

# EY Tax Alert

**CESTAT distinguishes SC ruling in NOS and holds expats deputation transaction as not liable to service tax**

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## Executive summary

This Tax Alert summarizes a recent ruling of Customs, Excise and Service Tax Appellate Tribunal, Hyderabad (CESTAT)<sup>1</sup> on applicability of service tax on deputation of employees by foreign company to an Indian entity.

Assessee, an Indian entity, entered into employment agreements with certain expatriate employees deputed from a foreign entity. It paid a portion of the salary, covering statutory social security contributions in the home country and other emoluments, to the foreign entity, which in turn remitted the amount into the employees' foreign bank accounts.

CESTAT held that such payments were not exigible to service tax on the following grounds:

- There are material factual differences in the present case and the Supreme Court judgement in case of Northern Operating Systems Pvt Ltd<sup>2</sup>, including the absence of any secondment agreement with the foreign entity and existence of direct employment agreements with expats.
- The expatriate employees worked solely under the control and supervision of the assessee for its Indian business operations. The employment agreements were independent of management consultancy services agreement entered into with the foreign entity. This clearly establishes employer-employee relationship between assessee and the expats.

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<sup>1</sup> 2026 (3) TMI 412 - CESTAT Hyderabad

<sup>2</sup> 2022 (61) G.S.T.L. 129 (S.C.)

## Background

- Assessee is engaged in the business of manufacturing cement and clinkers. It had entered into an agreement with a foreign entity to receive management consultancy services and discharged applicable service tax under reverse charge mechanism.
- Apart from the management consultancy services, certain employees (expats) of the foreign entity were also deputed to India for work under the control, direction and supervision of the assessee.

Assessee entered into individual employment agreement with such expats.

- In this regard, a part of salary was paid by the assessee into the bank account of the expats. The balance salary, including the statutory contributions payable in their home country, was paid by the assessee to the foreign entity, who in turn remitted the same to the bank account of the expats in their home country.
- A show cause notice was issued to the assessee proposing demand of service tax on the salary reimbursements of the expats to the foreign entity. The same was confirmed by an order.
- Assessee filed an appeal before the First Appellate Authority, which upheld the findings of adjudication order and rejected the said appeal.
- Aggrieved, assessee filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal, Hyderabad (CESTAT).

## Assessee's Contention

- Assessee was the actual employer of expats, and the foreign entity did not render any service in relation to the reimbursement made. It merely facilitated disbursement of salary.
- Assessee filed Indian Income Tax Returns for the expatriates on their global salary. The entire remuneration was borne by them.
- No secondment agreement existed between the assessee and the foreign entity. It entered into direct agreement with the expats in their personal capacity. The foreign entity did not deploy personnel under any service contract.

In contrast, in the Supreme Court judgement in case of Northern Operating Systems NOS<sup>3</sup>, there existed a secondment agreement and the expats were temporarily loaned to the Indian entity.

Therefore, the said judgment is not applicable to the facts of the present case.

- The expats deployed in India did not undertake any specific tasks which resulted in the supply of services by the foreign entity.

The expats occupied positions exclusively related to the assessee's business operations in India and did not contribute in any manner to the business activities of

the foreign entity.

- The decision of SC in NOS (*supra*) does not lay down blanket principle that all secondment arrangements amount to provision of "Manpower Recruitment and Supply Agency Service".

The determination of taxability depends upon the specific facts and circumstances of each case as has been clarified by Central Board of Indirect Taxes and Customs (CBIC) in Instruction No.05/2023-GST dated 13 December 2023.

## Revenue's Contention

- Assessee did not directly enter into agreements with expats but engaged them through the holding company i.e., foreign entity.
- Part of their salary along with certain charges was paid to the foreign entity, which clearly established that the arrangement was not pure employer-employee relationship but involved provision of services by the foreign entity.
- The appointment letters of expats preceded the employment agreements. These appointment letters were issued on a common letterhead and were countersigned by the foreign entity.
- The appointment letters are not standalone agreements between the assessee and the employees of the foreign entity. The same were issued only to the employees of the foreign entity.
- The amounts reimbursed to the foreign entity were not determined by the assessee and therefore cannot be equated with the salary paid by the assessee to the employees.
- The foreign entity was under contractual obligation to pay emoluments to the expats, and the said amounts were reimbursed by the assessee to the foreign entity. Accordingly, the assessee was receiving services from the foreign entity.
- The amount paid to the foreign entity cannot be artificially bifurcated and termed as reimbursable expenditure.

The agreement was on a fixed consideration basis, whereby the assessee had agreed to pay a fixed fee.

Therefore, the assessee's act of splitting the gross amount paid to the foreign entity into two components, namely payment to the foreign entity for its services and payments to its employee is not legally sustainable.

## CESTAT's Ruling

- The judgement of SC in the case of NOS (*supra*) was given in a particular set of facts and cannot be mechanically applied in all cases. The distinguishing factors between the facts in the above judgement and the present case are summarized as under:

<sup>3</sup> 2022 (61) G.S.T.L. 129 (S.C.)

Aspect	NOS	Present case
<b>Business Model of Indian entity</b>	Indian entity executes contracts secured by foreign entity for providing specialized services such as back-office operations, IT support, banking-related services, etc.	Assessee operates independently and is engaged in the manufacture of cement and clinker; expats manage Indian operations
<b>Correlation between service agreement and employment agreements</b>	Employment of seconded personnel was aligned with service delivery to foreign entity	Employment agreements were independent of service agreement; no linkage to foreign entity's business
<b>Secondment Agreement</b>	Formal secondment agreement post service agreement	No secondment agreement. Even the management consultancy agreement makes no mention of secondment
<b>Chronology of Agreements</b>	Secondment followed service agreement. Employment agreements followed secondment agreement	Few employment agreements predated management consultancy agreement
<b>Nature of agreements with employees</b>	Structured service arrangement	Direct employment agreements with expats
<b>Purpose of Secondment/ Deployment</b>	To fulfil service contracts of foreign entity	To manage and operate Indian business; no service to foreign entity
<b>Control &amp; Supervision</b>	Foreign entity retained obligations over employee conduct	Full control and supervision by Assessee
<b>Nature of Work Performed</b>	Employees performed tasks benefiting foreign entity	Employees worked solely for Assessee's Indian operations
<b>Payroll Structure</b>	Salaries entirely paid by foreign entity; Indian entity reimbursed such amount	Assessee paid part of salary directly; statutory contributions and other

		emoluments paid to foreign entity
<b>Income Tax Filing</b>	No mention of Indian tax filing by Indian entity	Assessee filed Indian income tax returns for expats on their global salary
<b>Salary Denomination</b>	Foreign currency	Both Indian Rupees and Foreign currency
<b>Global Repatriation Policy</b>	Repatriation of the employees was in accordance with this policy	No such policy exists

- Further, some employment agreements/letters with the expats were entered before management consultancy agreement, which substantiates that the employment of expats were not pursuant to any service arrangement with the foreign entity but due to certain independent needs.
- Moreover, in case of NOS (*supra*), it has been specifically observed that nature of service was that of service of manpower supply. Whereas, in this case, the proposal itself has been made under the Management Business Consultancy Service.
- In the facts of the case and especially, in the absence of any specific secondment agreement, the relationship between the assessee and the expats was that of employer-employee.
- The judgment in the case of NOS (*supra*), is not applicable to the facts of the case and material available on record.

Basis above, CESTAT allowed the appeal filed by assessee.

## Comments

In what appears to be the first favourable ruling under service tax post the SC verdict, CESTAT has analysed various criteria basis the facts in assessee's case vis-à-vis the facts in Northern Operating System to distinguish the SC judgement on secondment transaction.

Previously, several Tribunals had upheld the levy of service tax on employee deputation, relying on the perceived similarity of facts with the NOS decision [2025 (7) TMI 148; Service Tax Appeal No. 41736 of 2019; TS-547-CESTAT-2023-ST].

Under GST, the Karnataka High Court, in two cases, upheld the existence of an employer-employee relationship in cross-border arrangements and held that no GST was leviable, based on the specific facts of those cases [TS-647-HC(KAR)-2025-GST; 2026-VIL-147-KAR].

Several appeals on this issue are presently pending before the Supreme Court [Civil Appeal Diary No. 38335/2023].

Businesses with similar arrangements may rely on this ruling to support the non-taxability of such transactions, particularly where no secondment agreement exists between the entities.

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