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LITIGATION ALERT

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Karnataka High Court sets aside demand of IGST on salaries paid to foreign nationals

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Huawei Technologies India Private Limited v. State of Karnataka & Ors.[1]

The Hon'ble Karnataka High Court quashed the Show Cause Notice ("SCN") seeking to levy IGST on salaries paid to foreign national employees, holding that such remuneration arising from a bona fide employer–employee relationship falls outside the scope of GST.

Background and facts

- The Petitioner is part of the Huawei Group of Companies, headquartered in China, with group entities operating globally. The Petitioner provides software development services and information technology–enabled services to its related companies in India and outside India
- The recruitment is undertaken on a need basis through the issuance of role-specific job descriptions, open to foreign nationals as well as employees of other Huawei group entities
- Upon selection, candidates are issued offer letters by the Petitioner and, upon acceptance, a formal contract of employment is entered governing tenure, remuneration, and benefits. The same employment terms apply to foreign nationals
- The contract of employment applicable to foreign nationals lays down details of employment, including tenure, salaries, benefits, etc.
- In the present factual matrix, an SCN was issued demanding IGST along with interest and penalty on the premise that the Petitioner had imported "manpower recruitment and supply services" from non-resident taxable persons.
- Aggrieved by the impugned SCN, the Petitioner filed a writ petition before the Hon'ble High Court.

Findings of the court

- Transactions arising out of services provided by an employee to the employer in the course of employment are outside the ambit of GST, as the same fall squarely under Entry 1 of Schedule III to the Act.
- Where the relationship arises from an employment contract stipulating a period of employment, reporting authority, working hours, cost to company, and other conditions; and where employees are on the payroll, payments are made to foreign nationals in their Indian bank accounts, applicable income tax is deducted, and income tax returns are filed, the Authority cannot treat foreign national employees differently from Indian employees. In this regard, the court also placed reliance on the case of ***Alstom Transport India Limited***[2] wherein the co-ordinate bench of the Karnataka HC held that where expats were seconded to the Indian entity, salaries were paid directly to their bank accounts in India, TDS was deducted, and the Indian entity exercised administrative

[1] TS-1074-HC(KAR)-2025-GST
[2] Alstom Transport India Limited v. Commissioner of Commercial Taxes, Gandhinagar, 2025-VIL-756-KAR

and executive control, there existed an established employer–employee relationship.

- For a person to qualify as a "non-resident taxable person" under Section 2(77) of the Act, they should be making "occasional supplies." However, in the present transaction, there is no "supply," as the services are provided in the course of employment.
- The court further placing reliance on ***Metal One Corporation***[3] and Circular No. 210/4/2024-GST dated 26 June 2024, clarified that where supply is between related parties and the recipient is eligible for full ITC, the taxable value shall be the open market value, which shall be the value declared in the invoice. In the present case, no invoice is raised; thus, the value of supply shall be deemed to be "Nil."
- Accordingly, it was observed that even if the arrangement is deemed to be a secondment arrangement qualifying as a supply, the deeming fiction under the Circular neutralises any scope of tax liability.

Judgment

- The Writ petition was allowed and levy of IGST along with interest and penalty was held to be unsustainable as there exists a direct employer and employee relationship

[3] Metal One Corporation & Others v. Union of India & Others, 2024-VIL-1161-DEL

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The Ruling recognised that an employer–employee relationship, established by an employment contract, does not transform into a taxable supply of service under GST merely on account of the employee being a foreign national working in India. It reaffirms that salaries paid to expatriate employees by their Indian employers cannot be characterised as an "import of manpower recruitment and supply of service" merely because the employee is a foreign national.

Importantly, the decision underscores that the ratio of the Supreme Court in *Northern Operating Systems* cannot be applied mechanically to all secondment arrangements. In this context, the Court's approach aligns with CBIC Instruction No. 05/2023-GST, which clarifies that the judgment in Northern Operating Systems does not lay down a universal rule for all secondment structures and that each case must be examined on its own merits.

Further, the Court upheld and followed the earlier decisions of the Karnataka HC in *Alstom Transport India* and Delhi HC in *Metal One Corporation*, reaffirming that where an employer-employee relationship is established, the transaction falls within Entry 1 of Schedule III to the CGST Act and is outside the ambit of GST; and even otherwise, in the absence of an invoice and where full ITC is available, the value of supply may be deemed to be 'Nil', neutralising any tax demand.

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