# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION
## WRIT PETITION (L) NO.12528 OF 2025

GlobeOp Financial Services (India) Private Limited (Surviving entity after merger of GlobeOp Financial Services Technologies (India) Private Limited with GlobeOp Financial Services (India) Private Limited, effective from 01.02.2022
A company incorporated under the laws of India, having its registered office at 5th Floor, 501/502, Interface Building No.16, Malad West, Mumbai Suburban, Maharashtra – 400 064 ...**Petitioner**

***Versus***

1. Deputy Commissioner of State Tax, (MUM-NOD-E-0901), Malad_West_ 501, Nodal-09, Mumbai, Old Building, Cabin No.C-14, 5th Floor, GST Bhavan, Mazgaon, Mumbai – 400 010

2. State of Maharashtra, Through the Commissioner of State Tax, GST Bhavan, Balwant Singh Dodhi Marg, Mazgaon, Mumbai – 400 010

3. Union of India, Ministry of Finance, Department of Revenue through the Secretary (Revenue), North Block, New Delhi – 110 001 ...**Respondents**

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Mr. Rohan Shah, Senior Advocate a/w Mr. Mohammed Anajwalla, Ms. Chandni Tanna & Mr. Prathamesh Chavan i/b. India Law Alliance for the Petitioner.
Ms. Prachi Tatake, Addl. G. P. for Respondent No.1.
Ms. Shruti Vyas a/w Ms. Suman Kumar Das for Respondent No.3.

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CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATED : 30 June 2025

ORAL JUDGMENT:- *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. This petition challenges the impugned order dated 24 February 2025, issued by the First Respondent, to the extent that it confirms the GST demand of Rs.70,57,98,2018/- for the period April 2020 – March 2021.

4. Mr. Shah, learned senior advocate for the Petitioner, at the outset submitted that the impugned order is vitiated by non-application of mind, non-consideration of detailed submissions canvassed by the Petitioner in its replies dated 27 January 2025 and 6 February 2025. He pointed out that the so-called reasoning in the impugned order is a verbatim copy of the statements in the show cause notice dated 28 November 2024 at Exhibit-S. He handed in the chart to demonstrate that the so-called reasoning and findings are nothing but an exercise of cutting and pasting statements from the show cause notice. On this ground, Mr. Shah urged that the impugned order may be quashed and set aside without relegating the Petitioner to avail up the alternate remedy.

5. Ms. Tatake and Ms. Vyas submit that the above ground is not raised in the petition. They submit that the entire reply of the Petitioner has been reproduced and considered in the impugned order. Therefore, they submit that this is not a case of non-application of mind or passing of an unreasoned order.

6. Ms. Tatake and Ms. Vyas submit that the Petitioner has already preferred an appeal against an earlier order dated 1 April 2022 denying the Petitioner the refunds claimed. Therefore, they submit that the Petitioner should have followed the same course in this matter instead of challenging the impugned order directly before this Court.

7. The rival contentions now fall for our determination.

8. With the assistance of the learned counsel for the parties, we have perused the show cause notice dated 28 November 2024 and the replies filed by the Petitioner on 27 January 2025 and 6 February 2025, and the impugned order dated 24 February 2025. On a perusal of all these, we are satisfied that the adjudicating authority has failed to independently apply its mind to the various contentions raised in the replies filed on behalf of the Petitioner. Instead, the adjudicating authority has chosen to copy or rather cut and paste verbatim the allegations in the show cause notice dated 28 November 2024 to pass them of as reasons supporting the impugned order.

9. Mr. Shah handed in a chart, which establishes the above referred "cut and paste exercise". The comparative chart is transcribed below for the convenience of reference:-

| Allegations in the Show Cause Notice dated 28.11.2024 (387) Ex. S | Findings in the Impugned Order dated 24.02.2025 (104) Ex. A |
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| (408)<br>During the proceeding, in the course of examination of documents, discussion, etc. following facts/points were noticed:<br><br>As per Article/Section 1.3 of the service agreement dated 24/08/2015, the contractor provides to the service provider, free of cost, designated software or hardware computer equipment (the technology) required to undertake the services which are specified to the | (133)<br>I have perused the contagion of taxpayer & arrived to following conclusion.<br><br>As per Article/Section 1.3 of the service agreement dated 24/08/2015, the contractor provide to the service provider, free of cost, designated software or hardware computer equipment (the technology) required to undertake |

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| contractor's clients / project requirement. Such technology shall be returned on completion of the assignment upon request and shall at all times remain the property of the Contractor.<br><br>(409)<br>As per Section 5.1 of the service agreement dated 24/08/2015, any processes, specification, drawing, sketches, models, products, software, sample, tools, computers or other apparatus, programs, technical, scientific or business information or data, return, or otherwise owned or control by contractor, etc. furnished to or acquired by the service provider shall remain contractor's property.<br><br>As per the written submission of the taxpayer he has enlisted the activities/services undertaken, viz.<br>1. Fund accounting services by computing profit and loss of entire portfolio daily, calculation of periodic Net Asset Value and the allocation of returns to the fund investors for the customers.<br>2. Processing of derivative transaction by daily reconciliation, trade settlement and collateral management and pricing support:<br>3. Operations of securities by reconciling the cash balances, trades and positions between the fund manager and prime broker and investigating into differences and resolving them for customers;<br>4. Provision of flexible risk management analytics and reporting tools for its customers:<br>5. Control of Date management by maintaining a global centralized security master and creating accounts of securities dealt by customers on the database. | the services which are specified to the contractor's clients / project requirement. Such technology shall be returned on completion of the assignment upon request and shall at all times remain the property of the Contractor.<br><br>As per Section 5.1 of the service agreement dated 24/08/2015, any processes, specification, drawing, sketches, models, products, software, sample, tools, computers or other apparatus, programs, technical, scientific or business information or data, return, or otherwise owned or control by contractor, etc. furnished to or acquired by the service provider shall remain contractor's property.<br><br>As per the written submission of the taxpayer he has enlisted the activities/services undertaken, viz.<br>1. Fund accounting services by computing profit and loss of entire portfolio daily, calculation of periodic Net Asset Value and the allocation of returns to the fund investors for the customers.<br>2. Processing of derivative transaction by daily reconciliation, trade settlement and collateral management and pricing support.<br>3. Operations of securities by reconciling the cash balances, trades and positions between the fund manager and prime broker and investigating into differences and resolving them for customers<br>4. Provision of flexible risk management analytics and reporting tools for its customers;<br>5. Control of Date management by maintaining a global centralized security master and creating accounts of securities dealt by |

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| 6. Preparation of financial statements i.e. income and expenditure, balance sheet compilation and analysis.<br>7. Assistance to other stakeholders.<br><br>Thus, from the above it is presumed/ it appears that the taxpayer (Service Provider) had direct access to the end users of the Contractor (M/s Globeop Financial Services limited, Landon) by way of direct telephonic calls, emails, correspondence regarding services provided as per their requirement, etc.<br><br>Further, it is proved beyond doubt that due to access of Software's and other technology of the Contractor to the taxpayer, the taxpayer had become direct access of the documents of the Customers of the Contractor (M/s SS&C Financial Services Limited) in terms of viewing their applications, documents, filling of applications, verification of documents, fixing matching and un-matching, etc. After processing by the taxpayer, the said applications/documents later on becomes available to the Contractor and his Customers. Thus, in said services three parties, viz M/s SS&C Financial Services Limited, the Customers of M/s SS&C Financial Services Limited and the taxpayer were involved. Thus, this type of service didn't qualify as "Export of Services" & becomes "Intermediary" as per the provisions contained<br>**(410)**<br>u/s 13(8) (b) of the Integrated Goods and Services Act, 2017. Thus, as per the provisions of law, the Zero-rated supply claim of Rs.193,82,11,757/- made by the taxpayer was not admissible and becomes Intermediary. This was brought to the notice of the taxpayer's representatives. It was also brought to their notice that the taxpayer had claimed an excess refund on Intermediary transactions which become | customers on the database.<br>6. Preparation of financial statements i.e. income and expenditure, balance sheet compilation and analysis.<br>7. Assistance to other stakeholders.<br><br>Thus, from the above itis presumed/ it appears that the taxpayer (Service Provider) had direct access to the end users of the Contractor (M/sGlobeop Financial Services limited, Landon) by way of direct telephonic calls, emails, correspondence regarding services provided as per their requirement, etc.<br><br>Further, it is proved beyond doubt that due to access of Software's and other technology of the Contractor to the taxpayer, the taxpayer had become direct access of the documents of the Customers of the Contractor (M/s SS&C Financial Services Limited) in terms of viewing their applications, documents, filling of applications, verification of documents, fixing matching and un-<br>**(134)**<br>matching, etc. After processing by the taxpayer, the said applications / documents later on becomes available to the Contractor and his Customers. Thus, in said services three parties, viz M/s SS&C Financial Services Limited, the Customers of M/s SS&C Financial Services Limited and the taxpayer were involved. Thus, this type of services didn't qualify as "Export of Services" & becomes "Intermediary" as per the provisions contained<br>**(134)**<br>u/s 13(8) (b) of the Integrated Goods and Services Act, 2017. Thus, as per the provisions of law, the Zero-rated |

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| inadmissible and shall be reduced as per the provisions of law.<br><br>**(410)**<br>Without prejudice, to the Circular as well as the Judgements quoted in reply by the taxpayer, the fact that the taxpayer has not provided the details as mentioned in point no. 5 above cannot be changed. The citations given by the taxpayer are applicable only in the event of he should have produced all the details sought by this office for examination during the refund proceeding. The taxpayer has not provided details sought and concealed the facts.<br><br>As per Section 13(8) (b) of the IGST Act, the place of supply of "intermediary services" shall be the location of the supplier of services. Since the place of supply of services, in the instant case is in taxable territory of India, the said intermediary services cannot be treated as an export of services under the provisions of the GST laws.<br><br>In order to classify as 'export of service', as per section 2(6) of the Integrated Goods and Services Tax Act, 2017, one of the crucial conditions as contained under sub-clause (iii) is that the place of supply of service should be outside India.<br><br>We now discuss Inter-state provisions as well as Intra State provisions under the GST laws as follows:<br><br>Inter State provisions are contained under section 7 of the Integrated Goods and Services Tax Act, 2017 and since none of the specific provisions are applicable, residuary provision contained under section 7(5)(c) shall be made applicable in the case of intermediary service, which states that inter-state supply of goods or | supply claim of Rs.193,82,11,757/ made by the taxpayer was not admissible and becomes Intermediary. This was brought to the notice of the taxpayer's representatives. It was also brought to their notice that the taxpayer had claimed an excess refund on Intermediary transactions which becomes inadmissible and shall be reduced as per the provisions of law.<br><br>[*This Paragraph is not in the Impugned Order*]<br><br>**(134)**<br>As per Section 13(8) (b) of the IGST Act, the place of supply of "intermediary services" shall be the location of the supplier of services. Since the place of supply of services, in the instant case is in taxable territory of India, the said intermediary services cannot be treated as an export of services under the provisions of the GST laws.<br><br>In order to classify as 'export of service', as per section 2(6) of the Integrated Goods and Services Tax Act, 2017, one of the crucial conditions as contained under sub-clause (iii) is that the place of supply of service should be outside India.<br><br>We now discuss Inter-state provisions as well as Intra State provisions under the GST laws as follows: —<br><br>Inter State provisions are contained under section 7 of the Integrated Goods and Services Tax Act, 2017 and since none of the specific provisions are applicable, residuary provision contained under section 7(5)(c) shall be made applicable in the case of intermediary service, |

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| services or both in the taxable territory shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce, however, the same should not be an intra-state supply and should not be covered elsewhere in section 7 of the IGST Act.<br><br>Section 8 of the Integrated Goods and Services Tax Act, 2017 deals with the provisions of intra¬ state. Applying the provisions of section 8(2) which states that 'subject to the provisions of section 12, in case where the location of the supplier and the place of supply of services are in the same state or in the same union territory, the supply of service shall be treated as intra-state supply'.<br><br>The above provisions of inter-state supply and intra-state supply has clarity when both the recipient and the supplier of services are located in India. However as in the subject case, when the recipient is located outside India provisions of section 7(5)(c) shall be applicable. Section 7(5)(c) is reproduced as under: —<br><br>**(411)**<br>Supply of goods or services or both—<br>a. supplier is located in India and the place of supply is outside India.<br>b. To or buy a Special Economic Zone developer or a Special Economic Zone unit: or<br>c. In the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State¬ trade or commerce.<br><br>As per intra-state provisions contained in Section 8(2), the said provisions are subject to the provisions of section 12 of the IGST Act. As per section 12, the | which states that inter¬ state supply of goods or services or both in the taxable territory shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce, however, the same should not be an intra-state supply and should not be covered elsewhere in section 7 of the IGST Act.<br><br>Section 8 of the Integrated Goods and Services Tax Act, 2017 deals with the provisions of intra¬ state. Applying the provisions of section 8(2) which states that 'subject to the provisions of section 12, in case where the location of the supplier and the place of supply of services are in the same state or in the same union territory, the supply of service shall be treated as intra-state supply'.<br><br>The above provisions of inter-state supply and intra-state supply has clarity when both the recipient and the supplier of services are located in India. However as in the subject case, when the recipient is located outside India provisions of section 7(5)(c) shall be applicable. Section 7(5)(c) is reproduced as under<br><br>Supply of goods or services or both—<br>a. supplier is located in India and the place of supply is outside India.<br>b. To or buy a Special Economic Zone developer or a Special Economic Zone unit or<br>c. In the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce<br>**(135)**<br>As per intra-state provisions |

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| provisions of section 12 would be applicable only for determining the place of supply of service where the location of supplier of services and the location of recipient of the services is in India. When recipient is located outside India the said provisions of section 12 cannot be made applicable and since provisions of section 8(2) are inter-linked with provisions of section 12, the same cannot be made applicable in case the recipient of service is located outside India.<br><br>Thus, we find that in case the intermediary services are provided to the recipient located outside India, the inter-state provisions as contained under section 7(5)(c) shall be applicable and hence IGST is payable under such transaction.<br><br>In the instant case, the place of supply shall be location of the supplier of services, i.e., in India and, therefore, such 'intermediary services' cannot be classified as 'export of services'. In case the intermediary services are provided to the recipient located outside India, the inter-State provisions as contained under section 7(5)(c) shall be applicable and, hence, IGST is payable on the above transaction.<br><br>Supply of services by the applicant will be treated as 'inter-State supply' covered under section 7(5)(c) of the IGST Act and IGST is applicable on the aforesaid transaction, which is required to pay by the taxable person (TP) as per the provision of Law. | contained in Section 8(2), the said provisions are subject to the provisions of section 12 of the IGST Act. As per section 12, the provisions of section 12 would be applicable only for determining the place of supply of service where the location of supplier of services and the location of recipient of the services is in India. When recipient is located outside India the said provisions of section 12 cannot be made applicable and since provisions of section 8(2) are inter-linked with provisions of section 12, the same cannot be made applicable in case the recipient of service is located outside India.<br><br>Thus, we find that in case the intermediary services are provided to the recipient located outside India, the inter-state provisions as contained under section 7(5)(c) shall be applicable and hence IGST is payable under such transaction.<br><br>In the instant case, the place of supply shall be location of the supplier of services, i.e., in India and, therefore, such 'intermediary services' cannot be classified as 'export of services'. In case the intermediary services are provided to the recipient located outside India, the inter-State provisions as contained under section 7(5)(c) shall be applicable and, hence, IGST is payable on the above transaction.<br><br>Supply of services by the applicant will be treated as 'inter-State supply' covered under section 7(5)(c) of the IGST Act and IGST is applicable on the aforesaid transaction, which is required to pay by the taxable person (TP) as per the provision of Law. |

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| | In view of the above discussion the contention of taxpayer is not accepted & liability is raised. |

10. In the case of ***Piramal Enterprises Limited vs. The State of Maharashtra & Anr.*** Writ Petition No.2836 of 2021 disposed of on 11 June 2024, a Co-ordinate Bench of this Court, of which one of us (Jitendra Jain, J.) was a party set aside the impugned order after finding that there was no independent application of mind but the contents of a notice issued by the Service Tax Authorities was verbatim copied/borrowed by the VAT authorities.

11. In the above regard, a reference can be made to paragraph 70 of the above decision which reads as follows:-

> *"70. We are also in agreement with the contention as urged on behalf of the petitioner when the petitioner urges that the impugned review order is bad in law for the reason that there is non-application of mind by the reviewing authority in passing such order on another aspect. In this regard we find that when the reviewing authority intended to confine itself to the value assigned to the intangible assets as contained in Schedule 3.3 read with Section 3.3 and Section 2.5, the same has been borrowed / copied from the service tax demand notice in ad-verbatim manner. This is clear from the comparative extracts of the service tax demand notice and the extract of the impugned order and more particularly from perusal of paragraphs 13 to 26 and 30 to 31 of the impugned order when examined against paragraph 4, 5.1 to 5.4, 6.1 and 10 of the Service Tax demand notice, where the impugned order has clearly copied and pasted the findings and reasoning as contained in the service tax demand notice issued to the petitioner in regard to BTA. In this context we may also observe that the parameters of proceedings for levy of service tax, as it then stood under the provisions of the Finance Act,1994, could not have been borrowed to be made applicable for levy of VAT under the MVAT Act. We hence, wonder as to how the Reviewing Authority could verbatim borrow / copy the contents of the notice issued by the Service Tax Authority."*

12. The argument that the above ground is not raised or that such a ground does not indicate a lack of deliberation or render the impugned order unreasoned is misconceived. In Ground 'G.1', the

Petitioner has clearly alleged that the impugned order is silent and issued with a complete lack of deliberation. There are grounds asserting that the impugned order is unreasoned and therefore violates natural justice. Additional grounds claim that the order is vitiated due to non-application of mind. Furthermore, it is argued that the impugned order fails to cite or analyse any specific legal provision, judgment, or proposition, which again demonstrates a clear lack of deliberation. Detailed grounds also highlight that several contentions raised in the replies have not been considered. In Ground 'G' concerning non-application of mind, the Petitioner has relied upon the decision in the case of *Piramal Enterprises Limited (supra)*. Under these circumstances, the contention that no grounds were raised in the petition is quite misconceived and cannot be upheld.

13. Besides the grounds, the adjudicating authority is obliged to issue an order after thoroughly considering all relevant arguments and to state the reasons supporting its decision briefly. Any decision made without considering the main contentions or without providing any supporting reasons would be indicative of a lack of application of mind. Simply cutting and pasting the allegations in the show cause notice or mechanically reciting them verbatim does not inspire confidence that due consideration has been shown to the cause, and the decision is made after its due consideration. Ultimately, these are aspects of natural justice principles that should guide the decision-making process in such cases. As is well settled, in these matters, we focus on the process of decision-making rather than the final outcome.

14. We have also examined the replies filed by the Petitioner to the show cause notice. The Petitioner has put forward several contentions, relying on at least nine precedents they claim support their position, as well as the Board Circular dated 20 September 2021. From

the impugned order, we observe that although there may be a reference to this Circular and the decisions, these have not been addressed. The impugned order does not specify why such decisions are irrelevant or distinguishable, nor why the cited Circular does not apply. This was expected of the adjudicating authority. The failure to consider the contentions raised or the precedents relied upon, combined with the cut-and-paste approach mentioned earlier, also suggests a lack of proper consideration, which invalidates the impugned order.

**15.** Section 73(9) of the Central Goods and Services Tax Act, 2017 (CGST Act) which is similar to the corresponding provisions in the Maharashtra Goods and Services Tax Act, 2017 (MGST) provides that the proper officer shall, ***after considering the representation***, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten percent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order. The italicized portion implies and requires that the proper officer must apply his or her mind to the representation made and only after that, issue an order. The phrase 'consider' does not mean that the contents of the representation are transcribed in the impugned order and without any discussion on the contentions raised, a conclusion is reached. In this case, the so-called reasoning is merely a cut-and-paste of most of the contents of the show cause notice, as noticed above.

**16.** The term 'consider' has been a subject of several judicial pronouncements. It means examining or weighing the merits of matters. The "Chambers Dictionary" defines this as 'looking at attentively or carefully'. The "Standard Dictionary" describes this term as thinking with deliberate care or giving heed. In the case of ***Union of India & Anr. vs. Tulsiram Patel***[1], the Court clarified that 'consider' means to

1 (1985) SCC OnLine SC 178

contemplate mentally, fix the mind upon, think over, meditate, reflect, give heed, or take note, implying a deliberate, attentive mental process. In ***S. Kiranmayi vs. Sri N. Sambasiva Rao***[2], the Court held that 'consider' involves careful thought, review and weighing of factors.

17. Similarly, Section 75(6) of the CGST Act provides that the proper officer, in his order, shall set out the relevant facts and *the basis of his decision*. The emphasis of this provision is on the '***basis of decision***'. This means the emphasis is on the reasons that support the decision. Merely cutting and pasting the allegations from the show cause notice does not amount to giving any independent reasons after due consideration the assessee's contentions or after due application of mind to those contentions.

18. For all the above reasons, we are satisfied that the impugned order warrants interference on the ground urged.

19. The objection regarding the alternative remedy does not hold in this case. Firstly, it is not the case that an appeal has been filed against the impugned order. Secondly, an appeal was made against the order dated 1 April 2022, which included reasons; however, those reasons did not appeal to the Petitioner. Thirdly, since this is a case of complete non-application of mind and violation of principles of natural justice, there is no point in directing the Petitioner to pursue the alternative remedy of appeal. A clear breach of natural justice is an exception to the general rule that statutory remedies should usually be exhausted before seeking this Court's extraordinary intervention. In any event, we do not intend to annul the impugned order on its substance. Nonetheless, we are intervening because the decision-making process involved a breach of the principles of natural justice and fair play.

2 2017 SCC OnLine Hyd. 164

**20.** For all the above reasons, we quash and set aside the impugned order dated 24 February 2025 and remand the matter to the adjudicating authority for fresh consideration and disposal of the show cause notice within three months of the uploading of this order. Needless to add that the principles of natural justice will have to be followed, and this would include giving an opportunity of hearing to the Petitioner and considering the Petitioner's replies/representations. All contentions of all parties on merits are, however, left open.

**21.** The Rule is made absolute in the above terms without any order for costs.

**22.** All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J.) (M. S. Sonak, J.)