

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

MONDAY, THE FIFTH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE APARESH KUMAR SINGH
AND
THE HONOURABLE SRI JUSTICE G.M. MOHIUDDIN**

WRIT PETITION NOS: 28201, 5621 AND 5622 OF 2024

W.P.NO: 28201 OF 2024

Between:

Virtusa Systems (India) Private Limited, 203, Manikonda IT Park, Rajendranagar Mandal, Ranga Reddy, Hyderabad, Telangana, 500019, Rep. by its Authorized Representative Saurabh Chokhra, S/o. Pawan Kumar Chokhra, Manager Finance, Aged about 32 years, R/o. 503, Sai's Suraksha, Mayuri Nagar, Miyapur, Hyderabad, Telangana - 500049

...PETITIONER

AND

1. Union of India Ministry of Finance, Government of India, North Block, New Delhi - 110 001. Through the Secretary
2. The State of Telangana, Finance Department, Government of Telangana Through the Principal Secretary
3. Deputy Commissioner of Central Tax, Gachibowli Division, Ranga Reddy Commissionerate, 4th Floor, Serene Heights, Humayun Nagar, Masab Tank, Hyderabad- 500028, Telangana

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction, more particularly in the nature of Writ of Certiorari and Mandamus declaring and directing the Respondents to. i. To quash the impugned order dated 09.07.2024 and the proceedings pursuant thereto being null and void, illegal and without jurisdiction. ii. To direct the Respondent to grant/issue refund of Rs. 1,37,52,427/-for October to December, 2023, along with interest as per law within a reasonable/specified time frame iii. To award the costs of this Writ Petition in favour of the Petitioner and against Respondents. iv. For such further and other reliefs, including costs of this

Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to grant/issue refund of Rs.1,37,52,427/- for October to December. 2023, along with interest as per law within a reasonable/specified time frame to the Petitioner thereof in the interest of justice.

IA NO: 3 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the impugned rejection order dated 09.07.2024 passed by the Respondents in the interest of justice.

Counsel for the Petitioner: Ms. ANANYA KAPOOR FOR Ms. MAANASA.K
Counsel for the Respondent No.1: SRI B.MUKHERJEE rep.,SRI N.BHUJANGA
RAO, DEPUTY. SOLICITOR GENERAL OF INDIA
Counsel for the Respondent No.2: SRI R.SUSHANTH REDDY
Counsel for Respondent No.3: SRI D.RAGHAVENDAR RAO,Sr.SC FOR CBIT

W.P.NO: 5621 OF 2024

Between:

Virtusa Systems (India) Private Limited, 203, MANIKONDA IT PARK,
RAJENDRANAGAR MANDAL, RANGAREDDY, Hyderabad, Telangana,
500019 Rep. by its Authorized Representative Saurabh Chokhra, S/o. Pawan
Kumar Chokhra, Manager Finance, Aged about 31 years, R/o. 503, Sai's
Suraksha, Mayuri Nagar, Miyapur Hyderabad, Telangana - 500049

...PETITIONER

AND

1. Union of India Ministry of Finance, Government of India, North Block, New Delhi - 110 001. Through the Secretary
2. The State of Telangana, Finance Department, Government of Telangana Through the Principal Secretary
3. Commissioner of Central Taxes and Customs, Ranga Reddy, CGST Commissionerate, Posnet Bhavan, Tilak Road, Hyderabad - 500001

4. Deputy Commissioner of Central Tax, Gachibowli Division, Ranga Reddy Commissionerate, 4th Floor, Serene Heights, Humayun Nagar, Masab Tank, Hyderabad- 500028, Telangana
5. Additional/Joint Commissioner, (Appeals-1) GST and Central Tax, 7th Floor, GST Bhavan, L B Stadium Road, Basheer Bagh, Hyderabad- TS, 500004

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction, more particularly in the nature of Writ of Certiorari and Mandamus declaring and directing the Respondents to.

- i. Issue a writ of and/or order and or directions in the nature of certiorari or any other appropriate writ, order or direction quashing impugned order dated 12.12.2023 (received on 01.02.2024) and the proceedings pursuant thereto,
- ii. Award the costs of this Writ Petition in favour of the Petitioner and against Respondents.
- iii. For such further and other reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case,

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the impugned rejection order dated 12.12.2023 (received on 01.02.2024) passed by the Respondents and stay the proceedings thereof in the interest of justice.

Counsel for Petitioner: Ms.ANANYA KAPOOR, representing Ms. MAANASA.K
Counsel for the Respondent No.1: SRI B.MUKHERJEE
FOR SRI N.BHUJANGA RAO, DEPUTY SOLICITOR GENENRAL OF INDIA
Counsel for the Respondent No.2: GP FOR FINANCE & PLANNING
Counsel for the Respondent Nos.3: SRI SUSHANTH REDDY
Counsel for the Respondent Nos.4 TO 5: SRI D.RAGHAVENDAR RAO, Sr. SC
FOR CBIT

W.P.NO: 5622 OF 2024

Between:

Virtusa Systems (India) Private Limited, 203, MANIKONDA IT PARK,
RAJENDRANAGAR MANDAL, RANGAREDDY, Hyderabad, Telangana,
500019 Rep. by its Authorized Representative Saurabh Chokhra, S/o. Pawan
Kumar Chokhra, Manager Finance, Aged about 31 years, R/o. 503, Sai's
Suraksha, Mayuri Nagar, Miyapur Hyderabad, Telangana - 500049

...PETITIONER

AND

1. Union of India Ministry of Finance, Government of India, North Block, New Delhi - 110 001. Through the Secretary.
2. The State of Telangana, Finance Department, Government of Telangana Through the Principal Secretary
3. Commissioner of Central Taxes and Customs, Ranga Reddy, CGST Commissionerate, Posnet Bhavan, Tilak Road, Hyderabad 500001
4. Deputy Commissioner of Central Tax Gachibowli Division, Ranga Reddy Commissionerate, 4th Floor, Serene Heights, Humayun Nagar, Masab Tank, Hyderabad- 500028, Telangana
5. Additional/Joint Commissioner (Appeals-1) GST and Central Tax, 7th Floor, GST Bhavan, L B Stadium Road, Basheer Bagh, Hyderabad- TS, 500004

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction, more particularly in the nature of Writ of Certiorari and Mandamus declaring and directing the Respondents to

- i. Issue a writ of and/or order and or directions in the nature of certiorari or any other appropriate writ, order or direction quashing impugned order dated 12.12.2023 (received on 01.02.2024) and the proceedings pursuant thereto.
- ii. Award the costs of this Writ Petition in favour of the Petitioner and against Respondents.
- iii. For such further and other reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay

the operation of the impugned rejection order dated 12.12.2023 (received on 01.02.2024) passed by the Respondents and stay the proceedings thereof in the interest of justice.

Counsel for the Petitioner: Ms. ANANYA KAPOOR for Ms. MAANASA.K
Counsel for the Respondent No.1: SRI B.MUKHERJEE representing
SRI N.BHUJANGA RAO, DEPUTY SOLICITOR GENERAL OF INDIA
Counsel for the Respondent No.2: GP FOR FINANCE & PLANNING
Counsel for the Respondent Nos.3: SRI SUSHANTH REDDY
Counsel for the Respondent Nos.4 TO 5: SRI D.RAGHAVENDAR RAO, Sr. SC
FOR CBIT

The Court made the following: COMMON ORDER

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH
AND
THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN

WRIT PETITION Nos. 28201, 5621 and 5622 of 2024

DATED : 05.01.2026

W.P.No.28201 of 2024

Between:

Virtusa Systems (India) Private Limited

... Petitioner

AND

Union of India, Ministry of Finance,
Government of India, North Block,
New Delhi, through the Secretary and 2 others.

... Respondents

W.P.No.5621 of 2024

Between:

Virtusa Systems (India) Private Limited

... Petitioner

AND

Union of India, Ministry of Finance,
Government of India, North Block,
New Delhi, through the Secretary and 2 others.

... Respondents

W.P.No.5622 of 2024

Between:

Virtusa Systems (India) Private Limited

... Petitioner

AND

Union of India, Ministry of Finance,
Government of India, North Block,
New Delhi, through the Secretary and 2 others.

... Respondents

COMMON ORDER:

Ms. Ananya Kapoor, learned counsel represents Ms. K. Maanasa, learned counsel for the petitioner.

Mr. D. Raghavendar Rao, learned Senior Standing Counsel appears for the Central Board of Indirect Taxes and Customs in W.P.No.28201 of 2024.

Mr. R. Sushanth Reddy, learned counsel for respondent No.3 in W.P.Nos.28201 and 5621 of 2024.

Mr. B. Mukherjee, learned counsel represents Mr. N. Bhujanga Rao, learned Deputy Solicitor General of India, for respondent No.1.

2. All these writ petitions relate to the same petitioner. The rejection of refund by the Refund Sanctioning Authority dated 09.07.2024 is under challenge in W.P.No.28201 of 2024. The orders in appeal dated 12.12.2023 by which the refund sanction orders dated 09.11.2022 and 26.10.2022 have been set aside are under challenge in W.P.Nos.5621 and 5622 of 2024.

3. Heard the learned counsel for the parties.

4. Petitioner is an India entity engaged primarily in the business of providing taxable services under the category "Information Technology

Software Services” which, according to it, are exported mainly to its associated enterprises located at USA. Such supplies of services qualifies as export of services as the place of supply is the location of the service recipient outside India as per Section 13 of the Integrated Goods and Services Tax Act, 2017 (for short, “the IGST Act”). According to the petitioner, such supplies are in the nature of “zero rated supplies” as defined under Section 16 and includes export of goods or services and as such are eligible for refund of the unutilized ITC. According to the petitioner, it filed GST-RFD-01 along with supporting documents claiming refund on account of services for different periods i.e., 01.10.2023 to 31.12.2023, subject matter of W.P.No.28201 of 2024; 01.11.2021 to 31.03.2022, subject matter of W.P.No.5621 of 2024 and the subject period of refund in W.P.No.5622 of 2024 is from 01.04.2021 to 31.10.2021.

5. In W.P.No.5621 and 5622 of 2024 the refund sanctioning authority allowed the refund vide orders dated 06.11.2022 (Annexure P4) and 26.10.2022 (Annexure P4). The revenue preferred an appeal which has been allowed by the impugned order dated 12.12.2023 by the Additional Commissioner (Appeals-I) under challenge in both the writ petitions. However, the refund sanctioning authority rejected the refund by order dated 09.07.2024 impugned in W.P.No.28201 of 2024 based

entirely on the Commissioner's order for the earlier period. Therefore, the petitioner has assailed all the three orders in the present batch of writ petitions.

6. According to the petitioner, it fulfills the eligibility criteria being an "export of service" under Section 2(6) of the IGST Act. Such supply of services qualifies to be an Export of Services as the place of supply is the location of the services receiver, who is located outside the taxable territory (i.e. Outside India) in terms of Section 13 of the IGST Act 2017. Section 13 clearly provides that the provisions of this Section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India. Section 13(2) states that the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services.

6.1. It is submitted that the petitioner does not fall within the meaning of "Intermediary" defined in Section 2(13) of the IGST Act, which requires the following basic pre-requisites to be fulfilled – (a) a minimum of three parties; (b) two distinct supplies; and (c) Intermediary service provider should have the character of an agent, broker or any other similar person, who arranges or facilitates some supply, but does

not himself provide the main supply. In this regard, reliance is placed upon the Circular No.159/15/2021-GST, dated 20.09.2021.

7. According to the petitioner, the appellate authority has undertaken a completely novel ground vis-à-vis clause (C) of the agreement, which was not permissible in law. The conclusion of the appellate authority that the services rendered by the petitioner tantamount to “intermediary” services is patently wrong and perverse. There is no evidence to establish that the petitioner had not provided the main service. There is not even an allegation that there was any third party which the petitioner had arranged, who, in turn, provided the main services. The petitioner is rendering services “on its own account” and is not facilitating any supply of services. The petitioner is responsible for providing all services for all the risk related to performance of services and pricing of the services. Petitioner’s turnover is the entire charge for the service which is the main service itself, whereas in the case of an intermediary, the turnover is a mere commission or a facilitation fee which is not the fact in the present case. The services delivered by the petitioner are on its own account from India through telecommunication/internet links using its own infrastructure and work force of approximately 1000 employees. The petitioner has only one customer which is eTouch System Corporation, USA. to which it is

rendering and providing all services to it and the entire revenue/turnover is from it and no third party is involved. The remuneration model is a cost plus 15% model and the employees of the petitioner are all graduates and technology experts rendering core revenue generating activity.

8. It is submitted that the appellate authority without rendering any categorical finding as to how the petitioner falls within the definition of "intermediary" without existence of any proven third party, set aside the refund sanction order when the refund sanctioning authority had after verification of all the documents and on being satisfied found that the petitioner has fulfilled the conditions prescribed under Section 2(6) of the IGST Act by making supplies to his overseas recipient which qualified for export.

9. It is submitted that the departmental appeal was only on the ground to ascertain the nature of service and place of provision of service on proper verification of the agreement. Whether the agreement providing additional location of Hyderabad was valid for the petitioner to qualify as an exporter of service apart from its office at Bombay. The appellate authority though found amendment to the agreement by which additional location of Hyderabad was added as valid agreement for

services provided from Hyderabad office as well, it went on to hold that the petitioner is providing intermediary services to M/s. eTouch System Corporation, USA, which was not even a ground for appeal, relying upon clause (C) of the agreement, which permitted the petitioner to enter into a contract with a third party being customer of M/s. eTouch System Corporation, USA. The appellate authority did not render any finding as to who is the third party nor there any evidence to that effect. The order of the appellate authority, therefore, suffers from non-application of mind and is fit to be set aside.

10. It is submitted that the rejection of the refund by order dated 09.07.2024 for the period 01.10.2023 to 31.12.2023 is entirely based on the order of the appellate authority for the earlier periods and therefore, the same also is fit to be quashed.

11. Counter affidavits have been filed by the respondents in all these writ petitions. In substance, it is the stand of the respondents that the assertion of the petitioner that it fulfills all conditions for an export of services under Section 2(6) of the IGST Act is not established with evidence. The petitioner has failed to discharge its burden of proof. The petitioner has specifically failed to establish that the place of supply of service is outside India. This condition cannot be verified without a

complete understanding of the actual nature of service rendered. It requires a review of all relevant contractual documents including specific statements of work or purchase order of the project, which the petitioner failed to produce by withholding these crucial documents, the petitioner has prevented the tax authorities from validating its claim.

12. Learned counsel for the Revenue contends that in the nature of supplies undertaken, three parties are evident, (1) the petitioner; (2) its overseas group company M/s. eTouch System Corporation, USA (that is the client) and (3) the ultimate customers of US entity. The petitioner is clearly facilitating the provision of IT services from India on behalf of its US based client to that clients own customers. Petitioners services are not "on its own account".

13. Clause (C) of the agreement outlines that for administrative convenience or at the request of client of M/s. eTouch System Corporation, USA, service provider may enter into contract with third parties being customer of M/s. eTouch System Corporation, USA group companies. This clause shows the entity arranging or facilitating the main supply between its client and the end customer. Petitioner's claim that this clause was nullified by an amendment is incorrect. The amendment only deleted payment clauses leaving substantive clause (C)

intact. In such a scenario the petitioner's remuneration model (cost plus 15%) is irrelevant to the classification of the service. The character of service is determined by its intrinsic nature as revealed in the contractual obligations not by the method of billing. Petitioner's refusal to submit the specific purchase orders or statements of work prevented a proper determination of the transaction full scope. Therefore, adverse interference must be drawn.

14. Petitioner's reliance on CBIC Circular No.125/44/2019 does not curtail the quasi judicial power of adjudicating or appellate authority to call for any document to verify the merits and legality of the claim during scrutiny. The revenue does not dispute the legislative intent to make exports zero-rated. However, this benefit is conditional upon the supply legally qualified as an export. It can be classified as an export if its place of supply is outside India. According to Section 13(8)(b) of the IGST Act, the place of supply for intermediary services is the location of the supplier. Since the petitioner is located in India and its services are intermediary in nature, they are by law and not exports. Therefore, the impugned orders do not warrant any interference.

15. It is relevant to mention here that in the counter affidavit filed by the respondents in W.P.Nos.5621 and 5622 of 2024, besides the

aforesaid submissions, the respondents have on the one hand prayed to dismiss the writ petition and at the same time sought remand of the matter to the jurisdictional refund sanctioning officer to clearly check all the details with a clear direction to the petitioner to furnish documents as mentioned and maintained as per the agreement and orders as may be deemed fit. In W.P.No.28201 of 2024, however, wherein the rejection of refund sanction order is under challenge, the respondents have prayed for dismissal of the writ petition on similar grounds.

16. We have considered the submissions of the learned counsel for the parties and taken note of the materials placed on record. We have also taken note of the decisions relied upon by the petitioner especially in the case of **Boks Business Services Private Limited vs. Commissioner of Central Goods and Services Tax Delhi South and another¹** and **M/s. Cube Highways and Transportation Assets Advisor Private Limited vs. Assistant Commissioner, CGST Division and others²**.

17. In order to appreciate the issue at hand, we deem it proper to extract the findings of both the Assessing Officer and the Appellate

¹ W.P.(C).No.1255 of 2023, dated 22.08.2023

² W.P.(C) No.14427 of 2022, dated 17.08.2023.

Authority in W.P.Nos.5621 and 5622 of 2024 and the rejection order in W.P.No.28201 of 2024.

Findings of the Assessing Officer in W.P.No.5621 of 2024 at paras 7 to 9 at pages 98 and 99.

“7. All the submissions made by the taxpayer in relation to the issues raised in the Show Cause Notice are considered before passing this order. The applicant’s replies are found to be just in all the issues raised in SCN and reply submitted by the applicant is found to be satisfactory. Therefore, the amount of refund applied was sanctioned to the applicant.

8. In light of above details and the documents submitted by them electronically, and the other details available in the common portal, It is found that:-

As per Section 2(6) of IGST Act’ 2017 “Export of services” means the supply of any service when,

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; or in Indian rupees wherever permitted by RBI, [inserted vide IGST (Amendment) Act, 2018, w.e.f. 1-2-2019 and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person. if place of supply is out of India (Notification No. 9/2017-IT (Rate) both dated 28-6-2017 as inserted w.e.f. 27-7-2018)

After verification of the documents uploaded it appears that taxpayer has fulfilled all the above conditions from (i) to (v) as per section 2(6) of IGST Act 2017 which makes the supplies made by him to his overseas recipient to qualify as export.

Taxpayer exported software services to his overseas client as per the sales agreement entered with them.

As per the documents uploaded taxpayer made supplies to a distinct person. The supplier of service and the recipient of service are not merely establishments of a distinct person.

As per the FIRC/BRC documents uploaded the Taxpayer has received the foreign remittances as stated by him in statement-2.

The Net ITC based on which the final refund amount that will be sanctioned does not contain blocked credit as per section 17(5) of CGST Act 2017.

a) the refund claim for the same period has not been filed in the same category including any claim filed under 'Any Other' Category.

b) the refund claim has been filed within limitation of time, as provided under Acts.

c) They filed all the due returns and no dues are pending recovery from the them.

d) As provided under Section 54 (8), notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports. Accordingly, the provisions of unjust enrichment are not applicable to present refund application in terms of the provisions of section 54(8) of the CGST Act mentioned above.

e) the refund is not barred under the provisions of 2nd and 3rd proviso to section 54(3) of the CGST Act, 2017 inasmuch as the goods exported out of India are not subjected to export duty, and the supplier of goods or services or both has not availed the drawback in respect of central tax or claimed refund of the integrated tax paid on such supplies.

9. Accordingly, in pursuance of the provisions of the Acts and rules made thereunder the respective Acts, I pass the following order.

ORDER

I hereby sanction the refund of the amount of Rs.8,927,106/-, in cash to M/s. VIRTUSA SYSTEMS (INDIA) PRIVATE LIMITED, in terms of Section 54(5) of the Acts and Rule 92(1) of the Rules."

Findings of the Appellate Authority in W.P.No.5621 of 2024 at paras 12 to 18 at pages 139 and 140.

“12. I have gone through records of the case, cross objections and submissions at the time of personal hearing in all the appeals mentioned above.

13. Appellant stated that agreement is signed between M/s. eTouch Systems (India) Private Limited, Mumbai and M/s. eTouch System Corp, USA and not with Hyderabad unit. The agreement with Hyderabad office was not submitted by the applicant along with refund application which is necessary to ascertain the nature of services and Place of provision of service. In the absence of proper identification of the nature of services rendered it is not possible to ascertain the place of supply of service. The provisions of Section 13 of Integrated Goods & Services Tax Act, 2017 need to be verified vis-a-vis the facts of the case to determine whether the said supply is export or not. The Refund Sanctioning Authority without examining the nature of service, place of provision of service and without examining the applicability of sub-section (3) to (13) of Section 13 of Integrated Goods & Services Tax Act, 2017, concluded that the place of provision of service is outside of India and the supply of service is export, which is not correct.

14. Respondent has produced amendment to the agreement by which additional location of Hyderabad has been added to the agreement. Thus agreement submitted is valid agreement for the services provided from the Hyderabad office as well. As per the agreement copy respondent is providing Information Technology and Information technology enabled services to the M/s. eTouch System Corp, USA and clients of M/s. eTouch System Corp. USA. Therefore I will proceed to examine the nature and place of provision of services on the basis of agreement provided.

15. As per clause (C) of BACKGROUND portion of the agreement respondent on request of the third parties can enter in contract with third parties being customer of M/s. eTouch System Corp. USA. Therefore respondent is working as intermediary of M/s. eTouch System Corp, USA as well while providing services to them.

16. On being pointed out the same respondent submitted that above clause has been amended and submitted the amendment

to the agreement effective from April 2018. As seen from the amendment to the agreement clause 3.1.3 and 3.1.4 has been deleted but not the Clause (C) of the Background. Clause 3.1.3 and 3.1.4 were payment clauses and ensured minimum margin of 15 percent in case of third party earnings. Thus even after amendment to the agreement, clause (C) of the background is in place.

17. From the above discussions and findings it is evident that respondent is providing intermediary services to M/s. eTouch System Corp, USA. Therefore place of provision of services as per section 13(8)(b) of the IGST Act 2017 is in India and services do not qualify as export of services in terms of section 2(6) of the IGST Act 2017.

18. In view of the above findings and discussion, I pass the following order;

Order

I allow the appeal filed by the department by setting aside the order of original authority."

Findings of the Assessing Officer in W.P.No.5622 of 2024 at paras 5, 6 to 9 at page 110.

"5. On scrutiny of pertinent documents submitted by the applicant along with FORM GST RFD-01 certain discrepancies were observed which were communicated to the taxpayer vide SCN No.ZE3610220178124 dated 18-10-2022. The same are mentioned as following:-

(i) Tax payer claimed refund of integrated tax paid on export of services. The definition of export of services as per section 2(6) of IGST Act, 2017 is reproduced as following: -

a. "Export of services" means the supply of any service when,-

(1) The supplier of service is located in India;

(2) The recipient of service is located outside India;

(3) The place of supply of service is outside India;

(4) The payment of such service has been received by the supplier of service in convertible foreign exchange [or in

Indian rupees wherever permitted by the Reserve bank of India] and

(5) The supplier of service and the recipient of service are not merely establishment of a distinct person in accordance with explanation 1 in section 8.

6. The applicant submitted their reply on GST portal on 18-10-2022 to the issue raised in the Show Cause Notice as mentioned above. Point wise reply to issues raised by the applicant is given as following:-

Please find attached the inter company agreement with client for reference Circular No. 125/44/2019 - GST dated 18th November 2019, the supporting documents to be additionally uploaded at the time of refund application

- BRC/FIRC/any other document indicating the receipt of sale proceeds of services
- Copy of GSTR-2A of the relevant period
- Statement of invoices (Annexure-B)
- Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
- Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund at the time of filing of refund application, we have uploaded the BRC documents in support of the receipts for export invoices.

Request you to consider the above submission and sanction the refund.

In respect of Bank Statement the taxpayer submitted the statement vide their mail dated 26-10-2022 As per Section 2(6) of IGST Act 2017 "Export of services" means the supply of any service when, -

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; or in Indian rupees wherever permitted by RBI, [inserted vide IGST (Amendment) Act, 2018, w.e.f. 1-2-2019 and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person. If place of

supply is out of India (Notification No. 9/2017-IT (Rate) both dated 28-6-2017 as inserted w.e.f. 27-7-2018.)

After verification of the documents uploaded it appears that taxpayer has fulfilled all the above conditions which makes the supplies made by him to his overseas recipient to qualify as export.

7. All the submissions made by the taxpayer in relation to the issues raised in the show cause notice are considered before passing this order. The applicant's replies are found to be just in all the issues raised in SCN.

8. In light of above details and the documents submitted by them electronically, and the other details available in the common portal, I find that:-

- a) the refund claim for the same period has not been filed in the same category including any claim filed under "Any Other" Category.
- b) the refund claim has been filed within limitation of time, as provided under Acts.
- c) They filed all the due returns and no dues are pending recovery from them.
- d) As provided under Section 54(8), notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports. Accordingly, the provisions of unjust enrichment are not applicable to present refund application in terms of the provisions of section 54(8) of the CGST Act mentioned above.
- e) the refund is not barred under the provisions of 2nd and 3rd proviso to section 54(3) of the CGST Act, 2017 inasmuch as the goods exported out of India are not subjected to export duty, and the supplier of goods or services or both has not availed the drawback in respect of central tax or claimed refund of the integrated tax paid on such supplies.

9. Accordingly, in pursuance of the provisions of the Acts and rules made thereunder the respective Acts, I pass the following order.

ORDER

I hereby sanction the refund of the amount of Rs.5,43,04,056/- in cash to the applicant, in terms of Section 54 (8) of the Acts and Rule 92(1) of the Rules.”

Findings of the Appellate Authority in W.P.No.5622 of 2024 at paras 12 to 18 at pages 152 and 153.

“12. I have gone through records of the case, cross objections and submissions at the time of personal hearing in all the appeals mentioned above.

13. Appellant stated that agreement is signed between M/s. eTouch Systems (India) Private Limited, Mumbai and M/s. eTouch System Corp, USA and not with Hyderabad unit. The agreement with Hyderabad office was not submitted by the applicant along with refund application which is necessary to ascertain the nature of services and Place of provision of service. In the absence of proper identification of the nature of services rendered it is not possible to ascertain the place of supply of service. The provisions of Section 13 of Integrated Goods & Services Tax Act, 2017 need to be verified vis-a-vis the facts of the case to determine whether the said supply is export or not. The Refund Sanctioning Authority without examining the nature of service, place of provision of service and without examining the applicability of sub-section (3) to (13) of Section 13 of Integrated Goods & Services Tax Act, 2017, concluded that the place of provision of service is Outside of India and the supply of service is export, which is not correct.

14. Respondent has produced amendment to the agreement by which additional location of Hyderabad has been added to the agreement. Thus agreement submitted is valid agreement for the services provided from the Hyderabad office as well. As per the agreement copy respondent is providing Information Technology and Information technology enabled services to the M/s. eTouch System Corp. USA and clients of M/s. eTouch System Corp, USA. Therefore I will proceed to examine the nature and place of provision of services on the basis of agreement provided.

15. As per clause (C) of BACKGROUND portion of the agreement respondent on request of the third parties can enter in contract with third parties being customer of M/s. eTouch System Corp, USA. Therefore respondent is working as

intermediary of M/s. eTouch System Corp, USA as well while providing services to them.

16. On being pointed out the same respondent submitted that above clause has been amended and submitted the amendment to the agreement effective from April 2018. As seen from the amendment to the agreement clause 3.1.3 and 3.1.4 has been deleted but not the Clause (C) of the Background. Clause 3.1.3 and 3.1.4 were payment clauses and ensured minimum margin of 15 percent in case of third party earnings. Thus even after amendment to the agreement, clause (C) of the background is in place.

17. From the above discussions and findings it is evident that respondent is providing intermediary services to M/s. eTouch System Corp, USA. Therefore place of provision of services as per section 13(8)(b) of the IGST Act 2017 is in India and services do not qualify as export of services in terms of section 2(6) of the IGST Act 2017.

18. In view of the above findings and discussion, I pass the following order;

Order

I allow the appeal filed by the department by setting aside the order of original authority."

Rejection order in W.P.No.28201 of 2024 at paras 8 and 9 at pages 138 and 139:

"8. Discussion and Findings:

It is observed from the clause C of agreement dated 01.04.2017 between M/s. eTouch Systems (India) Private Limited, Mumbai and M/s. eTouch System Corp, USA, the details of clause C of said agreement are here under:

(C) For administrative convenience or at the request of client of eTouch US, Service Provider may enter into contract with third parties being customer of eTouch US or their group companies.

From the above, it appears that the tax payer is providing intermediary services to M/s eTouch System Corp., USA. Therefore, place of provision of services as per Section 13(8)(b) of IGST Act, 2017 is in India and services do not

qualify as export of services in terms of Section 2(6) of IGST Act, 2017.

The department had already preferred and appeal before the Joint Commissioner/Additional Commissioner (Appeals-1) on the same issue in taxpayer's own case. The Additional Commissioner (Appeals-1) vide Order-in-Appeal no. HYD-GST-RRC-APP1-375-23-24 dt.12.12.2023 has allowed the appeal filed by the department on the following grounds:

"As per Clause (C) of BACKGROUND portion of the agreement respondent on request of the third parties can enter in contract with third parties being customer of M/s eTouch System Corp, USA. Therefore, respondent working as intermediary of M/s eTouch Systems Corp, USA as well while providing services to them.

On being pointed out the same, respondent submitted that above clause has been amended and submitted the amendment to the agreement effective from April, 2018. As seen from the amendment to the agreement clause 3.1.3 and 3.1.4 has been deleted but not the Clause(C) of the Background. Clause 3.1.3 and 3.1.4 were payment clauses and ensured minimum margin of 15 percent in case of third party earnings. Thus, ever after amendment to the agreement, clause (C) of the background is in place.

From the above discussion and finding it is evident that respondent is providing intermediary services to M/s e Touch System Corp, USA. Therefore, place of provision of services as per Section 13(8)(b) of the IGST Act, 2017 is in India and services do not qualify as export of services in terms of Section 2(6) of IGST Act, 2017."

On verification of the agreement and invoices submitted in the present refund claim it is observed that the services were provided basing on the same agreement entered with M/s eTouch System Corp., USA, Hence, the services as mentioned in the invoices issued by M/s. Virtusa Systems (India) Pvt. Ltd are not export of services and hence not eligible for refund as was held by the Additional Commissioner (Appeals) in his OIA No. HYD-GST-RRC-APP1-375-23-24 dt.12.12.2023.

9. Accordingly, in pursuance of the provisions of the Acts and rules made thereunder the respective Acts, and Additional Commissioner (Appeals) order vide OIA No. HYD-GST-RRC-APP1-375-23-24 dt. 12.2023 I pass the following order.

ORDER

I hereby reject the refund of the amount of Rs.1,37,52,427/- in terms of Section 54(5) of the Acts and Rule 92(1) of the Rules.”

18. In order to appreciate the controversy, it is important to refer to the relevant provisions of IGST Act, which defined “intermediary” as per Section 2(13), “export of services” i.e., Section 6(2), and Section 13 which provides for place of supplier services:

“Section 2(13) – “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”

“Section 6 – ‘export of services’ means the supply of any service when, -

(ii) the recipient of service is located outside India.”

“Section 13 - Place of supply of services where location of supplier or location of recipient is outside India.

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:—

(a) services supplied in respect of goods which are required to be made physically available by the recipient of

services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any other use in India, other than that which is required for such repairs or treatment or process;

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

8(b) intermediary services.”

19. A perusal of the impugned orders two by the appellate authority and the rejection order of the refund sanctioning authority, which relies upon the findings of the appellate authority for earlier periods show that the impugned orders rely upon clause (C) of the agreement, wherein it was provided that the petitioner would enter into contract with third parties, customers of M/s. eTouch System Corporation, USA. The appellate authority and the refund sanctioning authority while rejecting

the claim have gone to hold that the petitioner provides intermediary services to M/s. eTouch System Corporation, USA, and its place of provision of services as per Section 13(8)(b) is in India, which do not qualify its export of services in terms of Section 2(6) of the IGST Act. It is pertinent to mention here that the refund sanctioning authority in W.P.Nos.5621 and 5622 of 2024 had in its finding recorded that the tax payer had fulfilled all the conditions which qualify as export of services to his overseas recipient and the refund claim was valid and within time. It had also recorded that the petitioner had provided statements, declarations, undertakings, certificates and other supporting documents electronically vide GST portal with its application which are copies of GSTR-2A/2B of the relevant period, statements of invoices, BIRC/FIRC, self-declaration regarding non-prosecution in sub-rule (1) of Rule 91 of the Central Goods and Services Tax Rules, 2017, to which an acknowledgement under Rule 90(2) of the Acts in FORM GST RFD-02 was also made available to the applicant through the common portal electronically. In order to render a finding on the question whether the petitioner was a intermediary, the appellate authority in the impugned orders dated 12.12.2023 and the rejection of refund by the sanctioning authority dated 09.07.2024 had to render findings on three primary requirements for intermediary services as per the Circular, dated

20.09.2021 issued by the Central Board of Indirect Taxes and Customs,
Department of Revenue, Ministry of Finance, which are usefully
extracted hereunder:

“3. Primary Requirements for intermediary services

The concept of intermediary services, as defined above, requires some basic pre-requisites, which are discussed below:

3.1 Minimum of Three Parties: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.

3.2 Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services;

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

3.3 Intermediary service provider to have the character of an agent, broker or any other similar person: The definition of “intermediary” itself provides that intermediary service provider *means a broker, an agent or any other person, by whatever name called.....*”. This part of the definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a

subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

3.4 Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary *“does not include a person who supplies **such** goods or services or both or securities on his own account”*. Use of word **“such”** in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.

3.5 Sub-contracting for a service is not an intermediary service: An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, ‘A’ and ‘B’ have entered into a contract as per which ‘A’ needs to provide a service of, say, Annual Maintenance of tools and machinery to ‘B’, ‘A’ subcontracts a part or whole of it to ‘C’. Accordingly, ‘C’ provides the service of annual maintenance to ‘A’ as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of ‘A’, i.e. to ‘B’ on behalf of ‘A’. Though ‘C’ is dealing with the customer of ‘A’, but ‘C’ is providing main supply of Annual Maintenance Service to ‘A’ on his own account, i.e. on principal to principal basis. In this case, ‘A’ is providing supply of Annual Maintenance Service to ‘B’, whereas ‘C’ is supplying the same service to ‘A’. Thus, supply of service by ‘C’ in this case will not be considered as an intermediary.

3.6 The specific provision of place of supply of ‘intermediary services’ under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.”

20. A mere perusal of the findings rendered by the appellate authority and the refund rejection order in W.P.No.28201 of 2024, it is apparent that the authorities have failed to record any finding as to existence of a third party in between the transaction undertaken or supply of services made by the petitioner to M/s. eTouch System Corporation, USA. The authorities have also not rendered any finding as to how the supplies made by the petitioner were not between two principals or by the petitioner on its own account despite submission of all relevant documents by the petitioner at the time of filing the refund application. The authorities also failed to record that the petitioner arranged or facilitated some other supplies other than the main supply, which is the role of an intermediary. Therefore, the findings of the authorities recorded in the impugned orders are cryptic, not adhering to the requirements under Section 13(2) defining "intermediary", Section 2(6) defining "export of services" and Section 13 which provides for "place of supplier services" as are relevant for determination on the claim of refund made by the petitioner. The impugned orders of the appellate authority therefore suffer from non-application of mind to the materials on record. Rejection of the refund application by the refund sanctioning authority dated 09.07.2024 in W.P.No.28201 of 2024 has simply borrowed the observations made by the appellate authority in the case of

the same petitioner relying upon clause (C) of the agreement for earlier two tax periods.

21. In the aforesaid facts and circumstances, this Court is of the view that the matter requires to be remanded to the appellate authority in W.P.Nos.5621 and 5622 of 2024 respectively and to the refund sanctioning authority in W.P.No.28201 of 2024. The impugned orders dated 09.07.2024, 12.12.2023 and 12.12.2023 in W.P.Nos.28201, 5621 and 5622 of 2024 are accordingly set aside. Let it be made clear that this Court has not made any comments on the merits of the claim of the refund by the petitioner. Since the matter of claim for refund is pending since long, the concerned authorities would endeavour to decide the appeal/application for refund in a reasonable time preferably within 12 weeks from the date of receipt of a copy of this order.

22. Accordingly, all these writ petitions are allowed. No costs.

Miscellaneous applications, if any pending, shall stand closed.

SD/-P.C.SULEKHA DEVI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Secretary, Union of India Ministry of Finance, Government of India, North Block, New Delhi - 110 001.
2. The Principal Secretary, State of Telangana, Finance Department, Government of Telangana
3. Deputy Commissioner of Central Tax, Gachibowli Division, Ranga Reddy Commissionerate, 4th Floor, Serene Heights, Humayun Nagar, Masab Tank, Hyderabad- 500028, Telangana
4. Commissioner of Central Taxes and Customs, Ranga Reddy, CGST Commissionerate, Posnet Bhavan, Tilak Road, Hyderabad - 500001
5. Additional/Joint Commissioner, (Appeals-1) GST and Central Tax, 7th Floor, GST Bhavan, L B Stadium Road, Basheer Bagh, Hyderabad- TS, 500004
6. One CC to Ms. MAANASA.K, Advocate [OPUC]
7. One CC to SRI N.BHUUJANGA RAO, Dy. SOLICITOR GEN. OF INDIA [OPUC]
8. One CC to SRI R.SUSHANTH REDDY, SC [OPUC]

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9. One CC to SRI D.RAGHAVENDAR RAO, SC FOR CBIT [OPUC]
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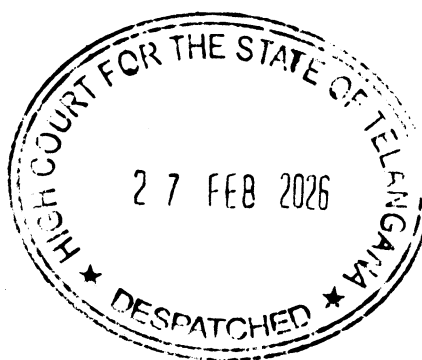
CHR

HIGH COURT

DATED:05/01/2026

COMMON ORDER

WP.Nos.28201, 5621 AND 5622 of 2024



**ALLOWING THE WRIT PETITIONS
WITHOUT COSTS**

⑫ CHR
23/2/26