

SERVICES PROVIDED BY EY INDIA TO EY OVERSEAS GROUP ENTITIES ARE NOT INTERMEDIARY SERVICES, BUT WILL FALL UNDER EXPORT OF SERVICES: DELHI HIGH COURT

Brief Facts of the Case

That the Petitioner i.e., M/s Ernst and Young Limited [**“EY India”**], is having an Indian Branch Office of M/s Ernst & Young Limited [**“E&Y Limited”**], a company incorporated under the laws of United Kingdom.

E&Y Limited has entered into service agreements for providing professional consultancy service to various entities of Ernst & Young group [**“EY Entities”**] on arm’s length basis.

In terms of the service agreements, the overseas entities had retained E&Y Limited, acting through its Indian Branch (i.e., EY India) to provide certain professional services. Thus, EY India had provided various professional services to overseas EY Entities in terms of the agreements entered into between E&Y Limited and the respective overseas EY Entities.

EY India applied for the refund of the Input Tax Credit [**“ITC”**] availed for providing its professional services for the periods December 2017 to March 2020. However, the Adjudicating Authority denied the refund of ITC on the premise that the services provided by EY India were ‘intermediary services’ and since EY India is located in India, the place of supply of the services was not the location of the recipients of the services but of the EY India’s location. Further, the decision of the Adjudicating Authority was also upheld by Additional Commissioner of CGST Appeal-II [**“Appellate Authority”**].

Being aggrieved by the impugned Order-in-Appeal passed by the Appellate Authority, EY India filed a writ petition before the Hon’ble Delhi High Court for challenging the Order-in-Appeal.

Issue before the Delhi High Court

Whether the services rendered by EY India to EY Overseas Entities as per the terms of the service agreement constitutes services as an ‘intermediary’?

Findings and decision of the Delhi High Court

- It was noted that the term ‘intermediary’ was defined under Section 2(13) of the Integrated Goods and Services Tax Act, 2017 [**“the IGST Act”**] and the definition made it clear that an intermediary merely ‘*arranges or facilitates*’ supply of goods or services or both between two or more persons. Thus, it was obvious that the person who supplied the goods or services was not an intermediary. Further, in the present case, there was no dispute that the EY India did not arrange or facilitate services to EY entities from third parties; it only rendered services to them. Thus, EY India had not arranged the said supply from any third party.

- Further, the High Court was unable to agree with the interpretation of the Adjudicating Authority, that proceeded on the basis that since the service agreements were between EY Entities and E&Y Limited, EY India has rendered services on behalf of its head office E&Y Limited. The Court observed that the last limb reads as “but does not include a person who supplies such goods or services or both or securities on his own account” but this does not control the definition of the term ‘intermediary’, however, it merely restricts the main definition of ‘intermediary’.
- The Court also noted that even if it is accepted that the EY India has rendered services on behalf of a third party, the same would not result in the EY India falling within the definition of ‘intermediary’ under Section 2(13) of the IGST Act, as it is the actual supplier of the professional services and has not arranged or facilitated the supply from any third party.
- The High Court further noted that the services rendered by the EY India to EY Entities, prior to roll out of the GST, was considered as ‘export of services’. Further, EY India’s application for refund of ITC for the period after March 2020 has also been accepted by the Adjudicating Authority. The Court further observed that since the recipient of the services is outside India, the professional services rendered by EY India would fall within the scope of definition of ‘export of services’ as defined under Section 2(6) of the IGST Act.
- Thus, based upon the aforesaid, Delhi High Court allowed the petition of EY India and set aside the impugned Order-in-Appeal passed by the Appellate Authority. Further, the Adjudicating Authority was directed to process the EY India’s refund application as expeditiously as possible.

Our Comments

That the Delhi High Court after the perusal of the provisions of the IGST Act has rightly held that EY India cannot be considered as an intermediary as the services was actual provided by it without arranging the same. Further, similar stand was taken in a judgment passed by the Hon’ble High Court of Punjab & Haryana in the case titled as ‘Genpact India Pvt Ltd vs Union of India’ [CWP-6048-2021 (O&M)], wherein, the petitioner provided BPO & Technical IT Support Services to overseas entities.
