

A2Z Taxcorp LLP

Whether GST is applicable on Notice Pay recovered from employee?

This issue is subjective and was debatable even in the Service Tax Regime.

It may be argued that Notice pay recovery is a consideration paid by employee to employer for non-performance of a contract of employment in terms of Clause 5 (e) of Schedule II of the CGST Act, 2017 i.e. *“Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”* are to be treated as supply of services.

This is a taxable service covered under head *“Agreeing to tolerate an act”* SAC Code 999794 - GST 18%. Further, If, it is specifically mentioned in the appointment letter that Notice pay shall be recovered with GST, then it will be recovered from concerned employee, otherwise it will be deemed that, GST is inclusive as per Rule 35 of the CGST Rules, 2017 and in such case, the employer shall bear the GST component by doing the backward calculation i.e. $\text{Tax amount} = (\text{Value inclusive of taxes} \times \text{tax rate in \% of IGST or, as the case may be, CGST, SGST or UTGST}) \div (100 + \text{sum of tax rates, as applicable, in \%})$.

It may be noted that vide *Press Release dated July 10, 2017 issued by Central Board of Indirect Taxes & Custom (CBIC)*, it was clarified that supply by the employer to the employee in terms of contractual agreement (i.e. part and parcel of CTC), will not be subjected to GST. However, this press release was issued for clarifying para 2 of Schedule I which deals supply made without consideration.

So, this is subjective issue and prone to divergent views.

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