Issue regarding the applicability of Service Tax on Notice Pay Recovery

According to Section 66E (e) of the Finance Act, 1994**, as inserted by Finance Act 2012,** *agreeing to the obligation to refrain from an act, or to tolerate on act or a situation, or to do an act shall be a declared service and liable to service tax*.

In terms of this entry, the following activities if carried out by a person for another for consideration would be treated as provision of service.

- Agreeing to the obligation to refrain from an act.
- Agreeing to the obligation to tolerate an act or a situation.
- Agreeing to the obligation to do an act.

The question of the implication of Section 66E (e) on notice pay are discussed as follows:

- The condition to pay an amount as notice pay in lieu of notice period for the employer to agree to let go an employee, normally forms part of the terms and conditions of employment.
- The employee can exercise the option of paying the notice pay as the consideration for the employer to agree to the obligation of letting him go, which the employer is bound to do as it is the part of the terms and conditions already agreed to and settled between them.
- In my view therefore this transaction of the employer agreeing to the obligation of tolerating an act on the part of the employee, for payment of a notice pay will be covered as a **declared service under Section 66 E (e).**
- In view of above, same will be liable to tax.