

Jumbo Trumpets...

In Re: Dharmendra M Jani & Anr. vs UOI & Ors. – W.P. No. 2031 of 2018

In a very significant judgment, the Hon'ble HC of Bombay had delivered a landmark decision on GST levy "INTERMEDIARY SERVICES" rendered to overseas recipients.

The ratio, as we have understood, is as follows:

1. Section 13(8)(b) of the IGST Act, is held to be constitutionally valid.
2. So it follows that, for an intermediary service provider who has provided a service to an overseas recipient, the place of supply is the location of the supplier - as per Sec. 13(8)(b) of the IGST Act.



3. Though as per the above deeming provision which makes both the location of the supplier (intermediary) and the place of supply are in the same State, still it is an export of service (in its literal meaning) and thus **WOULD NOT CONSTITUTE INTRA-STATE** supply (by its ordinary meaning) as the CGST as well as SGST laws has no Constitutional *locus standi* to tax an export of service.

4. What follows is that, the CGST as well as the corresponding State GST cannot be levied on such intermediary service.

5. Further, it would also not qualify to be an inter-State supply (as the location of the intermediary as well as the POS are not in two different States/UT) to constitute an IGST transaction.

6. Thus, neither CGST/SGST nor IGST could be levied in this transaction.



7. Last but not the least, this supply would also not qualify as export of services under GST law because it would not satisfy one of the conditions that the POS should be outside India because of the application of Sec. 13(8)(b) and thus would not get the export incentives, if any, under GST law.

8. In effect, the intermediary service rendered to an overseas recipient is on a suspended animation and cannot be taxed as intra- State (CGST/ SGST) nor inter - State (IGST) nor considered as export of Service (as one condition is unfulfilled).

There is also a shade of advisory to follow the Parliamentary recommendation to consider intermediary services to bring under the default Sec. 13(2) of IGST Act where the POS would be the location of the recipient.

We won't be surprised, instead of taking the advisory, the revenue hungry Government may even amend IGST Act in future and make Sec. 13(8)(b) to constitute an inter- State supply, as a special dispensation to the default definition.

