

## Issue Involved

- Determining the place of supply of marketing and promotion services {Section 8 of IGST Act,2017}.
- Levy of GST on intermediary services {Section 13(8)(b) of IGST Act, 2017}.

## Held that

Provisions of Section 13(8)(b) and Section 8(2) of IGST Act are legal, valid and constitutional and are confined in their operation to provisions of IGST Act only and same cannot be made applicable for levy of tax on services under CGST and MGST Acts.

## Case Reference

[2023] 151 taxmann.com 91 (Bombay) [06-06-2023]

## Facts of the Case: -

### Revenue:

- The revenue in this case is represented by the Union of India.
- The revenue defended the constitutionality and validity of Section 13(8)(b) and Section 8(2) of the IGST Act, 2017.

### Petitioner:

- The petitioner is a proprietary firm engaged in providing marketing and promotion services to its overseas customers, who are engaged in manufacturing and/or selling goods.
- The petitioner's services result in direct purchase orders being placed by Indian importers on the petitioner's foreign customers. The overseas customers then supply goods directly to the Indian importers.
- The petitioner receives commission payments from its foreign customers once the Indian importers make payments for the supplied goods. These payments are received in convertible foreign exchange.
- The petitioner asserts that its transactions qualify as "export of services" as per their interpretation, as the services provided by the petitioner are consumed and used by overseas clients outside India. They argue that this qualifies as export and should be exempt from CGST and MGST.

## Contributed By



### CA Vaibhav Jain

Partner

vaibhavjain@mehragoelco.com



### Jyotsana Thareja

Technical Trainee

jyotsanathareja@mehragoelco.com

- The petitioner highlights the government's policy to promote exports and states their intention to challenge the provisions that subject their transactions to GST.
- The petitioner pays the GST on the received commission under protest, indicating their disagreement with the tax liability. They reserve the right to claim a refund for the GST paid.

### Summary:

In the case of Dharmendra M. Jani, the High Court of Bombay ruled that the provisions of Section 13(8)(b) and Section 8(2) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) are legally valid and constitutional. The court held that these provisions apply exclusively to the IGST Act and cannot be extended to impose taxes on services under the Central Goods and Services Tax Act (CGST) and the State Goods and Services Tax Act (MGST). The case involved a difference of opinion among judges, with one judge declaring the provisions unconstitutional and another judge upholding their validity. The matter was referred to a third judge, who concluded that the provisions were constitutional. Based on the opinion of the third judge and the concurring judge, the High Court affirmed the legality of the provisions, dismissing the petitions challenging their constitutionality.

#### Notes to News & Updates:

Please note that Facts of the Case and Queries are as summarized by us based on our reading of case law and our interpretation based on law prevailing as on the judgement date. No assurance is being given on the correctness of the facts, and our opinion / analysis is given solely based on facts provided herein above.

Please note that this news and update is prepared by author for spreading knowledge, and the view is a matter of interpretation, and law is subject to various interpretations. The application of law and impact can vary widely based on the specific facts and interpretation of statute. Our views expressed above is based on facts and assumptions indicated above. No assurance is given that the authorities and/or Courts will concur with our views. We do not accept any liability, for any loss or damage caused as a result of any action taken on the above opinion expressed by us.

We hope you will find the above in order and we shall be too glad to provide any other assistance as may be required. In case you are looking specific expert help in relation to matters connected to this update or otherwise, please feel free to write to us on [vaibhavjain@mehragoelco.com](mailto:vaibhavjain@mehragoelco.com) ; [mg@mehragoelco.com](mailto:mg@mehragoelco.com)

#### New Delhi

503, Chiranjiv Tower, 43,  
Nehru Place, New Delhi 110019. India  
+91-11-2622-3712, 26226933

#### Pune

Flat No 03, Plot No 28,  
Gowardhan Housing Society,  
Maharshi Nagar, Pune – 411037

#### Gurugram

GLOBAL BUSINESS SQUARE  
Building No. 32, Sector 44,  
Institutional Area, Gurgaon, 122002, India  
Tel : +91-124-4786200

#### Chennai

Sri Raghava Nilayam, Old No 38 , New No  
28, West Circular Road, Mandavelipakkam,  
Chennai, Tamil Nadu, India, 600028

#### Mumbai

305-306, Garnet Palladium,  
Goregaon (East), Mumbai,  
Maharashtra-400063

#### Dubai (UAE):

R-3035, Reef Tower,  
Cluster O, Jumeriah Lake Tower,  
Dubai, UAE.

