केंद्रीय कर आयुक्त (अपील)

सत्यमेव जयते

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

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

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

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रजिस्टर्ड डाक ए.डी. द्वारा

S4S8405464

क फाइल संख्या : File No : V2(ST)56/Ahd-South/2018-19
Stay Appl.No. /2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-028-2018-19**
दिनाँक Date : **30-07-2018** जारी करने की तारीख Date of Issue 8/8/2018

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

ग Arising out of Order-in-Original No. **35/JC/2011/AS/S.TAX** दिनाँक: **15.12.2011** issued by Joint Commissioner, Central Central Excise, Ahmedabad-II

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

Kunvarji Finstock Pvt. Ltd.
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 a 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 पूर्वोक्त 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।

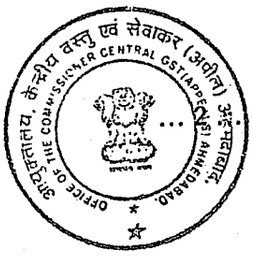
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

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 मूलं 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

Hon'ble CESTAT vide its order no. A/10997/WZB/AHD/2013 dated 19.8.2013, while deciding the appeal against OIA No. 68/2013(STC)/SKS/Comm.(A)/Ahd dated 16.4.2013, filed by M/s. Kunvarji Finstock Private Limited, 409, Shymak Complex, Near Kamdhenu Complex, Ambawadi, Ahmedabad- 380 015 [hereinafter referred to as "appellant']held as follows :

> *"5. On perusal of the records, we find that the first appellate authority has dismissed the appeal filed by the appellant only for non-compliance of the pre-deposit ordered by him. At this juncture, we find strong force in the contentions raised by the ld. Counsel that the issue of inclusion of reimbursable charges under the provisions of Rule 5 (1) of Service Tax Valuation Rules have been struck down by Hon'ble High Court of Delhi as ultra vires. We are unable to go into the merits of the case as the first appellate authority has not gone into merits of the case. We are of the view that the first appellate authority should be given a chance to reconsider the issue on merit. Accordingly, we set aside the impugned order and restore the appeal to its original number in the first appellate authoritys records, with the direction to the first appellate authority to reconsider the issue afresh, without insisting for any further pre-deposit and come to conclusion after following the principles of natural justice. We make it clear that we have not made any observations on the merits of the case and have kept all the issues open for the first appellate authority to reconsider the same.*
>
> *6. Appeal is allowed by of remand to first appellate authority."*

2. Based on the aforementioned direction, the appeal is being taken up for disposal.

3. The facts briefly are that the appellant registered under the categories of *stock broker service, banking and other financial service* and *business auxiliary service*, was issued a show cause notice dated 10.6.2010 based on an internal audit objection, *inter alia* alleging that they had short paid service tax in the category of banking and other financial services in respect of DP charges collected on behalf of CDSL from their clients. The notice further alleged that the appellant had short paid service tax on stamping charges and courier stationery charges i.e. out of pocket expenses. The show cause notice therefore, demanded service tax of Rs. 8.02 lacs along with interest and further proposed penalty on the appellant under sections 76 and 78 of the Finance Act, 1994.

4. This notice was adjudicated vide OIO No. 35/JC/2011/AS/S.Tax dated 15.12.2011 by the Joint Commissioner, Central Excise, Ahmedabad-II, [who was made the adjudicating authority vide office order dated 10.10.2011 issued by the Chief Commissioner, Central Excise, Ahmedabad in respect of the this case falling under the jurisdiction of service tax Commissionerate] wherein he confirmed the charges and the demand along with interest and further imposed penalty under sections 76 and 78 of the Finance Act, 1994.

5. On an appeal being filed before the Commissioner(Appeals), the matter was decided vide the OIA No. 68/2013(STC)/SKS/Comm.(A)/Ahd dated 16.4.2013, wherein the then Commissioner(Appeals), rejected the appeal for non compliance of section 35F of the Central Excise Act, 1944.

6. Thereafter on an appeal being filed before the Hon'ble Tribunal, vide its order dated 19.8.2013, *supra,* the matter was remanded back to the first appellant authority. However, since a departmental appeal was filed against the judgement of the Hon'ble Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. [2013 (29) S.T.R. 9 (Del.)], the matter was placed in call book. Since the Hon'ble Supreme Court of India has decided the departmental appeal, the matter was retrieved, for disposal.

7. Now in the appeal filed by the appellant before Commissioner(Appeals), the appellant had raised the following contentions:

- that it is difficult to work from the notice whether the alleged short payment is relating to brokerage income, other charges, gross DP charges or commission income on IPO;
- that the correct gross DP charges is Rs. 16,36,014/- and not Rs. 18,09,889/-;
- that the appellant had paid tax on the part of DP charges collected and retained by them and on those part of the DP charges which are deposited to CDSL, no service tax is either collected nor the same is paid;
- that since DP charges were collected as a pure agent, no service tax is liable in terms of Rule 5(2)of the Valuation Rules, 2006; that they satisfy all the conditions regarding pure agent; that the department has not given any evidence that the charges collected are not actually deposited with CDSL;
- that regarding stamping charges, what the appellant collects from clients are actual charges for stamps which is exactly what was incurred; that the charges were collected as a pure agent and hence no service tax is to be paid;
- that courier/stationery expenses are incurred for proper documentation and sending the same to the depositories or respective stock exchanges; that such charges cannot be included in the gross value charged for the purpose of calculation of the liability of service tax.

8. Personal hearing in the case was held on 24.7.2018 wherein Ms. Madhu Jain, Advocate, appeared on behalf of the appellant. The learned advocate reiterated the submissions/grounds of appeal . She also submitted that the disputes in the present appeal were settled issues and submitted copies of the following orders

[a] Indses Securities and Finance Limited [2018(2) TMI 569-CESTAT Ahmedabad]
[b] Intercontinental Consultants & Technocrats Pvt. Ltd. [2018-TIOL-76-SC-ST]
[c]Kunverji Commodities Brokers P Limited [2018(4) TMI 543-CESTAT Ahmedabad].

9. I have gone through the facts of the case, the grounds of appeals, the audit objection, the earlier OIA dated 16.4.2013, Tribunal's order dated 19.8.2013 and the oral contentions raised during the course of personal hearing. I find that the Hon'ble Tribunal while remanding back the matter had kept all the issues open for the first appellate authority for reconsideration. Hence, I find that the question to be decided is whether [a] the appellant is liable for service tax on the amount received by the appellant as DP charges and [b]whether the charges towards stamping and courier/stationery expenses, recovered from the customers would form the part of gross taxable value.

10. Moving on to the first question of whether the appellant is liable for service tax on the amount received as **DP charges** – after going through the notice, the audit objection attached

with the appeal papers, I find that the allegation is that the appellant was paying service tax on the net DP charges and not on the gross DP charges which was collected on behalf of CDSL from the clients. Generally these charges are collected separately in accordance with various statutory body regulations and are deposited with the authorities. The adjudicating authority based on a combined reading of Section 67 of the Finance Act, 1994 read with Rule 5 of the Service Tax (Determination of Value), Rules, 2006, held that all consideration received by a service provider towards any service, should be included in the gross taxable value further holding that the said charges are not recovered on actual basis but are a composite one. Coupled with this is the contention of the appellant, in his grounds of appeal, wherein it is contended that [*Para 5.3.....The actual fact in this regard is that the appellant has already paid service tax on those part of the DP charges collected which are retained by them and on those part of the DP charges which are deposited to CDSL, no service tax is either collected nor the same is paid."*]. What comes out is that the appellant, as far as this charge collected on behalf of CDSL is concerned, was not collecting the actuals. Now Section 67 of the Finance Act, 1994, 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 DP charges collected on behalf of CDSL had nothing to do with the services provided by the appellant in his capacity of service provider as a *stock broker service, banking and other financial service* and *business auxiliary service.* 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 DP charges, collected on behalf of CDSL, 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 held Rule 5 of the Service Tax (Determination of Value), Rules, 2006, to be ultra vires. In view of the foregoing, the demand of Rs. 88,544/- confirmed by the adjudicating authority along with interest and penalty is set aside.

11. As far as inclusion of charges towards stamping and courier/stationery expenses recovered from the customer would form the part of gross taxable value – these are reimbursements towards expenses wherein the appellant has stated that in the case of stamping charges the entire amount was not even collected. On going through the audit report, I find that the allegation was that the appellant had recovered stamping and courier /stationery charges from the customer during the year 2006-07 and 2007-08 and that being out of pocket charges the appellant was required to pay service tax on the above amount as per 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]

12. 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 2006-07 and 2007-08. Thus, the demand of Rs. 7,13,502/- confirmed by the adjudicating authority vide the impugned OIO, along with interest, and penalty under sections 76 and 78 in respect of this portion is accordingly, set aside.

13. In view of the foregoing, the OIO is set aside and the appeal is allowed.

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

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

(उमा शंकर)
आयुक्त (अपील्स)

Date 30.7.2018

Attested

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

By RPAD.

To,

M/s. Kunvarji Finstock Private Limited, 409, Shymak Complex, Near Kamdhenu Complex, Ambawadi, Ahmedabad- 380 015	M/s. Kunvarji Finstock Private Limited, Block B First floor, Siddhivinayak Towers, Off. S G Highway, Mouje Makarba, Makarba, Ahmedabad- 380051.

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(Vejalpur), Ahmedabad South Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.