitted declaration to the extent stating that there is no benefit claimed under Rule 89(4A) and (4B) of CGST Rules 2017. There is no HSN that pertains to blocked credit under Section 17(5) of CGST Act 2017. Therefore, NET ITC eligible is Rs. 1892697/- as declared in RFD-01.

17. ZERO RATED TURNOVER: The Claimant has considered Rs. 17,67,80,587/- as the Foreign Inward Remittance amount received during the relevant period as the turnover of zero-rated supply of services which is reflected in Statement 3A in RFD-01. The relevant FIRAs are verified as correlated with invoice nos. in Statement 3. However, as per Sec 2(6)(iii) of IGST Act 2017, and as discussed in above paras by treating the services provided by claimant as intermediary services' the turnover Zero Rated Turnover has to be treated as **NIL. Hence for the purpose of subject refund claim, the Turnover of Zero-rated supply of services is restricted to Rs.0/-.**



18. Declarations: *The claimant has submitted the following declarations in support of the said refund claim:*

(a) Undertaking in respect of the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of CGST ACT, 2017.

(b) Verification that the information given by them is true and correct as per the books of accounts and related documents maintained by them and declaration that no refund has been received by them earlier against the relevant documents submitted.

19. Unjust Enrichment: *As this claim relates to unutilized input tax credit on account of zero rated supplies, unjust enrichment is not applicable as per rule section 54(8)(b) of CGST Act, 2017.*

20. *Consequently, upon examination of the refund application and documents submitted along with as discussed above, since the total turnover of zero-rated supplies for the refund claim period found as **Nil**, therefore the amount of eligible refund in terms of Section 54(3) of the CGST Act, 2017, read with Rule 89 of CGST Rules, 2017, also arrived as Rs.0/- as follows:*

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[illegible]



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6.Net amount to be paid	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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Reference: T-Tax, I-Interest, P-Penalty, F-Fees, O-Others

Order

*I hereby reject the refund claim of **Rs.18,92,697/-** (IGST-Rs.458644/-, CGST-Rs.717026/- & SGST-Rs.717027/-)(Rupees Eighteen Lakhs Ninety Two Thousand Six Hundred and Ninety Seven only) of **M/s. Excelpoint Systems (India) Pvt Ltd**, 2 Floor, 304-306 Oxford Towers, Old Airport Road, Domulur, Bangalore-560008 having GSTIN 29AACCE0004DIZE.”*



4. The said aforesaid order of rejection was confirmed by the Appellate Authority by holding as hereunder:

Discussion & Findings:

5. I have carefully examined the records of the case, impugned order, grounds of appeal filed by the appellant, written submissions as well as submissions made by the appellant during Personal Hearing.

6. The issue to be decided is whether the appellant is eligible to avail refund of Rs. 18,92,697/- for the period April 2021 to March 2022, on account of export of services without payment of tax which was rejected by the order issued by the respondent or otherwise and whether the impugned services provided by the appellant can be considered as "Intermediary services?"

7.1. Before advertng to the submissions made by the appellant, I would like to reproduce the relevant provisions of the CGST Act pertaining to intermediary service for ease of reference.

As per Section 2(13) of the Integrated Goods and Services Tax, 2017 intermediary is defined as:

"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,

As per Section 2(6) of the Integrated Goods and Services Tax, 2017 export services" means the supply of any service when,-



- (i) the supplier of service is located in India,*
- (ii) the recipient of service is located outside India,*
- (iii) the place of supply of service is outside India,*
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange for in Indian rupees wherever permitted by the Reserve Bank of India); and*
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;*

As per Section (13)(8)(b) of the Integrated Goods and Services Tax, 2017 the place of supply of the following services shall be the location of the supplier of services, namely:-

- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;*
- (b) intermediary services;*
- (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.*

The relevant portion of Circular no. 159/15/2021-GST dated 20.09.2021 is as follows:

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 a minimum of three parties, two of them transacting in the supply of goods or two or more persons pris thus a natural corollary that the



arrangement requires services or securities (the main supply) and one arranging or facilitating (the 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 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, 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 ie.. 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, Le, 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

7.2. Now, I proceed to discuss the issues raised in the impugned order based on the submissions made by the appellant and the relevant statutory provisions

7.3. The respondent has rejected the impugned refund claim filed by the appellant on the grounds that as the supplies made by the appellant are found to be taxable services provided in India i.e., domestic supply of services, the refund of tax paid on such taxable supplies provided in India is not admissible under Section 54 of the CGST Act, 2017. The appellant by relying upon the Management Service Agreement entered into with Excelpoint Systems (PTE) Ltd, Singapore with effect from 01.04.2021 has interalia contended that they are providing marketing support services and technical support services on their



own account, that the nature of the services provided by the appellant does not fall under intermediary services and hence qualifies as export of service, that they are relying on CESTAT Bangalore vide FO No 20109-20114/2022 dated 28.03.2022 allowing the appeal in respect of their own case under Service Tax regime.

7.4. On perusal of the said Management Service Agreement entered into by the appellant with Excelpoint Systems (PTE) Limited, Singapore (referred to as Company) with effect from 01.04.2021, which is relevant to the impugned appeals, it is observed that the appellant is engaged in services which involve the following:

(i) the provision of marketing support services which include of the followings:

- Data collection, statistical and business analysis, in relation to Company's products/customers market and sending across the data/reports to the Company:*
- Educating potential customers identified by the Company or the suppliers of the Company with a view to promote the products of the Company,*
- Providing potential customers with information on the benefits and features of the products of the Company, through presentation and demonstration; and*
- Execute specific advertising strategy formulated by the Company to **facilitate** the sale of products;*

(ii) the provision of technical support services which include of the followings:



- *Advisory support in relation technical queries/clarifications requested for by the Company.*

The appellant in their submissions has admitted that the above services provided by them are as per the said agreement.

7.5. On a reading of the definition of the term "intermediary", it 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 between two more persons. Further, vide Circular No. 159/15/2021-GST dated 20th September, 2021, conditions to be met for qualifying as intermediary services' have been clarified.

7.6. With reference to the conditions stipulated in the CBIC Circular No. 159/15/2021-GST dated 20th September, 2021, for qualifying as intermediary services', there should be three parties in the arrangement. it is evident that in the instant case there exist three parties viz. the overseas Excelpoint Systems (PTE) Limited, Singapore, the appellant and the customers of Excelpoint Systems (PTE) Limited, Singapore.

7.7. Further, there should be two supplies i.e., Main supply & Ancillary supply. In the instant case, there are also clearly two distinct supplies, the main supply of providing goods/products by Excelpoint Systems (PTE) Limited, Singapore to its Indian customers and the ancillary supply of the appellant in providing marketing and technical support services to facilitate the promotion of the goods/products of Excelpoint Systems (PTE) Limited,



Singapore. The entire activity undertaken by the appellant in India includes data collection, statistical and business analysis of the products and the customer markets of their parent company, educating potential customers identified by the parent company with a view to promote the products of the parent company, providing potential customers with information on the benefits and features of the products of the parent company, executing specific advertising strategy formulated by the parent company to facilitate the sale of products and providing technical support services including advisory support in relation technical queries/clarifications requested for by the parent company. Also, such services are purely in the nature of arranging or facilitating the supply of main service i.e., supply of products by Excelpoint Systems (PTE) Limited, Singapore to their customers in India. Further, the appellant is not part of the main supply on principal-to-principal basis and is working as pure agent in the case of main supply. From the facts of the case, it is evident that the appellant is only a facilitator for the products supplied by Excelpoint Systems (PTE) Limited, Singapore to their customers in India.

7.8. From the terms of agreement it can be seen that the appellant facilitates some other supply ie., the ancillary supply, and does not himself provide the main supply and thereby is covered under the clause of agent/ broker/ by whatever name it may be called of the definition of 'intermediary'.

7.9. In the case of Airbus Group India Pvt Ltd (2021(54)G.S.T.L.194(A.A.R.-G.S.T.-Kar)), the Authority for



Advance Ruling under G.S.T. Karnataka has held at paras 16 and 17 as under:

Activities performed fall under 2 categories namely, Procurement Operations (PO) function and Procurement Transformation & Central Services (PY) function Assessee play important part in identifying vendors, explaining product requirement, advising and guiding vendors not merely on technical aspect of product but also ethical aspect in relation to such activities, without such services, foreign holding company will not be able to procure goods from vendors Thus, activity nothing but facilitating supplies to holding company from India - Fact that approval authority for such vendors lies with holding company located abroad not to make any work of difference to role of facilitation undertaken by assessee facilitation understood by assessee as technical advisory, guidance and business support assistance concerning quality control standards, performance and safety standards of suppliers However, by doing all this, assessee merely facilitating supplies to holding company as all activities directed at vendors Also, commission payment may not be always involved in intermediary scenario - Cost plus markup can also be one of ways for payment Criterion of nature of payment not part of definition of intermediary Therefore, activities performed by assessee fulfilling parameters mentioned in definition of 'intermediary' as per Section 2(13) of Integrated Goods and Services Tax Act, 2017

7.10. Based on the above discussions, and relying upon the above decision, with respect to the services being rendered by the appellant, it can be concluded that the conditions stipulated in the CBIC Circular No. 159/15/2021-GST dated 20th September for being an intermediary are met. Therefore, I am of the opinion that such services fall under the definition of Intermediary services

7.11. Further, to qualify a transaction of supply of services as export of services that transaction has to satisfy all five



ingredients of the definition of export of services simultaneously. In the instant case I find that the condition at Section 2 (6) (iii) of IGST Act is not satisfied. The impugned services do not qualify as export of services in as much as the place of supply of such services is in the taxable territory.

7.12. In the case of Airbus Group India Pvt Ltd (2021(54)G.S.T.L.194(A.A.R.-G.S.T.-Kar)), the Authority for Advance Ruling under G.S.T. Karnataka has held at para 19 as under:

Facilitation of supplies for holding company located abroad Place of supply to be India in terms of Section 13(8) of Integrated Goods and Services Tax Act, 2017 Thus, services not qualify as 'export of services in terms of sub-section (6) of Section 2 of Integrated Goods and Services Tax Act, 2017

7.13. Therefore, and relying upon the above decision, I find that in respect of the impugned services, the appellant is providing intermediary services to their foreign client and the location of the supplier is India and the place of supply of services is the location of the supplier i.e. India. To qualify as export as per Section 2(6) of the IGST Act, 2017, the place of supply of service should be outside India and the appellant have not fulfilled that condition. Further, I find that as per Section 13(8)(b) of the IGST Act,2017,the place of supply of the intermediary services shall be the location of the supplier of services which in the current case is the location of the appellant viz. India. In the current case as explained above the place of supply of service is in India and accordingly, the appellant is liable to pay the relevant



tax for the said supply and the question of processing and sanctioning refund under Section 54 of the CGST Act 2017 does not arise. The outward supply of services rendered by the appellant do not qualify as export.

7.14. The appellant in their submissions have submitted that in their own case, CESTAT Bangalore vide FO No 20109-20114/2022 dated 28.03.2022 has allowed their appeal on the same issue for the legacy period. In the said CESTAT Final Order, the discussion is based on Management Services Agreement dated 01.04.2013 with Excelpoint Systems (PTE) Limited, Singapore, whereas the impugned appeals are in respect of Management Services Agreement dated 01.04.2021. In the present agreement dated 01.04.2021, there is no reference to any previous agreement dated 01.04.2013 and the appellant have also not produced any evidence to indicate that the terms and conditions of both the said agreements are one and the same. Hence, I observe that the said decision of the Hon'ble CESTAT is not applicable to the impugned appeals.

7.15. The appellant in their additional submissions dated 10.06.2024 have relied on judicial decisions as detailed in para 4.2 above. I have examined each of the said decisions. All the said decisions are based on individual service agreements which are not available . As already detailed in the preceding paragraphs, from the terms of the said service agreement dated 01.04.2021, which is covered in the impugned appeal, the impugned services fall under the definition of intermediary services' and do not qualify as



export of services. Hence, the said judicial decisions are not applicable to the present facts of the case.

7.16. In view of the foregoing discussion and findings, I hold that the respondent has gone through the matter in a detailed way and passed a well-reasoned speaking order and hence, there is no reason to interfere with the impugned order.

8. In view of the above, I pass the following order.

Order

I reject the Appeal No. 171/2023 GST JC Appeals-1 filed by M/s Excelpoint Systems (India) Private Limited against Order in Original No. 123/2022-23 (GST-R) dated 02.03.2023 passed by the Assistant Commissioner of Central Tax, East Division-2, GST East Commissionerate, Bengaluru being devoid of merits and the impugned Order is upheld.

Accordingly, Appeal No. 171/2023 GST JC Appeals-I is disposed off."

5. It is the case of the petitioner that it is not an intermediary service provider and since the services provided by the petitioner amounts to export of service, petitioner is not liable to pay IGST as demanded by the respondents as held in the following judgments:



- a. *M/s. Amazon Development Centre India Pvt. Ltd. Vs. Commissioner of Central Tax GST (Appeals), Bengaluru – 2025 (5) TMI 150 – Karnataka.*
- b. *M/s. Columbia Sportswear India Sourcing Pvt. Ltd. Vs. Union of India – 2025 (5) TMI 2139 – Karnataka.*
- c. *M/s. Athene Technologies India LLP Vs. The State of Karnataka – 2025 (6) TMI 88 – Karnataka.*
- d. *Nokia Solutions & Networks India Pvt. Ltd. Vs. The Principal Commissioner of Central Tax – 2025-VIL-515-KAR.*

6. It is also submitted that in petitioner's own case in relation to pre-GST / service tax regime, the Customs, Excise & Service Tax Appellate Tribunal, Bengaluru, has already come to the conclusion that the petitioner was not an intermediary in relation to pre-GST tax period and the said order dated 28.03.2022 has attained finality and became conclusive and binding upon the respondent – department especially when there is no change in the activity of the petitioner during pre-GST and post-GST period.

7. Per contra, learned counsel for the respondents submits that there is no merit in the petition and that the same is liable to be dismissed.



8. As rightly contended by learned counsel for the petitioner, a perusal of the material on record comprising of Master Service Agreement dated 01.04.2014 entered into by the petitioner with its foreign / parent company in Singapore and other documents will clearly indicate that petitioner is not an intermediary and the service supplied by the petitioner amount to export of services and consequently, in the light of the judgments of this Court in **(i) M/s. Amazon Development Centre India Pvt. Ltd. Vs. Commissioner of Central Tax GST (Appeals), Bengaluru – 2025 (5) TMI 150 – Karnataka; (ii) M/s. Columbia Sportswear India Sourcing Pvt. Ltd. Vs. Union of India – 2025 (5) TMI 2139 – Karnataka; (iii) M/s. Athene Technologies India LLP Vs. The State of Karnataka – 2025 (6) TMI 88 – Karnataka** and **(iv) Nokia Solutions & Networks India Pvt. Ltd. Vs. The Principal Commissioner of Central Tax – 2025-VIL-515-KAR**, I am of the considered opinion that the impugned order of Adjudication Authority deserves to be quashed and the respondents be directed to refund / grant / sanction refund in favour of the petitioner as sought for in the petition and by quashing the demand of IGST made against the petitioner.



9. In the result, I pass the following:

ORDER

(i) The petition is hereby ***allowed***.

(ii) The impugned order-in-original dated 02.03.2023 at Annexure – J passed by respondent No.2 and the order-in-appeal dated 12.06.2024 at Annexure – A passed by respondent No.1 are hereby set aside.

(iii) Respondents are directed to refund / grant / sanction refund of Rs.18,92,697/- together with applicable interest in favour of the petitioner as per refund claim sought for by the petitioner in refund application at Annexure – F dated 05.01.2023, expeditiously and at any rate within a period of three months from the date of receipt of a copy of this order.

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