

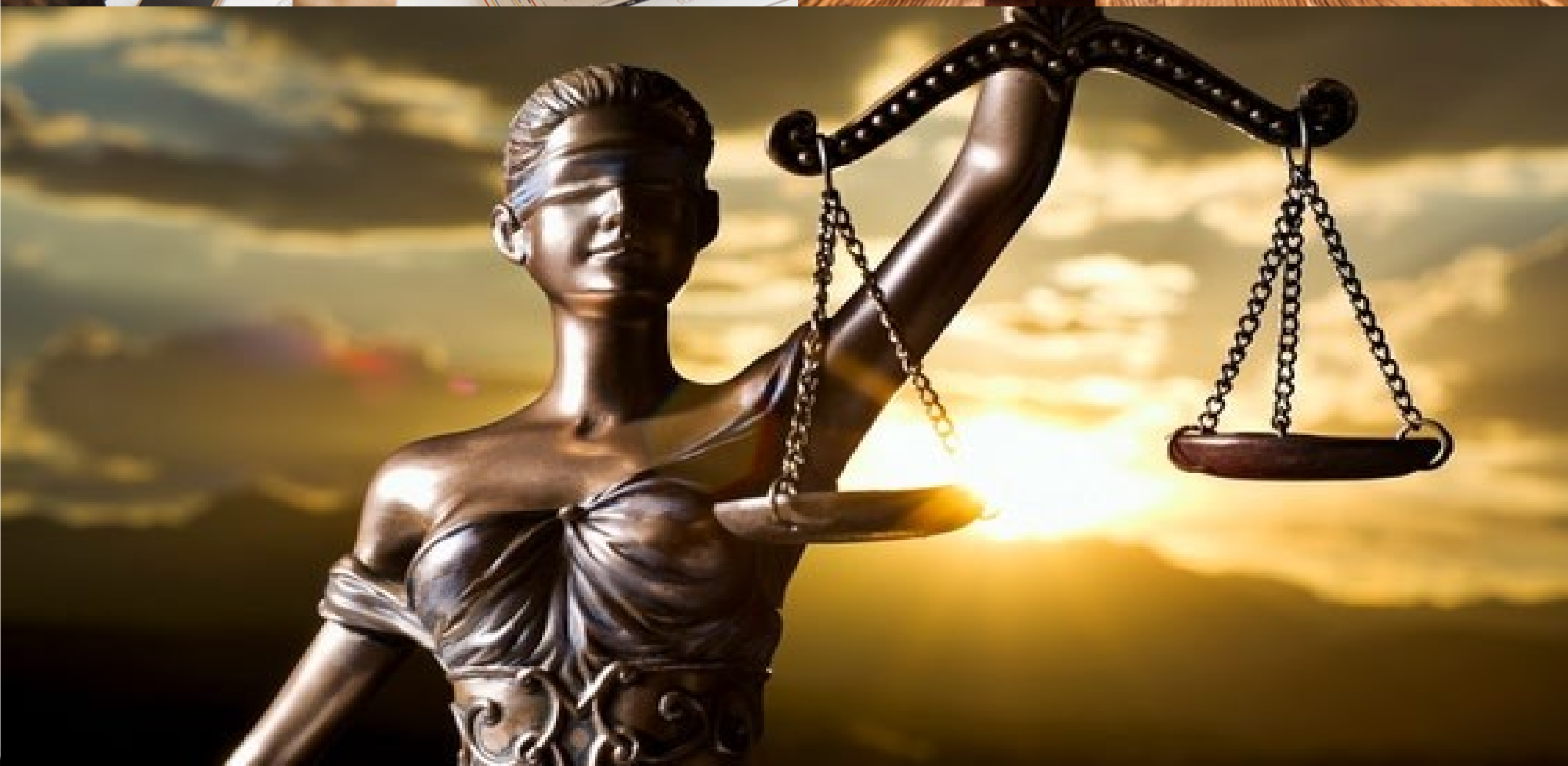

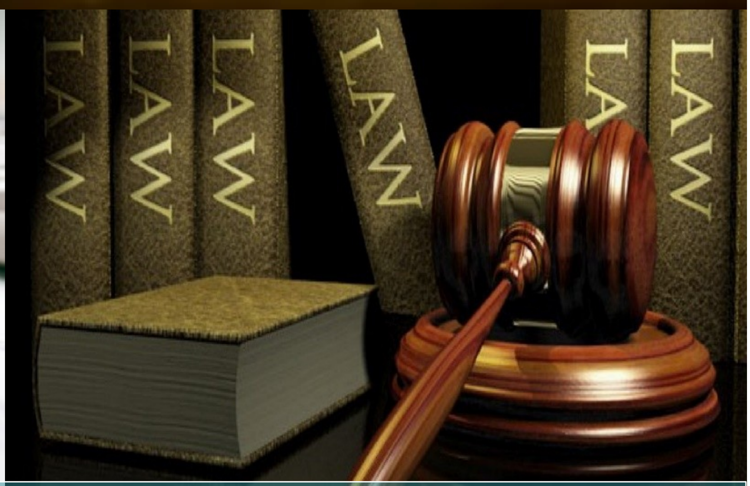

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Service Tax Implications on Notice Pay

December 13, 2019

The recent decision of CESTAT Allahabad in the case of ***HCL Learning Limited v. Commissioner of CGST, Noida, 2019-VIL-739-CESTAT-ALH-ST.***

In this case, the authorities demanded Service Tax on the amount recovered by taxpayer from its employee's salary on account of notice pay. As per contract, employee was employed for a fixed term and if he leaves the job before such term, certain amount was recovered by the employer.

The Tribunal in the instant case, held that the 'recovery' is out of the salary already paid and salary is not covered by the provisions of Service Tax. Accordingly, no Service Tax is payable on the same.

NITYA's Comments: *The above is the first decision of the Tribunal on the vexed issue of applicability of Service Tax on notice pay recoveries. Surprisingly, the decision does not discuss the concept of applicability of 'declared service' on such transaction. The Tribunal ought to have discussed whether this activity qualifies as a 'service' or 'declared service' in the first place or not. For pre-GST regime, taxpayers can continue to challenge applicability of Service Tax on notice pay recovery using the above case as well as contentions discussed in our specific update, NITYA's Insight | Issue 52 | Service Tax Implications on Notice Pay dated October 11, 2019 (Refer trail mail).*

This ruling is equally relevant under GST regime as well which contains similar provisions. Basis this, the taxpayers need not pay GST on notice pay recoveries and can continue to litigate this issue.

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