CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 50560 OF 2022

[Arising out of Order in Original No. JAI-EXCUS-000-COM-29-21-22 dated 09.09.2021 passed by the Principal Commissioner, CGST & Central Excise, Jaipur]

PRINCIPAL COMMISSIONER, CENTRAL EXCISE & CGST-JAIPUR I **.....APPELLANT**
NCR Bulding, Statue Cirlce, C-Scheme
Jaipur, Rajasthan-302005

Vs.

NATIONAL ENGINEERING INDUSTRIES LIMITED **.....RESPONDENT**
Khatipura Road,
Jaipur, Rajasthan-302012

<u>Appearance:</u>

Ms. Jaya Kumari, Authorised Representative for the appellant

Ms. Charanya Lakshmikumaran and Shri Dhruv Tiwari and Ms. Mehek Mehra, Advocates for the respondent

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51322 /2026

DATE OF HEARING : 29/07/2026
DATE OF DECISION : 12/08/2026

P.V.SUBBA RAO

1. This appeal has been filed by the Revenue to assail the order dated 09.09.2021 passed by the Commissioner in which he dropped the proceedings initiated by Show Cause Notice dated 22.06.2022 which proposed to demand service tax of Rs.9,46,60,726/- under the proviso to section 73(1) of the Finance Act, 1994[1] along with interest under section 75 of the Act and to impose penalties under section 77

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1 **Act**

and 78 of the Act on M/s National Engineering Industries Limited, Jaipur[2].

2. The respondent is manufacturer of ball bearings and axle boxes and is registered with the central excise department and also had service tax registration to provide consultancy services. Its records were audited by the Accountant General Audit who felt that the respondent had provided services of value of Rs.31,33,91,662/- during the period April 2016 to March, 2017 to M/s Electro Motive Diesel, USA[3] as per an agreement and the nature of this service was that of intermediary service.

3. After 2012, all services other than those in the negative list became exigible to service tax. Sometimes the service provider and service recipient are in different locations and in such cases it becomes necessary to determine where the service has been provided because the Act extended only to the whole of India except Jammu and Kashmir. It did not apply to other countries and, therefore, services rendered in some other country they were not exigible to service tax. The Place of Provisions of Service Rules, 2012[4] were notified to determine the place on provision of services. As per rule 3 of POPS Rules, the place of provision of a service shall be the location of this service recipient. However, some exceptions were made to the General Rule and as per Rule 9 of POPS Rules, the place of provision of service shall be the location of the service provider in respect of:

(a) service provided by the banking company or financial institutions or a non-banking company to account holders;

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2 Respondent
3 EMD
4 POPS Rules

(b) online information and data base excess or retrieval services;

(c) **intermediary services; and**

(d) service consisting of hiring all means of transport other than aircrafts and vessels except yachts after a period of one month.

4. The case of the department is that the appellant had provided intermediary services to M/s EMD, USA in its business with Indian Railways. The case of the respondent is that it had rendered only consultancy services to M/s EMD, USA and had not provided any intermediary services.

5. We have heard learned authorized representative for the Revenue and learned counsel for the respondent and perused the records.

6. The scope of these services rendered by respondent to M/s EMD, USA as per the agreement were as follows:

> "1. The Services to be performed by Consultant include.
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> a. Provide recommendations on course of action for furthering Client's business in India at a national level and follow up with Client on the same.
> b. Provide advice and guidance in managing meetings, liaisoning, and discussions at all levels necessary to assist Client's business in India at Client's directive.
> c. Getting studies organized, at Client's directive, on such topics that may support Client's business in India.
> d. Provide advice and guidance in coordinating with press and other media Client's directive.
> e. Provide regular updates on political scenario in the country and the Impact of any change of significance to Client's business in India.
> f. Provide advice and guidance as necessary on local rules and regulations that may affect Client's business in India.

g. Provide advice and guidance in warranty & claim verification and documentation for return of warranty cores to Client.

h. Provide advice and guidance for joint inspection of material with reference to warranties and claims.

i. Provide advice and guidance in arranging warehouse space for temporary storage of warranty and claim return cores.

j. Provide advice and guidance in coordination with Indian Railways ("IR")'s production units and maintenance facilities for the purpose of order execution and technical support.

k. Provide advice and guidance in clearance of warranty and claim material through customs.

l. Provide advice and guidance in coordination with IR for clearing material being supplied to customers on FOB basis.

m. Provide guidance on proper tendering proceedings to be followed for IR tenders.

n. Provide advice and guidance for arranging bid bonds on behalf of Client Inc. or its subsidiaries for customers tenders at Client's directive.

o. Provide advice and guidance in monitoring the tender process, analyze competitive scenario and present suggestions for next tender.

p. Provide advice and guidance in preparation of tender documents.

q. Carry out legal rectification of material supplied by client to customer in India upon receiving direction from client, consultant should arrange to carry out rectification and bill client for reimbursement, along with their currency invoice with all supporting documents."

7. The case of the department is that the respondent had, in providing advice and guidance to M/s EMD in coordinating with the Indian Railways production units and maintenance facilities for the purpose of order execution and technical support and in providing

advice and guidance in coordination with Indian Railways for clearing material being supplied to customers and in providing guidance on proper tendering procedures to be followed with Indian Railways, had acted as an intermediary between the EMD, USA and the Indian Railways. Since the appellant had acted as an intermediary, according to the Revenue, the place of provision of its service was the location of the respondent, namely, Jaipur which falls within the taxable territory and, the respondent had to pay service tax. Therefore, according to the Revenue the demand in the show cause notice with interest and penalties should have been confirmed but were wrongly dropped by the Commissioner.

8. The case of the respondent, on the other hand, is that it had no lis with the Indian Railways. All that it was required to do was to provide consultancy and guidance to EMD, USA in preparing its tenders and in coordinating with Indian Railways. In other words, it helped EMD, USA in dealing with Indian Railways. Learned counsel for the respondent submits that any multinational corporation will need some help and support from the domestic business in understanding the systems and doing business in India. The respondent was a consultant to EMD, USA for this purpose. Therefore, it had not provided any intermediary services. Since, it had not provided any intermediary services, the place of provision of the services provided by the respondent would, as per rule 3 of POPS Rules, be place of the service recipient which is USA and which is outside the taxable. Therefore, no service tax was liable to be paid and the Commissioner committed no error in dropping the demand.

9. We find that a perusal of the scope of services under the agreement of the respondent with EMD, USA would show that the

respondent was required to provide consultancy and guidance to EMD, USA in dealing with Indian Railways. There was no *lis* between the respondent and the Indian Railways. The respondent was not a go between for EMD, USA and the Indian Railways. It is well-established that for someone to be intermediary there must be three parties to the agreement and the intermediary should be liaisoning with the other two parties. Where the agreement is with only one party, the service provider provides services to that party only. It does not matter that the services were consultancy services which would help the service recipient in dealing with some other parties. In **Cube Highways and Transportation Assets Advisor Pvt Ltd.** vs. **Assistant Commissioner of CGST**[5], the Hon'ble Delhi High Court explained this position in the following words:

> "38. As noted above, the Appellate Authority had accepted that the services provided by the petitioner included identifying potential opportunities for investments in India, analyzing investment returns and related risks, preparing reports etc. However, the Adjudicating Authority concluded that the petitioner was "...performing these activities in India in his liaison capacity and the person acting in liaison capacity, has to act as a go-between his principal and his principal's customers which are opportunities for investments' in the instant case".
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> 39. Concededly, the said view is unsustainable.
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> 40. The petitioner is the service provider. It is rendering the advisory services directly to I Squared and is not acting as a facilitator for providing such services.
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> 41. 'Intermediary' as defined under Sub-section (13) of Section 2 of the IGST Act is a person who facilitates supply of services - he does not supply services himself but merely arranges the same. The Central Board of Indirect Taxes and Customs had issued a Circular dated 20.09.2021 which clearly defines the scope of 'Intermediary Services'. The relevant extracts of the said Circular are set out below:
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> > "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 -

5 **2023 (77) G.S.T.L. 387 (Del.),**

'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 Service Rules, 2012 issued vide Notification No. 28/2012-S.T., dated 20-06-2012 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 own account."

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 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 providers-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".
>
> xxx xxx xxx"

> 42. It is, thus implicit in the concept of an 'Intermediary' that there are three parties, namely, the supplier of principal service; the recipient of the principal service and an intermediary facilitating or arranging the said supply. Where a party renders advisory or consultancy services on its own account and does not merely arrange it from another supplier or facilitate such supply, there are only two entities, namely, service provider and the service recipient. In such a case, rendering of consultancy services cannot be considered as 'Intermediary Services' or services as an 'Intermediary'."

10. In view of the above, we find that the Commissioner has correctly dropped the proceedings initiated by the SCN holding that the appellant had not rendered any intermediary services.

11. In view of the above, the impugned order is upheld and the Revenue's appeal is dismissed.

[Order pronounced on **12/08/2026**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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