Three Judgments on Employee Secondment: NOS vs Metal One vs Alstom

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Background

Cross-border secondment of employees by foreign group companies to their Indian affiliates/subsidiaries has always been a keenly contested topic by the tax authorities and assessees under the service tax regime and also under the GST regime. The key issue revolves around whether such secondment arrangements constitute manpower supply service by the foreign companies to their Indian subsidiaries liable for GST as import of services by the Indian subsidiary or whether they represent a standalone employer-employee relationship between the seconded employee and the Indian subsidiary thereby not considered as a supply under Schedule III of the Central GST Act. The issue is highly fact driven and one would need to go through the facts of each case and the related documentation in order to arrive at the conclusion regarding presence of a taxable supply or otherwise in the above transaction.

In this backdrop, a significant ruling dated July 15, 2025 by the Honorable Karnataka High Court in the case of **M/s. Alstom Transport India Limited v. Commissioner of Commercial Taxes, Bangalore & Others** **[TS-647-HC(KAR)-2025-GST]** has held in favor of the Indian subsidiary due to existence of employer-employee relationship between the seconded employee and the Indian subsidiary.

This ruling provides much-needed clarity and relief to multinational groups operating in India It carefully differentiates the facts from the Supreme Court's landmark decision in the case of **Northern Operating Systems Pvt Ltd (NOS)** **[TS-216-SC-2022-ST]** in 2022 under the service tax regime, whereby secondments to India by the foreign entity who

remained the economic employer, retaining control over the secondees' terms of employment and re-imbursements charged to the Indian company with mark-up were held as import of services and thereby taxable under the service tax law.

This article discusses the detailed facts and legal reasoning behind the Alstom ruling, analyzes its relationship with NOS and Metal One Corporation cases, and provides practical broad level guidance to companies grappling with GST issues on secondment of employees.

Facts

- Alstom Transport India Ltd is engaged in the business of designing, supplying, installing and commissioning goods pertaining to railway and metro infrastructure projects. It also provides design and engineering services including software upgradation and modification in metro projects.
- During the disputed period of July 2017 to March 2023, the employees of the overseas group companies were seconded for a fixed tenure. Employment agreements were executed with each of the expatriate employees detailing their appointments, salaries and allowances. The expatriates were on the payroll of the Indian company and salaries were paid directly by the Indian company after TDS deduction under the Income-tax Act, 1961. No "service invoice" was separately raised by the foreign group for these deputations.
- Parallelly, the overseas group company continued to provide social security and related benefits available in their home countries. From November 2020, the appellant also discharged IGST under Reverse Charge Mechanism (RCM) on the amounts specified in the debit notes raised by the overseas group companies towards the above. The IGST was availed as ITC and no objections were raised by the tax authorities.

Department's contention

- The tax authorities alleged that these arrangements were taxable as as import of service as "manpower supply services" under the GST regime thereby raising demand of approximately Rs 60 crores including IGST, interest and penalty.
- The amount paid towards social security benefits of the seconded employees by the foreign company and reimbursed by the Indian company and also the amount of salary paid by the Indian company to the seconded employee in India is a consideration towards supply of manpower services by the overseas group company to the Indian subsidiary.

Contentions by Alstom Transport

- In a typical secondment arrangement, expatriate employees are deputed by a foreign parent to work for its Indian subsidiary for a limited period;
- Such arrangements are governed by dual contracts comprising (i) secondment agreement executed between foreign and Indian entities and (ii) an employment

agreement entered into directly between secondee and the Indian entity. The secondment agreement sets out the overreaching terms of deputation, including the duration of the secondment, general roles and responsibilities of the secondees and mechanism for re-imbursement of costs, such as salaries and benefits paid by the foreign company on behalf of the Indian company;

- The employment agreement contains clauses pertaining to tenure of employment, location of work, compensation structure, employment duties, benefits, termination and resignation clauses and dispute resolution mechanisms;
- During the course of secondment, the secondees remain subject to the operational supervision, control and administrative authority of the Indian company. The seconded employee is required to comply with all internal rules and policies of the Indian entity, office hours, conduct, statutory obligations, TDS, etc.;
- While the Indian company disburses the salary directly to the secondees, certain components such as social security contributions or benefits mandated under the laws of the home country may be paid by the foreign entity, which are later reimbursed by the Indian subsidiary;
- Functionally and contractually, the secondees are fully integrated into the Indian company's workforce and operate exclusively under its control during the term of their deputation;
- Prior to GST, under the service tax regime, various appellate tribunals consistently held that seconded employees were to be treated as employees of the Indian entity for all practical and legal purposes, and that no taxable manpower supply service was involved. These rulings were premised on the fact that the Indian company exercised complete control and supervision over the secondees during their period of deputation; that there was no payment of consideration to the foreign parent company in the form of service fees; and that the relationship between the foreign and Indian entities was neither that of a service provider-client nor principal-agent;
- From a valuation perspective, as per CBIC Circular *(Circular No.210/4/2024-GST dated 26 June 2024)*, where full ITC is available to the recipient of the service and no invoice is issued by the supplier, the value shall be deemed to be NIL. The same was relied upon by Delhi HC in the case of *Metal One Corporation India Pvt Ltd vs Union of India & Ors* [TS-697-HC(DEL)-2024-GST] and GST demands were quashed. Facts in this case was similar to the present one;
- Salaries paid to the expatriates by the Indian company cannot be treated as open market value under Rule 28 of the CGST Rules, 2017. Hence, salary payments cannot be considered as consideration for supply of manpower services and hence does not attract IGST under RCM.

Ruling given by the Honorable High Court

- The Court concurred with Alstom's views and contention holding that where there was employer and employee relationship between the employee and Indian company, the same is excluded under Schedule III of the CGST Act from the scope of supply and thereby not taxable.
- Further the Court relied on Circular No. 210 and Delhi HC judgment in the case of

Metal One Corporation where no invoice is issued and recipient is eligible for full ITC; NIL value is deemed value under Rule 28 of CGST rules.

- The Court distinguished the ruling given in NOS judgement to the present case. In NOS, the SC held that the foreign entity remained the economic employer, retaining control over the secondees' terms of employment who continued on the foreign payroll with salaries fixed in foreign currency and additional allowances such as hardship pay. The secondees were assigned to the Indian entity only for specific tasks and durations, after which they reverted to the foreign company. Importantly, the foreign entity levied a mark-up on salary reimbursements to the Indian company to cover administrative costs, thereby concluding that the arrangement was in the nature of a service transaction liable to tax despite there being employer-employee relationship.
- The Honorable High Court has also mentioned that the SC in NOS has ruled that decision in NOS should not be applied for all secondment cases and that facts of each case should be considered before arriving at the conclusion. CBIC in its instruction dated 13.12.2023 has also highlighted the same.
- The demand for IGST, interest and penalty were quashed.
- **It is important to note that the High Court has not only ruled that the said transaction is not taxable based on Circular No 210 as discussed above *(which is from a GST valuation perspective)* but has also conclusively ruled that the said transaction is not a 'supply' basis the detailed facts and contentions made by the petitioner in this case.**

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Key distinguishing features: NOS Vs Metal One Corporation Vs Alstom Transport India

Criteria	**Northern Operating Systems- SC (2022)**	**Metal One Corporation – Delhi HC (2024)**	**Alstom Transport India - Karnataka HC (2025)**
Applicable law	Service tax	GST	GST
Employee Control	Retained by foreign entity	Employee of Indian company contractually. *(Employee control not discussed in detail in the judgement)*	Operational and administrative control by Indian company
Salary Payment	Paid by overseas group company	As per the department, salary partly paid by foreign & Indian entity. *(Not discussed in detail in the judgement)*	Paid directly by Indian entity
Employment Terms	Retained foreign employment terms;	As per the department, secondment was for a	Indian employment contract Indian labour law & TDS

Criteria	Northern Operating Systems- SC (2022)	Metal One Corporation – Delhi HC (2024)	Alstom Transport India - Karnataka HC (2025)
	temporary secondment to India for a defined period with specific task and duration after which employee reverted to the foreign company	short duration and later repatriated to parent company. *(Not discussed in detail in the judgement)*	compliance by the secondee.
Economic burden/Service Invoice	Raised invoice with mark-up by the foreign company	No invoices raised by the foreign/Indian company *(Not discussed in detail the judgement)*	Debit note raised for socia security by the foreign company. GST paid and ITC claimed.
Ruling given by the Court	Taxable as manpower supply service	GST demand quashed	GST demand quashed
Emerging jurisprudence	Substance over form test; factual analysis critical.	Circular No. 210 clarifying NIL value if no invoice raised and if full ITC available binding on tax authorities.	Existence of employe employee relationship **AND** reliance on Circular No. 210 & Metal One Corporation decision.

Way forward

Interestingly, in Para 14 of the judgement the Honorable High Court has held that businesses must now assess secondment arrangements on a case by case basis.

Key factors include:

- *who bears the economic burden and controls long-term employment;*
- *whether the posting is task-specific or open-ended;*
- *how salary is paid directly by the Indian entity or via the foreign company; and*
- *whether the secondee is absorbed into the Indian organization or reverts to the foreign entity post-assignment.*

In the humble view of the authors, the above pointers are indicative and there could be alternative/additional factual and situation specific instances and related documentation that may arise or need to be considered for secondment arrangements.

While the present judgement brings relief to multi nationals operating in India, however each secondment arrangement should be analysed based on detailed and granular appreciation of all the facts and the related documentation. Multiple factors such as the fact that ESOP/RSU re-imbursements claimed by the foreign company *(not the ESOP per se being matter of taxation necessarily)*, functional reporting of the seconded employee to the

foreign company while administrative control lies with the Indian company, recovery of salary paid by Indian company from overseas group company and host of various other facts could lead to a potentially different conclusion than what is concluded by the Honourble High Court in Alstom case.

Further, the rulings pertaining to *Komatsu India Pvt Ltd* and *Nortel Networks India Pvt Ltd* are pending before Supreme Court under the service tax regime for cross border secondments. It would be interesting to see the view taken by the Honourable Supreme Court based on the settled positions under the service tax law and evolving jurisprudence under the GST regime on this issue.

The present ruling could also be useful for analysing implications, if any under the Indian Income-tax and Transfer Pricing laws from a Permanent Establishment, TDS and benchmarking point of view apart from GST in order to undertake a wholistic view while planning for cross border secondments.

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