

No service tax on amount paid to employees deployed from a company outside India

In *M/s Imasen Manufacturing India Private Limited v. Assistant Commissioner, CGST Division-E, Behror [OIA No. 202(SM)ST/JPR/2021 dated June 9, 2021]*, M/s Imasen Manufacturing India Private Limited (“**the Appellant**”) is engaged in the manufacture of Car Seat/ Car Seat Adjuster. The Appellant deputed seconded employees from M/s Imasen Electric Industrial Company Ltd., Japan (“**IEIC**”) and entered into a contract of employment with each employee and paid for the same to IEIC.

It is to be noted that wherein salary was payable by IEIC to the employees but the Appellant paid some amount to the employees for their well-being.

A show cause notice was issued to the appellant for recovery of service tax on amount paid by the Appellant to the employees for their well-being along with interest and penalty.

Commissioner (Appeals) stated that the services are provided by IEIC, located outside India to the Appellant and was not taxable especially when the Appellant treated the amount paid to the said persons as salary in terms of Income Tax Rules, 1962 and deducted the income tax on the same, which shows that the said persons worked as employees of the Appellant. Therefore, there is no doubt about the employer-employee relationship, thus the Appellant is not liable to pay any service tax and consequently no interest and penalty leviable.

Our Comments:

Similar stand was taken by CESTAT, Bangalore in *M/s Target Corporation India Pvt Ltd v. C.C.E., Bangalore [Service Tax Appeal No. 20459 of 2016, decided on January 19, 2021]* wherein the Court set aside the order passed by the Commissioner for demand of differential service tax amounting to INR 28,37,08,191/-, on secondment of the employees by the companies under agreement and held that such an activity cannot be termed as “manpower recruitment or supply agency” where employee-employer relationship exists.

Under the GST regime services of employee to employer is considered as neither supply of goods nor supply of services as per the Schedule III of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”). Further, when an employee is seconded, the receiving company becomes the real and economic employer and supply of services of employee to such company and it can be also be said that the reimbursement of salary by the secondee company to the other company does not amount to supply but such amount is

towards the employer-employee relationship and thus shall be covered within the ambit of Schedule III of CGST Act and shall not be liable to GST.

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