

Issue Involved

Whether the Petitioner is an intermediary within the meaning of Section 2(13) of the IGST Act in respect of services given under the Service Agreement?

Held that

Assessee's refund of Input Tax Credit was rejected holding that research and development services rendered by assessee to its holding company-McDonald's USA were intermediary services: Appellate Authority failed to address subject of controversy, order rejecting said refund was to be set aside and matter was to be remanded.

Case Reference

[2023] 151 taxmann.com 2 (Delhi)

Facts of the Case:

Revenue:

- The Adjudicating Authority rejected the petitioner's application for refund of ITC, considering the services rendered by the petitioner as intermediary services with the place of supply in India.
- The Appellate Authority upheld the decision of the Adjudicating Authority, stating that the services required the personal presence of the recipient of services or the person acting on its behalf, making them located in India as per the provisions of the IGST Act.

Petitioner:

- McDonald's India Pvt. Ltd. (the petitioner) entered into a service agreement with its holding company, McDonald's USA, to perform research and development services.
- The petitioner filed an application for the refund of tax paid on inputs used for services rendered to McDonald's USA.
- A show cause notice was issued proposing to reject the petitioner's claim for the refund of Input Tax Credit (ITC).
- The Appellate Authority upheld the decision of the Adjudicating Authority, stating that the services rendered by the petitioner were intermediary services, and the place of supply was in India, thus not qualifying as an export of services for the purpose of ITC refund. The revenue in this case is represented by the Union of India.

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- The revenue defended the constitutionality and validity of Section 13(8)(b) and Section 8(2) of the IGST Act, 2017.

Summary:

The case heard by the High Court of Delhi, revolved around the rejection of the petitioner's claim for refund of Input Tax Credit (ITC) in relation to research and development services provided to its holding company, McDonald's USA. The Appellate Authority upheld the rejection, classifying the services as intermediary services with the place of supply in India. However, the court found that the subject of controversy, i.e., whether the services qualified as exports, was not addressed adequately. It determined that the impugned order was beyond the scope of the Show Cause Notice and set it aside, remanding the matter to the Adjudicating Authority. The court highlighted the distinction between the services provided under the Service Agreement and the Master License Agreement, emphasizing that the services in question were independent and did not involve third-party suppliers. The decision referenced previous cases to support the petitioner's position.

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 ; mg@mehragoelco.com

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