

## Important Guidelines from GST Policy Wing- IDT122303

► CBIC instructs the field formation not to apply Supreme Court's Judgement in case of Northern Operating Systems mechanically [Instruction No. 05/2023-GST dated December 13, 2023]

CBIC has instructed the field formations to take considered approach while issuing Show Cause Notices in respect of secondment of employees by overseas group Companies to Indian firms based on Hon'ble Supreme Court ("SC") judgement in the case of M/s Northern Operating Systems Private Limited ("NOS"). Vide the aforesaid Instruction, CBIC has explained that in the case of NOS, the Supreme court took note of various facts of the case including the agreement with the overseas group Company and held that the activity of secondment of employees by overseas group Company to NOS was a taxable service of "Manpower supply"leviable under Service Tax laws. The CBIC also clarified that the issue of taxability on secondment of employees could also arise under GST laws.



info@valufocus.com



080 4122 2285



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However, it was also clarified that there could be multiple types of arrangement relating to secondment of employees and the tax implication in each case should be determined only after considering the specific nature of the contract and other terms and conditions attached to it. Accordingly, the CBIC instructed the field formations not to apply the judgement of Hon'ble SC mechanically in all cases and determine the taxability under GST Laws after careful consideration of the facts and circumstances of each case.

Further, in respect of invocation of extended period of limitation under section 74(1) of CGST Act, 2017 by the field formations, the CBIC clarified that section 74(1) can be invoked only in case there is fraud or wilful misstatement or suppression of facts to evade tax and not for merely non-payment of GST. Accordingly, the CBIC instructed the field formations to issue SCN invoking Section 74(1) of CGST Act, 2017 only if material evidence of fraud, wilful misstatement or suppression of facts exists to evade payment of tax and also to record such evidence in the SCN.



[info@valufocus.com](mailto:info@valufocus.com)



[080 4122 2285](tel:08041222285)



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