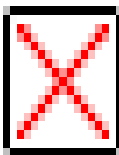


**Pay in lieu of serving notice period - ST/GST implication**

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**AS** per the charging section 9 of the [Central Goods and Service Tax Act, 2017](#)

(CGST Act) GST is payable on supply of goods and services. "Supply" is defined in section 7 of the CGST Act which is reproduced below for ease of reference:

**7(1) - For the purpose of this Act, the expression "supply" includes -**

**(a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business**

**(b) ..**

**(c) ..**

**(1A) - where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.**

In view of the above, it may be stated that the supply has to be in course of trade or commerce. This means that the supply has to be as per the commercial contracts wherein the provider of the service and the recipient of the service and the scope of the service to be provided are clearly mentioned along with the consideration for such service. Hence it is evident that the scope of the service is a certainty and not a contingency and the role of the service provider and the recipient of service is clearly spelt out.

In this backdrop, let us explore whether the notice to pay which is received by the employer from the employee when the employee resigns from the service and pays the said amount in lieu of serving the notice period tantamount to employer providing the deemed service **"agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"** mentioned in serial number 5(e) of Schedule-II of the CGST Act. And if so, will the employer then be liable to pay GST on such amount received from the employee.

Notice to pay recovery happens when there is a breach of the employment contract. Employment contract is an express contract for provision of service by the employee to the employer. The consideration for such service by the employee is the salary and perquisites paid by the employer. **It is never to be interpreted to mean a contract for provision of service by the employer to the employee.** The entire contract is designed to give a legal sanction to the provision of service by the employee to the employer and all other incidental and ancillary conditions are anchored around the said essential characteristics of the contract for provision of service by the employee to the employer. Hence the notice to pay recovery is like any other conditions like number of casual leave / medical leave / annual leave etc. which are conditions attached to the essential element of provision of service by the employee. Breach of the conditions of such service contract does not automatically results into a diametrically opposite situation whereby the contract becomes a contract for provision of service by the



11. *Consideration is, undoubtedly, an essential ingredient of all economic transactions. Certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow. Without an identified recipient who compensates the identified provider with appropriate consideration, a service cannot be held to have been provided. A service that is clearly identifiable has to be provided or agreed to be provided. The factual matrix of the existence of a monetary flow combined with convergence of two entities for such flow cannot be moulded by tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient.*

In view of the above, as per the understanding of the author, the amount which the employee pays to the employer in lieu of **not** serving the notice period **does not** qualify as consideration for any service provided by the employer.

**(The views expressed are strictly personal)**

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