



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Taxes)
Sri Sahil Inamdar, Additional Commissioner, I.R.S. (Central Taxes)

A.R. Com/11/2024

Date:09.05.2024

TSAAR Order No.09/2024

**[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017
AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT,
2017.]**

1. M/s. Center for International Admission and Visas (CIAV), Plot No. 9/3RT, S R Nagar, Hyderabad, Telangana- 500 038 (36AAJFC7567P1ZL) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act'2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per section 98(2) of TGST Act'2017.

4. BRIEF FACTS OF THE CASE:

M/s. Center for International Admission and Visas (CIAV) has entered into agreements with foreign universities/ colleges to provide referral services. Broadly, under the scope of services, the Applicant provides referrals of the aspirants/ applicants who wishes to apply and study abroad to the universities/ colleges located outside India. The Applicant is responsible to prepare the case of the aspiring student and refer it to the concerned foreign college and university, as per the requirement of the aspiring student and the fitment to the college/ university. The Applicant is not bound to refer student to a college or university, in particular. On the contrary, the Applicant considering the merits of the aspiring student and particulars of the college/ university, refers the case. It is pertinent to note that the college/ university

retains full and complete discretion about whether to accept a student applicant for enrolment. The Applicant has no authority to accept an applicant or guarantee a student applicant's acceptance by the college/ university. Thus, the Applicant works as an independent contractor providing its own service of 'marketing/ recruitment/ referral' to the foreign colleges and university.

5. QUESTIONS RAISED:

1. Whether in view of the given facts and circumstances the activity of providing services of 'Marketing/Recruitment/ Referral Consultant' by the Applicant to foreign universities/ colleges on principal to principal basis would qualify as 'intermediary' as defined under Section 2 (13) of the Integrated Goods and Services Tax Act, 2017 or whether the same would be considered as an independent service of 'Marketing/Recruitment/ Referral Consultant' by the Applicant to foreign universities/ colleges? and/ or
2. Whether in view of the given facts and circumstance the activity of the Applicant would be liable to levy of GST or would qualify as 'export of services' in terms of Section 2(6) of the Integrated Goods and Services Tax Act, 2017?

6. PERSONAL HEARING:

A personal hearing notice was issued to the applicant to appear for personal hearing on 08-04-2024. Sri Akhil Gupta, Advocate and Anshul Gupta, Consultant have appeared and argued the case. The Authorised Representatives reiterated the contentions already submitted along with the application.

Further, the Authorised Representative/Applicant M/s. Center for International Admission and Visas (CIAV), Hyderabad reiterated that their case /Similar Case is not pending in any proceedings in the applicant's case under any of the provision of the Act and have not already decided in any proceedings in the applicant's case under any of the provisions of the Act.

7. DISCUSSION & FINDINGS:

- 7.1. The salient features of the agreement between the Applicant and foreign colleges and universities as are follows:
 - (a) The Applicant has a 'privity of contract' with foreign colleges and universities, and it works as an 'independent contractor' for them.
 - (b) The role of the Applicant is specific and of expertise, based on its experience with Indian markets. The Applicant is responsible to prepare the case of the aspiring student and refer it to the concerned foreign college and university, as per the requirement of the aspiring student and the fitment to the foreign college and university.
 - (c) The Applicant is not bound to refer student to a college or university, in particular. On the contrary, the Applicant after considering the merits of the aspiring student and particulars of the college/ university, refers the case.

- (d) The foreign college and university retain full and complete discretion about whether to accept a student applicant for enrolment. The Applicant has no authority to accept an applicant or guarantee a student applicant's acceptance by the foreign college and university.
- (e) The Applicant receives referral income or commission from foreign college and university on the basis of number of successful admissions out of the referrals made by it.
- (f) The Applicant does not get any income or commission, as consideration from the prospective students for execution of its agreement with foreign college and university.

7.2. M/s Center for International Admission and Visas, the Applicant has contended that in terms of above agreement with the foreign college and university, it has a 'privity of contract' only with the foreign college and university. The Applicant is nowhere contractually connected with the prospective students, who it refers to the foreign college and university. It is the foreign college/ university which renders consideration to the Applicant for undertaking engagement as per the agreement.

7.3. Section 2(93) of the CGST Act defines 'recipient' as follows:

"recipient of supply of goods or services or both, means –

- (a) Where consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration."*

As is seen, the person who is contractually responsible for making payment for a supply shall be considered as recipient of such supply. In the present case, as per the terms of the underlying agreement, consideration is payable in convertible foreign exchange by foreign college and university for the services rendered to it by the Applicant. There is no mention of any agreement between the Applicant and prospective students who are referred by it to foreign college and university. Even in terms of the agreement, the Applicant cannot have any contractual arrangement with the prospective students for activities which the Applicant has to do for the foreign college and university. Therefore, the recipient of the services of the Applicant, undisputedly, is the foreign college and university and not the student(s). Similar view is taken by CESTAT in the case of Microsoft Corporation (I) (P) Ltd. v. Commissioner of Service tax 2014 (36) STR 766, which has also been applied to GST Law by the Bombay High Court in the matter of Vodafone Idea Ltd. v. Union of India 2022 (66) GSTL 63 (Bom.).

7.4. Coming to the concept of 'intermediary', defined in Section 2(13) of the IGST Act

"Intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account"

As is seen, 'intermediary' is involved with two supplies at a time:

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

7.5. In this manner, 'intermediary' is a broker, an agent or any other person, who facilitates or arranges services between two or more persons, while the main

service is performed by the service recipient of intermediary's services. It is pertinent to mention that a person would qualify as 'intermediary' only if he facilitates the supply of service between two or more person. A person who provides the service on principal to principal basis without facilitating a service between two persons will not be termed as 'intermediary'.

7.6. CBIC in its para 3 of the Circular No. 159/15/2021-GST dated 20.09.2021 clarifies as follows:

"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."*

7.7. The Punjab & Haryana High Court in the matter of *Genpact India (P) Ltd. v. Union of India 2023 (68) GSTL 3 (P&H)* while deciding on the issue of 'intermediary' under GST law has held as follows:

"28. As per definition of "intermediary" under Section 2(13) of the IGST Act the following three conditions must be satisfied for a person to qualify as an "intermediary";

*29. **First, the relationship between the parties must be that of a principal-agency relationship. Second, the person must be involved in arrangement or facilitation of provisions of the service provided to the principal by a 3rd party. Third, the person must not actually perform the main service intended to be received by the service recipient itself.** Scope of an "intermediary" is to*

mediate between two parties i.e. the principal service provider (the 3rd party) and the beneficiary (the agents principal) who receives the main service and expressly excludes any person who provides such main service “on his own account”...

7.8. Similar views were held by the Delhi High Court in the case of *Ernst & Young Ltd v. Additional Commissioner, CGST Appeals-II W.P.(C) 8600/2022*, relevant of which reads as follows:

“20. A plain reading of the aforesaid definition makes it amply clear that an intermediary merely “arranges or facilitates” supply of goods or services or both between two or more persons. **Thus, it is obvious that a person who supplies the goods or services is not an intermediary. The services provided by the intermediary only relate to arranging or facilitating the supply of goods or services from the supplier. In the present case, there is no dispute that the petitioner does not arrange or facilitate services to EY entities from third parties; it renders services to them. The petitioner had not arranged the said supply from any third party.**

22. In the present case, the petitioner has provided professional services in terms of the service agreements to overseas entities (EY Entities). It had issued the invoices for the said services directly to EY Entities and had received the invoiced consideration from EY Entities, in foreign convertible exchange. As stated hereinbefore, there is no dispute that the professional services were, in fact, rendered by the petitioner...”

7.9. Recently, in the case of *SNQS International Socks Pvt. Ltd. v. Commissioner Service Tax Appeal No. 41587 of 2016, CESTAT*, which has been upheld by Hon’ble Supreme Court in SLP has held as follows:

“12.2.3. In the definition of “intermediary”, as in Rule 2(f) of the Place of Provision of Services Rules, 2012, the words- ‘broker’ and ‘agent’ are used synonymously though there are fine differences among the intermediary, commission agent and broker, to be analysed depending upon the facts of each case. **As given in paragraph 12.1.1 above, there are two supplies in case of an intermediary - (i) supply between the principal and the third party and (ii) the supply of his own service to his principal for which he gets paid. In the instant case, there is only one supply by the Applicant to his principal i.e., the foreign client, that too on his account. There is no service provider and service recipient relationship between the Applicant and the vendors who were developed by him as there is no consideration received from these and the supply of goods by these vendors is incidental to the service of the Applicant. Reportedly, the Applicant has not entered into any agreement with the vendors either on their own or on behalf of the overseas client.**

12.3. In this case, the Applicant is found to be providing services of design and product development essentially for its foreign client to keep track of updates in fashion trends in knitted goods, evaluation and development of vendors, including quality monitoring and logistics and operational assistance. The Applicant has not engaged any other service provider for the process of procuring the specific goods to be exported as per the requirement of his foreign client. All these services are rendered only to M/s. Primark, Dublin, Ireland on his own account and he is receiving the consideration for the services as a percentage of FOB value of the merchandise exported. There is no evidence on record to show that he is receiving any consideration from the vendors developed by him and as such, the services could not be termed as falling under the category of “intermediary”.”

7.10. The concept of ‘intermediary’ in GST law is same as the one under Service tax law and so is the respective legal position. CBIC in its circular has clarified:

“2.2 The concept of ‘intermediary’ was borrowed in GST from the Service Tax Regime...”

..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-a-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.”

7.11. Relying on the CBIC Circular, the Punjab & Haryana High Court in the matter of *Genpact India (P) Ltd.* (*supra*) has also held as follows:

“37. A perusal of the definition of intermediary under the service tax regime vis-a-vis the GST regime would show that the definition has remained similar. Even as per circular dated 20-9-2021 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (GST Policy Wing), the scope of intermediary services has been dealt in Para 2 thereof. In Para 2.2 it stands clarified that the concept of intermediary was borrowed in GST from the Service Tax Regime. The circular after making a reference to the definition of intermediary both under Rule 2(f) of the Place of Provision of Service Rules, 2012 and under Section 2(13) of the IGST Act clearly states that there is broadly no change in the scope of intermediary services in the GST regime vis-a-vis the service tax regime except addition of supply of securities in the definition of intermediary in the GST law.”

7.12. In view of the CBIC Circular and the judgement of Punjab & Haryana High Court, it is imminent that the jurisprudence in Service tax law should be followed while dealing with the concept of ‘intermediary’ under GST law. It is seen that the issue of ‘intermediary’ with respect to marketing and referral services by Indian service providers to foreign colleges was raised before the CESTAT in multiple occasions in Service tax regime, wherein the Tribunal has categorically held the Indian services providers not be an ‘intermediary’. One such case is of *Sunrise Immigration Consultants Pvt. Ltd. v. Commissioner of Central Excise and Service Tax, Chandigarh 2018 TIOL 1849 CESTAT CHD* wherein it was held as follows by the Chandigarh Bench of Tribunal:

“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 be called as intermediary.”

7.13. Based on the decision of *Sunrise Immigration (supra)*, Tribunal has rendered decisions in case of *Valmiki Consultants Pvt. Ltd. v. Commissioner of Customs, Central Tax Hyderabad 2019 TIOL 674 CESTAT HYD* and *Krishna Consultancy v. Commissioner of CGST, Nagpur in Service Tax Appeal No. 85867 of 2016*.

7.14. A perusal of the terms of the underlying agreements between the Applicant and foreign colleges and university amply clarifies that the Applicant is not an agent of foreign colleges and university, as it cannot and does not represent itself as an agent or broker or a similar person to enter into a contract, supply or transaction with third party i.e. the prospective students, on behalf of foreign colleges and university. In fact, neither the Applicant has any role or responsibility for services provided by foreign colleges and universities to the

prospective students nor it can influence or interfere in the selection process of prospective students thus rendering itself an alien to the arrangement between the foreign colleges and university, and prospective students. Similarly, the prospective student is under no obligation to join the foreign colleges and university, they have been referred to; the decision to join remains entirely at their discretion. The terms and conditions of the agreement reflects that the Applicant is under a principal-to-principal contractual relationship with the foreign colleges and university, whereby it is providing its independent and main service of marketing and referral to its service recipient i.e. foreign colleges and university.

- 7.15. The relationship between the Applicant and foreign colleges and university has been defined, impliedly or explicitly, as of principal to principal. It is also clear that the necessary conditions for qualifying as 'intermediary' i.e. presence of three parties and provision of main service with ancillary service by the facilitator acting as an agent or broker, as per Section 2(13), are not fulfilled by the applicant. In fact, the applicant is providing services to their clients namely foreign colleges and university who are paying commission/fees to the applicant. The applicant is only facilitating the aspirant student and introduced them to the college and if these students gets admission to the college, the applicant gets certain commission which is in nature of promoting the business of the college 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 services of marketing and referral which is not the main service provided by the main service providers namely foreign colleges and university. As the applicant did not arrange or facilitate main service i.e. education by foreign colleges and university. In that circumstances, the applicant cannot be called as an intermediary.
- 7.16. In another perspective, the Applicant has been hired by foreign colleges and university to provide its expertized services of marketing and referral, which otherwise could not be effectively conducted by foreign colleges and university in Indian territory because of social, regional and economic factors or lack of requisite competence. Thus, the Applicant can be considered to be performing outsourced service of marketing and referral by foreign colleges and university, which is squarely outside the ambit of 'intermediary' as mentioned in foregoing paragraphs. At the same time, foreign colleges and university are providing their main service of education and admission thereto to prospective students which is an independent activity to the underlying agreement between the Applicant and foreign colleges and university.
- 7.17. As for the aspect of mode of payment of consideration paid on success basis, it is only a mode for execution of the terms of the agreement in the present case and cannot be construed to define or alter the nature of service provided by the Applicant.
- 7.18. In view of above discussion, it appears that the services of 'marketing/ recruitment/ referral consultant' are provided by the Applicant to foreign colleges and university on principal to principal basis, with no contractual relationship with prospective students. The Applicant is providing its main service of marketing/recruitment and referral consultant to the foreign colleges/universities, which is independent of the transactions between the foreign colleges/university, and their prospective students. The Applicant cannot be construed to have been facilitating services of the foreign colleges and university to the prospective students as students cannot be construed as

service recipients particularly in the absence of consideration flowing from them to the Applicant. Therefore, we are of the considered opinion that, the Applicant cannot be considered as ‘intermediary’ for the purpose of Section 2(13) of IGST Act.

7.19. Clause (6) of section 2 of the IGST Act is reproduced below for reference:

“(6) “export of services” means the supply of any service when, –

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

7.20. In the instant case, the Applicant (Supplier) is located in India while the recipient of services i.e. foreign colleges and university are located outside India. Since, the activity of the Applicant is an independent service of ‘marketing/ recruitment/ referral consultant’, the same will fall under Section 13(2) of the IGST Act to determine its place of supply. Accordingly, the place of supply of the services of the Applicant shall be location of recipient of it services i.e. location of foreign colleges and university which is outside India. Further, the Applicant and foreign colleges and university are nowhere related to each other and thus, cannot be treated as establishment of a distinct person in accordance with Explanation 1 to Section 8 of IGST Act.

7.21. Therefore, the activity of the Applicant for foreign college and university should qualify as ‘export of service’ in terms of Section 2(6) of IGST Act provided the payments are received in convertible foreign exchange.

8. In view of the foregoing, we rule as follows:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
1. Whether in view of the given facts and circumstances the activity of providing services of ‘Marketing/Recruitment/Referral Consultant’ by the Applicant to foreign universities/ colleges on principal to principal basis would qualify as ‘intermediary’ as defined under Section 2 (13) of the Integrated Goods and Services Tax Act, 2017 or whether the same would be considered as an independent service of ‘Marketing/Recruitment/ Referral Consultant’ by the Applicant to foreign universities/ colleges? and/ or	No, in view of the discussion above, the Applicant should not be considered as ‘intermediary’ for the purpose of Section 2(13) of the IGST Act.
2. Whether in view of the given facts and circumstance the activity of the Applicant would be liable to levy of GST or would qualify as ‘export of services’ in	The activity of the Applicant for foreign college and university should qualify as ‘export of service’ in terms of Section 2(6)

terms of Section 2(6) of the Integrated Goods and Services Tax Act, 2017?	of IGST Act provided the payments are received in convertible foreign exchange.
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(S.V. KASI VISWESWARA RAO)
(ADDL. COMMISSIONER) (STATE TAXES)
TAXES)


(SAHIL INAMDAR)
(ADDL. COMMISSIONER) (CENTRAL

[under Section 100 (1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this order]

To

M/s. Center for International Admission and Visas (CIAV),
Plot No. 9/3RT, S R Nagar, Hyderabad, Telangana- 500 038.

Copy submitted to:

1. The Commissioner (State Taxes) for information.
2. The Commissioner (Central Taxes), Hyderabad Commissionerate, 2nd Floor, GST Bhavan, Basheerbagh, Hyderabad, Telangana -500 004

Copy to:

3. The Assistant Commissioner (ST), Sanathnagar Circle.