



GST and expatriate employees - They are employees first!

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1. Introduction



THE taxation of cross-border employment arrangements has increasingly come under scrutiny in the GST regime, particularly in cases involving multinational corporations deploying expatriate employees across jurisdictions. The question whether salary paid to foreign nationals working in India can be subjected to GST under the guise of "**import of manpower recruitment and supply service**" has been a recurring point of dispute between taxpayers and the revenue authorities. Recognising the growing uncertainty in this area, the CBIC also issued Circular No. [210/4/2024-GST](#) dated 26.06.2024, which provided much-needed clarity on valuation and tax implications in transactions between related parties, particularly in cases where the recipient is eligible for full input tax credit.

The controversy arose in the case of an Indian entity forming part of the Huawei group, where foreign nationals were employed for a fixed period to provide software development and information technology enabled services. The department sought to treat the salary paid to such expatriate employees as consideration for import of manpower recruitment and supply service, alleging that the foreign nationals were acting as **non-resident taxable persons** supplying services to the Indian entity. Based on this premise, a show cause notice was issued proposing levy of IGST on the salary paid to these employees.

The Court [[2026-TIOL-436-HC-KAR-GST](#)], however, approached the issue from a more fundamental perspective-whether such a transaction can at all be characterised as a "*supply*" under GST. Holding that a clear **employer-employee relationship** existed between the assessee and the foreign nationals, the Court ruled that the services rendered by such employees fall squarely within **Entry 1 of Schedule III of the CGST Act, 2017**, which places services provided by an employee to the employer in the course of employment outside the ambit of GST. The decision also examined the concept of **import of services under Section 2(11) of the IGST Act** and the definition of **non-resident taxable person under Section 2(77) of the CGST Act**, ultimately concluding that the department's attempt to characterise the transaction as import of manpower services was legally unsustainable.

2. Employer-Employee Relationship, Manpower Services and the Scope of Supply under GST

At the heart of the present controversy lies the distinction between an employment relationship and a service arrangement. Under GST law, this distinction assumes considerable importance because services rendered by an employee to an employer are expressly excluded from the scope of "*supply*" which is the taxable event under GST laws. Consequently, before examining the issues of manpower supply or import of services, it becomes necessary to determine whether the underlying relationship is one of **employer and employee** or that of an independent service provider.

2.1 Employer-Employee Relationship under GST

The GST law clearly recognises the employer-employee relationship as a special category of transaction. Entry 1 of Schedule III of the CGST [Act, 2017](#) provides that *services by an employee to the employer in the course of or in relation to his employment* shall be treated as neither a supply of goods nor a supply of services. As a result, such transactions fall completely outside the charging provisions of GST.

This exclusion reflects a principle carried forward from the earlier indirect tax regime. Once a person works under the direction, control and supervision of the employer and receives remuneration in the nature of salary, the relationship ceases to be a commercial service arrangement and instead becomes one governed by employment law.

2.2 Taxability of Manpower Recruitment and Supply Services

"*Manpower recruitment and supply service*" ordinarily refers to situations where one entity supplies personnel to another entity for consideration while retaining control over such personnel. In such cases, the personnel remain employees of the supplier and are merely placed at the disposal of the recipient.

However, where individuals are directly hired by the recipient entity and function under its supervision and control, the relationship is one of employment rather than manpower supply. The remuneration paid in such circumstances constitutes salary, and therefore cannot be treated as consideration for a taxable service.

2.3 Entry 1 of Schedule III and Exclusion from Supply

The significance of Entry 1 of Schedule III lies in the fact that it removes employer-employee transactions from the very scope of supply. Once the services rendered fall within this entry, the question of levy of GST under Section 7 read with Section 9 of the CGST Act i.e., the charging section of GST laws does not arise at all.

Therefore, where expatriate personnel are employed directly by the Indian entity and receive remuneration as salary, the transaction cannot be artificially re-characterised as supply of services merely because the employees are foreign nationals.

2.4 Import of Service under GST

The department also attempted to invoke the provisions relating to **import of services under Section 2(11) of the IGST Act, 2017**. For a transaction to qualify as import of services, three conditions must be satisfied: the supplier must be located outside India, the recipient must be located in India, and the place of supply must be in India.

The Court noted that these conditions were not fulfilled in the present case. The foreign nationals were working in India as employees of the petitioner and therefore could not be regarded as independent suppliers located outside India. Consequently, the allegation that the petitioner had imported manpower services was found to be fundamentally flawed.

3. Factual Background

The petitioner forms part of the Huawei Group of Companies headquartered in China, with group entities operating across several jurisdictions. The petitioner is engaged in providing software development and information technology enabled services to related entities both within and outside India.

Whenever a vacancy arises within the group, including positions in the petitioner's organisation, the opportunity may be offered to employees across the Huawei group. In certain cases, foreign nationals are selected for such roles and are issued an offer letter followed by a formal contract of employment. Upon acceptance of the offer, an employment agreement is executed between the petitioner and the selected candidate, specifying the period of employment, reporting structure, remuneration, benefits and other terms of service. The same procedure applies to foreign nationals who are recruited to work with the petitioner in India.

During the course of investigation, the department sought details of the remuneration paid to such foreign nationals. The petitioner furnished the relevant information and explained that these individuals were employees of the petitioner during the relevant period.

Subsequently, the department issued pre-SCN intimation notices in Form DRC-01A, alleging that the remuneration paid to expatriate employees between 2018-19 and 2022-23 constituted consideration for

import of services and was liable to IGST under the reverse charge mechanism. The petitioner filed detailed replies contesting the proposed demand. However, rejecting these explanations, the department proceeded to issue the show cause notice.

4. Issue before the High Court

The central issue before the High Court was whether IGST could be levied on salaries paid by the petitioner to foreign nationals employed by it for a fixed period. The department alleged that such payments represented consideration for import of "*Manpower Recruitment and Supply Service*" provided by non-resident taxable persons.

The petitioner, on the other hand, contended that the foreign nationals were employees of the petitioner and therefore the payments made to them constituted salary arising out of employment. Consequently, the transaction fell within Entry 1 of Schedule III of the CGST Act, which excludes services by an employee to the employer from the ambit of supply

5. Proceedings before the High Court

The petitioner directly challenged the show cause notice before the High Court. After examining the employment agreements and the factual record, the Court found that the foreign nationals were directly employed by the petitioner and were working exclusively under its supervision and control.

The Court observed that the employment contracts clearly stipulated the tenure of employment, reporting hierarchy, remuneration structure, working hours and other service conditions. The foreign nationals were placed on the payroll of the petitioner and were paid salary along with benefits such as house rent allowance, provident fund and performance bonuses in their Indian bank accounts.

It was also noted that income tax TDS was deducted by the petitioner in accordance with the provisions of the Income-tax Act, 1961, and the foreign nationals had filed their income tax returns in India during the relevant period. Furthermore, the expatriate employees were treated at par with Indian employees in terms of compensation and social security benefits.

5.1 Employer–Employee Relationship established

Based on these facts, the Court concluded that a genuine employer-employee relationship existed between the petitioner and the foreign nationals. Consequently, the remuneration paid to them was in the nature of salary and could not be treated as consideration for a taxable service

The Court held that services rendered by these employees were squarely covered under Entry 1 of Schedule III of the CGST Act, which excludes services provided by an employee to the employer in the course of employment from the scope of supply.

5.2 Foreign nationals not "*non-resident taxable persons*"

The department had also argued that the foreign nationals should be treated as "*non-resident taxable persons*" under Section 2(77) of the CGST Act. The Court rejected this contention, noting that the definition requires a person to make occasional supplies of goods or services in India.

In the present case, the foreign nationals were not making any independent supplies to the petitioner. The services rendered by them were in the course of employment and therefore specifically excluded from the scope of supply under Schedule III.

5.3 No import of services under IGST Act

The Court further observed that the foreign nationals were residing in India for a significant period during the disputed years and were provided accommodation and other employment benefits by the petitioner. Their salaries were taxed under the Income-tax Act thereby reinforcing the conclusion that they were employees working in India.

Since the employees were not independent suppliers located outside India, the conditions required for import of services under Section 2(11) of the IGST Act were not satisfied. Accordingly, the Court held that the transaction could not be treated as import of manpower services.

On these grounds, the High Court held that the impugned show cause notice seeking to levy IGST on the salaries paid to expatriate employees was unsustainable in law and deserved to be quashed.

6. Conclusion

The ruling serves as an important reaffirmation of the principle that employment relationships stand outside the GST framework. By recognising the distinction between genuine employment and manpower supply arrangements, the Court has reinforced the scope of Entry 1 of Schedule III of the CGST Act, ensuring that salary payments cannot be artificially converted into taxable supplies.

The decision is also significant in the broader context of multinational businesses operating in India. Cross-border deployment of employees is a common feature of global organisations, and attempts to characterise such arrangements as import of services can lead to substantial and unwarranted tax exposure. By examining the substance of the relationship and the surrounding factual circumstances, the Court has clarified that where a **direct employer–employee relationship exists**, the transaction cannot be brought within the ambit of GST merely by re-labelling it as manpower supply.

An important takeaway from the ruling is the critical role played by the **employment contract and its terms** in determining the true nature of the relationship. The Court placed considerable reliance on the employment agreement and its clauses executed between the petitioner and the foreign nationals, which clearly stipulated the period of employment, reporting hierarchy, remuneration structure, working conditions and other service benefits. These contractual elements helped establish the existence of a genuine employment relationship and effectively dismantled the department's allegation of manpower supply.

For businesses, particularly multinational groups, the case highlights the importance of carefully structuring and drafting employment agreements involving expatriate employees. Clear contractual provisions relating to supervision, control, payroll obligations, remuneration structure, social security benefits and tax compliance can play a decisive role in demonstrating the existence of an employer–employee relationship. In the absence of such clarity, arrangements may risk being misconstrued as manpower supply or secondment arrangements, potentially exposing the entity to unintended GST liabilities.

Thus, beyond its immediate legal outcome, the decision underscores a broader compliance lesson: proper documentation and thoughtful drafting of employment contracts are often the first line of defence against avoidable tax disputes. In complex cross-border employment arrangements, the language of the agreement is not merely a formality—it becomes a crucial instrument in determining the tax character of the transaction itself.

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