CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

BANGALORE

Regional Bench COURT-2.

Service Tax Appeal No. 20743 of 2022

[Arising out of the Order-in-Original No. 01-02/2022-23 (North) (Pr.Commr) dated 08.09.2022 passed by the Pr. Commissioner of Central Tax, West Commissionerate, Bengaluru.]

Cisco Systems (India) Pvt Ltd

Birgade South Parade,
No. 10 MG Road,
Bangalore,
Karnataka – 560001 **.......Appellant**

VERSUS

Commissioner of Central Tax
Bangalore West
BMTC building, Banashankari II, Stage,
Bangalore
Karnataka-560070 **.....**
Respondent

AND

Service Tax Appeal No. 20802 of 2022

[Arising out of the Order-in-Original No. 01-02/2022-23 (North) (Pr.Commr) dated 08.09.2022 passed by the Pr. Commissioner of Central Tax, West Commissionerate, Bengaluru.]

Cisco Systems (India) Pvt Ltd

Birgade South Parade,
No. 10 MG Road,
Bangalore,Karnataka – 560001
.......Appellant

VERSUS

Commissioner of Central Tax
Bangalore West
BMTC building, Banashankari II, Stage,
Bangalore. Karnataka-560070 **.....**
Respondent

Appearance:
Mr. G. Shivadass, Sr. Advocate, for Appellant
Mr. P R V Ramanan, Special Sr. Counsel (AR) for the Respondent

Coram:
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

<u>FINAL ORDER Nos. 20862 - 20863 of 2026</u>

Date of Hearing: 25.05.2026
Date of Decision: 20.07.2026

Per: P.A. AUGUSTIAN

The issue in the present appeals is whether the activities carried out by the Appellant with overseas entity through International Service Agreement, Manufacturing Support Services Agreement and International Agreement are falling under the category of 'export of services' as claimed by the Appellant or 'intermediary service' as held by the adjudicating authority.

2. M/s. Cisco Systems India Private Limited (hereinafter referred to as "Appellant"), is a wholly owned subsidiary of Cisco Systems Inc., incorporated in USA (hereinafter referred to as "Cisco Systems Inc" or "Cisco Inc"). The registered office of the Appellant is located at Bangalore. The Appellant has various units in Special Economic Zones engaged in the business of offering wide range of products and services such as routers, switches, wireless, security building systems, network management, data centre switches, technical support services and application network services etc. The Appellant renders various services to its group entities including management services, manufacturing support services, marketing and sales support services, administrative support services, technical assistance services, advanced services, spare services etc. A substantial portion of the services are rendered from the above-mentioned units located in SEZ. Appellant is registered for providing Business Support Services, Information Technology Software Services and Business Auxiliary Services. Alleging that the Appellant had provided marketing and sale service to their client for marketing client's product and services within the taxable territory by acting as intermediary, investigation commenced and a Show Cause Notice was issued under Section 73(1) of the Finance Act, 1994 by invoking the extended period of limitation alleging that the Appellant is

an intermediary as per Rule 2(f) of the Place of Provision of Services Rules, 2012 (POPS Rules, 2012, for short). Further, Statement of Demand dated 17.03.2020 was issued for the period April 2017 to June 2017. Adjudication authority as per the impugned orders, confirmed the demand and also imposed penalty. Aggrieved by the said orders, present appeals are filed. Appeal No.ST/20743/2022 pertains to the period from July 2012 to March 2017 and appeal No. ST/20802/2022 pertains to the period from April 2017 to June, 2017.

3. When the appeals came up for hearing, Learned Sr. Counsel for the appellant submitted that the services rendered by the Appellant do not qualify as intermediary services in terms of Rule 2(f) of POPS Rules, 2012 as the Appellant was rendering various services on its own account. The Appellant submitted that even though the OIO has dealt with each service distinctly, the impugned order has erred by painting them with the same brush to reach a common conclusion that each service is towards facilitation of sales and marketing of CSI BV's products and hence, qualifies as 'intermediary service'. The Appellant submitted that the entire discussion in the order is a selective interpretation of the clauses in the agreements without appreciating the tone and tenor of the agreements as a whole and without any evidence whatsoever of the activities actually undertaken by the Appellant. He further submitted that the relationship between the Appellant and services to its group entities are on principal-to-principal basis and the terms of the agreement is on cost plus mark-up basis and it is not related to sale of the product or any other factors. As regards demand under the category of marketing and sale support, Learned Sr. Counsel for the Appellant drew our attention to the International Service Agreement dated 29.07.2007 and submitted that as per the terms of the agreement, all customer orders shall be placed on service recipient and they shall accept or reject such orders in its own discretion and shall inform the customers directly of its decision. Said agreement includes marketing and sales support services for supply of marketing research forecast of advertising, distribution of commercial material related to general administration cost, participation in trade shows, prompt responses to all enquires to customers, potential customers to

information relating to the products, maintenance of adequate staffs per selling location etc.

4. Learned Sr. Counsel further drew our attention to the other services including Marketing and Sales Support, Technical Support Service, Advanced services, spare services and Pan regional / administrative support services where all the services are agreed upon a term of cost-plus percentage basis and not connected with the sale of the products. He also drew our attention to the Manufacturing support service agreement dated 01.04.2016 between Appellant with CSIBV and international service agreement dated 01.04.2008, between Appellant with Cisco, California. As regards Marketing and Sales Support, it is submitted that Marketing and sales support services includes:

a. Supply of marketing research, forecasts and use of advertising;
b. Distribution of promotional materials and related General & Administration Costs.
c. Participation in trade shows, prompt responses to all inquiries by customers or potential customers for information relating to the products;
d. Maintenance of adequate staff per selling location and ensuring their participation in CISCO BV's sales training courses.

4(a). Regarding demand against Technical Support Services, he submits that the agreement includes:-

a. Provision of product information to the customers:
b. Provision of software support services including telephone and email troubleshooting, information related to equipment system use, configuration and installation and software patches and upgrades and related G&A.
c. Technical assistance in accordance with CISCO BV's current technical assistance guidelines.
d. Maintenance of adequate staff per specified location and ensuring their participation in CISCO BV's training courses:
e. Provision of training to employees and customers.
f. Pre-delivery inspection services as requested by CISCO BV.

4(b). Regarding Advanced Services, it is submitted that said agreement includes:-

a. Deployment and implementation of CISCO BIV's network hardware and software.
b. Network consulting, planning, design and configuration services
c. Customized technical support, engineering services related G&A and other similar services.

5 (i). Regarding Other Support Services including Restructuring services, Acquisition services and Spare Services, it is submitted that the demand confirmed by the Adjudication Authority is unsustainable since it is on principal-to-principal basis. Further as regards Pan Regional/Administrative Support Services, Learned Sr. Counsel submitted that Provision of one or more of the following services for the benefit of one or more affiliates include:-

a. Finance and accounting services including budget preparations project accounting, and similar types of support;
b. Human resources services including recruitment, advice on compensation plans, employee development etc.
c. Legal and tax services including advice on legal issues, coordinating the preparation of year-end compliance obligations;
d. Information systems services including analysis of information systems, design of systems, selection of hardware and software, implementation and maintenance of computer systems, network infrastructure, and similar types of support.
e. Business organization services including telecommunication access and support, facility management operations control quality control and similar types of support.
f. Treasury including assistance and advice on cash management, foreign currency risk analysis and accounting, interest rate risk analysis and debt/equity funding related G & A and other support services;

5(ii). Regarding Manufacturing Support Services, it includes:-

a) Oversight of contractual relationships between CSI BV and Contract Manufacturers (CM)

5(iii). As regards General Support Services, it includes:-

a. Communicating, interacting, co-ordinating and liaison with CMS.

a. b. Evaluating and auditing the logistics of CM,
b. Conducting on-site inventory audits and on-site supplier audits;
c. Evaluating and auditing fulfilments of orders,

d. Monitoring product test plans including test development for new products, sequencing of orders and expedition of urgent orders,
e. Evaluating and auditing component related, test script and quality issues,
f. Training CM's regarding new products and assessing the operations, quality of services provided by them

5(iv). As regards Global Manufacturing Operations, Learned Sr. Counsel further submitted that Manufacturing Engineering includes:

a. Assist in implementation of guidelines for process design, quality and monitoring procedures,
b. Assist in design of manufacturing strategies at local sites,
c. Set quality control strategy and report on quality control,
d. Perform testing process to ensure quality control standards are adhered,
e. Ensure compliance with safety plans,
f. Conduct CM production line audits.

5(v). He further submitted that Test Engineering includes:-

i. Monitor/test procedures and assist in implementation of test solutions and perform test failure analysis on defective products,
ii. Product material management:
iii. Support manufacturing partner supply chain performance,
iv. Ensure inventory levels are driven by CM partners to assure supply and avoid excess or obsoletes inventory. Set the site inventory reserves to adequate levels,
v. Follow up and ensure a correct scrap disposition process is followed by CM's.

5(vi). As regards Global planning and fulfilment, he submitted that it includes:-

i. Evaluate qualification of component families, quality/reliability performance data and participate in defect reduction teams,
ii. Global supplier management:
iii. Work with business units from early phases of development to execution of product launches, support alignment of business requirements and roadmaps with commodity technology roadmaps.
iv. Assist CISCO BV in the process of supplier qualification and selection for commodities needed for specific product builds.
v. Product operations:
vi. Evaluate the lifecycle of product from pre-concept commit to mass production;
vii. Support design action plan and management of prototype.

5(vii). Regarding Management services, he submitted that it includes:-

a. Provision of strategic oversight to sales organization for setting direction for individuals and teams within the organization in terms of markets, products and services, customer segments, etc.
b. Making available the resources required to teams,
C. Provision of hands-on sales support for strategic/high value customers where required,
d. Provision of support services such as legal, financial services,
e. Provision of corporate marketing services which includes branding and advertising activities, targeted campaigns to specific groups like enterprises, service providers, customers etc.

6. The Learned Sr. Counsel further drew our attention to the definition 'intermediary service' under Rule 2(f) of POPS Rules, 2012 where it is specifically stated that intermediary means a broker, an agent or any other person by whatever name called, who arranges or facilitate a provision of a service herein after called the main service or supply of goods between two or more persons but does not include a person who provide the main service or supplies the goods on his account. Further, it is settled that said provision is in *pari materia* with Section 2(13) of GST Act, 2017. The scope and requirement of intermediary service is also clarified by the Board vide Circular No. 159/15/2021-GST dated 20.09.2021 stating that minimum of three parties of distinct supplies, character of an agent or broker or any other similar person, exclude for persons supplying goods or services or both on account. Thus, the concept of intermediary can be alleged only if there are three parties, viz. the supplier of principle service, recipient of services and intermediary facilitating or arraigning the said supply. In Appellant's cases, service provider is not involved in the activity of negotiation of sale and purchase of goods in India. Thus, the Appellant cannot be termed as an 'intermediary' as laid down by the Tribunal in the matter of **M/s Macorine Global Services Pvt Ltd vs Commissioner of Central Excise and Service tax (2021-VIL-2704-CESTAT (Chd.)** and in the matter of **M/s Excel Point System India Pvt Ltd vs Commissioner of Service Tax, Bangalore**. Also relied on the judgment of Hon'ble High Court of Karnataka in the matter **of M/s. Athene Technologies India LLP vs State of Karnataka [2025-VIL 531 KAR]**.

7. The Learned Sr. Counsel also drew our attention to the "Taxation of services, education guide published by the Revenue on 20th June, 2012 where it is clarified that:-

> ***5.9.6 What are "Intermediary Services"?***
>
> *Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:*
> *i) the supply between the principal and the third party; and*
> *ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.*
>
> *For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition.*
>
> *Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the rules as "the main service"), but provides the main service on his own account.*
>
> *In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-*
>
> ***Nature and value****: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.*
>
> ***Separation of value:*** *The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".*
>
> ***Identity and title:*** *The service provided by the intermediary on behalf of the principal is clearly identifiable.*
>
> *In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services:-*
>
> > *i) Travel Agent (any mode of travel)*
> > *ii) Tour Operator*
> > *iii) Commission agent for a service [an agent for buying or selling of goods is excluded]*
> > *iv) Recovery Agent*
>
> *Even in other cases, wherever a provider of any service acts as an intermediary for another person, as identified by the guiding*

principles outlined above, this rule will apply. Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the 'main service'.

2. Scope of Intermediary services

2.1 Scope of Intermediary services 'Intermediary' has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under–

> *"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."*

2.2 The concept of 'intermediary' was borrowed in GST from the Service Tax Regime. The definition of 'intermediary' in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows:

> *"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;"*

2.3 From the perusal of the definition of "intermediary" under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

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 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.*

8. The Learned Sr. Counsel also drew our attention to the decision of this Tribunal in the matter of **Commissioner of General Tax, CC Vs. Informatica Business Solutions Pvt Ltd (2025 (26) Centax 167 (Tri-Bang.))** where it is held that**:-**

> *"10. We find that recently Board has issued a circular bearing No.159/15/2021-GST dated 20.09.2021 clarifying who should be considered as an 'intermediary' in the context of GST, which is borrowed from the definition of Rule 2(f) of the POPS Rules, 2012. The said circular has been noted in various judgments of this Tribunal and which are referred in the case of Commissioner of CG&ST &CE, Delhi South Vs. Grant Thornton Advisory Pvt. Ltd. [2024(10) TMI 147 – CESTAT NEW DELHI]. The relevant portion of the order reads as follows:-*
>
>> *15. The relevant clauses of the Cost Reimbursement Agreement do not indicate that Grant Thornton, India was to act as an 'intermediary'. The activities undertaken by Grant Thornton, India are for promoting the brand name of Grant Thornton in India. Grant Thornton in India had to provides services on its own account and merely because Grant Thornton, India outsourced certain services would not mean that it became an 'intermediary'.*
>>
>> *16. The transaction would, therefore, not be covered by rule 9 of the 2012 Rules. Under rule 3 of the 2012 Rules, which would be applicable in the present case, the place of provision of service shall be the location of the recipient of service. The recipient of service is Grant Thornton, London, which is outside India. There is no dispute that the payment for the services had been received by Grant Thornton, India in covertable foreign currency. Thus, the conditions set out in rule 6A of the Service Tax Rules 1994 stand satisfied. Thus, there can be no manner of doubt that the services provided by Grant Thornton, India to Grant Thornton, London would be 'export of services'.*
>>
>> *17. This issue was examined by the Tribunal in Sunrise Immigration Consultants Private Limited vs. Commissioner of Central Excise and Service Tax, Chandigarh [2018-TIOL-1849- CESTAT-CHD]. The Tribunal considered whether the assessee would be an 'intermediary' with reference to the services provided to universities, colleges and banks and whether any service tax could be levied. The observations of the Tribunal are as follows:*
>>
>>> *"10. We find that the appellant is nowhere providing services between two or more persons. In fact, the appellant is providing services to their clients namely banks/colleges/university who are*

paying commission/ fees to the appellant. The appellant is only facilitating the aspirant student and introduced them to the college and if these students gets admission to the college, the appellant gets certain commission which is in nature of promoting the business of the college and for referring investors borrow loan from foreign based bank to the people who wishes settled in Canada on that if the deal matures, the appellant is getting certain commission. So the nature of service provided by the appellant is the promotion of business of their client, in terms, he gets commission which is covered under Business Auxiliary Service which is not the main service provided by the main service providers namely banks/university. As the appellant did not arrange or facilitate main service i.e. education or loan rendered by colleges/banks. In that circumstances, the appellant cannot intermediary." be called as

(emphasis supplied)

18. The definition of 'intermediary services' in section 2(13) of the Integrated Goods and Service Tax Act, 2017 is pari-materia with the definition of 'intermediary services' in rule 2 (f) of the 2012 Rules. The meaning of 'intermediary services' has been considered by the Punjab and Haryana High Court in Genpact India Pvt. Ltd. vs. Union of India [2023 (68) GSTL 3 (P&H)]. The issue that arose for consideration before the High Court was whether the services rendered by the petitioner under the agreement could be treated as 'intermediary services' under the provisions of the IGST Act".

9. The Learned Sr. Counsel also drew our attention to the decision of this Tribunal in the matter of **M/s Salesforce.com India Pvt Ltd vs Commr. of Central Tax, Bangalore [**Final Order No. 21721-21722/2024 dated 07.10.2024] wherein it is held that:-

"21. We have gone through the service agreement entered by M/s. Sales force.com, Singapore Pte Ltd. (SFDC, Singapore) with the Appellant, where it is specifically stated that the SFDC, Singapore and Appellant desire to enter into an arrangement whereby Appellant will within its designated territory as defined in Exhibit 'A' subject to provide services in support of SFDC, Singapore business operations limitation provided by the agreement. Appellant shall assist SFDC, Singapore in marketing the products and services, shall educate potential customers regarding the use of the product through advertisement, if required by SFDC, Singapore. However, the Appellant shall not have the authority to conclude sales contract in the name or on behalf of the SFDC, Singapore. As regards receipt of

payment, the Appellant is not permitted to collect payment from SFDC Singapore's customers and if any amount is received, it should be promptly paid to the SFDC, Singapore. As held in the matter of M/s. Blackberry India Pvt. Ltd. (supra) an 'intermediary' is a person, who arranges or facilitates provision of the main service between two or more persons. We find that the appellant does not arrange or facilitate the provision of any main supply between M/s. Sales force.com, Singapore Pte Ltd. (SFDC, Singapore) and their customers / clients.

22. Therefore, the appellant cannot be considered as an 'intermediary' in terms of Section 2(f) of Place of Provision of Services Rules, 2012. Further the service provided by the appellant qualify for export since it is providing services to M/s. Sales force.com, Singapore Pte Ltd. (SFDC, Singapore), which is outside India and is receiving convertible foreign exchange for such services.

23. In view of the above discussion and the decisions on the issue, the services provided by the Appellant-Salesforce.com India Pvt., Ltd., to their overseas entity M/s. Salesforce.com Singapore Pvt. Ltd., cannot be considered as 'intermediary service' provided in India in terms of Section 65B (44) of Finance Act, 1994 and the said services qualify as export of service".

10. The Learned Sr. Counsel further submitted that in the case of **T.C. Global India Pvt Ltd. Vs Additional Director General, DGCEI, New Delhi. [(2025) 26 Centax 124 (Tri.-Delhi)]** where it is held that:-

17. In the light of above observation vis-à-vis facts, the question to be adjudicated, therefore is:

Whether the services rendered by the appellant to overseas universities/colleges amounts to „Export of Service" as contended by appellants or it is „intermediary service" as alleged by the department.

18. Foremost we check the definition "intermediary" and that of 'Export of Service' Intermediary' has been defined in Rule 2(f) of Place of Provision Rules, 2012 as under:

> *"intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account".*

Thus, to be an intermediary, the following criterias are to be fulfilled:

(a) intermediary should be a broker or an agent or similar person by whatever name called.
AND
(b) such person is undertaking either of the two functions:

(i) Arranges a provision of a service (hereinafter called the 'main' service) between two or more persons:

(ii) Facilitates a provision of a service (hereinafter called the 'main' service) between two or more persons:

19. At the outset it is important to mention that the phrase 'any other person" in the definition has not to be read in absolute isolation else the existence of the first two words- agents or brokers would have no relevance. By applying the principle of "Noscitur a Sociis" and "Ejusdem generis, the nature of any person has to take its Colour from the genre of persons specified in the definition clause. If the word is preceeded by a set of words, the general word must be read in context of the preceeding or surrounding words to provide a gainful meaning to the definition. Thus phrase „any other person" has to be read as person like agent or broker.

11. He further submitted that the issue is also covered by the decision of the Tribunal in the matter of **Xilinx India Technology Services (P) Ltd. v. Commr.,- 2023 SCC OnLine Del 5628,** the judgment of the Hon'ble High Court of Karnataka in the matter of **Amazon Development Centre India Pvt Ltd vs Additional Commissioner of Central Tax, GST Appeal II, Bangalore [2025 VIL-409 (Kar)]** and the decision of this Tribunal in the matter of **Amazon Seller Services Private Limited Vs. CCE,ST&CGST(North), Bangalore [Final Order No.21807-21809/2024 dated 20.12.2024].** Further submits that considering the representations made by the industry, the issue regarding 'intermediary service' was reconsidered by the 56th Meeting of the GST Council and it is held that

> Amendment in place of supply provisions for intermediary services under section 13(8) of the IGST Act: The Council recommended omission of clause (b) of section 13(8) of IGST Act 2017. Accordingly, after the said law amendment, the place of supply for "intermediary services" will be determined as per the default provision under section 13(2) of the IGST Act, 2017 i.e. the location of the recipient of such services. This will help Indian exporters of such services to claim export benefits.
> Accordingly, Notification dated 30.03.2026 is issued omitting clause (b) in sub-section (8) of Section 13 of IGST Act, 2017.

12. Also relied on the following case Laws;

i. **Chevron Philips Chemicals India Pvt Ltd. v. Commissioner of Central Tax and Central Excise 2024) 15 Centax 102 (Tri-Bom) affirmed in (2024) 15 Centax 103 (S.C.);**
ii. **Verizon India Pvt Limited v. Commissioner of Service Tax, Delhi 2019-VIL-527-CESTAT-DEL-ST**
iii. **Ohmi Industries Asia Pvt. Ltd. v. Asst. Commissioner of GST. (2023) 6 Centas 163 (Del.):**
iv. **Pr. Commissioner, Central Excise & CGST-Delhi South Vs. Blackberry India Pvt. Ltd. (2023) 9 Centax 113 (Del.)**
v. **Genpact India (P) Ltd. v. Union of India (2022) 1 Centax 226 (P&M.)**
vi. **SNQS International Socks Pvt Ltd Commissioner of GST and CE Coimbatore (2024) 16 Centax 412 (Th Mad) affirmed in (2024) 16 Centax 413 (SC)**
vii. **Boks Business Services Pvt Ltd. v. Commissioner of CGST Delhi South and Anr. (2023) 10 Centax 44 (Det)**
viii. **M/s Ernst and Young Limited vs. Additional Commissioner, CGST, Appeals-B. Delhi and Ant. (2023) 4 Centax 440 (Del.).**
ix. **M/s Columbia Sportswear India Sourcing Pvt Ltd Vs Union of India, 2025-VIL-512-KAR**
x. **M/s. Athene Technologies India LLP vs State of Karnataka 2025-VIL 531 KAR**

13. The Learned Senior Counsel further submitted that the demand is also confirmed by invoking extended period of limitation and there is no justification to invoke the extended period of limitation. The learned Senior Counsel submitted that close to 60% of the demand raised in the impugned SCN has been dropped by the impugned order after detailed analysis of the facts and documents already available with the Department (demand in respect of Research and Development Services). On this ground alone, it is evident that the Appellant has never suppressed information from the Department and is right in its *bona fide* belief regarding non-taxability under 'intermediary' for all its services. It is trite law that in order to invoke the extended period of limitation, the Department has a burden not only to allege legally but also to prove factually that there was a deliberate attempt to suppress information from the Department and such suppression of information resulted in the evasion of service tax due to the Government. The settled principles of law relating to burden of invoking the extended period of limitation clearly stipulates that the Department must enunciate the factual instances which evidence the suppression or withholding of information resulting in the evasion of service tax due to the Government. This SCN and OIO have failed in bringing out any

contumacious act on the part of the Appellant which would even bear semblance to an act of suppression of information with an intention to evade payment of service tax.

13(i). He also drew our attention to the details of the correspondence where agreements executed with the service recipient was submitted to the respondent since 2007; being so, invocation of extended period of limitation is unsustainable. He also drew our attention to the following chart showing the demand under normal period and invoking extended period of limitation.

Period Category	Year	Amount of Service Tax (in Crores) - as per OIO		
		DTA	SEZ	Total
Beyond normal time, by invoking extended period	2012-13	75,07,00,405	73,31,08,120	1,48,38,08,524
	2013-14	1,06,78,59,722	1,11,20,97,432	2,17,99,57,154
	2014-15	1,02,29,85,350	1,30,38,93,292	2,32,68,78,642
	2015-16	52,58,34,883	1,08,86,55,098	1,61,44,89,981
	Sub-total A	**3,36,73,80,359**	**4,23,77,53,942**	**7,60,51,34,301**
Within normal time	2015-16	72,16,63,664	1,13,67,93,332	1,85,84,56,997
	2016-17	1,23,02,26,439	2,68,22,89,963	3,91,25,16,403
	2017-18	35,72,95,358	58,15,32,571	93,88,27,929
	Sub-total B	**2,30,91,85,462**	**4,40,06,15,867**	**6,70,98,01,329**
Total demand as per OIO		**5,67,65,65,821**	**8,63,83,69,809**	**14,31,49,35,630**
%age		**39.65%**	**60.35%**	

14. on behalf of the Revenue the Learned Special Counsel for the Revenue reiterated the findings in the impugned order and drew our attention to the details of the agreement. As per clause 3.6 of the customer orders, it is specifically stated that all customer orders shall be placed on service recipient. Service provider will forward any orders received from customers to service recipient for further handling by service recipient. Service recipient shall accept or reject such orders in its sole discretion and shall inform customers directly of its decision. Further as regarding status, an independent contractor, clause 7.1 specify that independent contractor, service recipient is engaging service provider to perform service on behalf of service recipient as an

independent contractor. Nothing in the agreement shall be construed to:

i) Give either party the power to direct and control the day to day activities of the other party.

ii) Construed the parties as Partners, Joint Ventures, Principle and Agent, Employer and Employees, Co-owners or participant in a joint undertaking.

15. Further submitted that the activities performed by the appellant viz. the act of identifying the potential customers in India, promoting the products of the principal to the potential customers, addressing the queries of the potential customers with regard to the Principal's products, communicating with the Principal about the comments and queries of the prospective customers are all activities of facilitating the supply of products by the service recipient to the customers in India. It is noticed that the appellant carries out the activities as per the Agreement in a "liaison capacity" and as a conduit or the intermediary. Appellant may be prohibited by the agreement from entering into binding contracts but at the same time appellant is authorized by it to act as the go-between the principal’s customers and prospects in India and the Principal itself. Learned Special Counsel for the Revenue also relied on the decision of Appellate authority for Advance Ruling under GST, Karnataka in the case of **M/s. Inferina India Pvt Ltd (2020 (33) GSTL 491 APP AAR GST (Kar).**

16. The Learned Special Counsel for the Revenue also drew our attention to the finding in the impugned order and submits that though the appellant were paid on cost plus 10% basis irrespective of the fact as to whether the sales takes place or not, they are reimbursed by the service recipient, the manner of receipt of consideration on cost plus basis and not commission is irrelevant, as it is seen clearly in the definition that there is no qualification regarding the manner of payment, which need to be satisfied other than arranging or facilitating the supply of goods or services to be called an intermediary. The consideration may be based on the turnover of supply on behalf of the supplier or on the basis of efforts made, quotations issued, customers engaged or any other method but this does not have bearing on the

nature of supply. There is nothing in the definition to indicate that if the person supplying the services receives the consideration other than as commission, that would exclude him from being an intermediary. Therefore, the contention of the appellant is not tenable. Coming to the stipulations in the Education Guide -Taxation of services issued by the CBIC regarding the nature of value, separation of value and identity and title, Learned Sr. Counsel submitted that the stipulations in the Education Guide are:- Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied for obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal. It is seen that in the present case, the goods and services (called products) belonging to the service recipient are being directly supplied by the service recipient to the customers in India. The service recipient abroad directly enters into contract with the customers. The appellant is only facilitating the supply between the service receiver and customers in India. Further, they are receiving the consideration on cost plus 10% basis. They are under obligation to place all customers orders on service receiver for further handling by service recipient. Further service recipient accepts or rejects such orders in its sole discretion and inform the customers directly of its decision and collect the value for supply directly. Therefore, this condition is fulfilled.

17. As regarding the submission related to separation of value, the Learned Special Counsel for the Revenue submitted that the value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission". The value of appellant’s services is identifiable separately from the main supply of products that he is arranging. The appellant gets their consideration on cost plus basis whereas the service recipient directly receives the consideration for products supplied to the customers in India. Hence this condition is also fulfilled. As regards the identity and title, the Special Counsel for the Revenue submitted that the service provided by the

intermediary on behalf of the principal is clearly identifiable in the present case and considering the fact that the appellant had fulfilled the other two primary requirements of being intermediary service-minimum three parties and two distinct supplies. Though it has been contended by the appellant that the Service Recipient has engaged them as an independent contractor and nothing in the Agreement can be construed to constitute the Parties as partners, joint ventures or principal and agent in this regard, the appellant has emphasized upon not being an agent or a broker, it is submitted that there can be difference between agent, broker and an intermediary. Whereas in the case of an agent or broker, activity is undertaken on another's behalf which is not necessary in the case of an intermediary. Therefore, calling oneself as an independent contractor is not relevant for the purpose of determining an intermediary as per the definition. An intermediary will merely facilitate or arrange the supply of goods or services between two or more people but will not be providing such supplies on his own account. Here, the word 'main service' is of prime importance. Although the Agreement in this case does mention that they are independent contractors and are not to act as an agent; the actual activity performed by the appellant as discussed above is one of facilitating the supply of 'Products' by them to the customers in India. Thus, in economic substance or commercial reality, the transactions are provision of Intermediary Service by the appellant.

18. He also submitted that under the International Service Agreement with the CISCO Systems International BV, Netherlands, the appellant is undertaking marketing and sales support service activities. The Agreement has to be read as a whole. The nature of activities involving analysis of information system, design of system, selection of hardware and software, implementation of system and maintenance of computer systems, internal support, designing of network infrastructure, network management and administration that these services are, by and large, provided to the customers of the service recipients. Though the appellant has contended that these services are provided directly to CSI, BV, Netherlands, there is no documents produced in support of the above contention. From the agreements relied by the appellant, it is clear from the scope of services as mentioned above that selection of

hardware and software, implementation of computer systems, assistance in designing and management are considered to be rendered to the customers in India. The appellant is providing legal and tax services to the customers in India in connection with the sale of products (Goods and Services) of the service recipient. The appellant has issued invoices under the service category "Business Auxiliary Service" and have given the description of service as "Marketing, Sales, General & Administrative Services" on monthly basis. Thus, they themselves are clubbing such administrative services with the marketing and sales services. Therefore, it is seen that such administrative and general services are part and parcel and in relation to marketing and sales support services only. Appellant is providing services related to Products and Spares under the agreement to service recipient. These services are termed as 'Management Services' and the consideration is paid on cost plus @ 10% basis. Service provider provides strategic oversight to sales organizations which provide guidance and directions for markets, products and services, customer segments, etc. to pursue and provide to the teams, resources required. This job involves supervision and guidance to the sales organization within M/s Cisco India with respect to promotion of goods and services of the service recipient, assessment of the requirements of customers, customer segment in general; building brand of Cisco Systems Inc., USA, contacting and canvassing the products and services, deploying suitable teams for such marketing. They also provide hands-on sales support for strategic or high-value customers, including taking feedback from the potential customers and existing customers and advising the service recipient of the modification, improvements or customization required as per the customers requirement. They also perform the support services towards the legal requirements including assistance in Customs clearance and facilitating finance, arranging payment terms and loans, if required. The appellant also provides corporate marketing services including branding and advertising activities; they also conduct trade shows and targeted campaigns to specific groups like enterprises and potential customers. Thus, from the above activities and as per the clauses of the agreement, it is clear that the appellant being a service provider was conducting the market research, advertising, distribution of promotional materials to the customers and potential customers and participating in trade shows to attract customers on behalf of the overseas entity. They were also marketing the product of the service recipient M/s Cisco Systems Inc., USA by regularly deploying marketing personnel in India. They were also providing product information to Cisco Inc., USA's customers along with market forecast and requirements of customers along with suitable modifications/customizations were being suggested by the appellant to the service recipients as per the feedback received from the customers in India. They were also demonstrating the equipment and programmes to the potential customers and replying to the enquiries and request by customers for information relating to products.

19. The Learned Special Counsel further drew our attention to the various conditions including Article 4, 7 of the agreement and submitted that from the above said conditions, it is evident that the Appellant have been engaged to provide various manufacturing related services in connection with the manufacturing activities of the contract manufactures in India by assisting them with development operation plans, delivery performance, evaluate quality and reliable performance. Thus, the Appellant is facilitating the overseas entity service recipient. All these activities also clearly show that the appellant was facilitating supply of goods and services (products) of the service recipient to the customers. These activities clearly amount to rendering of intermediary services and accordingly, the Place of Provision of Service as per Rule 9(c) of the POPS Rules, 2012 is the location of the service provider India, and therefore, the services rendered are not "export of service" in terms of Rule 6A of Service Tax Rules, 1994. Accordingly, the impugned order confirming demand of service tax is sustainable and liable to be recovered from the appellant.

20. As regards the definition referred to by the Learned Sr. Counsel for the Appellant on the last limb of definition of term intermediatory under Section 2(13) of the IGST Act, 2007 which read as but does not include any person, Special Counsel for the Revenue drew our attention to the judgment of the Hon'ble Supreme Court in the matter of **M/s W.O. Holesworth and Others Vs. State of Uttar Pradesh (1957 AIR 887)** where it is held that:-

> *"These definitions emphasize that the trustee is the owner of the trust property and the beneficiary only has a right against the*

trustee as owner of the trust property. The trustee is thus the legal owner of the trust property and the property vests in him as such. He no doubt holds the trust property for the benefit of the beneficiaries but he does not hold it on their behalf. The expressions" for the benefit of " and " on behalf of" are not synonymous with each other. They convey different meanings. The former connotes a benefit which is enjoyed by another thus bringing in a relationship as between a trustee and a beneficiary or cestui que trust, the latter connotes an agency which brings about a relationship as between principal and agent between the parties, one of whom is acting on behalf of another. Section 11(1) therefore can only come into operation where the land from which agricultural income is derived is held by such common manager, receiver, administrator or the like on behalf of, in other words, as agent or representative of, persons jointly interested in such land or in the agricultural income derived therefrom. Even though such persons were the beneficiaries cestui que trust under a deed of trust, they would not be comprised within the category of persons on whose behalf such land is held by the trustees and the trustees would not be included in the description of common manager, receiver, administrator or the like so as to attract the operation of s. 11(1). Trustees do not hold the land from which agricultural income is derived on behalf of the beneficiaries but they hold it in their own right though for the benefit of the beneficiaries".

21. The Learned Special Counsel for the Revenue also drew our attention to the judgment of **Hon'ble Supreme Court in the matter of The State Vs. Gangamma & others** (**AIR 1965 KANT 235) - High Court of Karnataka** where it is held that: -

"(13) Thus the words, 'on behalf of connote an agency; when one person acts on behalf of the other the former acts as a agent of the latter. No doubt ordinarily, an agency, that is, the relationship of principal and agent, is the result of a contract express or implied; but an agency may also be created by a statute".

22. As regards invocation of extended period of limitation, he reiterated the finding in the impugned order and submits that Appellant failed to correctly disclose the nature of services provided, classifying them as exports under ITSS, BAS, or BSS, instead of intermediary services, thereby not paying the applicable Service Tax. The argument that all information was available with the Department through ST-3 returns or audits is not a valid defence when the information provided in such returns or during audits was itself a misclassification or misrepresentation of the true nature of the services. The very fact that a significant portion of the demand pertains to services which the

Appellant now argues extensively are not intermediary, but which the Department found to be intermediary after investigation, shows a difference in interpretation that cannot be simply brushed aside as a *bona fide* belief when the scale of operations and the clarity available from agreements (when read holistically) pointed towards facilitation. The OIO notes that the true nature of the activities and the extent of their taxability as intermediary services came to light only upon investigation by the Department. Though *suo moto* payment was acknowledged initially for Marketing and Sales Support Services from October 2014 onwards, the investigation subsequently revealed a much wider scope of services potentially classifiable as 'intermediary', covering a longer period. This selective and belated payment under protest does not absolve Appellant from the charge of suppression for the entire gamut of services and the full period of dispute. The failure to assess correctly and declare the services as intermediary, despite the availability of the POPS Rules from July 2012, constitutes suppression of material facts with an intent to evade payment of tax.

23. In rejoinder, the Learned Sr. Counsel for the Appellant also drew our attention to the finding in the impugned order where the Adjudicating Authority has reached the finding by relying on the decision of Appellate Authority for Advance Ruling under GST, Karnataka in the case of M**/s Inferina India Pvt Ltd (2020 (33) GSTL 491 APP AIR GST (Kr) and submits** that the said finding is binding to the applicant therein and not applicable to the appellant's case.

24. Heard both sides and perused the records. The period of dispute in the present appeal is from July 2012 to June 2017 and the issue to be decided is whether the services rendered by the appellant falls under the category of Intermediary Services. Intermediary Services in terms of Rule 2(f) of the 'Place of Provision of Service Rules', are defined as follows:

> "Intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of service (herein after called the "main" service) or a supply of goods, between two or more persons, but does not

include a person who provides the main service or supplies the goods on his account.

The Commissioner in the impugned order examines three of the agreements entered into by the appellant Technical Assistant Services, International Service Agreement and Marketing and Sales Support Services. As per the International Service agreement dated 27.07.2009 And as observed by the Commissioner in the impugned order, the service provider is M/s. Cisco India (the appellant) and the obligations of the service provider is to get all customer orders and place before the service recipient (M/s. Cisco California). Further the service recipient engages the service provider to perform services on behalf of service recipient as an independent contractor and service provider shall not conclude or sign any contract involving the sale or lease of any products on its own behalf or on behalf of service recipient. It is also to be noted that the appellant is paid in accordance with the cost incurred at actuals plus a markup of 10%. The Commissioner in the impugned order at para 119 observes that 'I find that the manner of receipt of consideration and cost-plus basis and not Commission is irrelevant, as it is seen clearly in the definition that there is no qualification regarding the manner of payment, which need to be satisfied other than arranging or facilitating the supply of goods or services to be called an intermediary. The consideration may be based on the turnover of supply on behalf of the supplier or on the basis of efforts made, quotations issued, customers engaged or any other method but that does not have any bearing on the nature of supply. There is nothing in the definition to indicate that if the person supplying the services receives the consideration other than as commission that would exclude him from being an intermediary therefore the contention of the assesses is not tenable'.

25. Thus, from the above it is clear that the payments are not linked to the sales by the service provider but only to the extent of expenses incurred by the service provider to the service recipient. In this context it may be relevant to refer to the clarification issued with regard to

intermediary services by the Board vide Circular No.159/15/2021-GST dated 20.09.2021 which is extracted below:

Circular No. 159/15/2021-GST
F.No. CBIC-20001/8/2021-GST

Government of India
Ministry of Finance Department of Revenue
Central Board of Indirect Taxes and Customs
New Delhi, dated the 20th September, 2021

Subject: Clarification on doubts related to scope of "Intermediary"–reg.

Representations have been received citing ambiguity caused in interpretation of the scope of "Intermediary services" in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues in succeeding paragraphs.

2. Scope of Intermediary services

2.1 'Intermediary' has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under– "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."

2.2 The concept of 'intermediary' was borrowed in GST from the Service Tax Regime. The definition of 'intermediary' in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows:

"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a Circular No. 159/15/2021-GST supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;”

2.3 From the perusal of the definition of “intermediary” under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

3. Primary Requirements for intermediary services The concept of intermediary services, as defined above, requires some basic pre- requisites, 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 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.

4. Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following illustrations:

Illustration 1 ‘A’ is a manufacturer and supplier of a machine. ‘C’ helps ‘A’ in selling the machine by identifying client ‘B’ who wants to purchase this machine and helps in finalizing the contract of supply of machine by ‘A’ to ‘B’. ‘C’ charges ‘A’ for his services of locating ‘B’ and helping in finalizing the sale of machine between ‘A’ and ‘B’, for which ‘C’ invoices ‘A’ and is paid by ‘A’ for the same. While ‘A’ and ‘B’ are involved in the main supply of the machinery, ‘C’, is facilitating the supply of machine between ‘A’ and ‘B’. In this arrangement, ‘C’ is providing the ancillary supply of arranging or facilitating the ‘main supply’ of machinery between ‘A’ and ‘B’ and therefore, ‘C’ is an intermediary and is providing intermediary service to ‘A’.

Illustration 2 ‘A’ is a software company which develops software for the clients as per their requirement. ‘A’ has a contract with ‘B’ for providing some customized software for its business operations. ‘A’ outsources the task of design and development of a particular module of the software to ‘C’, for which “C’ may have to interact with ‘B’, to know their specific requirements. In this case, ‘C’ is providing main supply of service of design and development of software to ‘A’, and thus, ‘C’ is not an intermediary in this case.

Illustration 3 An insurance company ‘P’, located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by ‘P’ to the clients. For processing insurance claims, ‘P’ decides to outsource this work to some other firm. For this purpose, he approaches ‘Q’, located in India, for arranging insurance claims processing service from other service providers in India. ‘Q’ contacts ‘R’, who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by ‘R’ to ‘P’. ‘Q’ charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by ‘R’ to ‘P’. In such a case, main supply of insurance claims processing service is between ‘P’ and ‘R’, while ‘Q’ is merely arranging or facilitating the supply of services between ‘P’ and ‘R’, and not himself providing the main supply of services. Accordingly, in this case, ‘Q’ acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration 4 ‘A’ is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, ‘A’ is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. ‘A’ decides to outsource the task of providing customer care services to a BPO firm, ‘B’. ‘B’ provides customer care service to ‘A’ by interacting with the customers of ‘A’ and addressing / processing their queries / complains. ’B’ charges ‘A’ for this service. ‘B’ is involved in supply of main service ‘customer care service’ to ‘A’, and therefore, ’’B’ is not an intermediary.

5. The illustrations given in para 4 above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

The Hon'ble High Court of Karnataka in the case of M/s. Amazon Development Centre India Private Limited, in a similar set of facts, referring to the above Board Circular has observed as follows:

'13. A perusal of the customer services agreements clearly indicates that the same expressly restricts the petitioner from acting as an agent and precludes it from entering or negotiating contracts for sale of products; the services provided by the petitioner is on principal-to-principal basis on the petitioner's own account and the petitioner is not acting in the capacity of an agent or broker coupled with the fact that the agreements specifically provide and stipulate that agency was not being created under the Agreements, thereby leading to the unmistakable / sole conclusion that the necessary ingredients constituting the petitioner as an "intermediary" was clearly not fulfilled in the facts and circumstances of the instant case; in other words, in the absence of any agency relationship between the petitioner and the foreign affiliates or the Amazon consumer entities, the very first / basic / pre-requisite/ pre-condition for the petitioner to be constituted or treated or construed as an "intermediary" and for being an agent acting on behalf of the foreign affiliates would neither be fulfilled nor satisfied and the customer support services provided by the petitioner clearly do not constitute intermediary services and consequently, the said contention of the respondents – revenue cannot be accepted'.

26. Further with regard to all the agreements referred above and the activities carried out by the Appellant, we find that the issues were considered by the Hon'ble High Court of Karnataka in the matter of **Amazon Development Centre India Pvt Ltd** (Supra) wherein it is held that:_ the meaning of term facilitation/arrangement cannot be extended to cover agreements where main services are rendered by the service provider on its own account as an intermediatory arranges of facilitate main supply between two or more other person and does not himself provide the main supply. The last limb of definition of term intermediatory under Section 2(13) of the IGST Act, 2007 which read

as but does not include any person who supply such goods or service on both on securities in his own account does not control the definition but restrict the meaning, definition and clarified that the definition is not to be read in an expansive manner. Further it is clarified that if service providers rent a service on account to the recipient as opposed to merely putting the third party directly in touch with the service recipient, arranging supply of goods or service, the service rendered are not intermediatory in nature as held in the matter of **Earnest Young India vs Commissioner CGST (2003 VIL 190 (Del).** Further subcontracting a portion of works to third party does not mean that intermediary relationship is established as subcontract or render services on their account. Further, we find that the Hon'ble High Court of Karnataka also held that the service recipient customer is not the customer of the service provider. When the service is rendered to third party at the behest of service recipient, the service recipient is the customer and not the third party. Recipient of service is determined by contract between the parties and it depends on who has the contractual right to receive the services and who is responsible for the payment for services rendered to the service recipient. Further if the service provider does not receive consideration from the customer of the entity to which render service, the service provider is providing the main service which was subcontract to it and receive consideration from the main contractor and cannot be termed as an intermediatory. Further, if the condition of the contract is for providing the service based on cost plus marketing, it cannot be considered as connected with main supply of goods. Main supply of goods may or may not happen and cannot be directly correlated with the service provided by the service provider.

27. Further, we find that this issue was also considered by this Tribunal in the matter of **Informetica Business Solution (supra)** wherein it is categorically held that marketing support service including identification of customers providing information and educating potential customers, procuring information from the client in terms of their requirement, expectations regarding the pricing of product, passing of information to the foreign entity, demonstration and presentation to the customer on the application of the product and maintenance and support of the product rendered, it does not rendered

to behalf of the foreign entity does not amounts to intermediary service. Thus, the concept of intermediary can be alleged only if there are three parties, namely the supplier of principle service, recipient of services and intermediary facilitating or arraigning the said supply. In Appellant's case, service provider is not involved in the activity of negotiation of sale and purchase of goods in India. Thus, appellant cannot be termed as an 'intermediary' as held by the Tribunal in the matter of **M/s Macorine Global Services Pvt Ltd vs Commissioner of Central Excise and Service tax (2021-VIL-2704-CESTAT (Chd.)** and in the matter of **M/s Excel Point System India Pvt Ltd vs Commissioner of Service Tax, Bangalore**. We also find that in identical set of facts in the case of **SNQS International Socks Pvt Ltd Commissioner of GST** where in the tribunal had held that the services do not fall under the category of intermediary services was upheld the Hon'ble Supreme Court **in (2024) 16 Centax 413 (SC).**

28. Following the ratio of the various decisions we find that the services rendered by the appellant cannot be termed as an 'intermediary' and hence the impugned orders confirming the demand and penalty are set aside.

Appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 20.07.2026)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja…