

**GIB/TN/GE T & D INDIA LIMITED/07.11.2019/HC-207**

**High Court Category :** Classification of Services

**State :** Tamil Nadu

**Order No.:** GIB/TN/GE T & D INDIA LIMITED/07.11.2019/HC-207

**Name of Entry :**

GE T & D INDIA LIMITED

**Date :** 07-11-2019

**Breif Issue :**

**FACTS AND ISSUE OF THE CASE:**

In this case the petitioner is a dealer assessed to service tax by the respondent. The terms of employment of the petitioner company include a stipulation for a notice period prior to quitting from employment, ranging from two to three months. An option is provided to the employees to the effect that if they are not in a position to stay and serve out the notice period, then in lieu of the same, the employee will be required to pay the equivalent pay of salary for the period for which notice was not served.

The petitioner in this case had received certain amounts in lieu of notice period from outgoing employees. The Assessing Officer was of the view that this amount would attract service tax since the petitioner is deemed to have facilitated the termination of employment and thus a category of service entitled and described as 'facilitation of termination of employment' was carved out by the Assessing Officer.

**Decision of Advance Ruling Authority :**

**DECISION:**

The query raised relates to a contra situation, one, where amounts have been received by an employee from the employer by reason of premature termination of contract of employment, and the taxability thereof. The Board has answered in the negative, pointing out that such amounts would not be related to the rendition of service. Equally, the employer cannot be said to have rendered any service per se much less a taxable service and has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit. The definition in clause (e) of Section 66E is not attracted as the employer has not 'tolerated' any act of the employee but has permitted a sudden exit upon being compensated by the employee in this regard.

Though normally, a contract of employment qua an employer and employee has to be read

as a whole, there are situations within a contract that constitute rendition of service such as breach of a stipulation of non-compete. Notice pay, in lieu of sudden termination however, does not give rise to the rendition of service either by the employer or the employee.

Petition allowed.