

P&H HC stays adjudication in IDP-Education's 'Intermediary' classification issue de-jure pre-GST ruling

Oct 29, 2024

Punjab & Haryana HC grants interim stay in a writ petition filed by IDP Education India Pvt Ltd (Petitioner) challenging the SCN issued by the DGGI proposing a GST demand of Rs 237 crore (approx), classifying IDP as 'intermediary' rather than an 'exporter of service'; Petitioner, engaged in providing support services to IDP Australia by assisting Indian students in choosing of courses in foreign universities, visa assistance services etc, argues that this SCN is issued parallel to SCNs and order issued by the State GST authorities in two separate occasions and is currently being litigated against before the writ court; These being - (i) one from the he refund rejection order of Chandigarh Commissionerate, (ii) second from the order of Haryana GST authorities confirming the SCN raising the GST demand and against which Petitioner succeeded in getting an interim order; Petitioner invites attention to the ruling of CESTAT which declared it as a 'sub-contractor' receiving claim from IDP Australia for its services under Finance Act, 1994 and that same was subsequently upheld by the Delhi HC; Petitioner asserts that once it is held that it is providing services as 'sub-contractor', it cannot be held as 'intermediary' as per Circular No. 159, which also indicates that it is providing services on its own account; Furthermore, alludes to the fact that not only the authorities in Andhra Pradesh and Kerala have granted refund by holding that Petitioner is not an 'intermediary', but writ court in Petitioner's own case has asked clarification from the Department as to why the ruling of CESTAT is not being followed; Petitioner also challenges the DGGI power to issue SCN as 'proper officer' and contends that the fact that it has taken an 'export' position was within Revenue's knowledge, in which case, invoking section 74 is erroneous; Hearing such arguments, HC issues notice, directs interim stay of all future proceedings in relation to the demand, and tags the matter with already pending matters of the Petitioner; Lists matter on November 6, 2024.

The matter is before Justice Sanjeev Prakash Sharma and Justice Sanjay Vashisth.

Sr. Advocate Tarun Gulati, alongwith Advocates Sudipta Bhattacharjee, Onkar, Arjyadeep Roy (from Khaitan & Co), and Advocates Kumar Sambhav, Nikhil Goyal and Rana Gurtej are appearing for Petitioner, whereas Revenue is being represented by Sr. Standing Counsel Rishabh Kapoor.

Information in this alert is source based.

IDP Education India Private Limited v Union of India & Ors

Key averments of Petitioner:-

- (i) The DGGI is not a proper office to issue the SCN and hence the proceedings are devoid of jurisdiction.
- (ii) On merits, IDP only has a contractual arrangement with IDP Australia and has no privity either with the Foreign Universities or the Indian students. IDP provides its services on its own account and cannot be categorized as an 'intermediary'.
- (iii) The order confirming the demand raised in the SCN and SCN itself was issued with a pre-judged mindset. Accordingly, the proceedings are arbitrary. Despite a stay being there for the GST for the State of Haryana, the same demand was again incorporated in the SCN issued by DGGI.
- (iv) As per Circular No. 159, sub-contracting of services cannot be categorized as 'intermediary' services. The actual arrangement between IDP and IDP Australia is akin to sub-contracting which is not 'intermediary' service.
- (v) IDP has a favourable judgment from CESTAT which has been affirmed by the Delhi High Court. The Punjab & Haryana High Court has ruled in the case of Genpact that the concept of 'intermediary' under the service tax laws and GST regime is same. Hence, rationale of the judgment of CESTAT is equally

applicable in GST regime.

(vi) Section 74 of the Central Goods and Services Tax Act, 2017 ("CGST Act") has been incorrect and erroneously invoked. The fact that IDP has been taking an 'export' position was always within the knowledge of the Department.

(vii) HC in Genpact's case had stayed proceedings raising demand on the output side when the petitions of rejection of refund was pending. Similar order also exists in IDP' case.

(viii) The action of the Department in raising the demand is nothing but an afterthought and a counter-blast measure.

(ix) Given that favourable CESTAT judgment exists in case of IDP which has been affirmed by the Delhi High Court, any recovery proceedings would amount to disregarding the binding judgment.

(x) Authorities in Andhra Pradesh and Kerala have granted refund to IDP holding that they are not 'intermediary'. Tax authorities cannot take contrary positions in different States.

(xi) Section 74 has been incorrect and erroneously invoked. The fact that IDP has been taking an 'export' position was always within the knowledge of the Department.

(xii) Given that favourable CESTAT judgment exists in case of IDP which has been affirmed by the Delhi High Court, any recovery proceedings would amount to disregarding the binding judgment.

(xiii) Authorities in Andhra Pradesh and Kerala have granted refund to IDP holding that they are not 'intermediary'. Tax authorities cannot take contrary positions in different States.

(xiv) The Punjab & Haryana High Court in IDP's own case vide its order dated 9 October 2023 asked the Department to clarify as to why the judgment of CESTAT is not being followed.

GSTsutra Note:

- HC earlier granted [interim relief](#) against a GST demand of Rs 30 crore classifying Petitioner as an 'Intermediary' w.r.t. support services provided to Australian counterpart.
- [Circular No. 159/15/2021-GST](#) clarifies doubts regarding the scope of 'intermediary'.