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## **INTERNATIONAL INBOUND ROAMING SERVICES AND INTERNATIONAL LONG DISTANCE SERVICES TO FOREIGN TELECOM OPERATOR IS EXPORT OF SERVICES: BOMBAY HIGH COURT**

The Hon'ble High Court of Bombay ('BHC') in *Vodafone Idea Limited vs The Union of India & Ors.*<sup>1</sup> with *Commissioner of CGST & Central Excise vs Vodafone Idea Limited*<sup>2</sup> held that services rendered by Home Telecom Operator to Foreign Telecom Operator ('FTO') in the nature of International Inbound Roaming Services ('IIR') and International Long Distance ('ILD') is Export of Services.

### **I. Background**

1. Section 2(6) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') defines 'export of services' as the supply of any service when:
  - i) the supplier of service is located in India;
  - ii) the recipient of service is located outside India;
  - iii) the place of supply of service is outside India;
  - iv) the payment for such service has been received by the supplier of service in convertible foreign exchange (or in Indian rupees wherever permitted by the Reserve Bank of India); and
  - v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8.
2. Section 13 of the IGST Act is applied to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India. Section 13(2) provides that the place of supply of services shall be the location of the recipient of services, except for the services specified in sub-sections (3) to (13).

### **II. Brief facts of the case**

1. Vodafone Idea Limited ('VIL') was engaged in providing telecom services under the telecommunication licence received from Government of India. VIL had supplied IIR and ILD services to FTOs under an agreement and paid IGST on export of its services. Subsequently, VIL applied for refund under Section 54 of the Central Goods and Services Tax Act, 2017 ('CGST Act') read with Rule 96 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules'), which was approved by the Joint Commissioner (Appeals-II) vide. Order dated 18.08.2021.
2. Subsequently, VIL filed writ petition and sought implementation of above mentioned order. The revenue sought quashing of the said order on following grounds:
  - i) The said services were consumed by the users of FTO travelling in India, therefore the same cannot be considered as export of services.
  - ii) For a service to be treated as export, the place of supply shall be outside India and merely receiving consideration in foreign currency is not sufficient for a transaction to be export of services.

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<sup>1</sup> W.P. No. 3221 of 2021

<sup>2</sup> W.P. No. 12860 of 2022

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**III. Observations by The BHC**

1. The Court observed that the relationship between the FTO and its subscribers is on principal to principal basis. The subscribers were not representative or agent of the FTO. Therefore, Section 13(3)(b) of the IGST Act was not applicable in the present case.
2. The Court further observed that the subscribers of FTO were not the customers of VIL since the subscribers were not liable make any payment to VIL. Further, VIL had raised invoices to FTO for supply of services, and not to any individual. Based on aforesaid, the Court held that FTO was the recipient of VIL's services and not FTO's subscribers.
3. There was no supply of services specified in sub-sections (3) to (13) of Section 13 of the IGST Act. Therefore, it was held that the place of supply of service shall be the location of recipient of the services as per Section 13(2) of the IGST Act, which in the present case was located outside India.

**IV. Decision of the BHC**

In view of the above mentioned observations, the Hon'ble BHC allowed the petition filed by VIL and directed the Revenue to implement the order-in-appeal dated 18.08.2021 passed by the Joint Commissioner (Appeals) and grant the refund.

**V. VA Comments:**

The instant judgement is pertinent for determination of place of supply in case of export and import of services under Section 13 of IGST Act. The players in the telecom sector engaged in rendering such services should seek to draw in agreements with the FTO's which clearly define the substance of the transaction and the actual recipient so as to avoid any ambiguity.

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