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GSTAT, Mumbai held that Procurement Hub Services Rendered by Foreign Affiliate to Indian Recipient Constitute Import of Services and Not Intermediary Services



The GSTAT, Mumbai (Division Bench) in *M/s. Dow Chemical International Private Ltd. v. Commissioner of State Tax, Mazgaon, Mumbai [Final Order in Appeal Nos. APL/2/PB/2026 to APL/7/PB/2026 dated June 04, 2026]* dismissed the appeals filed by the assessee and held that procurement support services provided by Dow Europe GmbH (Switzerland) — functioning as the centralized procurement hub of the Dow Group — to its Indian affiliate do not qualify as “intermediary services” within the meaning of Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (“the IGST Act”), but rather constitute an “import of services” with the place of supply being in India, and consequently, the refund of IGST paid under the Reverse Charge Mechanism (“RCM”) for the period January 2022 to June 2022 cannot be granted.

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Facts:

- **M/s. Dow Chemical International Private Limited (“the Appellant” / “Dow India”)**, an Indian company engaged in manufacturing and distributing chemical components, entered into a written Procurement Agreement dated July 01, 2021 with **Dow Europe GmbH (“Dow Europe”)**, a Swiss-incorporated related entity within the global Dow Group that functions as the centralized procurement hub of the entire Group.
- Under the said Agreement, Dow Europe undertook activities such as identification, selection and approval of potential foreign suppliers, negotiation of procurement terms, facilitation of supply from selected suppliers to the Appellant, development of procurement strategies, supplier risk management, strategic sourcing, procurement governance, quality audits, and oversight of procurement.
- During the period **January 2022 to June 2022**, under the impression that the services received from Dow Europe constituted an “import of services” under Section 2(11) of the IGST Act, the Appellant discharged IGST under RCM amounting to **Rs. 7,81,12,995/- , Rs. 1,12,62,629/-, Rs. 1,30,15,941/-, Rs. 1,47,89,813/-, Rs. 1,31,52,277/- and Rs. 38,56,339/-** respectively (aggregate of approximately Rs. 13.41 Crores).
- Subsequently, the Appellant reversed the Input Tax Credit availed on the said RCM payments and filed refund applications under Section 54(1) of the MGST Act read with Rule 89 of the MGST Rules, contending that the services were in the nature of “**intermediary services**” under Section 2(13) of the IGST Act and that the place of supply under Section 13(8)(b) was outside India (Switzerland), thereby not attracting GST.
- The Deputy Commissioner of State Tax rejected the refund applications, and the Joint Commissioner of State Tax (Appeals), Raigad Division, Belapur, Navi Mumbai, vide

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impugned orders dated August 07, 2023, confirmed such rejection. Aggrieved, the Appellant preferred appeals before the GSTAT under Section 112 of the CGST Act, 2017.

Contentions:

Appellant:

- The services rendered by Dow Europe squarely fell within the wide and inclusive definition of “intermediary” as Dow Europe was merely facilitating the supply of goods between the Appellant (in India) and foreign suppliers.
- All three pre-requisites under **Circular No. 159/15/2021-GST dated September 20, 2021** stood satisfied — three parties (Appellant, Dow Europe, foreign suppliers); two distinct supplies (main supply of goods + ancillary facilitation); Dow Europe not supplying goods on its own account.
- The remuneration was structured as 3.5% of total purchases (commission-based), a key indicator of facilitative role, and was payable only if procurements were made.
- Reliance was placed on rulings of AAR/AAAR in *Airbus Group India Pvt. Ltd., Toshniwal Brothers (SR) Pvt. Ltd., Gulf Turbo Solutions LLP, Global Reach Education Services Pvt. Ltd.* and *Vservglobal Pvt. Ltd.*

Respondent:

- Dow Europe did not merely facilitate but independently rendered substantive procurement and sourcing services on a principal-to-principal basis using its own systems, expertise and strategic sourcing capabilities.
- Clause 6 of the Procurement Agreement expressly provided that the parties function as independent contractors and Dow Europe was not authorized to bind Dow India —

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hence the exclusionary clause of Section 2(13) (“services on his own account”) was squarely attracted.

- Reliance was placed on *Columbia Sportswear India Sourcing (P.) Ltd. v. Union of India* [2025] 174 taxmann.com 936 (Karnataka) and on para 3.5 of Circular No. 159/15/2021-GST (sub-contracting on principal-to-principal basis is not intermediary).

Issue:

Whether the procurement support services rendered by Dow Europe GmbH (Switzerland) to Dow India under the Procurement Agreement dated July 01, 2021 qualify as “intermediary services” within the meaning of Section 2(13) of the IGST Act — thereby attracting Section 13(8)(b) and rendering the place of supply outside India — or whether the said services constitute an “import of services” with the place of supply being in India under the default rule of Section 13(2), and consequently, whether the Appellant is entitled to refund of IGST paid under RCM for the period January 2022 to June 2022?

Held:

The GSTAT, Mumbai in **Final Order in Appeal Nos. APL/2/PB/2026 to APL/7/PB/2026** held as under:

- **Observed that**, two divergent streams of legal opinion had emerged on the issue — where an Indian entity provided services to a foreign sister concern, Revenue invariably treated the same as “intermediary services” taxable in India; whereas where a foreign entity provided services to an Indian sister concern, Revenue treated the same as “import of services” and levied IGST under RCM. The Bench held that both contradictory views could not co-exist and one consistent view must be adopted.
- **Noted that**, rulings of State Advance Ruling Authorities relied upon by the Appellant (such as *Airbus Group India, Global Reach Education*) are, in view of Section 103(1)(a)

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of the CGST Act, binding only on the applicant and the concerned officer and have merely persuasive value before the Tribunal. Wherever there is a conflict between a High Court ruling and an Advance Ruling, the High Court ruling must prevail.

- **Noted that**, CBIC circulars are not binding on judicial authorities like High Courts (under Articles 226/227) or on the Tribunal which is not a Department under CBIC; however, they may be looked into for interpretation in a persuasive capacity, relying on *K.P. Varghese v. ITO [1981] 7 Taxman 13 (SC) and Ellerman Lines Ltd. v. CIT [1971] 82 ITR 913 (SC)*.
- **Observed that**, the first prerequisite under Circular No. 159/15/2021-GST of **minimum three parties** was satisfied, as Dow Europe identified the suppliers and fixed the price, quantity and quality, Dow India purchased the goods, and a third-party foreign supplier was also involved.
- **Held that**, the second prerequisite of **two distinct supplies** (main supply between principals + ancillary supply of facilitation) was **not satisfied**, inasmuch as both Dow Europe and Dow India are direct/indirect subsidiaries of Dow INC (collectively “Dow Group”). Dow Europe, located in Switzerland, functions as the **Centralized Procurement Hub** for the entire Dow Group globally — thereby providing a **core service** for which Dow Europe itself exists, and not an ancillary facilitative service.
- **Held that**, applying the ratio in *Columbia Sportswear India Sourcing (P.) Ltd. v. Union of India [2025] 174 taxmann.com 936 (Karnataka)* and *Pr. Commissioner v. Blackberry India Pvt. Ltd. [SERTA 7/2023 dated July 12, 2023] (Delhi HC)*, Dow Europe renders services **on its own account** to the service recipient located in India and acts as an **independent contractor** — it does not represent or bind the Indian client in the course of its services. The exclusionary clause of Section 2(13) is therefore squarely attracted.

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- **Held that**, the services received by Dow India are in the nature of an **import of services** under Section 2(11) of the IGST Act and the place of supply shall be in India under the default rule of Section 13(2), and the transaction does not fall within the purview of Section 13(8)(b) read with Section 2(13).
- **Held that**, the view of the First Appellate Authority that the refund claim was an “afterthought” was **incorrect** — Section 54 of the CGST Act read with Rule 89 of the CGST Rules expressly provides for refund of tax paid under misconception within the prescribed time limit, and such a statutory remedy cannot be defeated on the principle of an afterthought.
- **Held that**, the services provided by Dow Europe cannot be termed as “intermediary services” as they are not in the nature of ancillary services, but rather constitute core services rendered by it to a sister concern under the global Dow INC. Accordingly, all the questions framed were answered against the Appellant and in favour of the Revenue, the appeals were **dismissed**, and the orders of the First Appellate Authority were **confirmed**.

Our Comments:

Section 2(13) of the IGST Act, 2017 defines “intermediary” as “*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 13(8)(b) of the IGST Act** provided that the place of supply of intermediary services shall be the location of the supplier of services.

Crucially, Section 13(8)(b) of the IGST Act has now been omitted by Section 157 of the Finance Act, 2026 (No. 4 of 2026) with effect from March 30, 2026, pursuant to the recommendation of the 56th GST Council Meeting (September 03, 2025). Post-omission, the

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place of supply of intermediary services is governed by the default rule under Section 13(2) of the IGST Act, i.e., the **location of the recipient**. For Indian-resident recipients (such as Dow India) availing facilitation services from foreign suppliers, the place of supply remains in India — thereby attracting IGST under RCM — a position fully consistent with the GSTAT’s ruling under analysis.

The order under analysis is notable for the **symmetrical / parity approach** adopted by the GSTAT — the Bench explicitly disapproved of the Revenue’s inconsistent practice of treating outbound (Indian-to-foreign) services as intermediary while treating identical inbound (foreign-to-Indian) services as import. Applying the same test, the Tribunal held that procurement support rendered by a centralized hub of a global group to its Indian affiliate is a core service rendered on the supplier’s own account, hence neither intermediary nor an ancillary service, and the place of supply is in India.

Pari materia judgments (services on “principal to principal basis” — not intermediary):

- ***Columbia Sportswear India Sourcing (P.) Ltd. v. Union of India [2025] 174 taxmann.com 936 (Karnataka)***: The Karnataka High Court held that buying support services (sourcing, factory monitoring, shipment coordination) rendered on cost-plus mark-up basis by the Indian entity to its foreign affiliate were **export of services** and not intermediary, as the petitioner acted as an independent contractor on its own account, did not bind the foreign recipient, and was remunerated on cost-plus and not on success-fee/commission basis. SLPs filed by Revenue were dismissed by the Supreme Court.
- ***Pr. Commissioner of CGST, Delhi South v. Blackberry India Pvt. Ltd. [SERTA 7/2023 dated July 12, 2023] (Delhi HC)***: Marketing, promotional and technical marketing assistance services rendered by Blackberry India to Blackberry Singapore on principal-to-principal basis for cost-plus consideration were held to be export of services and not

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intermediary, since the appellant was an independent service provider not facilitating supply of services from another supplier.

- ***Genpact India (P) Ltd. v. Union of India [2022] 144 taxmann.com 201 (Punjab & Haryana)***: The Punjab & Haryana High Court held that BPO services provided on a principal-to-principal basis under a Master Services Sub-Contracting Agreement with the foreign parent were not intermediary services, and refund of unutilized ITC aggregating Rs. 26,34,61,625/- was directed — affirming the principle that **sub-contracting on a principal-to-principal basis is not intermediary** (in line with para 3.5 of *Circular No. 159/15/2021-GST*).
- ***Commissioner of Delhi GST v. Global Opportunities Pvt. Ltd. (Supreme Court, January 28, 2026)***: The Apex Court (Bench led by Justice J.B. Pardiwala) dismissed Revenue's SLP and upheld the Delhi High Court's judgment holding that educational consultancy services rendered to foreign universities on a principal-to-principal basis qualify as export of services and not as intermediary services, even though the consideration was received in convertible foreign exchange and Indian students benefitted. The Court also noted that the recent legislative recommendation to omit Section 13(8)(b) reflected the legislative intent to remove the confusion.
- ***K.C. Overseas Education Pvt. Ltd. v. Union of India (Bombay HC, affirmed by Supreme Court)***: Educational consultancy services to foreign universities held to be export and not intermediary.

Contrary/persuasive rulings (which the GSTAT distinguished and chose not to follow):

- ***In re Airbus Group India Pvt. Ltd. 2021 (54) G.S.T.L. 195 (AAR-Karnataka)***: Procurement support services rendered by the Indian entity to its French parent were held to be intermediary services. The GSTAT held this AAR ruling to be persuasive only (Section 103(1)(a) CGST Act) and inconsistent with the binding High Court rulings supra.

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- *In re Global Reach Education Services Pvt. Ltd. 2018 (4) TMI 808 (AAR-West Bengal); In re Vservglobal Pvt. Ltd. 2018 (11) TMI 959 (AAAR-Maharashtra); In re Toshniwal Brothers (SR) Pvt. Ltd. (AAAR-Karnataka) — advance* rulings holding similar arrangements to be intermediary; treated as persuasive only and not binding.

On the constitutional validity of Section 13(8)(b):

In *Dharmendra M. Jani v. Union of India (Bombay HC- WRIT PETITION NO. 2031 OF 2018)*, a Division Bench delivered a split verdict on the constitutionality of Section 13(8)(b). The matter was referred to a third Judge (Kulkarni, J.) who upheld the validity of Section 13(8)(b) but confined its operation strictly to the IGST Act, holding that it cannot be extended to levy CGST/SGST. The Gujarat High Court has also upheld its validity on the same restricted basis. With the omission of Section 13(8)(b) by the Finance Act, 2026 effective March 30, 2026 **without any savings clause**, a strong view exists that the long-pending controversy stands legislatively buried and that pending demands/refund denials premised on Section 13(8)(b) should also lapse consequentially.

Closing thought: Although the assessee in the present matter lost its refund claim, the GSTAT's reasoning is a welcome step towards intellectual consistency in the Revenue's approach to cross-border services. The same legal test — whether the supplier acts on its own account on a principal-to-principal basis, or merely arranges/facilitates a third-party supply — must be applied symmetrically whether the supplier is in India or abroad. Going forward, with Section 13(8)(b) gone, the controversy is largely consigned to history; however, the distinction between intermediary and principal-to-principal supply will continue to be critical for determining import RCM liability on inbound services and for export refund eligibility on outbound services.

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