

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 20648 of 2019

(Arising out of Order-in-Appeal No. 85/2019 dated 01/04/2019
passed by the Commissioner of Central Tax (Appeals I), Bangalore)

**M/s. XL Health Corporation India
Pvt. Ltd.**

....Appellant

#54, Abacus Centre, 1st Main, Sarakki Industrial
Area, JP Nagar, III Phase, Bangalore - 560 078

VERSUS

**Commissioner of Central Tax,
Bengaluru South
Commissionerate**

....Respondent

5th Floor, C.R. Buildings, P.B No. 5400,
Queens Road, Bangalore – 560 001
Karnataka

and

Service Tax Appeal No. 20649 of 2019

(Arising out of Order-in-Appeal No. 86/2019 dated 01/04/2019 passed by
the Commissioner of Central Tax (Appeals I), Bangalore)

**M/s. XL Health Corporation India
Pvt. Ltd.**

....Appellant

#54, Abacus Centre, 1st Main, Sarakki
Industrial Area, JP Nagar, III Phase,
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**Commissioner of Central Tax,
Bengaluru South Commissionerate**

....Respondent

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Queens Road, Bangalore – 560 001
Karnataka

APPEARANCE:

Mr. Ravi Banthia & Ms. Madhuri Rau, CA

For the Appellants

Mr. P. Rama Holla, Superintendent (AR)

For the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order Nos. 20225 - 20226 / 2022

Date of Hearing: 27/04/2022

Date of Decision: 06/05/2022

Per : S.K. MOHANTY

The issue involved in these appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Brief facts of the case are that during the disputed period, the appellants herein had collected certain amount as 'Notice Period Pay' or 'Bond Enforcement Amount' from their employees, who want to quit the job without notice or do not serve the organization for the prescribed period as per terms of the employment contract. During the course of audit of records maintained by the appellants, it was observed by the Department that the appellants did not pay service tax on the consideration received on account of 'notice pay' from the employees. The Department had interpreted that the said activity of the appellant is covered under the declared service, defined under Section 66E (e) of the Finance Act, 1994. Accordingly, show-cause proceedings were initiated against the appellants, which culminated into the adjudication order dated 26/03/2018, wherein service tax demand of Rs. 6,21,514/- (Rupees Six Lakhs Twenty One Thousand Five Hundred and Fourteen only) and Rs. 3,42,561/- (Rupees Three Lakhs Forty Two Thousand Five Hundred and Sixty One only) were confirmed along

with interest. Besides, the said order had imposed penalties of Rs. 6,21,514/- (Rupees Six Lakhs Twenty One Thousand Five Hundred and Fourteen only) and Rs. 34,256/- (Rupees Thirty Four Thousand Two Hundred and Fifty Six only) under Section 78 *ibid* and 76 *ibid* respectively. On appeal against the adjudication order dated 26/03/2018, the learned Commissioner (Appeals) vide the impugned order dated 01/04/2019 has upheld the adjudication orders and rejected the appeals filed by the appellants. Feeling aggrieved with the impugned orders, the appellants have preferred these appeals before the Tribunal.

3. The learned Consultant appearing for the appellants submitted that in absence of any taxable service being provided by the appellants to their employees, mere recovery of the notice pay from the latter will not be subjected to levy of service tax in terms of Section 66E(e) *ibid*. He further submitted that notice pay recovered from the employees is towards the compensation for non-performance according to the desired level and cannot be equated with the phrase 'consideration', defined in the statute. The learned Consultant further submitted that the issue arising out of the present dispute is no more *res integra*, in view of the following judgments delivered by the judicial forums:

a. GE T & D India Limited (Formerly ALSTOM T & D India Limited) Vs. Deputy Commissioner of Central Excise - 2020 (1) TMI 1096-Madras High Court

b. C.S.T.-Service Tax-Ahmedabad Vs. Intas Pharmaceuticals - 2021 (6) TMI 906 - CESTAT Ahmedabad

c. M/s. Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. Vs. Commissioner of Central Goods and Services Tax, Customs and Central Excise, Jodhpur I - 2022 (1) TMI 909 - CESTAT New Delhi

4. On the other hand, the learned AR appearing for Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. The term 'notice pay' mentioned in the employment contract cannot be considered as a service, more specifically as the taxable service inasmuch as neither of the parties to the contract have provided any service to each other. Thus, the phrase 'service' defined in Section 65B (44) *ibid* and 'declared service', as defined in Section 65B (22) are not applicable for consideration of such activity as a service for the purpose of levy of service tax. Further, the amount received as compensation by the appellants cannot be equated with the term 'consideration' inasmuch as the latter is received for performance under the contract; whereas, the former is received, if the other party fails to perform as per the contractual norms. We find that the issue arising out of the present dispute is no more open for any debate, in view of the judgments relied upon by the learned

Consultant for the appellants. The Hon'ble Madras High Court in the case of **GE T & D India Limited** (supra) has held that in absence of rendition of any taxable service, the amount received as consideration cannot be termed as taxable service for the purpose of levy of service tax thereon. The relevant paragraph in the said judgment is extracted herein below:

“11.....the employer cannot be said to have rendered any service per se much less a taxable service and has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit. The definition in clause (e) of Section 66E as extracted above is not attracted to the scenario before me as, in my considered view, the employer has not ‘tolerated’ any act of the employee but has permitted a sudden exit upon being compensated by the employee in this regard.

12. Though normally, a contract of employment qua an employer and employee has to be read as a whole, there are situations within a contract that constitute rendition of service such as breach of a stipulation of noncompete. Notice pay, in lieu of sudden termination however, does not give rise to the rendition of service either by the employer or the employee.”

7. Further, we also find that by relying upon the above judgment of Hon'ble Madras High Court, this Tribunal in the case of M/s Intas Pharmaceuticals (supra) and M/s Rajasthan Vidhyut Prasaran Nigam Ltd. (supra) has held

that any compensation paid by the employee to the employer for resigning from the service without giving the requisite notice, would not be termed as consideration for the contract of employment and as such, would not fall within the preview of taxable service.

8. In view of the settled position of law, we do not find any merits in the impugned order, insofar as it has upheld confirmation of adjudged demands on the appellants. Therefore, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

(Order pronounced in Open Court on **06/05/2022**)

(S.K. MOHANTY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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