

M/S Gap International Sourcing (India) ... vs Additional Commissioner, Cgst ... on 1 May, 2023

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 11399/2022 & CM APPL. 33549/2022
M/S GAP INTERNATIONAL SOURCING (INDIA)
PRIVATE LIMITED Petitioner
Through: Mr. G Shivadass, Sr. Adv.
with Mr. Devashish
Marwah & Mr. Rishabh J,
Adv.
Versus
ADDITIONAL COMMISSIONER, CGST
APPEALS- II & ORS. Respondents
Through: Mr. Akshay Amritanshu,
SSC with Mr. Ashutosh
Jain & Mr. Samyak Jain,
Adv.
CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN
ORDER

% 01.05.2023

1. The petitioner has filed the present petition, inter alia, impugning an order dated 07.02.2022, whereby the appeals preferred by the Revenue against the four separate orders dated 09.01.2020, 02.03.2020, 07.05.2021 and 31.05.2021 passed by the Adjudicating Authority (respondent no.2) granting refund of unutilized Input Tax Credit (hereafter 'ITC') was allowed. The petitioner also impugns the orders dated 25.03.2022 and 24.05.2022, whereby the appeals preferred by the petitioner against the orders-in-original dated 31.05.2021 and 18.11.2021 passed by the Adjudicating Authority rejecting the petitioner's claim for refund of ITC in respect of the Financial Year 2019-20, were rejected. In addition, the petitioner also impugns an order dated 23.03.2022, whereby the petitioner's appeal against an order dated 02.03.2020 to the extent it partially denied the

2. The controversy in the present petition relates to denial of the petitioner's claim for refund of accumulated ITC in relation to export of services for the periods April, 2018 to June, 2018; July, 2018 to September, 2018; October, 2018 to December, 2018; January, 2019 to March, 2019; April, 2019 to September, 2019 and October, 2019 to March, 2020.

3. The petitioner filed separate applications seeking refund of ITC in respect of the aforesaid

periods. The Adjudicating Authority had allowed the applications (for the four quarters of the Financial Year 2018-19) in terms of the orders dated 09.01.2020, 02.03.2020, 02.05.2020 and 07.05.2020.

4. These orders were reviewed by the Principal Commissioner of Central Goods and Services Tax, Delhi-South and the Revenue appealed the said refund orders before the Appellate Authority (respondent no.1). The Appellate Authority allowed the appeals by the impugned order dated 07.02.2022 and held that the petitioner was not entitled to the refund as claimed.

5. The petitioner had claimed refund of ITC on the ground that it related to remuneration for services rendered to overseas entities, in terms of an Advisory Service Agreement. The Appellate Authority noted that the petitioner's remuneration under the said Agreement was based on costs plus a mark up of 15% and observed that the petitioner was involved in facilitating supply of goods by various suppliers to the foreign entities. The Appellate Authority held that the petitioner was acting as an agent, and the services provided by it fell under the category of intermediary services. Thus, in terms of Section 13(8) of the Integrated Goods & Services Tax Act, 2017 (hereafter 'IGST Act') read with Section 2(6) of the IGST Act, services rendered

6. The petitioner's claim for refund of unutilized ITC for the Financial Year 2019-20 was rejected by the Adjudicating Authority on similar grounds. The petitioner's appeal to the Appellate Authority also met the same fate.

7. The petitioner also filed an appeal against the order dated 02.03.2020, to the extent that the petitioner's claim for refund for the quarter July, 2018 to September, 2018 had been partially rejected. The petitioner filed a claim for refund of an amount of ₹ 88,81,834/- which was revised to ₹ 88,16,495/-. However, the Adjudicating Authority had computed the refund amount at ₹ 80,03,575/- and had rejected the claim to the extent of ₹ 8,78,258/-. The petitioner claims that the same is erroneous as it is based on erroneous computation of the turnover.

8. The principal question raised in this petition is whether the Appellate Authority was correct in holding that the services rendered by the petitioner in terms of the Advisory Services Agreement were in the nature of intermediary services.

9. It is the petitioner's case that it had entered into two separate agreements namely, a 'Support Services Agreement' and an 'Advisory Services Agreement' with a foreign entity (Gap International Sourcing Inc.). The petitioner does not dispute that the services rendered pursuant to the Support Services Agreement are in the nature of intermediary services. However, it claims that the services rendered pursuant to the Advisory Services Agreement are not in the nature of intermediary services.

10. According to the petitioner, the concerned authorities have erred in confusing between the services rendered under the two agreements.

11. The petitioner claims that in terms of the Advisory following services:

"Identifying business opportunities, conducting market research and developing strategies for India and neighbouring regions on a global basis."

12. According to the petitioner, such services do not qualify as intermediary services as there is no third party involved in rendering all these services. The petitioner contends that it neither facilitates nor arranges for supply of services from any third party. The petitioner claims that the said services are rendered on principal-to-principal basis.

13. According to the petitioner, the question involved in the present petition is covered by the recent decision of this Court in M/s Ernst & Young Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi & Anr.: 2023:DHC:2116-DB.

14. We have heard the learned counsels for the parties.

15. There is merit in the contention that the services relating to market research and developing strategies cannot be classified as intermediary services. However, there is a serious controversy as to the exact nature of services rendered by the petitioner. In the given circumstances, it was contended by the counsels that the matter be remanded to the Adjudicating Authority to decide afresh keeping in view the decision of this Court in M/s Ernst & Young Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi & Anr. (supra). The said course commends to us.

16. Insofar as the impugned order dated 23.03.2022 passed by the Appellate Authority is concerned, the Appellate Authority had rejected the petitioner's appeal against partial rejection of the claim for refund on the ground that the petitioner had not produced any documentary evidence to establish the actual eligible turnover for zero rated supplies.

the applications filed by the petitioner for refund for the Financial Years 2018-19 and 2019-20 are restored before the Adjudicating Authority for considering afresh in light of the decision of this Court in M/s Ernst & Young Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi & Anr. (supra).

18. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J AMIT MAHAJAN, J MAY 1, 2023 'gsr'