Genpact India Pvt. Ltd. vs. Union of India and Others

Whether BPO services provided by an Indian company (Genpact India) to its overseas group entity (Genpact International Inc., USA) under a Master Services Sub-Contracting Agreement constitute

Date of Order: November 11, 2022
Case Law No: GIB-PHHC-2022-02
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background & Relevant Facts

The petitioner, Genpact India Pvt. Ltd., is a BPO service provider registered under Haryana GST, employing approximately 50,000 employees. It is engaged in providing a host of BPO and IT-enabled services including maintaining vendor/customer master data, processing vendor invoices, book-keeping, software development, technical IT support, data analysis, supply chain management support etc. — all rendered from India remotely through telecommunication/internet links using its own infrastructure.

The petitioner entered into a Master Services Sub-Contracting Agreement (MSA) dated 01.01.2013 with Genpact International Inc. (GI), a US entity. Under the MSA, the petitioner was sub-contracted by GI to actually perform and deliver BPO/IT services directly to GI's overseas customers, on a principal-to-principal basis. The petitioner raised invoices on GI and received payment in convertible foreign exchange. There was no separate agreement between the petitioner and GI's customers.

For the period July 2017 to March 2018, the petitioner filed a refund application on 18.10.2018 claiming refund of unutilised ITC of Rs. 27,26,27,276/- under Section 16 of the IGST Act read with Section 54 of the CGST Act. The Deputy Commissioner by Order-in-Original dated 14.03.2019 sanctioned Rs. 26,34,61,625/- accepting the services as export of services.

However, the Principal Commissioner exercised revision powers under Section 107(2) of the CGST Act and filed an appeal contending that the petitioner's services were "intermediary services" — relying on a Circular dated 18.07.2019 which was subsequently withdrawn on 04.12.2019. The Joint Commissioner (Appeals) by order dated 27.05.2020 held the services to be intermediary services and ordered recovery of the entire refund of Rs. 26,34,61,625/-.

In an earlier round of litigation (CWP No. 10302/2020), this Court set aside the order dated 27.05.2020 and remanded the matter for fresh decision. The Appellate Authority on remand again passed order dated 15.02.2021 holding the petitioner to be an intermediary and denying the refund, additionally denying a further claim of Rs. 82,15,102/-. Refund applications for subsequent periods (April 2018–March 2019) were also rejected on identical grounds. Aggrieved by the order dated 15.02.2021, the present writ petition was filed.

Court Observations (Verbatim)

"*A bare perusal of the recitals and relevant clauses of the MSA...do not in any manner indicate that petitioner is acting as an 'intermediary' so as to fall within the scope and ambit of the definition of 'intermediary' under Section 2(13) of the IGST Act. Such clauses cannot also be interpreted to conclude that the petitioner has facilitated the services. The said clauses are in relation to the modalities of how the actual work would be carried out and do not in any manner establish that the petitioner was required to arrange/facilitate a 3rd party to render the main service which has actually been rendered by the petitioner.*"

"*As per definition of 'intermediary' under Section 2(13) of the IGST Act the following three conditions must be satisfied for a person to qualify as an 'intermediary'; First, the relationship between the parties must be that of a principal-agency relationship. Second, the person must be involved in arrangement or facilitation of provisions of the service provided to the principal by a 3rd party. Third, the person must not actually perform the main service intended to be received by the service recipient itself.*"

"*There is no change in the legal position i.e. with regard to the scope and ambit of 'intermediary' services under the service tax regime vis-a-vis the GST regime and there being no change of facts as it is the MSA of 2013 (Annexure P-1) which continues to operate, the department cannot take a different view for different periods.*"

"*The finding recorded by the respondents-department to hold the petitioner to be in a principal agent relationship with the GI to be without any basis and to be clearly erroneous. The impugned order proceeds oblivious of Clause 21.6 of the MSA... Nothing in this Agreement shall constitute or be deemed to constitute a relationship of employer and employee, agency, joint venture or partnership between the parties hereto...*"

"*Even as per the afore-noticed circular dated 20.09.2021 and in reference to para 3.5 it stands clarified that sub-contracting for a service is not an 'intermediary' service.*"

"*The written statement seeks to justify the impugned order on grounds which are not even part of the impugned order and which is clearly impermissible in law.*" [Relying on Mohinder Singh Gill vs. Chief Election Commissioner]

"*The principle of consistency as such ought to apply in the present matter as well and we find merit in the stand taken on behalf of the petitioner that the view taken in the order in original dated 25.01.2018...holding the petitioner to be not an 'intermediary' under the MSA, should prevail even under the GST regime.*"

Final Verdict

Writ petition allowed. Impugned order dated 15.02.2021 quashed. Order-in-Original dated 14.03.2019 granting refund of Rs. 26,34,61,625/- restored. Directed that the benefit of this order shall enure to the petitioner for subsequent refunds as well. In favour of Assessee.

ADDITIONAL FOOTNOTES

Cases Referred & Citations

	Case	Forum	Citation
1	Infinera India (P.) Ltd., In re	Karnataka AAAR	[2020] (AAAR-Karnataka)
2	Vservglobal (P.) Ltd., In re	Maharashtra AAR	[2018] 19 GSTL 173 (AAR-Maharashtra) = 2018 (11)
3	M/s. Radhasoami Satsang Soami Bagh, Agra vs. Commissioner of Income Tax	Supreme Court	(1992)
4	Bharat Sanchar Nigam Ltd. vs. Union of India	Supreme Court	(2006)
5	Mohinder Singh Gill & Anr. vs. Chief Election Commissioner, New Delhi & Ors.	Supreme Court	(1978)
6	CBIC Circular No. 159/15/2021-GST	CBIC	Dated 20.09.2021 — Clarification on scope of intermediary services
7	CBIC Circular	CBIC	Dated 18.07.2019 — subsequently withdrawn on 04.12.2019

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