केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा कर भवन, सातवीं मंजिल पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015

GST Building, 7th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015

सत्यमेव जयते

079-26305065

टेलेफैक्स: 079-26305136

क फाइल संख्या :File No : **V2/92, 93 & 96/GNR/2018-19** S88+3 S883

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-61 to 63-18-19**

दिनाँक Date :**09.08.18** जारी करने की तारीख Date of Issue: 29/8/2018

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **AHM-ST-003-JC-AKS-022 to 24-17-18** दिनाँक : **27-03-2018** से सृजित

Arising out of Order-in-Original: **AHM-ST-003-JC-AKS-022 to 24-17-18,** Date: **27-03-2018** Issued by: Joint Commisisoner,CGST, Div:RRA,HQ, Gandhinagar Commissionerate, Ahmedabad.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Effective Teleservices Pvt Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any

nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall beer a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।
Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत निर्धारित रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

Three appeals have been filed by M/s. Effective Teleservices, 1st floor, Infotower-4, Infocity, Nr. Indroda Circle, Gandhinagar- 382 009 [for short – 'adjudicating authority'] against OIO Nos. AHM-ST-003-JC-AKS-22 to 24-17-18 dated 27.03.2018 passed by Joint Commissioner, Central Excise, Ahmedabad-III Commissionerate [for short –'adjudicating authority']. Since the issue involved is the same in all the three appeals viz. V2/92/GNR/2018-19, V2/93/GNR/2018-19 and V2/96/GNR/2018-19, all these appeals are being decided vide this OIA.

2. Briefly stated, internal audit raised an objection vide Final Audit Report no. 104/2010-11 dated 2.5.2011, that the appellant had not discharged service tax under section 66A(1) of the Finance Act, 1994 read with notification No. 11/2006-ST dated 19.4.2006, in respect of *internet telecommunication service* provided by M/s. Verizon and Quest through M/s. Etch Inc USA, under reverse charge mechanism. Two show cause notices dated 8.4.2014 and 21.4.2015, covering the period from 2009-2010 to 2012-2013 and 2013-2014, respectively, were issued to the appellant, *inter alia*, proposing classification of the service provided by them under '*internet telecommunication services*'; proposing recovery of service tax along with interest and further proposing penalty under sections 76, 77 and 78 of the Finance Act, 1994. Vide earlier OIO no. 16-17/2015-16 dated 23.11.2015, both these notices were adjudicated, wherein the adjudicating authority classified the service under '*internet telecommunication services*'; confirmed the service tax along with interest and further imposed penalties under section 77 and 78. Aggrieved, the appellant filed an appeal against the OIO dated 23.11.2015, which was decided by me vide OIA No. 145-146/2016-17 dated 28.10.2016, wherein the said OIO was set aside and the matter was remanded back to the original adjudicating authority. Subsequently, vide the aforementioned impugned OIO dated 27.3.2018, the adjudicating authority has decided the show cause notice dated 8.4.2014, and periodical notices dated 21.04.2015 and 13.4.2016, wherein he has classified the service under 'internet telecommunication services'; confirmed the demand of Rs. 68,08,095/- along with interest; imposed penalty under sections 77 and 78 of the Finance Act, 1994. The appellant was also directed to pay an amount as prescribed under the provisions of Rule 7C of the Service Tax Rules, 1994 for their failure to file the ST-3 returns in time and the manner prescribed under the law.

3. Feeling aggrieved, this appeal has been filed against the impugned OIO dated 27.3.2018, raising the following grounds:

- that they wish to deny all the allegations; that they have not contravened the provision of section 65, 66, 68, 70 & 73(a) of the Finance Act, 1994;
- that the service was availed & used outside India and hence out of the purview of service tax; that the appellant was not in receipt of any service in India; that the service was availed by a branch outside India; that only for the purpose of financial statement it was shown as foreign expenditure; that it was reimbursement of expenses incurred by the associates concerned there; that since the service was received and consumed outside India it is not liable for service tax;
- that actual reimbursement of expenses are not liable for the service tax; that it is actual reimbursement of expenses;
- that the appellant is eligible for input credit and eligible for the refund of service under Rule 5 of

the CENVAT Credit Rules, 2004 as a 100% exporter of service so the matter is revenue neutral;

- that extended period cannot be invoked in the present dispute since there is no suppression, willful misstatement on the part of the appellant;
- that no penalty can be imposed under sections 77, 78 of the Finance Act, 1994; that no interest is leviable.
- that they would like to rely on the case of M/s. J J Intercontinental [2013(29) STR 9(Del)], Enso Secutrack Ltd [2011(23) STR 465 (Tri-Bang)], Gati Ltd [2010(19) STR 877 (Tri-Bang)], M/s. Tech Mahindra [2012(26) STR 344 (Tri-Bang)], Chillies Export House [2011(24) STR 40 (Tri-Chennai)], Solar Explosives Ltd [2011 (21) STR 448 (Tri-Mum)], Dineshchandra R Agarwal Infracon [2010(18) STR 39 (Tri-Abad)], M/s. Nizam Sugar Factory [2008 (9) STR 314 (SC)]

4. Personal hearing in all the three appeals was held on 25.7.2018 wherein Shri Vipul Kandhar C.A., appeared on behalf of the appellant and reiterated the submissions advanced in the grounds of appeal. He further stated that the demand is of reimbursement of expenses and submitted a copy of the judgement in the case of M/s. Intercontinental Consultants & Technocrats P Ltd [2018(10) GSTL 401(SC)].

5. I have gone through the facts of the case, my earlier OIA, the impugned OIO, the grounds made in the appeal and the oral submissions made during the course of personal hearing. As is already mentioned the issue was earlier decided by me vide OIA No. AHM-EXCUS-003-APP-145 to 146-16-17 dated 28.10.2016, wherein I had remanded back the matter with the following directions:

> *11. The copy of representative agreement, cited to augment the claim that services were provided outside India, the relevant portions of which are reproduced supra, nowhere speaks that the services were rendered outside India; that the branches to whom services are provided are outside India. The agreement only discloses that the appellant will reimburse M/s. Etech of the actual expenses upon presentation of debit notes with a copy of invoices from third party providing the services, which effectively means the third parties appointed by M/s. Etech.*
>
> *12. The contentions in this regard were rejected by the original authority, on the grounds of lack of documentary evidence [refer para (vi), (ix) and (xvi) of the impugned OIO]. In-fact the documents were never produced before the adjudicating authority. As the documents submitted before the appellate authority are only representative, it is difficult to draw any conclusions. It is therefore, felt that further documentary evidence, in these regard, need to be submitted by the appellant – which thereafter, needs to be examined, to decide the claim of the appellant.*
>
> *13. In view of the foregoing, the appellant is directed to submit all the evidences, documentary, etc., to support his claim that the payments were in respect of reimbursement of expenses; that it was just a money transfer; that the service was not received in India; that the services were provided outside India and used outside India - to the adjudicating authority, within 60 days of the receipt of this Order-in-Appeal. Needless to state, that any failure on part of the appellant, to satisfy the original adjudicating authority in respect of evidences, documents, within the stipulated time frame of 60 days, would render the contentions in this regard, to be rejected. The adjudicating authority is further directed to pass an order after following the principles of natural justice after thoroughly examining the documents provided by the appellant, in this regard.*

6. Now, the issue to be decided in the present appeal is whether the appellant is liable for service tax in respect of the foreign expenditure reflected in their books of accounts,

under *internet telecommunication service,* defined under 65(57a) read with 65(105) (zzzu) of the Finance Act, 1994, under reverse charge mechanism.

7. Before moving forward, I find that the adjudicating authority in his impugned OIO, has recorded the following findings, which are reproduced below in brief:

- that he has gone through the agreement made between the appellant and M/s. Etech, USA and the invoices concerned; that M/s. Qwest has provided services to the appellant at their centre in Gujarat and Vadodara through M/s. Etech; that perusal of ledger of reimbursement Quest charges in the accounts of the appellant clearly shows that the appellant had received broadband services from the M/s. Etech;
- that the services received by the appellant is appropriately classifiable under 'internet telecommunication service' as defined under section 65(57a) of the Finance Act, 1994;
- that in respect of the period prior to 1.7.2012 - the appellant who is in India had received service from a person who had established a business in a country other than India & hence in accordance with Section 66A(1) of the Finance Act, 1994 read with notification No. 11/2006-ST dated 19.4.2006, the appellant being the service receiver was liable to pay service tax;
- that from 1.7.2012 – M/s. Etech Inc., USA is located in a non taxable territory; that the appellant is located in a taxable territory; that as per Rule 2(dd) of the service tax rules, read with rule 3 of the Place of Provision of Service Rules, 2012 [notification No. 28/2012-ST], the place of provision of the subject service is in India and therefore, is taxable;
- that circular no. 141/10/2011-TRU dated 13.5.2011 pertains to export of service rules, 2005 and hence is not relevant to the instant case.

8. I will deal with the issue one after the another. Firstly, I find that the appellant has not contested the classification. Hence, this is not in dispute, as far as the present proceedings are concerned.

9. The appellant has vigorously contested that the service was availed & used outside India and hence out of the purview of service tax; that the appellant was not in receipt of any service in India; that the service was availed by a branch outside India; that only for the purpose of financial statement it was shown as foreign expenditure; that since the service was received and consumed outside India it is not liable for service tax. However, the adjudicating authority in his findings in para 19.1 has stated that the service was provided by the appellant by M/s. Etech Inc., USA at Gujarat and Vadodara and it was utilized in Gujarat & Vadodara; that the appellant had obtained permission from the telecom department to set up international call centre at Gandhinagar, Gujarat and through this call centre they had provided various service to their client. Therefore, the adjudicating authority concluded that the appellant had utilized the services of M/s. Etech Inc., USA in Gujarat. This conclusion was drawn by the adjudicating authority after verification of the invoices, ledgers and the agreements. I had remanded back the matter earlier only for this purpose i.e. to give a findings after going through the documents. The appellant in his grounds has reiterated what he had stated before me during the earlier proceedings. He has not produced any document to substantiate his primary arguments that the service was resumed and consumed outside India. I therefore, do not find any plausible reason to interfere with the findings recorded by the adjudicating authority more so since it is based on his

study of documents submitted by the appellant. Thus the contention that the service were provided and consumed outside India is not tenable and is therefore, rejected.

10. Now going through the second contention raised by the appellant, wherein he has contended that actual reimbursement of expenses are not liable for the service tax; that it was actual reimbursement of expenses. In this regard, the adjudicating authority has while disagreeing with the contention held that the appellant has not reimbursed the expenses to their service provider M/s. Etech Inc., USA, but had paid/made provisions for charges for the service provided by them; that the expenses paid are not reimbursement expenses, but service charges paid to M/s. Etech Inc., USA, for receiving the service from them; that the appellant has failed to prove that they have made payment towards reimbursement charges to M/s. Etech Inc., USA. On going through the grounds of appeal filed by the appellant, I find that there is nothing put forth by the appellant, which counters the findings of the adjudicating authority. However, what is interesting is that on going through the earlier OIA file of the appellant, I find that they had submitted a representative agreement between M/s Etech Inc., USA and the appellant, wherein *inter alia* in para 2 Reimbursement of expenses, the following is stated viz.

> *2. Reimbursement of expenses:*
>
> *2.1 ETPL [the appellant], will reimburse ETCH actual expenses incurred by ETECH for all above services upon presentation of debit notes with a copy of invoices from 3rd party providing the services.*
> *2.2* If there is a discrepancy as to the value of the services, both parties agree to resolve such discrepancy within fifteen days of notice from ETCH that such discrepancy exist.
> *2.3ETECH confirms that if will not mark up any profit in billing to ETPL and all charges would only be reimbursement of actual amount invoices of party providing services.*
> *2.4ETPL shall reimburse the expenses with in 30 days of presentation of debit notes along with copy of invoices,*

Now surprisingly, on going through the entire agreement, this is the only para which talks about payments towards services provided by M.s, Etech to the appellant. Now, no rational agreement would be devoid of payment for services rendered. The conclusion which can be drawn is that this reimbursement of expenses is a nomenclature used in this agreement by the appellant and M/s. Etech Inc., USA towards payment of service charges. It is because of this that I agree with the findings of the adjudicating authority wherein he states that that the expenses paid are not reimbursement expenses, but service charges paid to M/s. Etech Inc., USA, for receiving the service from them. The appellant's reliance on the judgement of the Hon'ble Supreme Court of India in the case of M/s. Intercontinental Consultants & Technocrats P Ltd [2018(10) GSTL 401(SC)], would have helped the appellant only if he was able to prove that what was paid under the nomenclature reimbursement of expenses were actually reimbursement of expenses. That not being the case, I do not find that the rationale of the judgment would be applicable to the case of the appellant just because the service charge/payment word is renamed as reimbursement of expenses and therefore, I reject this contention.

11. As far as the appellant's claim that he is eligible for input credit and eligible for refund of service under Rule 5 of the CENVAT Credit Rules, 2004 is concerned, I find that the adjudicating authority has dealt with the contention in para 19.3 of his impugned OIO. No plausible contention/argument is made by the appellant in the grounds of appeals, which forces me to interfere with the findings in this regard. The contention is therefore rejected.

12. The appellant has thereafter submitted that extended period cannot be invoked. The contention was also raised before the adjudicating authority who rejected it in para 19.5 of his OIO. In his grounds against the finding of the adjudicating authority the appellant in para 3.4.2 has only stated that extended period cannot be invoked in the present case since there is no suppression, wilfull misstatement on the part of the appellant. No reasoning is given nor is the finding of the adjudicating authority refuted, where he has emphatically held that the case is a fit case for invoking extended period. Again, since no plausible contention is made against the findings of the adjudicating authority I do not find any need to interfere with the findings of the adjudicating authority in this regard.

13. The appellant has lastly contended that the penalties under section 77, 78 is not leviable. The adjudicating authority in para 19.6 has given in depth his reasonings for imposing penalty under sections 77 and 78. He has also dealt with the contention of section 80 and further given reasonings for not given any reasons as to why the findings in the impugned OIO are not correct. The appellant in his grounds of appeal has not contested the findings. I find that the findings for imposing penalty under sections 77 and 78 are correct and there is no reasons to interfere with the same.

14. Finally before ending, I find that the appellant has quoted a catena of case laws wherein he has reproduced the head notes, without caring to mention how the case law would be applicable to the present dispute. Since no reasoning is given as to how a particular citation would be applicable to the present dispute at hand, I am left with no option but to ignore the reliance placed on the said case laws.

15. In view of the foregoing, I uphold the impugned OIO and reject the three appeals filed by the appellant.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

16. The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स)

Date: 7.08.2018

Attested

(Vinod Lukose)
Superintendent (Appeal)
Central Tax, Ahmedabad.

BY R.P.A.D

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Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Gandhinagar Commissionerate.
3. The Addl./Joint Commissioner, (Systems), Central Tax, Gandhinagar Commissionerate.
4. The Joint Commissioner, Central Tax, Gandhinagar Commissionerate.
5. The Dy. / Asstt. Commissioner, Central Tax, Gandhinagar Division, Gandhinagar Commissionerate.
6. Guard file.
7. P.A