

# TAX FLASH NEWS

12 April 2019

## Service Tax – Payment towards the salary of employee deputed from parent company not liable to service tax– Supreme Court

Hon'ble Supreme Court<sup>1</sup> has dismissed appeal filed by revenue against the order passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi (CESTAT) in case of Nissin Brake India Pvt. Ltd. (assessee) where it was observed and held that, since the relationship between the assessee and the manpower (deployed by the foreign parent company) is of employer-employee, the salary paid to such employee shall not be liable to service tax.

### Facts of the case

The assessee is engaged in the manufacture of automobile parts. It had entered into a dispatch agreement with its foreign parent company for payment of salary and perks to the employees deputed from such foreign company. Revenue had alleged that the said arrangement is in the nature of manpower recruitment or supply agency service and accordingly subject to levy of service tax under reverse charge mechanism. Accordingly, an order was passed by the revenue confirming demand of service tax along with interest and penalty.

### Order by CESTAT

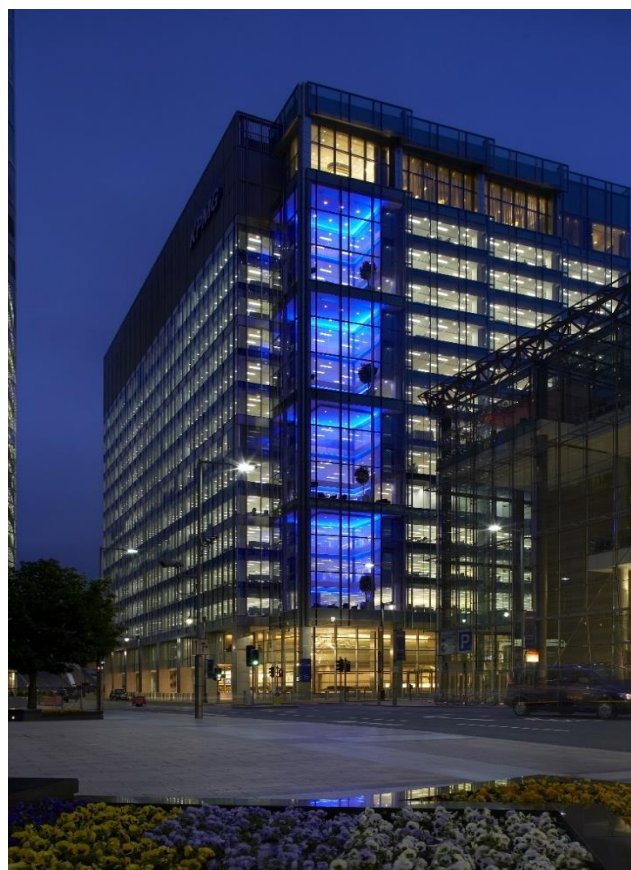
CESTAT in its order had observed that the deployed employees work under the control, direction, and supervision of the assessee. The assessee deducts tax at source from the salaries and perks given to employees. Further, there is no additional consideration paid to the parent company for deployment of staff, thus it cannot be said that there is any agency-client relationship. The relationship between the assessee and the deployed employee is of an employee-employer, thus it cannot be considered as taxable service.

### Order by Supreme Court

The revenue appeal against the CESTAT order has been dismissed on merits by the Supreme Court.

### Our comments

This order would help to close past pending litigations pertaining to this issue. The order, however, should not be made directly applicable under the GST regime and has to be analysed in light of the schedule I entry on free supply between distinct / related parties.



<sup>1</sup> Nissin Brake India Pvt. Ltd [TS-230-SC-2019-ST]

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