

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70580 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1597-17-18 dated 10/01/2018 passed by Commissioner (Appeals), Central Goods & Service Tax, Noida)

M/s HCL Learning Limited,

.....Appellant

(E-4, Sector-11, Noida, U.P.)

VERSUS

Commissioner of Central Goods

& Service Tax, Noida

.....Respondent

(Commissioner of Central Goods

& Service Tax, Noida)

APPEARANCE:

Shri Nishant Mishra, Advocate for Appellant

Shri Anupam Kumar Tiwari, Authorized Representative for Respondent

CORAM :

Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)

Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.71950 / 2019

DATE OF HEARING: 25 November, 2019

DATE OF DECISION: 25 November, 2019

PER : ANIL G. SHAKKARWAR

After hearing both the sides duly represented by learned advocate Shri Nishant Mishra appearing on behalf of the appellant and Shri Anupam Kumar Tiwari appearing on behalf of the Revenue, we note that in the present case the employer has been served with a show cause notice demanding service tax from that part of the amount which he recovers out of the salary paid to the employee if the employee breaches the contract of total term of employment. From the record, we note that the

term of contract between the appellant and his employee are that employee shall be paid salary and the term of employment is a fixed term and if the employee leaves the job before the term is over then certain amount already paid as salary is recovered by the appellant from his employee. This part of the recovery is treated by Revenue as consideration for charging service tax.

2. We hold that the said recovery is out of the salary already paid and we also note that salary is not covered by the provisions of service tax. Therefore, we set aside the impugned order and allow the appeal.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)