

TAX INFO

Dated 26/07/2022

Latest update on GST Law: **Roaming Services to Foreign Telecom Operators (FTOs) provided by telecom operators are "Export of services"** as given by **Bombay High Court**.

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Name of Appellant	Commissioner of CGST & Central Excise
Name of Respondent	Vodafone Idea Limited
Court	Bombay High Court
Date of Judgement	04/07/2022
Appeal No.	WRIT PETITION (L) NO. 12860 OF 2022

Brief Facts of the Case Law:

Vodafone Idea Limited, inter-alia, provides the services in the nature of international Inbound Roaming Services (IIR) and International Long Distance (ILD) Services to Foreign Telecom Operators (FTOs). The services provided by Vodafone Idea Limited are **export of services** within the meaning of section 2(6) of the IGST Act. Petitioner chose to export the services on payment of Integrated Tax and claim refund thereof. During the period April- 2019 to September 2019, Vodafone Idea Limited filed applications dated 26.03.2021 and 20.05.2021 for refund of integrated tax paid on export of services under Form RFD-01A. Department issued two show-cause-notices dated calling upon Vodafone Idea Limited to show cause as to why its refund claims, should not be rejected which were duly replied. However, Department rejected refund claims of Vodafone Idea Limited and held that the place of supply of services provided by Vodafone Idea Limited was the State of Maharashtra and cannot be considered as export of services. Aggrieved by the order, Vodafone Idea Limited filed the appeal before the Joint Commissioner of CGST and CX (Appeals). The Joint Commissioner (Appeals), by an order dated 18.08.2021, held that the services provided by Vodafone Idea Limited is **export of services and thus are eligible for refund** of Rs. 1,02,74,14,843/- alongwith appropriate interest. Hence, Revenue preferred this writ petition.

Contention of the Respondent:

By virtue of the IIR and ILD services provided by it, a person travelling to a country outside of his usual place of residence (where he is a regular subscriber of a telecom service provider) wishes to use telecom services from the same service providers (who usually provide services to that person in his / her usual place of residence) with the same contact number, so that his / her connection with the outside world was not interrupted, to cater to such need, almost all telecom service providers have an agreement with the other telecom service providers in different countries / circles to provide telecom services to their customers when he / she is travelling to other country and vice versa. The services are rendered under agreements with the service recipients and according to the agreement; Vodafone Idea Limited is contractually obligated only to the Foreign Telecom Operators (FTOs) for the services under the agreement. The consideration is payable to Vodafone Idea Limited by the FTOs and the consideration is payable in convertible foreign exchange. Home Operator ('HO') is licensed to provide telecom services only in the Telecom Circle of its country and Foreign Telecom Operator ('FTO') is licensed to provide services in the Telecom Circle of respective country. Further, HO and FTO have entered into a roaming arrangement whereby a subscriber of HO, travelling to New York would be able to use the network of FTO, without being a telecom subscriber therein of FTO and when a subscriber of FTO travels to India, he/she will be able to seamlessly latch on to the network of HO and continue to use telecom services in India. Depending upon the usages of the subscriber and the arrangement between HO and FTO, FTO and HO would issue invoices on each other. Further, they would in turn recover service charges from their respective customers.

The services are contractually provided by HO and FTO's for allowing its operators to make / receive calls while roaming. For these services, HO raises invoice on FTO's. In the given case, Vodafone Idea Ltd is the Home Operator and hence, Vodafone Idea Ltd raises invoices on FTO's. The place of supply where the services are consumed, therefore is outside India. The place of supply of services, where the location of supplier or location of recipient is outside India, is required to be determined in terms of Section 13 of the IGST Act. Under sub-section 2 of Section 13

of the IGST Act, the location of the recipients of services rendered by Vodafone Idea Limited is that of FTO. Thus, the conditions prescribed under section 2(6) of the IGST are also complied with.

Contention of the Department:

Since the customer of FTOs makes calls within the territory of Maharashtra, the place of supply of service is within Maharashtra and not outside India. The roaming services provided by Vodafone Idea Limited to customers of foreign entities are actually consumed in India only by those customers visiting India from abroad. Hence, in the light of Section 13(3)(b) of IGST, condition No. (iii) of Section 2(6) of IGST as the place of supply outside India has not been fulfilled. Therefore, the said services cannot be treated as export of services.

Decision of the Court:

In this case consideration is payable by the FTO for the services rendered to it. The services are rendered under agreements with the service recipients and according to the agreement, Vodafone Idea Ltd is contractually obligated only to the FTOs for the services under the agreement; the consideration is payable by the FTOs and the consideration is payable in convertible foreign exchange. There is no mention of any agreement with subscriber of FTO. Vodafone Idea Ltd has reiterated that there is no contract with subscriber of FTO making it liable to pay value of service to Vodafone Idea Ltd. We find that practically it is impossible for Vodafone Idea Ltd to have contract with subscriber of FTO. Therefore, the subscriber is not liable to make any payment to Vodafone Idea Ltd. It is a fact that payment is received from FTO. Hence, subscriber of the FTO cannot be considered as recipient of service as held by Adjudicating Authority. FTO is undoubtedly the recipient of service.

The point of dispute is whether provisions of Section 13(2) or Section 13(3) of IGST are applicable to the present case. Section 13(2) refers to the place of supply of services as the location of the recipient of services except in cases of Sub-section (3) to (13) of Section 13. Section 13(3) identifies the place of supply of services as the location where the services are actually performed. The provision of section 13(3)(b) is applicable in the case where services are supplied to an individual as Section 13(3) (b) starts with the words "service supplied to an individual". We find that in the instant case the said services were supplied to FTO and not to an individual. The FTO had supplied services to their subscriber (individual). Here, the supplier of services is Vodafone Idea Ltd and the recipient of the service is FTO as discussed above. Further, Vodafone Idea Ltd has no idea of subscribers of FTO and therefore question of supplying service to an individual (subscribers) does not arise. Vodafone Idea Ltd had issued invoices to FTO and not to any individual which substantiates those services were not provided to an individual. We would agree with the concept that customer's customer cannot be your customer. In the case at hand customer of Vodafone Idea Limited is the FTO and the subscribers of FTO are the customers of FTO. When a service is rendered to a third-party customer of FTO, the service recipient is your customer and not the third party customer of FTO.

In our opinion, therefore Vodafone Idea Limited has provided services to FTOs and not to the individual subscribers of FTOs. Therefore Section 13(3)(b) is not attracted. Section 13(3)(b) on which reliance has been placed by the Deputy Commissioner is not applicable.

As per Section 13(2) of the IGST, 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. Therefore, the place of service or supply of service supplied by Vodafone Idea Limited is the location of recipient of the service, i.e., location of the FTO, which is outside India. It is therefore evident that in the instant case, sub-section (2) of Section 13 is applicable and not sub-section (3)(b) of Section 13. Therefore, performance of services has no relevance in this case.

This Court dismissed the petition filed by revenue. Consequently, the order-in-appeal dated 18.08.2021 passed by the Joint Commissioner (Appeals) was upheld and it was directed to grant the refund of Rs.1,02,74,14,843/- with appropriate interest thereon.

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