

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

Before:

Mr. Rakesh Kumar Sharma, Member

Ms. Smaraki Mahapatra, Member

In the matter of
Appeal Case No. 01/WBAAAR/Appeal/2018 dated 26.04.2018

- And -

In the matter of :

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017, by M/s Global Reach Education Services Private Limited, having its office at Unit-7W, The Millennium, 235/2A, A.J.C. Bose Road, Kolkata-700020, West Bengal through its Authorised Signatory.

Present for the Appellant: Mr. Pulak Kumar Saha, Chartered Accountant

**Heard on: 23.07.2018
Date of order: 24.07.2018**



This Appeal has been by filed M/s Global Reach Education Services Private Limited, holding GSTIN 19AAGCG0859E1ZK (hereinafter referred to as the "Appellant"), on 16.04.2018 against the Ruling dated 21.03.2018 pronounced by the West Bengal Authority for Advance Ruling.

The Appellant is a Private Limited Company primarily engaged in promoting the courses of Foreign Universities in India among prospective students. The Appellant had approached the West Bengal Authority for Advance Ruling for deciding the determination of liability to pay goods and services tax on Appellant's output services. The West Bengal Authority for Advance Ruling after hearing the matter and examining the documents vide its Ruling dated 21.03.2018 came to the finding that the Applicant was an intermediary service provider and held that:

"The services of the applicant are not 'Export of Services' and are taxable under the GST Act."

The Appellant in Para 2.18 of Exhibit II of Grounds of Appeal submitted along with the Appeal Application has stated that "there is no dispute in the Impugned Ruling that the promotion services will not qualify as export of services".

However, the Appellant has filed the instant appeal under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "GST Act") against the findings of the West Bengal Authority for Advance Ruling that the Appellant is an "intermediary" of the Foreign Universities.

The Appellant made written and oral submissions and challenged this finding on the grounds that the Advance Ruling Authority wrongly considered them as recruitment agent facilitating the recruitment or enrolment of students to Foreign Universities. The Appellant argued that it was providing 'business auxiliary services' to Foreign Universities by promoting their courses

and its services are in the nature of marketing and promotion of courses offered by these Universities.

The Appellant argued that the function of an intermediary is to facilitate or arrange the supply of goods or services between two or more persons. The Appellant on the contrary was providing services on its own account, in the nature of marketing and promotion of courses of Foreign Universities in India and remuneration paid for these services was based on a percentage of fees paid by students admitted to the University.

The Appellant submitted the copy of its agreement with Australian Catholic University (ACU) dated 23.11.2018 expiring on 22.11.2019. In Clause 3.1 of the said agreement main responsibilities of the Appellant, referred to as 'Education Agent' have been spelt out as follows-

Under this Agreement the Education Agent must (to the University's satisfaction and as notified by the University from time to time):

- a) promote the Courses of the University;
- b) find suitable Prospective Students to undertake Courses;
- c) in accordance with University procedures and requirements, recruit and assist in the recruitment of suitable students;
- d) assist people to become students and for that purpose provide all necessary information about Courses and assistance in completing forms or applications and submitting these to the University;
- e) comply with the requirements of the ESOS Act and obligations under the National Code;
- f) Meet any enrolment or other performance targets as mutually agreed between ACU and the Education Agent; and
- g) perform other services and provide reports or information requested by the University or required by this Agreement.



The Appellant submitted at the time of Hearing that at present services covered under item (c) above are not being provided, though no such variance of the Agreement was submitted in support of thereof.

The Appellant placed reliance on the Ruling of the Authority For Advance Rulings (Central Excise, Customs and Service Tax), New Delhi, dated 04.03.2016, in the matter of the applicant GoDaddy India Web Services Ltd [2016-TIOL-08-ARA-ST], in connection with various support services provided by the applicant to GoDaddy US located in USA. The services included marketing and promotion services of GoDaddy US services in India by way of direct marketing, branding activities and offline marketing. GoDaddy India also provided services for supervising quality of third party customer care centre service. In this case the Authority For Advance Rulings observed that the definition of "intermediary" as envisaged under Rule 2(f) of the Place of Provision of Services Rules, 2012, does not include a person who provides the main service on his own account and that the applicant was providing "business support services" to GoDaddy US.

The Appellant submitted that the facts in the case are similar to that of GoDaddy and the scope of services provided by the Appellant, inter-alia, includes marketing and promotion services.

The Appellant also referred to order dated 16.03.2018 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chandigarh in appeal case No. ST/52205/2015, titled M/s Sunrise Immigration Consultants Private Ltd. Vs. CCE & ST, Chandigarh. In this case the Applicant was providing Visa facilitation service and referral services to foreign banks/ foreign Colleges/ foreign Universities. In this case the Applicant had argued that as per

Rule 2(f) of Place of Provision of Services Rules, 2012, intermediary means a broker, an agent or any other person who arranges or facilitates a provision of service (main service) between two or more persons but does not include a person who provides the 'main service' on his account. The Applicant further submitted that the service rendered by college to student is imparting of education and service between borrower and bank is money lending and had has no concern with education imparted by colleges/universities and money lent by bank. The Applicant submitted that he was providing Business Auxiliary Service to his clients namely banks and universities. Therefore, the Applicant did not arrange or facilitate main service i.e. education or loan rendered by colleges/banks.

Therefore, the Applicant is not intermediary and therefore, is not liable to pay service tax in terms of Rule 6A of the Rules, 1994 read with Rule 9 of the said Rules.

Hon'ble Customs, Excise & Service Tax Appellate Tribunal, Chandigarh confirmed the liability to pay tax on the visa facilitation service as the same was not disputed. For other two services the Tribunal observed 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...."

Heard the Appellant and the submissions are considered.

First of all, the Appellant's submission is that the Advance Ruling Authority wrongly considered them as recruitment agent facilitating the recruitment or enrolment of students to Foreign Universities, which is not tenable as Clause 3.1 of the Agreement with Australian Catholic University clearly stipulates Appellant's main responsibilities that it, *inter alia*, shall-

- a) promote the Courses of the University;
- b) find suitable Prospective Students to undertake Courses;
- c) in accordance with University procedures and requirements, recruit and assist in the recruitment of suitable students;

The Appellant cannot have the liberty to pick and choose only some portions of the Agreement by saying that such and such clause is not being undertaken by it. The Agreement has to be considered in its entirety.

In the matter of M/s GoDaddy India Web Services Ltd [2016-TIOL-08-ARA-ST], cited by the Appellant, the nature of agreement with GoDaddy US was not identical either in terms of service rendered or the other conditions, including payment for the services rendered. In fact Authority For Advance Rulings (Central Excise, Customs and Service Tax), New Delhi, noted that... "In consideration for the above-mentioned support services, the applicant shall charge a fee equal to the operating costs incurred by the applicant plus a mark-up of 13 on such costs, which will be received by the applicant from GoDaddy US in US Dollars. It is contemplated that GoDaddy US would be the only customer of the applicant. Applicant would not provide any services for or on behalf of GoDaddy US in



India or outside India. Applicant is not authorized to enter into any contract or arrangement on behalf of GoDaddy US or which would bind it in any manner whatsoever. GoDaddy US will directly contract and render services to customers in India. It will directly engage relevant third party service providers in India such as marketing agencies and call centers. Further, the applicant will not be engaged in arranging or facilitating provision of services by GoDaddy US to customers in India. Furthermore, the applicant will not secure orders from customers in India or arrange or facilitate the provision of any service by any third party service provider to GoDaddy US. The only service to be performed by the applicant is provided to GoDaddy US on a principal-to principal and arm's length basis."

Unlike the agreement of the Appellant, M/s GoDaddy India Web Services Ltd. had M/s GoDaddy US as the only customer and had several other restrictive and stringent conditions including the fee which was fixed equal to the operating cost and a markup of 13 above such cost.

The Appellant in the instant case was free to refer students to Australian Catholic University (ACU) or any other University of its choice. Further, the fee paid to the Appellant was not tied to the promotional activities or expenses incurred to promote Courses of ACU but as a percentage of fee paid by the students who got admitted to ACU.

In other words no consideration was paid in spite of incurring expenses by the Appellant for promoting activities of ACU, if no student joined ACU.

The facts and circumstances of the case of M/s Sunrise Immigration Consultants Private Ltd. Vs. CCE & ST, Chandigarh, and statutory provisions involved, under which the order was passed by Hon'ble Customs, Excise & Service Tax Appellate Tribunal, Chandigarh were completely different. In this case 'intermediary' under Rule 2(f) of the Place of Provision of Service Rules, 2012 (POPS), in relation to 'main service' was considered by the Tribunal. The definition of intermediary under Rule 2(f) of POPS is as under:



"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provisions 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."

The definition of 'intermediary' under Clause (13) of Section 2 of the Integrated Goods and Services Tax Act, 2017, is 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;

From the above two definitions it is amply clear that the issue of 'main service' decided by the Hon'ble Customs, Excise & Service Tax Appellate Tribunal, Chandigarh, in the matter of M/s Sunrise Immigration Consultants Private Ltd. Vs. CCE & ST, Chandigarh, cannot be imported into "intermediary", as defined under the IGST Act, 2017, as the definition of "intermediary" under Section 2(13) of IGST Act, is not the same as that under Rule 2(f) of the POPS Rules, 2012, in as much as under GST an "Intermediary" is an entity who arranges/facilitates for the supply of services of another entity, which may include ancillary services, whereas under POPS Rules, 2012, the intermediary arranges/facilitates for provisions of services of the main service provider.

In this case, the Appellant promotes the courses of the University, finds suitable prospective students to undertake the courses, and, in accordance with University procedures and requirements, recruits and assists in the recruitment of suitable students, and hence, the Appellant is to be considered as an intermediary in terms of Section 2(13) of the IGST Act.

In view of the above discussions, we are in conformity with the West Bengal Authority for Advance Ruling, that the services of the Appellant are not 'Export of Services' under the GST Act, and are eligible to tax.

The Appeal thus fails and stands disposed of accordingly.

Send a copy of this order to Appellant for information.



sd/-

(SMARAKI MAHAPATRA)
Member
West Bengal Appellate Authority
for Advance Ruling

sd/-

(RAKESH KUMAR SHARMA)
Member
West Bengal Appellate Authority
for Advance Ruling