

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

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 900 of 2012

(Arising out of Order-in-Original No.01/2012-ST (Commr.) dated 16.01.2012 passed by the Commissioner of Central Excise, Bangalore.)

**M/s. ARM Embedded
Technologies Private Limited**

Level III, Block B, Salarpuria Touch Stone,
Marathahalli Outer Ring Road,
Varthur Hobli,
Bangalore - 560 087.

Appellant(s)

VERSUS

**The Commissioner of Central
Excise**

C.R. Building,
Queen's Road,
Bangalore - 560 001.

Respondent(s)

APPEARANCE:

Shri G. Shivadass, Senior Advocate for the Appellant.

Shri M. A. Jithendra, Assistant Commissioner (AR), Authorised Representative for the Respondent

CORAM:

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order No. 20549 / 2026

DATE OF HEARING: 17.11.2025

DATE OF DECISION: 24.04.2026

PER : R. BHAGYA DEVI

This appeal is filed by M/s. ARM Embedded Technologies Pvt. Ltd. against Order-in-Original No. 01/2012 ST (Commr.) dated 16.01.2012 passed by the Commissioner of Central Excise, Bangalore-I Commissionerate.

2. Briefly the facts are that the appellant failed to discharge service tax under Reverse Charge Mechanism (RCM) on the manpower services received by them from their parent company, accordingly, notice was issued and the Commissioner in the impugned order based on the agreement held that the services received by the appellant are in the nature of 'Manpower Recruitment or Supply Agency Service' and hence, liable to service tax. Accordingly confirmed a demand of Rs.1,76,79,723/- along with interest and imposed penalties under Section 77 and 78 of the Finance Act, 1994. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Sr. Counsel submits that the appellant is a 100% Export Oriented Unit (EOU) registered with Software Technology Parks of India (STPI) for exporting Information Technology Services (ITS). During the disputed period, it is submitted that the appellant had entered into Salary Cost Reimbursement Agreement with its overseas counterpart ARM Ltd. in England intending to employ certain employees from its foreign counterparts for the purpose of software development and commercial operations. Under this agreement, specific employees of the overseas entity at the request of the appellant were seconded to the appellant's Indian operations for software development and commercial activities. The appellant paid the entire salary of such seconded employees with other benefits such as PF allowance, special allowances etc. while the foreign entity disperses the other part of the salary. It is stated that for administrative convenience, a part of the salary is paid by the parent-company which is reimbursed by the appellant. It is also submitted that these seconded employees during their tenure with the appellant regularly paid their taxes and the appellant had filed regular TDS returns for reporting tax deducted at source. During the period of secondment, the employees are considered as whole time employees of the appellant.

3.1 It is submitted that the appellant's case is different from the case of **CC, CE & ST, Bangalore (Adjudication) vs. Northern Operating System Pvt. Ltd.: 2022 (61) GSTL 129 (S.C.)** dated 19.05.2022 decided by the Hon'ble Apex Court for the reasons stated below:

- The employees are on the pay role of the appellant.
- All salaries and social security benefits are also fulfilled by the appellant.
- The payments made by the parent-company are reimbursed by the appellant.
- The seconded employees are for the sole purpose of establishing the appellant's company and are not hired for any specific task.
- There is no replacement of employees.

3.2 It is further submitted that the payments made by the appellant are reimbursable expenses and hence, not taxable as is held by the decision of the Hon'ble Supreme Court in the case of **Intercontinental Consultants and Technocrats Pvt. Ltd. vs. Union of India 2018 (10) GSTL 401 (S.C.)** dated 30.11.2012. It is stated that the extended period of limitation also cannot be upheld as is held by the Hon'ble Apex Court in the case of **Northern Operating System Pvt. Ltd** (supra).

4. The Learned Authorized Representative (AR) on behalf of the Revenue submitted the issue is settled by the Hon'ble Apex Court in the case of **Northern Operating System Pvt. Ltd.** (supra) and the Commissioner was right in confirming the demand of service tax along with penalty since the appellant had failed to discharge service tax during the relevant period.

5. Heard both sides and perused the records. The limited issue to be decided is whether the appellant is liable to pay service tax under the category of 'Manpower Recruitment or Supply Agency Service' under reverse charge mechanism for the manpower services received from their parent-company M/s. ARM Ltd. UK. The period of dispute is from 01.08.2006 to

29.03.2010 and the show-cause notice was issued on 11.10.2010.

6. The Hon'ble Supreme Court in the case of **Northern Operating System Pvt. Ltd.** (supra) held as follows:

"33. The issue which this Court has to decide is whether the overseas group company or companies, with whom the assessee has entered into agreements, provide it manpower services, for the discharge of its functions through seconded employees.

34. The contemporary global economy has witnessed rapid cross-border arrangements for which dynamic mobile workforces are optimal. To leverage talent within a transnational group, employees are frequently seconded to affiliated or group companies based on business considerations. In a typical secondment arrangement, employees of overseas entities are deputed to the host entity (Indian associate) on the latter's request to meet its specific needs and requirements of the Indian associate. During the arrangement, the secondees work under the control and supervision of the Indian company and in relation to the work responsibilities of the Indian affiliate. Social security laws of the home country (of the secondees) and business considerations result in payroll retention and salary payment by the foreign entity, which is claimed as reimbursement from the host entity. The crux of the issue is the taxability of the cross charge, which is primarily based on who should be reckoned as an employer of the secondee. If the Indian company is treated as an employer, the payment would in effect be reimbursement and not chargeable to tax in the hands of the overseas entity. However, in the event the overseas entity is treated as the employer, the arrangement would be treated as service by the overseas entity and taxed".

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43. A plain reading of the definition of "manpower recruitment agency" (per Section 65(68) of the unamended Act) requires that to fall within that description,

(a) a person (the expression is not defined; however, by Section 3(42) of the General Clauses Act, the term includes "*any company or association or body of individuals whether incorporated or not*");

(b) provides service

- (c) directly or indirectly,
- (d) in any manner for recruitment or supply of manpower,
- (e) temporarily *or otherwise*

44. The question is what are the services provided to the assessee, and by whom? Do they include the provision of services, through employees, by its overseas group companies or affiliates? After 1-7-2012, the definition of "service" underwent a change. Except listed categories of activities excluded from, or kept out of the fold of the definition, *every activity* virtually is "service". Now, by Section 65(44), "service" means

- (a) any activity
- (b) carried out by a person for another
- (c) for consideration, and
- (d) includes a declared service (the term "declared service" is defined in Section 66E).

45. Section 65(44), however, excludes from its sweep [by clause (b)], "*a provision of service by an employee to the employer in the course of or in relation to his employment.*" The assessee contends that the secondment agreement has the effect of placing the overseas employees under its control, so to say, and enables it to require them to perform the tasks for its purposes. It emphasizes that the real nature of the relationship between it and the seconded employees is of employer and employee, and outside the purview of the service tax regime.

46. From the above discussion, it is evident, that prior to July, 2012, what had to be seen was whether a (a) person provided service (b) directly or indirectly, (c) in any manner for recruitment or supply of manpower (d) temporarily or *otherwise*. After the amendment, *all* activities carried out by one person for another, for a consideration, are deemed services, except certain specified excluded categories. One of the excluded category is the provision of service by an employee to the employer *in relation to his employment*.

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48. The task of this Court, therefore is to, upon an overall reading of the materials presented by the parties, discern the true nature of the relationship between the seconded employees and the assessee, and the nature of the service provided - in that context - by the overseas group company to the assessee.

49. A co-joint reading of the documents on record show that :
- (i) Attachment 1 to the service agreement ensures that the overseas group company assigns, *inter alia*, certain tasks to the assessee, including back office operations of a certain kind, in relation to its activities, or that of other group companies or entities;
 - (ii) The assessee is paid a mark up of 15% of the overall expenditure it incurs, by the overseas company (clause 2, read with attachment 1 of the Service Agreement);
 - (iii) By the Secondment Agreement, the parties agree that the overseas employee is *temporarily loaned* to the assessee (Article I read with the Schedule);
 - (iv) During the period of secondment, the assessee has control over the employee, *i.e.* it can require the seconded employee to return, and likewise, the employee has the discretion to terminate the relationship (Article II);
 - (v) The overseas employer (group company) pays the seconded employee, which is reimbursed to the overseas company, by the assessee (Article III);
 - (vi) The assessee is responsible for the work of the seconded employee, *i.e.*, the overseas employer, during the secondment period, is absolved of any liability for the job or work of its seconded employees (Article VII);
 - (vii) The secondment is for a specified duration, and the employment with the assessee ceases upon the expiration of that period (Article II of the secondment agreement and the "*Duration*" clause in the letter of understanding with the seconded employee);
 - (viii) The letter of understanding issued to the seconded employee specifies that the tenure with the assessee is an assignment (in one place, the term used is "*At its conclusion, repatriation will be in accordance with the Global Mobility Repatriation Policy*");
 - (ix) The terms include the salary payable as well as other allowances, such as hardship allowance, vehicle allowance, servant allowance, paid leave, housing allowance, etc. *The nature of salary and other perks underscore the fact that the seconded employees are of a certain skill and possess the expertise, which the assessee requires.*

50. The above features show that the assessee had *operational or functional* control over the seconded employees; it was potentially liable for the performance of the tasks assigned to them. That it paid (through

reimbursement) the amounts equivalent to the salaries of the seconded employees - because of the obligation of the overseas employer to maintain them on its payroll, has two consequences : one, that the seconded employees continued on the rolls of the overseas employer; two, since they were not performing jobs in relation to that employer's business, but that of the assessee, the latter had to ultimately bear the burden. There is nothing unusual in this arrangement, *given that the seconded employees were performing the tasks relating to the assessee's activities and not in relation to the overseas employer*. To put it differently, it would be unnatural to expect the overseas employer to not seek reimbursement of the employees' salaries, since they were, for the duration of secondment, not performing tasks in relation to its activities or business.

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52. A vital fact which is to be considered in this case, is that the nature of the overseas group companies business appears to be to secure contracts, which can be performed by its highly trained and skilled personnel. This business is providing certain specialized services (back office, IT, bank related services, inventories, etc.). Taking advantage of the globalized economy, and having regard to locational advantages, the overseas group company enters into agreements with its affiliates or local companies, such as the assessee. The role of the assessee is to optimize the economic edge (be it manpower or other resources availability) to perform the specific tasks given it, by the overseas company. As part of this agreement, a secondment contract is entered into, whereby the overseas company's employee or employees, possessing the specific required skill, are *deployed for the duration the task is estimated to be completed in*. This Court is not concerned with unravelling the nature of relationship between the overseas company and the assessee. However, what it has to decide, is whether the secondment, for the purpose of completion of the assessee's job, amounts to manpower supply.

53. Facially, or to put it differently, for all appearances, the seconded employee, for the duration of her or his secondment, is *under the control of the assessee, and works under its direction*. Yet, the fact remains that they are on the pay rolls of their overseas employer. What is left unsaid - and perhaps crucial, is that this is *a legal requirement, since they are entitled to social security benefits in the country of their origin*. It is doubtful whether without the comfort of this assurance, they would agree

to the secondment. Furthermore, the reality is that the secondment is a part of the global policy - of the overseas employer *loaning their services, on temporary basis*. On the cessation of the secondment period, they have to be repatriated in accordance with a global repatriation policy (of the overseas entity).

54. The letter of understanding between the assessee and **the seconded employee nowhere states that the latter would be treated as the former's employees after the seconded period (which is usually 12-18 months). On the contrary, they revert to their overseas employer and may in fact, be sent elsewhere on secondment. The salary package, with allowances, etc., are all expressed in foreign currency (e.g., US \$ 330,000/- per annum in the letter produced before Court, extracted above).** Furthermore, the allowances include a separate hardship allowance of 20% of the basic salary *for working in India*. The monthly housing allowance in the specific case was ` 3,66,700. In addition, an annual utility allowance of ` 3,97,500/- is also assured. These are substantial amounts, and could have been only by resorting to a standardized policy, of the overseas employer.

55. The overall effect of the four agreements entered into by the assessee, at various periods, with NTS or other group companies, clearly points to the fact that the overseas company has a pool of highly skilled employees, who are entitled to a certain salary structure - as well as social security benefits. These employees, having regard to their expertise and specialization, are seconded (a term synonymous with the commonly used term in India, *deputation*) to the concerned local municipal entity (in this case, the assessee) for the use of their skills. Upon the cessation of the term of secondment, they return to their overseas employer, or *are deployed on some other secondment*.

56. This Court, upon a review of the previous judgment in *Sushilaben Indravadan* (supra) held that there no one single determinative test, but that what is applicable is "*a conglomerate of all applicable tests taken on the totality of the fact situation in a given case that would ultimately yield, particularly in a complex hybrid situation, whether the contract to be construed is a contract of service or a contract for service. Depending on the fact situation of each case, all the aforesaid factors would not necessarily be relevant, or, if relevant, be given the same weight.*"

57. Taking a cue from the above observations, **while the control (over performance of the seconded employees' work) and the right to ask them to return, if their functioning is not as is desired, is with the assessee, the fact remains that their overseas employer *in relation to its business, deploys them to the assessee, on secondment. Secondly, the overseas employer - for whatever reason, pays them their salaries. Their terms of employment - even during the secondment - are in accord with the policy of the overseas company, who is their employer. Upon the end of the period of secondment, they return to their original places, to await deployment or extension of secondment.***"

7. In this background, one needs to examine the terms of the Agreement entered into by the appellant with their parent-company. The relevant clauses of the Agreement are reproduced below:

Agreement For Salary Cost Reimbursement

This agreement is made this 29th Day of November, 2005 at Adarsh Opus, 3d Floor, No.1 Campbell Road, Austin Town, Bangalore -560 047, India.

Between:

ARM Limited a company incorporated under the laws of ENGLAND and having its Principal Office at 110 Fulbourn Road, Cambridge, CB1 9NJ, England (hereinafter referred to as "**Assignor**" which term shall unless repugnant to its context or meaning thereof shall mean and include its transferees, successors, permitted assignees and representatives) of the FIRST PART

AND

ARM EMBEDDED TECHNOLOGIES Private Limited, a company incorporated under the Companies Act, 1956 having its registered office at Adarsh Opus, 3rd Floor, No.1 Campbell Road, Austin Town, Bangalore -560 047 (hereinafter referred to as "**Assignee**" which term shall unless repugnant to its context or meaning thereof shall mean and include its transferees, successors, permitted assignees and representatives) of the OTHER PART

WHEREAS:

1. ARM Embedded Technologies Pvt. Ltd. wishes to **recruit certain employee's of ARM Limited, for the purposes of its Software Development and Commercial operations.** Such employees are hereinafter referred to as "Employees"
2. ARM Limited has expressed its willingness to **send such employees on secondment for facilitating the operations of ARM Embedded Technologies Private Limited.**

3. The parties deem it expedient to reduce into writing the terms and conditions that shall govern their mutual relations.
4. The effective date of this agreement is from April 01 2005.

Now This Agreement Witnesseth and it is hereby agreed by and between the parties as follows:

1. Interpretation

In this Agreement unless the context otherwise requires:

- a) Words denoting the singular number shall include the plural and vice versa;
- b) Words denoting any gender shall include all genders;
- c) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have the appropriate corresponding meaning;
- d) Words denoting natural persons shall include corporation and vice-versa;
- e) Headings are for convenience only and shall not affect interpretation;
- f) Reference to any party in this agreement shall include the party's successors and permitted assigns;
- g) Any schedule to this agreement is incorporated herein forms part of this agreement; and
- h) References to "\$" or to "**USD**" shall be taken as referring to amounts of currency of the **United States Dollar**.

2. Assignment & Remuneration

- 2.1 The employees as required and specified by the Assignee for its operations in India and intimated to Assignor shall be seconded by Assignor to the office or location specified by Assignee. Such Assignment shall be for duration and on the terms to be mutually agreed upon by the parties hereto.
- 2.2 At the request of Assignee and for administrative convenience, Assignor shall pay to the employees in their home country such foreign currency salary amounts as specified in the attached schedule to this agreement or schedules signed by the parties from time to time.
- 2.3 **Assignee agrees to reimburse Assignor, such foreign currency salary amounts paid by Assignor on its behalf under clause 2.1 above.**
- 2.4 Assignor shall send to Assignee debit notes for the foreign currency salary amounts paid to the employees on behalf of Assignee.
- 2.5 All payments by Assignor to Employees under this agreement would be made net of all Withholding taxes and levies, wherever applicable.

4. Term

The term of the agreement shall be co-terminus with the period of employment of the employees with Assignee.

5. Relationship

None of the provisions of this agreement shall be deemed to constitute a partnership between Assignor and Assignee and neither Assignor nor Assignee shall have any authority to bind each other in any way (except as expressly provided) for by this agreement.

6. Successors and Assigns

This agreement shall ensure for the benefit of and shall be binding on the respective successors in title and permitted assigns of each party who shall procure in transferring its interest hereunder that each such transferee shall execute a deed with the other party by which the transferee agrees to be bound by the terms identical, mutatis mutandis, to the terms of the agreement.

7. Notices

Any notices or communications to be given under this agreement shall either be delivered personally, sent by registered post, telex or facsimile transmission or by electronic mail. The addresses for service of each party shall be the address previously notified to the other party.

8. Variations

No modification or alteration of, or addition to any of the provisions of this agreement or the schedule shall be made unless agreed to by the parties in writing

9. Governing Law

This agreement shall be governed by, and interpreted in accordance with English law.

10. Confidentiality

All information exchanged between the parties under this agreement, all information relating to the terms and conditions of this agreement or to any of the activities contemplated by this agreement is confidential to them, their employees, legal advisers and other consultants and may not be disclosed to any other person except:

- a) To the advisor of either party,
- b) For the purposes of this agreement or otherwise with the consent of the party who supplied the information;
- c) If the information is, on the date this agreement is entered into, lawfully in the possession of the recipient of the information through sources other than the party who supplied the information;
- d) If required by law or a stock exchange;
- e) In connection with legal proceedings relating to this agreement; or
- f) If the information is generally and publicly available.

11. Representations and Warranties

Assignor and Assignee each represents and warrants to the other that

- a) It has the capacity to enter into and perform this agreement and all transactions and undertakings contemplated herein and that all corporate and other actions required to authorize it to enter into

and perform this agreement have been or will be properly taken, and

- b) This agreement has been duly executed by it and is valid and binding upon it in accordance with its terms.

SCHEDULE ONE

Reimbursement of Salary, Allowances etc., for Employees Seconded to ARM Embedded Technologies Private Limited, Bangalore. India

This schedule is made pursuant to the Agreement dated 29th day of November 2005 between ARM Embedded Technologies Private Limited and ARM Limited, effective from April 01 2005.

1. Assignment and payment

1.1 Assignee for the time being agrees to take on its employment Assignor personnel, as per Clause 2 of this schedule.

1.2 On behalf of Assignee, Assignor agrees to pay the employees, the foreign currency salary relating to his employment with Assignee

1.3 Assignor may provide any other benefits/amenities as per the compensation policy of the Company

2. Salary, Allowances Etc. Reimbursable To Assignor

As per secondment letter from respective home countries of the assigned employee (s) from time to time.

3. Salary and Allowances payment

4.1 The salary, allowances etc shall be as per the secondment letter executed from time to time between parties and will be net of all withholding Taxes wherever applicable, periodically by Assignor to Assignee on a pro-rata basis

4.2 Assignee will be responsible for the timely payment of all withholding taxes including but not limited to personal Income Taxes incurred by the employee for receipt of his salary and allowances.

4.3 The payment by Assignee to Assignor of the above salary, allowances, cost etc. is subject to compliance of various statutory regulations under the Indian Income Tax Regulations and Foreign Exchange Management Regulations.

5. Special conditions

In addition to the net salary and allowance payments, the Assignee will provide and pay directly to the employees all such benefits and allowances as mutually agreed between the Employee and the home country Assignor.

Provided, that the above benefits/amenities shall be subject to and as per the policy of the company.

8. Below are the letters issued to some of the secondment employees.

July 12, 2010

Dear Mr Tim Hay

1. We are happy to confirm your secondment to ARM Embedded Technologies Private Limited. (hereinafter referred to as 'ARM' or 'the Company'). designation is Senior Engineer and you will be based in the Bangalore Office.

Your duties will be as follows:-

- Verification Engineer, SMMU:
 - a. Contribute in Testplan/Verification Methodology documentation
 - b. Contribute in building System Verilog Testbench
 - c. Contribute in building Scoreboard functionality
 - d. Contribute in building Protocol Checkers/Monitors and Bus Functional Models
 - e. Contribute in developing random/directed test cases
 - f. Contribute in Debug and fixing of the Verification Environment/test Issues
 - g. Contribute to providing inputs to user facing documentation,
 - Verification Assessor, Hugo
 - a. Review Hugo Verification Methodology and implementation and provide inputs where required.
- 2. Please note that your term of employment (secondment) with the Company commences from 01 August 2010 and is valid for a period of 11 months initially, with the option to extend the assignment.**
3. You will be required to work at the Company's establishment at ARM Embedded Technologies Pvt. Ltd or at such other places, as the Company may direct. You are also expected to do such other work as may be assigned to you from time to time. You are liable to be transferred from one job, department, division or location to another with mutual consultations.
 4. Your salary / emoluments will be as per Annexure-I. Your next increment subject to the Company policy.
 5. During the period of secondment, you will work in accordance with the Company's policies and procedures in existence from time to time.
 6. You will complete all necessary documentation formalities required as per local statutes. The Company will assist you in this exercise.
 7. The regular working hours at ARM Embedded Technologies Pvt. Ltd shall be 40 hours per week.
 8. During the period of secondment, you will be a whole time employee of the Company and you will not undertake any trade, business or occupation or public office for payment or otherwise except with the

written consent of the Company. You will also not during your tenure of employment with the Company, be directly or indirectly interested in any other company or entity engaged in any activity that the Company is / may be engaged / interested in.

9. Provident Fund ('PF') - Since you qualify as an "International Worker" under the PF regulations, you will be required to contribute to provident fund in India. The employer will make matching contributions
10. You will furnish all the information and data that is required to facilitate tax filing to the agency authorized to do so by the Company.
11. In the event of your voluntary resignation prior to the completion of your secondment or if you are terminated for cause, at the time of your separation from the Company, you will ensure that the assets and documents and intellectual properties of the Company in your custody and / or under your charge, including any Power of Attorney (s) issued by the Company in your favor, are returned intact to the Company and you will vacate the Company accommodation, if any provided to you.
12. Please indicate your acceptance of the terms and conditions of this employment agreement by signing and returning a copy of the same. We look forward to having you join the Team and anticipate that this will be a mutually beneficial relationship.

Annexure-I

Salary/Allowances/Deductions Summary

While on your international assignment, you will receive assignment-related allowances, deductions and other benefits as per the international assignment policy.

The employer will review the salary, allowances and deductions per the schedule indicated herein and will adjust accordingly (up or down) based on the data review.

An overview of your current (as of the start date of your assignment) allowances is below.

On-Assignment Salary/Allowances/Deductions

- Home-Country Salary - entitled to a salary of GBP 34,250/ (annual equivalent to INR 24,23,970 and USD 51,855 based on exchange rate as at 03 July 2010)
- Your salary as per your discretion may be paid into the bank account designated by you in your home country.
- Host-Country Housing Allowance
- You will be entitled to a House Rent Allowance of INR Rs.21,500 per month which will be paid to you by ARM, India
- Host-Country Utilities Allowance
- You will be entitled to a Utilities Allowance of INR Rs. 10,000 per month
- Host-Country Transportation Allowance.

- You will be entitled to a transportation allowance equivalent to INR 192,000/annual.
- Per Diem GBP 5,794/annual (reviewed quarterly and updated monthly for previous month's FX rate).

12th July 2010

To whom so ever it may concern

Mr. Tim Hay is our employee and will be on assignment in India from the 1st August 2010 to 30th June 2011.

We undertake to withhold all the necessary taxes payable by Mr Hay during his assignment to India and deposit the same with the government treasury in accordance with the provisions of the Income tax Act, 1961.

Further, in case any taxes that are due to the Government of India from Mr Hay in connection with his assignment in India, then ARM Embedded Technologies Private Limited shall discharge such taxes on behalf of Mr Hay.

9. Clause 1 and Clause 2 of the Agreement clearly establishes the fact that the employees belong to the parent-company ARM Embedded Technologies Pvt. Ltd. wishes to **recruit** certain employees of ARM Limited, for the purposes of its **Software Development and Commercial operations**. The parent-company sends such employees on **secondment for facilitating the operations** of ARM Embedded Technologies Private Limited. Salary paid is home country salary in foreign currency as per the international assignment policy which is later reimbursed by the appellant.

10. The employees are recruited for a specific period and they return to the parent-company once the tenure is complete. The fact that the employees are under the control of the appellant during the secondment period does not in any manner disprove the fact that they have been recruited from their parent-company and are under the payroll of the parent-company under the international assignment policy. Exactly, in these circumstances, the Hon'ble Supreme Court held that the appellant is liable to pay service tax under the category of 'Manpower Recruitment or Supply Agency Service'. Hence, the impugned order on merit is upheld but the demand is to be

confirmed only for the normal period for the reason that no *mala fide* intention can be alleged against the appellant since any tax payment would be eligible for cenvat credit.

11. In view of the above, the impugned order is upheld only to the extent of confirmation of demand for the normal period and all other penalties are set aside.

Appeal is partially allowed.

(Order pronounced in Open Court on 24.04.2026.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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