

Omission of Intermediary Provisions - Whether pending proceedings survive under the General Clauses Act *ex lege*?

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Concept of intermediary and issues faced:

"Intermediary" has been defined to mean a person who acts in the capacity of agent, broker and other similar person who facilitates or arranges supplies between two persons. Based on interpretation of the said definition, the department contested that a service provided by the Indian supplier to the foreign recipient such as marketing, post-sale support services, market survey, support services, advisory services/consultancy services, software development and support and project management activities etc., would be treated as intermediary services and consequently the same were proposed to be subjected to tax in India by virtue of [Section 13\(8\)\(b\)](#) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') which prescribed the place of supply for intermediary services to be the location of the supplier and therefore, such transactions were not treated as export of services even when the recipient of such services located in foreign territory.

The issue was settled by the various judgments of the High Courts including the decision of the Karnataka High Court in ***M/s. Nokia Solutions and Networks India Pvt. Ltd., vs. The Principal Commissioner of Central Tax & Anr, 2025-VIL-415-KAR*** and ***M/s. Amazon Development Centre India Private Limited v. Additional Commissioner of Central Tax, GST Appeals-II,***

Bangalore & Others, [2025-VIL-409-KAR](#) wherein it was concluded that the services such as Software development and Support, Customer support services provided by the Indian entity to the foreign recipient amounts to export of services by examining various facets of the definition of 'intermediary'.

Amendment vide Finance Act, 2026:

Basis the recommendation of the 56th GST Council meeting, the Finance Act, 2026 vide Section 157 omitted Section 13(8)(b) of the IGST Act with effect from 30.03.2026 without any saving clause. Consequently, post such omission, the place of supply for the intermediary services is governed under the default rule provided under Section 13(2) of the IGST Act which provides that the place of supply is the location of the recipient of supply and accordingly, in case of the above transactions, the place of supply would be the location of the foreign entity. Hence, such transactions would now qualify as export of services by the companies in India.

It is also pertinent to note that Intermediary as a concept still exists and the definition of Intermediary under [Section 2\(13\)](#) of the IGST Act still finds its place in the statute book, however, the place of supply will be governed under [Section 12](#) and [Section 13](#) of the IGST Act accordingly.

View of Bombay High Court in the context of omission of Rule 96(10) and Rule 89(4B):

Hon'ble Bombay High Court in ***Hikal Ltd vs. Union of India & others, [2025-VIL-959-BOM](#)*** in the context of omission of [Rule 96\(10\)](#) and [89\(4B\)](#) of the Central Goods and Services Tax Rules, 2017 (CGST Rules) by way of [Notification No. 20/2024 - Central Tax](#) dated 08.10.2024 observed that omission without saving clause will obliterate the statute from the statute book and any proceedings which have not culminated in a final judgment prior to the omission are abated at the consummation of the omission. Accordingly, omission of the said Rules would erase these Rules from existence as if they had never been

enacted or passed, and they should be regarded as provisions that never existed, except in relation to 'transactions past and closed'. Further, on the issue of applicability of Section 6 of the General Clauses Act, the Hon'ble Court held that the same is not applicable and therefore the saving clause provided under the said Section will not save the pending proceedings.

Effect of omission without saving clause - Application of General Clauses Act:

Before dwelling into the General Clauses Act, 1897 ('General Clauses Act'), it is pertinent to note that the Central Goods and Services Tax Act, 2017 ('CGST Act') does not have a specific saving clause for the repeal of provisions of the CGST Act. However, [Section 174](#) of the CGST Act provides for repeal and saving with respect to the enacts repealed while introducing CGST Act. Further, sub-section (3) to Section 174 of the CGST Act also clarifies that said provisions should not be read as prejudicial or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

Section 6 of the General Clauses Act provides for effect of repeal. and a plain reading of Section 6 of the General Clauses Act, it is apparent that the saving clause operates where an enactment is repealed by the General Clauses Act or by any Central Act or Regulation. The provision stipulates that, unless a different intention is expressed, such repeal shall not:

- a. Revive anything that was not in force or in existence at the time the repeal comes into effect;
- b. Prejudice or alter the prior operation of the repealed enactment;
- c. Impair any right, privilege, obligation, or liability that was acquired, accrued, or incurred under the repealed enactment;
- d. Affect any penalty, forfeiture, or punishment incurred in respect of an offence committed under the repealed enactment; or

- e. Affect any investigation, legal proceeding, or remedy concerning any such right, privilege, obligation, liability, penalty, forfeiture, or punishment.

Further, in terms of the said provision, any investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any penalty, forfeiture, or punishment incurred prior to the repeal under the repealed enactment may be imposed, as if the repealing Act or Regulation had never been enacted.

In the present case, the omission of Section 13(8)(b) of the IGST Act is by way of [Section 157](#) of the Finance Act, 2026 and the same is a Central Act and therefore, the question which arises for consideration is whether the saving clause provided under Section 6 of the General Clauses Act will be applicable to the omission of Section 13(8)(b) of the IGST Act.

Judicial View

Before proceeding to conclude on the applicability of Section 6, it is pertinent to consider the series of decisions of the Hon'ble Apex Court on applicability of the said provision:

Rayala Corporation (P) Ltd and Ors vs. Director of Enforcement, New Delhi, [1969-VIL-87-SC-DT](#)

The Constitution Bench while dealing with the omission of Rule 132-A of Defence of India Rules observed that the Section 6 of the General Clauses Act cannot be applied for such omission for two reasons, firstly, Section 6 only applies to repeals and not to omissions and secondly, Section 6 applies when the repeal is of a Central Act or Regulation and not of a rule.

Kolhapur Canesugar Works Ltd vs. Union of India, [2000-VIL-29-SC-CE](#)

The Constitution Bench of the Apex Court, while considering the applicability of Section 6 of the General Clauses Act to the deletion of Rule 10 and 10A of the

Central Excise Rules, relied on the decision in ***Rayala Corporation (supra)*** and concluded that the savings provision provided under Section 6 was not applicable to the pending proceedings.

General Finance Co. and Ors vs. Assistant Commissioner of Income Tax, Punjab, [2002-VIL-13-SC-DT](#)

The question raised in the present case was the applicability of Section 6 of the General Clauses Act for the omission of Section 276DD of the Income Tax Act, 1961. The Court relying on the series of decisions which held that omission is different from repeal, once again held that Section 6 of the General Clauses Act is applicable only for repeals and not to omissions.

Fibre Boards (P) Ltd., Bangalore vs. Commissioner of Income Tax, Bangalore, [2015-VIL-01-SC-DT](#)

The Hon'ble Court while considering the omission of Chapter XXII-B of the Income Tax Act by way of Finance Act, took a divergent view compared to both the decisions in ***Rayala Corporation (supra)*** and ***Kolhapur Canesugar (supra)*** with observation that the said decisions was concerned with the deletion of the Rules and that once it was held that Section 6 of the General Clauses Act would itself not apply to a Rule, it was wholly unnecessary to state that the Section 6 is applicable only to repeals and not to omissions. Therefore, the findings of the Constitution Bench in ***Rayala Corporation (supra)*** on applicability of Section 6 for omission cannot be a *ratio decidendi* and is in the nature of *obiter dicta*. The Court further observed that the decision in ***Rayala Corporation (supra)*** was passed without considering Section 6A of the General Clauses Act which indicates that a repeal by an amending Act can be by way of express omission and therefore the word 'repeal' in Section 6 and Section 24 of the General Clauses Act would include repeals by express omission.

Shree Bhagwati Steel Rolling Mills vs. Commissioner of Central Excise and Ors, [2015-VIL-128-SC-CE](#)

The Hon'ble Court following the decision in **Fibre Board (supra)** held that Section 6 of the General Clauses Act applies to omission as well and observed that on a conjoint reading of the expression 'delete', 'omit' and 'repeal' makes it clear that 'delete' and 'omit' are used interchangeably and when the expression 'repeal' refers to 'delete' it would necessarily include 'omission' as well.

From the above decisions, it is clear that the findings of the constitution Bench in **Rayala Corporation (supra)** on omission were held to be in the nature of *obiter dicta* and not *ratio decidendi* in case of **Fibre Boards (supra)** and **Bhagwati Steel (supra)**. Additionally, it is also pertinent to note that unlike the **Fibre Boards (supra)** which was considering the omission of provisions of an Act, the Court in **Rayala Corporation (supra)** and **Kolhapur Canesugar (supra)** was dealing with the omission of a Rule for which in any case, Section 6 of the General Clauses Act does not apply.

Hence, it can be safely concluded that Section 6 of the General Clauses Act would be applicable for omission as well and therefore, the savings clause would be applicable for the pending proceedings and therefore the pending proceedings with regard to the issue of intermediary will not abet.

In any event, given that the omission comes into force on 30.03.2026, it is open to the Court to interpret if the same has retrospective effect or not which will in turn decide the fate of all pending proceedings. However, contention can always be taken by the assessee that the intention behind the omission of Section 13(8) (b) of the IGST Act which was to resolve the long-standing litigation and to align the place of supply with the destination-based taxation principle, to be considered while deciding the pending matters by the Courts.

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(The views expressed in this article are strictly personal.)