CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86069 of 2021

(Arising out of Order-in-Original No. MUM.SOUTH/CGST/Pr.Commr-110-111/20-21 dated 24.03.2021 passed by the Commissioner of CGST& Central Excise, Mumbai South Commissionerate, Mumbai.)

DBS Bank India Limited **.... Appellants**
(successor in business of DBS Bank Limited)
Express Towers, Ground Floor,
Nariman Point, Mumbai – 400 021.

Versus

Commissioner of CGST & Central Excise **....Respondent**
Mumbai South Commissionerate
13th Floor, Air India Building
Marine Drive, Nariman Point
Mumbai – 400 021.

APPEARANCE:

Shri Prasad Paranjape, Advocate for the Appellants

Shri Shashank Kumar Yadav, Authorized Representative for the Respondent

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86016/2026

Date of Hearing : 04.05.2026
Date of Decision : 17.08.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s DBS Bank India Limited, Mumbai (herein after, referred to as "the appellants", for short) assailing the Order-in-Original No. MUM. SOUTH/CGST/Pr.Commr-110-111/20-21 dated 24.03.2021 (herein after, referred to as "the impugned order") passed by the Commissioner of CGST & Central Excise, Mumbai South Commissionerate, Mumbai.

2.1 The brief facts of the case are that the appellants herein *inter alia*, are engaged in providing amongst various services, 'Banking and Other Financial Services' which are taxable services under Chapter V of the Finance Act, 1994. For the purpose of payment of Service Tax and for compliance with service tax statute, they are registered with the jurisdictional Commissionerate under service tax centralized registration No. AAACT4652JST001.

2.2 During the course of EA-2000 Audit conducted by the department on books of accounts maintained by the appellants, it was found that under the head of 'Commission & Brokerage and Miscellaneous income', the appellants have received certain income during the Financial Years 2012-2013 to 2015-2016 from their Head office M/s DBS Singapore, and for which no service tax was paid by them. In this regard, upon scrutiny of agreement dated 28.05.2015 entered into by the appellants with their head office, the audit officers have found that the appellants provide various services such as origination/referral; structuring, co-ordination; credit assessment and approval; disbursement, monitoring and credit facility management etc., for which they had received certain amount as remuneration. The department had interpreted that such services have been rendered by the appellants as an 'intermediary' between DBS Bank Singapore and their 'Indian Borrowers' and these services having been performed in the capacity of 'intermediary' which are specifically covered by Rule 9(c) of the Place of Provision Rules, 2012. Thus, the department concluded that the appellants are liable for payment of service tax in terms of Sections 65B(44), 65B(51) of the Finance Act, 1994.

3. In this regard, the Department had informed the appellants about the audit objection vide their letters dated 20.03.2017 and 09.06.2017, and upon examination of the reply given by the appellants vide their letters dated 27.03.2017, 23.06.2017, have also held pre-SCN consultation on 03.08.2018. Having not been satisfied with the explanation offered by the appellants, the Department had proceeded against the appellants bank in India, for demand of service tax vide SCN dated 17.10.2018 and Statement of demand dated 01.10.2019 by treating the appellants as intermediary service provider to foreign banks and proposing for demand of service tax for the period 01.04.2013 to 31.03.2016 and 01.04.2016 to 30.06.2017, respectively. In the SCNs, the department had demanded service tax on 'intermediary service' by invoking the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 along with interest and for imposition of penalty on the appellants under Section 77 & 78 ibid. The afore said SCNs were adjudicated by the learned Commissioner of CGST & Central Excise, Mumbai South by confirming all the proposals made in the SCNs vide impugned order. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

4.1 Learned Advocate submitted that the appellants for providing Banking and other Financial Services were registered in India under the Banking Regulations Act, 1949, as Foreign Branch of DBS Bank headquartered in Singapore (DBS Singapore). With effect from 01.03.2019, the appellants were established as DBS Bank India Limited with transfer of business from Branch Office to itself. During the course of its business, the appellants use to provide certain support services with respect to DBS Singapore's business of External Commercial Borrowing (ECB) to Indian Borrowers. The nature of services rendered by the appellants to DBS Singapore are in the nature of loan structuring/co-ordination, credit assessment and approval, disbursement, monitoring and credit facility management and for this purpose they had entered into an Agreement with DBS Singapore. This Agreement also provided for a method of revenue to be received by the appellants based on the efforts involved in various activities performed by them. The consideration for the services rendered by them was received by them from DBS Singapore in foreign exchange against periodical debit notes raised. For the period 01.04.2014 onwards, a separate Agreement dated 28.05.2015 was executed with DBS Singapore, which was similar to the earlier Agreement that was applicable for the period from 01.04.2012. The remuneration payable to the appellants was bifurcated to the key functions performed by them, as provided in detail in the Annexure-I to the said agreement. For the period upto 31.03.2013, the appellants on a conservative basis were discharging Service tax on the entire consideration received by them from DBS Singapore. However, with effect from 01.04.2013, the appellants, based on review of its tax position, considered the services provided by DBS Singapore as export and discontinued paying service tax on the same.

4.2 He further explained about the details of work undertaken by the appellants and the remuneration received from their foreign entity DBS Singapore, as follows. The various works undertaken by the appellants involve, (a) Origination/Referral (b) Cultivation and creation of potential client relationships and recommending them to DBS Singapore (c) Structuring/ Coordination (d) Structure the lending arrangement basis assessment of operational, financial, legal aspects (e) Facilitate negotiation of contractual terms with the borrower (f) Credit assessment and approval (g) Perform credit analysis (h) Evaluate credit-worthiness of the borrower (i) Disbursement, monitoring and loan management (j) Check draft facility agreements and (k) Resolve any outstanding legal issues (if any) (l)

Managing disbursement of loan proceeds, follow up for instalments and (m) Check for collateral offered. For providing the aforesaid services, DBS Singapore were required to pay 20% of Ascertained Income to the appellants which is further split as under: (i) Origination/Referral 8.5%, (ii) Structuring /Coordination 5.5% (iii) Credit assessment and approval 4.5% (d) Disbursement, monitoring and loan management 1.5%.

4.3 The appellants had considered the place of provision of above services provided by them to DBS Singapore under Rule 3 of the Place of Provision of Services Rules, 2012 (POPS Rules) as outside India and therefore had not discharged service tax on the same. He further stated that as the service recipient in the present case is DBS Singapore in terms of Rule 2 (i) of the POPS Rules, and therefore, the place of provision of appellants' services was considered to be Singapore and thus considered not liable to tax.

4.4 He further stated that "Intermediary" is defined under Rule 2 (f) of the POPS Rules to mean a broker, an agent, or any other person, by whatever name called, who arranges or facilitates a provision of a service two or more persons. The said definition itself carves out exception to state that 'intermediary' does not include a person who provides a service on his own account. Since the appellants provide services to their head office DBS Singapore on its own account, he stated that they would not qualify as 'intermediary'. He further submitted that the entire gamut of services provided by them to DBS Singapore are performed on their own account, though it may require certain interaction with Indian Borrowers desiring to obtain lending services from DBS Singapore. However, actual grant of loan and terms of granting such loan are decided by DBS Singapore alone. The appellants have no power or authority to offer or agree to the terms of lending service to be provided by DBS Singapore to Indian Borrowers, without prior approval of DBS Singapore. Therefore, he submitted that the appellants do not qualify as 'intermediary' and hence there is liability to pay service tax.

4.5 In support of their stand, learned Counsel had relied upon the following decisions of the Tribunal:

(i) *SNQS International Socks Pvt. Ltd. vs. Commissioner of GST & Central Excise, Coimbatore* [(2024) 16 Centax 412 (T)] dated 23.11.2023 read with [(2024) 16 Centax 413 (S.C.)] dated 19.03.2024.

(ii) *Chevron Philips Chemicals India Pvt. Ltd. vs. Commissioner of Central Tax and Central Excise* [(2024) 15 Centax 102 (T)] dated 20.12.2022 read with [(2024) 15 Centax 103 (S.C.)] dated 29.01.2024.

5. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

6. Heard both sides and carefully examined the case records. We have also perused the additional written submissions presented in the form of paper book for this case.

7. The issues for determination in the present appeal before the Tribunal in this case are:-

(i) whether the services provided by the appellants banks in India to their head office DBS, Singapore can be considered as 'intermediary service' for the purpose of service tax levy under the Finance Act, 1994;

(ii) whether the appellants are liable to penalty under Sections 76, 77 and 78 of the Act of 1994?

8.1 The transactions under present dispute are covered during the period commencing from 01.04.2013 to 30.06.2017. Thus, the relevant legal provisions of the Finance Act, 1994, as applicable in the present case are of post negative list regime i.e., after 01.07.2012, and the same are extracted and given below:

"Finance Act, 1994

65. *(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*

(a) an activity which constitutes merely,—
(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

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65. *(51) "taxable service" means any service on which service tax is leviable under section 66B;*

65. *(55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.*

66B. *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent. on the value of all services, other than those services specified in the negative list, provided or agreed to* *be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*

66C. *Determination of place of provision of service.—*
(1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

(2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory."

8.2 The following are the legal provisions of the Rules framed under the Finance Act, 1994, relevant for the present case and the specific provisions of these Rules are extracted and given below:

"Place of Provision of Services Rules, 2012
(Notification No. 28/2012 - Service Tax dated 20.06.2012 as amended)

2. ***Definitions*** *- In these rules, unless the context otherwise requires,-*
(a) "Act" means the Finance Act, 1994 (32 of 1994);

(f) "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 on his account.;

3. ***Place of provision generally****.- The place of provision of a service shall be the location of the recipient of service: Provided that in case "of services other than online information and database access or retrieval services" (Inserted vide Notification 46/2012- Service Tax) where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.*

9. ***Place of provision of specified services****.- The place of provision of following services shall be the location of the service provider:-*
(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;
*(b)" ****;" omitted vide Notification 46/2016-Service Tax*
(c) Intermediary services;
(d) Service consisting of hiring of means of transport other than, - (i) aircrafts, and (ii) vessels except yachts upto a period of one months.

14. ***Order of application of rules****.- Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration."*

8.3 From plain reading of the above legal provisions, it transpires that for the period relating to the pre-negative list regime i.e., prior to 01.07.2012, the taxability was determined in terms of coverage of an activity under the service tax net to be defined as 'taxable service' under Section 65(105) *ibid*, which enumerated each of the specified services. For the period post-negative list regime, the category of services hitherto defined under the erstwhile regime were merged under a common phrase i.e., 'service' as defined under Section 65B(44) *ibid*, which was brought into effect from 01.07.2012. In the present case, the disputed transactions have been undertaken during April, 2014 to June, 2017, between the appellants Bank in India with its head office at Singapore. The learned Commissioner had treated the activities in which the appellants are engaged under the head of loan structuring, credit assessment and disbursement etc., are necessary for performance of main activity of providing ECB loans by DBS Singapore to Indian customers and therefore, he held that such activities provided by appellants DBS Bank India Limited, to their head office i.e., DBS Singapore amounts to activity carried out by 'one person' in India to 'other person' in Singapore, and therefore would fall under the scope of 'services'. Further, he had also noted in the impugned order that without the activities provided by the appellants, the fruition of main service by DBS Singapore cannot happen, and therefore he concluded that these services would be rightly covered by the category of intermediary service provider. On the above basis, he held the appellants are liable for payment of service tax.

8.4 It is fact on record that the appellants were initially registered in India under the Banking Regulations Act, 1949, as 'Foreign Branch' of DBS Bank headquartered in Singapore (DBS Singapore). Subsequently, the appellants were established as 'DBS Bank India Limited' with transfer of business from Branch Office to itself. The back ground to this is that the Reserve Bank of India (RBI) in the context of global financial crisis of 2008 resulting in growing complexity and interconnectedness of financial institutions, coupled with the lack of effective cross border resolution regimes, severely constraining the ability of home and host authorities to cope with the failure of too big to fail (TBTF) and too connected to fail (TCTF) institutions, have addressed these challenges by introducing a scheme of domestic incorporation of foreign banks, which would provide for (i) protecting local retail depositors, (ii) easing the resolution process, and (iii) affording greater regulatory comfort. Accordingly, on 06.11.2013, RBI in exercise of its power under Section 35A read with Section 44A of the Banking Regulation Act, 1949, and in the public interest as well as in the interest of banking policy, issued a 'Scheme for Setting up of Wholly Owned Subsidiaries (WOS) by foreign banks in India. In India, the Reserve Bank of India (RBI) allowed foreign banks, if eligible, to establish presence through a single mode i.e. either the branch mode or the wholly owned subsidiary (WOS) mode. On the basis of such policy, RBI had granted approval to DBS Bank Ltd. to set up a wholly owned subsidiary (WOS) in India– DBS Bank India Limited. Thus, effect from 01.03.2019, the entire business in India was transferred to DBS Bank India Limited under Section 44A of the Banking Regulation Act, 1949. On going through the aforesaid factual details, it clearly transpires that the appellants banks' office in India and their head office DBS Singapore, are not two different persons, but are one and the same 'legal person'. Hence, on the prima facie view, there is no legal basis on which the activities provided by appellants to their head office can be treated as services rendered by one person to another person, in order to fall under the taxable category. Hence, the findings at para 28(v) of the impugned order does not have any legal basis, and thus on this basis itself the demand of service tax is liable to be set aside.

9.1 Notwithstanding the above, in order to arrive at a conclusion whether the activities undertaken by the appellants involve 'intermediary service' or not, we would like to examine the relevant clauses of agreement dated 28.05.2015 entered into between them.

"2. Purpose:
This agreement states the terms between the parties for activities performed by Branch Office in respect of the origination of credit facilities booked in Head Office under the extant RBI and MAS guidelines for booking of these assets in Head Office.

3. Services provided by Branch Office:
3.1 The Branch Office will originate credit facilities and mange relationships with Indian companies and any of their subsidiaries whether the subsidiaries are incorporated in India or abroad ("Indian Borrowers") as well as perform credit analysis of the Indian Borrowers.

3.2 Branch office shall perform the following functions:
a) In co-operation with the relevant business units and General Management of the DBS Group in Singapore, define a business development plan for respective business units in India;
b) Cultivate and create potential client relationships;
c) Perform/Evaluate credit analysis for the new relationships;
d) Recommend the credit risk to Head Office;
e) Negotiate the contractual terms with the Indian Borrower;
f) Check the draft facility agreements;
g) Resolve any outstanding legal issues (if any);
h) Check for collateral offered;
i) Generally, manage the relationship with the Indian Borrower, where appropriate, during the life of the transaction; and
j) Generally monitoring of the Loans including follow-up with Indian Borrowers in the event of payment default and initiate legal action if any on behalf of head office after specific authorisation

7. Remuneration of the parties

7.1 Remuneration of Branch Office:

a) As compensation for the services rendered, as described in part 3 of the present Agreement, Branch Office shall get reimbursed from Head Office in US dollars at an agreed percentage which is based on current factors as detailed in Annexure -1.

b) Branch Office's remuneration will be calculated and accrued quarterly in arrears and be payable by Head Office quarterly in arrears, under advice.

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Annexure -I

Head Office and Branch Office have agreed to compute the revenue split pertaining to credit facilities booked at Head Office in following steps:

1. Ascertain total net interest income and fees ("Ascertained Income") for credit facilities booked in Head Office and originated by Branch Office
2. Head Office to pay 20% of the Ascertained Income to the Branch Office.
3. The 20% remuneration paid to Branch Office is in respect of the key functions performed:

Key functions performed by Branch office	***Split of 20% Remuneration***
Origination /Referral	*8.5%*
Structuring / Coordination	*5.5%*
Credit assessment and approval	*4.5%*
Disbursement, monitoring and credit facility management	*1.5%*
Total	*20%”*

9.2 The above agreement clearly brings out the fact that the services provided by appellants to their head office are governed by the specific clauses of the agreement. On overall reading of the agreement, it also transpires that recognizing the overall policy and instructions laid down by RBI in relation to performance of certain activities by the Indian branches, the appellants had clearly specified the activities performed by them as Indian entity to their Head office at Singapore, in terms of the above agreement. We find that such agreement also provided for the head office DBS Singapore to assume all ongoing risks in respect of credit facility granted to Indian Borrowers originated by branch office and booked in Singapore. This included credit risk, liquid risk, interest rate risk and foreign currency risk. Further, it was only the DBS Singapore who were authorised to enter into credit agreement with Indian borrowers and not the appellants in India. Therefore, the decision with regard to ECB borrowing were finally decided by DBS Singapore only and by the appellants.

9.3 In this regard, we find that compensation for various activities undertaken by the appellants office in India is provided as an arrangement to compute the revenue split pertaining to loans booked at Head Office. These have been worked out by them on the basis of a formula taking into consideration (i) expected loss i.e., the cost of doing business of granting credit in the event of default (ii) cost of capital being the rate of return which providers of capital require to be compensated and (iii) benefit of capital i.e., the benefit enjoyed by a reduced cost of fund as capital is presumed to be redeployed to fund part of underlying asset. The compensation in the form of remuneration to branch office was accordingly calculated as per above formula and accrued quarterly being payable by Head Office DBS Singapore to the appellants. Thus, the activities carried out between the branch office and the headquarters abroad cannot be categorised as services rendered between two different persons. However, since the learned Commissioner has held that the services provided in this case is covered under the scope of definition under Section 65(44) *ibid* as 'service' and is also covered under the category of 'intermediary service', we would like to examine the exigibility of such activities to service tax in terms of Section 66C *ibid* and the rules made thereunder. Therefore, we need to look into the Rules framed in exercise of the powers vested with the Government in terms of Section 94(2)(hhh) *ibid*, i.e., Place of Provision of Services Rules, 2011 (POPS).

9.4 In terms of POPS, under Rule 3, generally the place of provision of service shall be taken as the location of the recipient of service. However, specific rules prescribe the place of provision of service in various circumstances such as performance-based services, services relating to immovable property, services relating to events, services provided from more than one location, service provider and service recipient located in taxable territory, provision of specified services viz., services provided by banking company or a financial institution, goods transport services etc. It is claimed by the department that the nature of services received from Indian office to Singapore office of appellants is an intermediary service, for which the applicable rule under POPS is Rule 9; whereas the appellants have claimed that the applicable rule under POPS is Rule 3. In order to determine the correct application of the Rule, we have also examined the definition of the phrase 'intermediary services' provided in Rule 2 *ibid*. Inasmuch as, the Singapore office of DBS bank had arranged for undertaking certain activities through services of the appellants, in the course of providing external commercial borrowing to its customers in India, it cannot be said that appellants themselves are providing services to the Indian customers of DBS Singapore, in order to categorize the same as 'intermediary services'.

9.5 In the context of various difficulties encountered by the trade and industry with respect to 'intermediary services', the Ministry of Finance had issued Circular dated 20.09.2021 clarifying the scope of levy and the conditions to be fulfilled for deciding the activity as liable for covering under the scope of 'intermediary services'. The relevant paragraphs dealing with 'intermediary services' are extracted and given below as follows:

"CIRCULAR NO. 159/15/2021-GST
[F.NO. CBIC-20001/8/2021-GST], DATED 20-9-2021

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 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".*

9.6 Accordingly, by applying the aforesaid three criteria in the present case, we find that firstly, the appellants and their head office and the Indian customers of DBS Singapore are only form two parties, and there is no third party involved in such transaction; secondly, there is no main supply and ancillary supply, which is in the nature of facilitating or arranging the main supply, in the present transaction. We also find that the consideration provided in the form of remuneration to appellants by DBS Singapore is independent of the consideration involved in provision of services by DBS Singapore to their customers. Thus, we find that all the three criteria laid down by the CBIC's clarification is unable to be fulfilled in the present case to categorize the disputed services, as 'intermediary services'. Since, the appellants were involved in main supply of services of ECB financing, on principal-to-principal basis to their head office on their own account, these cannot be considered as intermediary service and the role of appellants cannot be treated 'intermediary' providing service to another person.

10.1 On the issue of service tax levy on services provided directly by an Indian entity to its overseas entity, whether it would amount to intermediary service or otherwise, was examined in detail in the case of *Chevron Philips Chemicals India Pvt. Ltd.* (supra), by the Co-ordinate Bench of the Tribunal. In the Final order dated 20.12.2022 passed in that case, the Tribunal was held that it could not be said that the appellant-assessee had acted as an intermediary between overseas entity and its customers in India. The relevant paragraphs of the said case are extracted given below:

> ***"7.*** *We have examined the contract dated 14-9-2009 entered into between the overseas entity M/s CPC Global and the appellant. Clauses in the agreement provide that the appellant shall not be empowered to make any pricing decisions, to sign any contracts, or to make any commitments on behalf of the overseas entity; that the consideration received by the appellant from M/s CPC Global as a service provider, is not directly linked with the sale of products by the selling companies in India, but determined based on fees earned by M/s CPC Global; that the relationship between the parties as per the contract is that of the independent contractor-contractee and not that as agents. The content in the agreement clearly provide that no services were provided by the appellant to the selling companies or end customers on behalf of the overseas entity M/s CPC Global. Thus, under such circumstances, it cannot be said that the appellant has acted as an intermediary in the dealings between the overseas entity and their customers in India. To qualify as an intermediary, service as per the statutory provision, the essential element for consideration is that the parties to the contract should act as principal-agent and that the agent shall be in a position to represent and bind the principal. On reading of the clauses in the agreement vis-à-vis the statutory provisions, it is abundantly clear that the services provided by the appellant to the overseas entity qualify as export in terms of rule 6A of the Service Tax Rules, 1994 read with rule 3 of the Place of Provision of Services Rules, 2012.*
>
> ***8.*** *We find that by reading the contents of the said agreement dated 14-9-2009 entered into between the appellant herein and the self same overseas entity, this Tribunal in the case of the appellant itself, vide Final Order No.*

A/87373-87378/2019 dated 20-12-2019 has held that the appellant cannot be termed as an intermediary. The relevant paragraph in the said order is extracted herein below:-

"17. For the period after 1-10-2014, on merit also, the appellant cannot be called as an 'intermediary'. On a simple reading of the agreement analyzed as above, it is clear that the appellants are appointed by their overseas counterpart CPC Global for sales promotion of the goods for their client in the defined territory. The appellant has no role in fixation of price nor they negotiate in any manner between CPC Global and their clients relating to sales promotion of the goods sold. Therefore, in my view, the appellant cannot be called as an intermediary. consequently, fall outside the amended definition of 'intermediary' under Rule 2(f) and Rule 9 of the POPS Rules, 2012. Similar view has been expressed by the Tribunal in the case of Lubrizol Advance Materials (supra) and R.S. Granite Machine (supra). This Tribunal in the case of Lubrizol Advance Materials has held as under:-

"6. I find that the learned Commissioner (Appeals) has denied the benefit of export with effect from 1-10-2014 under the Place of Provision of Services Rules, 2012, holding that the appellant had facilitated supply of goods between its foreign counterpart and processing of goods and thus, it should be considered as an intermediary. On perusal of the contracts, I find that the service fee charged by the appellant to its overseas group entities for provision of service has no direct nexus with the supply of goods by the overseas group entities to its customers in India. Further, the appellant had provided the service to the overseas entities on principal to principal basis. Thus, the appellant cannot be termed as an intermediary between the overseas entity and the Indian customers. It is an admitted fact on record that the consideration received by the appellant for providing the services was based upon cost plus markup and is nowhere connected with the main supply of goods. In other words, the main supply may or may not happen and thus, cannot be directly correlated with the service provided by the appellant. Thus, the appellant is not acting as a bridge between the overseas group entities and supplies made to their customers in India and accordingly, it cannot be said that the appellant has provided intermediary service and should be governed under the provisions of rule 9 of the rules."

Also, in the case of R.S. Granite Machine (supra), this Tribunal has held as under: -
5. The facts of the case as analysed elsewhere in this order, make it clear that obtaining/procuring order for its foreign Principals is the main service rendered by the appellant and consequently, rigors Rule 9 vis-à-vis Rule 2 (f) are not applicable. In view of the above, I am of the considered opinion that Rule 3 of POPS Rules would only apply and therefore the appellant cannot be fastened with tax liability. For the above reasons, demand as well as the impugned order are not sustainable and consequently, the same are set aside and the appeal stands allowed with consequential benefits if any, as per law."

***9.** In view of the foregoing discussions, we do not find any merits in the impugned order passed by the adjudicating authority in confirming the adjudged demands on the appellant. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant."*

10.2 We further find that being aggrieved with the aforesaid order of the Tribunal, the department had filed a Civil Appeal Diary No. 51950 of 2023, before the Hon'ble Supreme Court. In disposal of the said Civil Appeal vide judgement dated 29.01.2024, the Hon'ble Supreme Court had dismissed the departmental appeal.

10.3 In view of the foregoing discussions and analysis, and in terms of the orders passed by the Tribunal and the Hon'ble Supreme Court as above, we find that there are no strong grounds to hold that the services rendered by the appellants to its Singapore head office for ECB financial services are liable for payment of service tax as 'intermediary services'. Consequently, the adjudged demands of service tax including imposition of penalties on the appellants confirmed in the impugned order is not legally sustainable.

11. In the result, by setting aside the impugned order dated 24.03.2021, the appeal is allowed in favour of the appellants.

(Order pronounced in open court on 17.08.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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