

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, MUMBAI  
REGIONAL BENCH**

**Service Tax Appeal No. 87665 of 2022**

(Arising out of Order-in-Appeal No. AJV/186/RGD APP/2020-21 dated 26.11.2020 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigad)

**M/s. Kellogg India Pvt. Ltd.**

**Appellant**

L-2 & L-3 MIDC Talaja Audoglek,  
Vasahat Talaja, Raigad 410 208.

Vs.

**Commissioner of CGST & CE, Belapur**

**Respondent**

5<sup>th</sup> Floor, CGO Complex, 10, CBD Belapur,  
Navi Mumbai 400 614.

Appearance:

Shri Bharat Raichandani, Advocate, for the Appellant

Shri Nitin Ranjan, Deputy Commissioner, Authorised Representative  
for the Respondent

**CORAM:**

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)  
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER  
(TECHNICAL)**

Date of Hearing: 12.05.2023

Date of Decision: 16.06.2023

**FINAL ORDER NO. 85948/2023**

PER: ANIL G. SHAKKARWAR

The appellant is manufacturer of excisable goods and is also holding service tax registration. The appellant was issued with a show cause notice dated 08.04.2019 demanding service tax amounting to Rs.29,08,508/-. It was stated in the said show cause notice that Revenue has verified trial balance and books of accounts of the appellant and noticed that in respect of those employees who left their job without giving notice to the appellant for the period which was agreed upon between the appellant and their employees in case their employees leave the job there were recoveries of sums. It was agreed between the appellant and their employees under clause 10 of agreement that in case the employee leaves the job with the appellant before serving the stipulated notice period of three months, the appellant would deduct an amount equivalent to incomplete days

of notice period as basic salary from unpaid salary or such other dues to be paid to the employee. It was argued in the said show cause notice that the said act of the appellant was a declared service and therefore the appellant was required to pay the said service tax on an amount of Rs.2,09,33,892/- not paid to the employees leaving employment, for the period from April 2014 to June 2017. The said show cause notice was on contest adjudicated through order-in-original dated 25.06.2020. The original authority confirmed the demand and imposed penalties. Aggrieved by the said order, appellant preferred appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) decided the said appeal through the impugned order-in-appeal dated 26.11.2020. The learned Commissioner (Appeals) did not interfere with the order passed by the original authority. Therefore, the appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. He has submitted that the appellant enters into a contract with its employees and the term also includes that if the employee leaves the job without giving three months' notice to the appellant, then on the basis of incomplete days of notice period, some amount payable would be deducted from the amount payable to the employee. He has submitted that the appellant does not receive any consideration from its employee. The unpaid salary is accounted for in the books of account as notice pay recovery and the same is treated by Revenue as consideration for declared service for agreeing to tolerate the act of leaving the employment. He has submitted that the amount which is unpaid to the employee is salary not paid and salary not paid is a part of total compensation of salary which is out of the purview of service tax. He has also submitted that the issue is no more *res integra* and has been decided by this Tribunal in the case of *HCL Learning Ltd. vs. Commissioner of Central Goods and Service Tax, Noida* reported at 2019-TIOL-3545-CESTAT-ALL. He further submitted that following the precedent decision, there is no case for Revenue.

3. Heard the learned AR who has supported the impugned order.

4. We have carefully gone through the record of the case and the submissions made. We note that the show cause notice has very clearly stated that the amount of Rs.2,09,33,892/- is recorded in the books of account as salary not paid to the employees. The basic fundamental of charging service tax at *ad valorem* is that the service provider has to receive consideration from the service recipient. Here as per the show cause notice, the appellant has not received any consideration and, therefore, the question of payment of service tax does not arise. The amount which is stated by Revenue in the show cause notice is the amount not paid as salary and retained by the appellant. Salary is out of the purview of service tax. Further, this issue is no more *res integra* and decided through case law relied upon by the appellant. In the said final order of this Tribunal, it has been held that such recovery is out of salary and salary is not covered by the provisions of service tax and, therefore, the demand is not sustainable.

5. By following the precedent decision, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 16.06.2023))

**(Anil G. Shakkarwar)**  
**Member (Technical)**

**(Dr. Suvendu Kumar Pati)**  
**Member (Judicial)**

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