

TAX INFO

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Latest update on GST Law: Information regarding **Important ruling that Supply of services by intermediary is not export of services** based on the **Judgement issued by Gujarat High Court.**

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Supply of services by intermediary is not export of services

Name of Petitioner	Material Recycling Association of India
Name of Respondent	Union of India
Court	Gujarat High Court
Date of Judgement	24.07.2020
Order No.	Special Civil Application No. 13238 of 2018

The petitioner, Material Recycling Association of India is an association comprising the recycling industry engaged in manufacture of metals and casting etc., for various upstream industries in India. The members of the petitioner also act as agents for scrape, recycling companies based outside India engaged in providing business promotion and marketing services for principals located outside India.

The petitioner submitted that the member of the petitioner association receives only the commission upon receipt of sale proceeds by its foreign client in convertible foreign exchange. Accordingly, IGST cannot be levied on the members of the petitioner association, who are engaged in the transaction of export of service, covered under the Section 16(1) of the IGST Act, 2017 which provides for “zero rated supply”.

The petitioner has challenged the constitutional validity of Section 13(8)(b) of the Integrated Goods Service Tax Act, 2017 with a direction to the respondent to refund of IGST paid on services provided by the members of the petitioner association and to their clients located outside India.

HC finds no unconstitutionality in Sec 13(8)(b) determining place of supply for intermediary read with section 8(1) of IGST Act. As per Section 2(13) of IGST Act, Intermediary means a broker or agent or any other person who arranges or facilitates supply of goods or services between two persons except when he supplies goods or services on his own account.

Intermediary located and registered in India undertakes promotional and marketing of goods and services belonging to foreign recipient outside India. Foreign recipient then supplies directly to the ultimate customer and pay specified percentage in convertible foreign exchange to this intermediary. Then such service taken by intermediary on behalf of foreign recipient is export of service or not? Export of services means:

1. Supplier must be located in India.
2. Recipient must be outside India
3. Money must be received in Convertible Foreign Exchange
4. There should not be establishment of distinct person
5. Place of supply must be outside India

As per Section 13(8)(B), Place of supply by intermediary is location of supplier. So, both place of supply and location of supplier is in India, hence, it is not export of services. GST to be levied at the rate of 18% of which no credit to the foreign recipient.

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