आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad

सत्यमेव जयते

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎: 079-26305065 टेलेफैक्स : 079 - 26305136

6847 to 6853

क फाइल संख्या : File No : **V2(ST)55 /North/Appeals/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-EXCUS-002-APP-64-18-19**

दिनाँक Date : **11-Sep-18** जारी करने की तारीख Date of Issue 29/10/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **AHM-SVTAX-000-ADC-30-16-17** Dated **16-Jan-17** Issued by **Additional Commissioner ,** Central GST , Div-III , Ahmedabad North.

घ **अपीलकर्ता का नाम एवं पता**
Name & Address of The Appellants

M/s AHA Oilfield Service

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:–
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:–
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम,1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:–
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद–380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar,Ahmedabad – 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी– 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरूद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of

crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम,1994 की धारा 86 की उप–धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त,, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ **(OIA)**(उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा **अधीक्षक** केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश **(OIO)** की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)**(OIA)**(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (**OIO**) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 6.50/– पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में वर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. **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।**

4. 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.

4(1) **इस संदर्भ में, 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।**

4(1) 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

This appeal has been filed by M/s. AHA Oilfields Services, A-6, Maitri Ashoka, Motera Gam Road, Sabarmati, Ahmedabad- 380 005 [for short –'appellant'] against OIO No. AHM-SVTAX-000-ADC-30-2016-17 dated 16.1.2017, passed by the Additional Commissioner of the erstwhile Service Tax Commissionerate, Ahmedabad [for short –'adjudicating authority].

2. The facts briefly are that during the course of internal audit, it was observed that the appellant has short paid/not paid service tax during the FY 2009-10 to 2012-13, amounting to Rs. 16,16,087/-. Therefore, a show cause notice dated 17.10.2014, was issued to the appellant *inter alia* demanding the service tax short paid/not paid along with interest and further proposing penalty on the appellant under sections 76, 77 and 78 of the Finance Act, 1994. The notice was issued invoking the extended period.

3. This notice was adjudicated vide the impugned OIO dated 16.1.2017, wherein the adjudicating authority confirmed the demand along with interest and further imposed penalty under sections 77(2) and 78 of the Finance Act, 1994.

4. Feeling aggrieved, the appellant has filed this appeal on the below mentioned grounds:

- that the adjudicating authority, erred in confirming the demand without considering the submissions made by the appellant;
- that the show cause notice is based on rule 5(1) of the Service Tax (Determination of Value), Rules, 2006, [for short 'Valuation Rules, 2006']which has been held to be *ultra vires*;
- the appellant paid amounts towards toll tax and parking chares on behalf of the service recipient which were reimbursed;
- that the appellant had given DG set on rent under contract & also supplied fuel/diesel to run the DG sets; that the appellant while issuing invoices to the recipient, enclosed invoices of fuels purchased by them on behalf of the recipient which was reimbursed by the recipient;
- that the amount was paid on actual consumption basis and was reimbursed by the service recipient;
- that they would like to rely on the case of Intercontinental Consultants and Technocrats P Ltd [2013(29) STR 9(Del.)];
- that the adjudicating authority erred in holding that reimbursement of diesel should have been on actual basis and not on the basis of a fixed amount; that they were charging a fix amount on the diesel on hourly basis which is the most convenient method of knowing the actual consumption of fuel;
- that as per the terms of the agreement [copy of which is not enclosed with appeal papers], the service recipient was required to pay for diesel/HSD charges and engine oil on actual basis;
- that the adjudicating authority erred in confirming the demand of service tax without considering the submission that the appellant had incurred expenditure amounting to Rs. 2,63,938/- on toll taxes and parking charges which were reimbursed by the service recipient; that the appellant had rented a TATA 207 and incurred expenditure on toll taxes and parking charges; that as per the contract entered with the service recipient [copy of which is not enclosed with appeal papers] the appellant would be reimbursed of the parking and toll charges;
- that the appellant had fulfilled all the conditions of a pure agent in terms of Rule 5(2) of the Valuation Rules, 2006, *supra*;
- that the department has not found any positive act or omission on the appellant's part, in not submitting the details of the appellant's business transaction to the department;
- that it is an admitted fact that all the business transactions were duly shown in the appellant's books of account and balance sheet and it is on the basis of the balance sheet and audited books of accounts that all the figures are obtained by the officers for raising the demand; that there was no failure or omission in disclosing this information;
- that they would like to rely on the case of Hindustan Steel Limited [1978 ELT J159];

5. Personal hearing in the case was held on 29.8.2018, wherein Shri Aditya S Tripathi, Advocate appeared on behalf of the appellant. He reiterated the grounds of appeal and further informed that the matter is covered by the Hon'ble Supreme Court decision in the case of Intercontinental Consultants and Technocrats P Ltd [2018(10) GSTL 401(SC)]. He also provided a copy of the said order.

6. I have gone through the facts of the case, the grounds of appeal and the oral submissions made during the course of personal hearing. The issue to be decided is whether the appellant is liable for service tax on the short payment/non payment detected by Audit during the course of reconciliation of accounts.

7. Before moving on to the issue, I would briefly like to mention the findings of the adjudicating authority:

(a) with reference to the difference in the gross income for FY 2010-11 and 2011-12, as worked out in the reconciliation prepared by audit and the reconciliation provided by the appellant, the appellant has excluded the toll tax and parking charges income while taking gross income and has further taken deduction of the same, which is a double benefit;

(b) the appellant has in his reconciliation statement included closing debtors as deduction from the gross income during FY 2011-12 and has also included opening debtors as addition and closing debtors as deduction from the gross income during FY 2012-13, while the said figure was not taken into account in the reconciliation by Audit. As per the Point of Taxation Rules, 2011 wef April 2011, only the opening debtors is required to be added to be added in the gross income for the FY 2011-12 & there is no requirement to subtract the closing balance of debtors in the reconciliation of income during FY 2011-12; that similarly for the FY 2012-13, there is no requirement to add or subtract opening & closing debtors;

(c) that in respect for the abatement availed for Cab bill for the FY 2012-13, by the appellant in his reconciliation statement, the audit in their reconciliation had already granted this abatement while computing the gross income and therefore deduction as sought by the appellant would lead to double benefit;

(d) in respect of the reimbursement sought for HSD, Oil, toll tax and parking charges, the reimbursement expenses as claimed by the appellant should have been actual; that they have not submitted copy of invoices or purchase orders to substantiate their claim;

(e) that in respect of renting of TATA 207 vehicle, the appellant has not submitted copy of purchase order to substantiate the claim that toll tax and parking charges were reimbursement expenses to be reimbursed by the principal/service recipient;

(f) that as per the provision of Rule 5(1) of the Valuation Rules, 2006, all expenditure or costs incurred by the appellant shall be treated as consideration for the taxable service provided & shall be included in the value for the purpose of charging service tax for the said services;

(g) that the appellant has not produced any evidence that they have entered into contractual agreement with the recipient of service to act as a pure agent in order to incur expenditure or cost in the course of providing taxable services as per condition [a] of explanation 1 to Rule 5(2) of the Valuation Rules, 2006.

8. The entire case revolves around the appellant's disagreement with the reconciliation done by the Audit. The appellant had provided the reconciliation statement, as prepared by him to the adjudicating authority, which is taken on record in para 4.2 of the impugned OIO. The adjudicating authority has addressed all the points wherein the reconciliation statement as per the appellant differs/varies, to the one prepared by the Audit. Let me, discuss the issue one after the other.

8.1 Regarding the points listed in [a] to [c] of para 7, *supra,* I find that the appellant has not contested the same and therefore, the findings of the adjudicating authority in this regard stands upheld.

8.2 Moving on to para [d], [e], [f] and [g], the appellant has vociferously contested that the findings are not legally tenable more so since the Hon'ble Supreme Court in the case of Intercontinental Consultants and Technocrats P Ltd [2018(10) GSTL 401(SC)], has upheld the judgment of the Hon'ble High Court of Delhi [2013 (29) S.T.R. 9 (Del.)], which had held that Rule 5 of the Valuation Rules, 2006, to be ultra vires.

8.3 I find that the appellant in his reconciliation provided to the adjudicating authority deducted the reimbursement in respect of HSD/Oil and toll tax and parking charges. The adjudicating authority held that the deduction of reimbursement is not to be allowed for reasons mentioned *supra*. However, let us first examine the Rule 67 of the Finance Act, 1994, which states as follows [*wef* 1st May, 2006]:

> *"67. Valuation of taxable services for charging service tax.*
> *(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,*
> *(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;*
> *(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;*
> *(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.*
> *(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.*
> *(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.*
> *(4) Subject to the provisions of sub sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.*
> *Explanation: For the purpose of this section,*
> *(a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;*
> *(b) "money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travelers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;*
> *(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of accounts of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise."*

Now, the reimbursement claimed towards HSD/Oil, toll tax and parking charges, paid by the appellant on behalf of their service recipients, had nothing to do with the services provided by the appellant i.e. renting of DG set and renting of TATA 207 vehicle, [para 4.7.2 of the impugned OIO]. Section 67 of the Finance Act, 1994, clearly provides that in the valuation of taxable services, nothing more or nothing less than the consideration paid as quid pro quo for the service, can be brought to charge. Further, "consideration" means any amount that is payable for the taxable services provided or to be provided. Since HSD/Oil and toll tax and parking charges, paid by the appellant on behalf of their service recipients, had nothing to do with the taxable services provided by the appellant, the question of demanding tax on the said amount by including it in the value of taxable service is legally not correct. This gets further strengthened in terms of the judgement of the Hon'ble High Court of Delhi in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. [2013 (29) S.T.R. 9 (Del.)], wherein the Court, as I have already mentioned above, held Rule 5 of the Valuation Rules, 2006, to be ultra vires. The adjudicating authority has invoked Rule 5(1) of the Valuation Rules, 2006, for holding these

amounts to be a part of taxable value. However, this issue is no longer *res integra*, having been first decided by the Hon'ble Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. [2013 (29) S.T.R. 9 (Del.)], wherein on the question of the constitutional validity of Rule 5 of the Service Tax (Determination of Value) Rules, 2006 to the extent it includes re-imbursement of expenses in the value of taxable services for the purposes of levy of service tax, it was held as follows:

> **18.** Section 66 levies service tax at a particular rate on the value of taxable services. Section 67(1) makes the provisions of the section subject to the provisions of Chapter V, which includes Section 66. This is a clear mandate that the value of taxable services for charging service tax has to be in consonance with Section 66 which levies a tax only on the taxable service and nothing else. There is thus inbuilt mechanism to ensure that only the taxable service shall be evaluated under the provisions of 67. Clause (i) of sub-section (1) of Section 67 provides that the value of the taxable service shall be the gross amount charged by the service provider "for such service". Reading Section 66 and Section 67(1)(i) together and harmoniously, it seems clear to us that in the valuation of the taxable service, nothing more and nothing less than the consideration paid as quid pro quo for the service can be brought to charge. Sub-section (4) of Section 67 which enables the determination of the value of the taxable service "in such manner as may be prescribed" is expressly made subject to the provisions of sub-section (1). The thread which runs through Sections 66, 67 and Section 94, which empowers the Central Government to make rules for carrying out the provisions of Chapter V of the Act is manifest, in the sense that only the service actually provided by the service provider can be valued and assessed to service tax. **We are, therefore, undoubtedly of the opinion that Rule 5(1) of the Rules runs counter and is repugnant to Sections 66 and 67 of the Act and to that extent it is ultra vires**. It purports to tax not what is due from the service provider under the charging Section, but it seeks to extract something more from him by including in the valuation of the taxable service the other expenditure and costs which are incurred by the service provider "in the course of providing taxable service". What is brought to charge under the relevant Sections is only the consideration for the taxable service. By including the expenditure and costs, Rule 5(1) goes far beyond the charging provisions and cannot be upheld. It is no answer to say that under sub-section (4) of Section 94 of the Act, every rule framed by the Central Government shall be laid before each House of Parliament and that the House has the power to modify the rule. As pointed out by the Supreme Court in Hukam Chand v. Union of India, AIR 1972 SC 2427 :-
>
> "The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with Section 40 of the Act."
>
> Thus Section 94(4) does not add any greater force to the Rules than what they ordinarily have as species of subordinate legislation
>
> [emphasis supplied]

The department feeling aggrieved by the aforesaid judgement, filed an appeal before the Hon'ble Supreme Court of India. The Supreme Court in the departmental appeal in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. [2018 (10) G.S.T.L. 401 (S.C.)], held as follows:

> **29.** In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. **Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax**. Though, it was not argued by the Learned Counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, **therefore, has to be prospective in nature**. On this aspect of the matter, we may usefully refer to the Constitution Bench judgment in the case of *Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited* [(2015) 1 SCC 1] wherein it was observed as under :

"27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."

30. As a result, we do not find any merit in any of those appeals which are accordingly dismissed.

[emphasis added]

9. Article 141 of the Constitution of India states that the law declared by the Supreme Court shall be binding on all courts within the territory of India. As, it has been held by the Hon'ble Supreme Court of India that *reimbursable expenses* cannot form a part of the valuation of taxable services, the question of adding reimbursable expenditure to the gross amount charged in terms of Section 67 of the Finance Act, 1994, for the period prior to 14.5.2015. The present dispute is pertaining to the period 2009-10 to 2012-13. Hence, the appellant's plea that they are eligible for deduction of reimbursement in respect of HSD/Oil, toll tax and parking charges stands allowed and the service tax demand needs to be reworked after giving the appellant the benefit of deduction of the below mentioned reimbursements :

Particulars	2009-10	2010-11	2011-12	2012-13
Reimbursement (HSD/Oil)	31,18,080	13,19,431	5,39,306	11,85,454
Reimbursement (Toll tax and parking charges)	46,157	7,708	3,637	2,63,938

The demand therefore needs to be reworked after giving the aforementioned benefit for the respective years. Consequently, the interest liability and penalty also needs to be reworked based on the final demand.

10. In view of the foregoing, the OIO is set aside to the extent mentioned above and the appeal is partly allowed.

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

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

(उमा शंकर)
आयुक्त (अपील्स)

Date :11 .9.2018

Attested

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

By RPAD.

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Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad North Commissionerate.
3. The Assistant Commissioner, Central Tax Division-VII(SG Highway East), Ahmedabad North Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
5. Guard File.
6. P.A.