



TAXING GOODBYES???

(Makaranda Prasada, Advocate, Swamy Associates)

The constant search for a higher pay and greener pastures has led to a culture of employees regularly searching for new jobs and seeking relief from their current position as soon as a better avenue presents itself. As a result, the current practice of notice period is in place in which the employee leaving the company issues a notice indicating the time period before they would leave and this would in turn enable a smooth transition for the employer to find a replacement and train them. However, there will be situations where the employee would like to leave immediately without serving their notice period. Thus, it is a well-established clause in most employment contracts in case of an immediate resignation, compensation is provided to the Company/ employer for the sudden and unexpected exit of the employee. o. Off late, the taxmen had begun to demand Service Tax / GST on such compensation paid by the employee to the employer, in lieu of notice period, alleging that the employer has tolerated the employee's early exit as per Section 66E (e) of the Finance Act, which declares "*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act*" as a service. .

The Hon'ble High Court of Madras had heard this exact issue in the case of ***M/s GE T & D India Limited (Formerly Alstom T & D India Limited) V. Deputy Commissioner of Central Excise, Large Tax Payer Unit, Chennai. [2020-VIL-39-MAD-ST]***.

The entire argument of the Revenue can be summed up inasmuch in that the Company is tolerating the act of their employees immediately quitting from service and the same constitutes as a taxable service. The Hon'ble High Court has observed that at the very outset, it is clear that services provided by the employee to the employer are not taxable as it is an exclusion under Section 65 (44) (b) of the Finance Act, 1994. Further, to answer the present question, the Court had relied on CBEC Guidance Para 2.9.3 dated 20.06.2012 wherein it was clarified that amounts received by an employee for premature termination are still under the course of employment and hence cannot be a service. The Hon'ble Court opined the opposite of the situation can also not be a service wherein an employer had merely *facilitated the exit upon imposition of a cost* but not tolerated the act of the employee. The issue is now settled, i.e. Notice pay, does not give rise to the rendition of service either by the employer or employee.

In my opinion, the ratio of this judgement would apply for the GST era also.