केंद्रीय कर आयुक्त (अपील)

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

सत्यमेव जयते

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

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9907 to 9911

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)53/Ahd-South/2018-19& V2(ST)04/EA-2/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-0158 & 159-2018-19**
दिनाँक Date : **27-01-2019** जारी करने की तारीख Date of Issue 27/3/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **STC/43/R.M.G/DC/D-III/12-13** दिनाँक: **22.03.2013** issued by Deputy Commissioner, Div-III, STC, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Development 2020
Ahmedabad

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 अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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.

(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।

(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.

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–बी/35–इ के अंतर्गतः–

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

(क) 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

(a) 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.

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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 a court fee stamp of Rs.6.50 paise 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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

Two appeals have been filed against OIO No. STC/43/RMG/DC/D-III/12-13 dated 22.3.2013, passed by the Deputy Commissioner, Division III, of the erstwhile Service Tax Commissionerate, Ahmedabad [for short –'adjudicating authority'], viz.

Sr. No.	Name of the appellant(s)	Appeal No.
1	Development 2020 1, Sigma I Corporates, Off. S G Road, B/h Rajpath Club, Ahmedabad 380 059.	V2(ST)53/Ahd-South/18-19
2	Deputy Commissioner, Division III, Service Tax Commissionerate, Ahmedabad.	V2(ST)04/EA-2/Ahd-South/18-19

2. Briefly, the facts are that based on intelligence, a case was booked against the appellant mentioned at Sr. No. 1, *inter alia* alleging that they had short paid service tax of Rs. 1,16,802/- in respect of two invoices and secondly that the appellant had not paid service tax of Rs. 1,50,092/- by not including the reimbursement expenses in the gross amount charged for computing service tax. The notice, therefore demanded service tax of Rs. 2,66,894/- including interest and further proposed penalty on the appellant under sections 76, 77 and 78 of the Finance Act, 1994.

3. This notice was adjudicated vide the aforementioned impugned OIO dated 22.3.2013, wherein the adjudicating authority confirmed the demand and further imposed penalty on the appellant.

4. Feeling aggrieved both [i]the appellant and [ii]the department, have filed appeals against the impugned OIO, raising the following grounds:

Appeal filed by M/s. Development 2020

- that invoice no. 390/ASPEE/1/250 dated 5.9.2008 whose value is mentioned in the show cause notice as Rs. 4,45,000/- and ST Rs. 55,002/-; that the correct service value is Rs. 5,00,000/- and the wrongly prepared bill was on record; that the bill and ST-3 returns are attached with appeal; that the correct value is Rs. 5.00 lacs and the tax involved is Rs. 61,800/-; that M/s. ASPEE to whom service was rendered, had cleared the bill and deposited service tax directly and hence this was not paid for the second time by the appellant;
- in respect of bill no. 390/ASPEE/2/262 dated 5.11.2008, the service tax was paid by the recipient of service;
- that in both the cases, the challans were enclosed with the ST-3 returns; that there were no suppression with an intent to evade payment of the tax;
- that they would like to rely on the case of Mahadev Tubes [2009(16) STR 724], Navyug Alloys [2009(13) STR 421];
- that the demand is hit by limitation;
- that in respect of the demand confirmed against reimbursements, the appellant relies upon the case of Intercontinental Consultants wherein Rule 5 of the Service Tax Determination of Value Rules, 2006, was been held to be ultra vires.

Appeal filed by the department

The department vide its Review Order No. 23/2013 dated 24.6.2013, issued from F. No. STC/RRS/OIO-03/Div III/13-14, has contended that the adjudicating authority erred in not imposing penalty under Section 76 of the Finance Act 1994.

5. Personal hearing in respect of both the appeals was held on 29.1.2009, wherein Shri Milind Ranade, CA appeared on behalf of the appellant mentioned at Sr. No. 1, supra and reiterated the grounds of appeal. He pleaded limitation. He also informed that the issue pertaining to reimbursements are for the period prior to 2015. Additional submissions were also submitted, reiterating the grounds already raised.

6. I have gone through the facts of the case, the grounds of appeal and the oral submissions raised during the course of personal hearing. Questions that need to be decided are [a] whether the duty, interest and penalty confirmed is correct or otherwise; and [b] whether penalty under Section 76 of the Finance Act, 1994, is required to be imposed on the appellant.

Appeal filed by M/s. Development 2020

7. Giving primacy to facts, let me first deal with the demand relating to the two invoices on which the allegation against the appellant [mentioned at Sr. No. 1] is that they had not discharged service tax. Two invoices involved, in the short payment/non payment are viz.

(i) Invoice no. 390/ASPEE/1/250 dated 5.9.2008. The show cause notice mentions the details in para 5.3(iii) and 5.3(v) wherein the value is shown as Rs. 4,45,000/- and ST Rs. 55,002/-. An image of the invoice is reproduced in the show cause notice itself. The appellant in the grounds of appeal states that the **draft bill** prepared by some staff member showed the incorrect amount and service tax; that the correct value of service rendered was Rs. 5,00,000/- and the service tax involved was Rs. 61,800/-; that they had received Rs. 5.00 lacs from the service recipient and that the service recipient had directly deposited the service tax through challan. The appellant further states that they had attached the said challan depicting payment of tax by the service recipient along with the ST-3 returns.

The facts, which emerge on going through the notice is that during the course of investigation, it was the appellant himself who had submitted the copy of invoices on 15.5.2012 to the investigating officer . The invoice dated 5.9.2008, when submitted on 15.5.2012, cannot be the draft bill, the appellant is referring to in his grounds. **The argument raised therefore belies facts.** However, after having said so, what is important is that the appellant stating that the recipient paid the service tax, which I find is not disputed. The adjudicating authority I find has held that it was the incumbent on the appellant to pay the tax and since he had not paid the same, it stands short paid.

(ii) Next, is the case of invoice no. 390/ASPEE/2/262 dated 5.11.2008 wherein the appellant states that the tax was paid by the recipient of service and that they had enclosed the challan with the ST -3 returns.

7.1 The appellant has enclosed both the ST-3 returns for the period April to September and October to March for the FY 2008-09. On going through the returns, I find that in respect of the month of September, the appellant shows his value of taxable service as Rs. 28,55,049/-; service tax payable as Rs. 342605 + [Rs. 6852 and Rs. 3426/- (Education cess)]. Service tax during the said period was charged @ 12%. The appellant has enclosed a challan dated 17.10.2008 depicting payment of Rs. 282605/- + Rs. 8478/-. Clearly they had not paid service tax on Rs. 5.00 lacs, which they claim was the value of the service on which tax was paid by the service recipient. Similarly on going through the ST-3 return for the period **October to March 09**, I find that the appellant in his

return had mentioned that Rs. 60,000/- + 1,200 was the service tax paid directly, meaning by the recipient. The appellant in his appeal papers has also enclosed a certificate from the service recipient dated 30.6.2012 to the effect that they had deposited the amount in business auxiliary service; that through oversight the code was incorrectly written as 00440262 instead of 00440225 or 00440226 that the interchange of the last two digit caused the confusion.

I draw two conclusions from the above facts presented before me [a] that the service tax stands paid, irrespective of who paid it; and [b] even if the payment of the tax by the correct person is disputed, the fact that the non payment was clearly evident in the returns clearly hits the departmental charge of demanding service tax by invoking extended period. By no stretch of imagination can extended period be invoked in such cases more so since the facts were known and mentioned clearly in the returns. In-fact the show cause notice in para 2.2 clearly lists the same. Therefore, the confirmation of the demand of Rs. 1,16,802/-, along with interest and penalty in respect of the two invoices ,is set aside in view of the foregoing facts.

8. Moving on to the second dispute regarding demand of service tax on reimbursements, I find that the issue as far as inclusion of reimbursements towards expenses are concerned, pertain to the period 2007-2008 to 2011-12. The appellant was required to pay service tax on the above amount as per Rule 5 of the Service Tax (Determination of Value), Rules, 2006. 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, the Court 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 judgdment, 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** simply does not arise more so since the present dispute is pertaining to the period 2007-08 to 2011-12. Thus, the demand of Rs. 1,50,092/- confirmed by the adjudicating authority vide the impugned OIO, along with interest, and penalty is accordingly, set aside.

Appeal filed by the department

10. Since the demand of Rs. 2,66,894/- stands set aside, the question of imposing penalty as contended by the department in its appeal, does not arise. The departmental appeal is therefore rejected.

11. In view of the foregoing, the appeal filed by the appellant mentioned at Sr. No.1 of the table supra stands allowed. The appeal filed by the department is rejected.

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

12. The appeal filed by the appellants stands disposed of in above terms.

(उमा शंकर)
प्रधान आयुक्त (अपील्स)

Date 27.1.2019

Attested

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

By RPAD.

To,

Development 2020
1, Sigma I Corporates,
Off. S G Road, B/h Rajpath Club,
Ahmedabad 380 059.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Assistant Commissioner, Central Tax Division- VIII, Ahmedabad South Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.