केंद्रीय कर आयुक्त (अपील)

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

सत्यमेव जयते केंद्रीय कर भवन, 7th Floor, GST Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015

☎: 079-26305065 टेलेफैक्स : 079 - 26305136

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)51,52&54/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-090to092-2018-19**
दिनाँक Date : **31-10-2018** जारी करने की तारीख Date of Issue 6/12/2018

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

ग Arising out of Order-in-Original No. **19/STC/AHD/ADC(JSN)/2013-14** दिनाँक: **12.11.2013, 11/ORS/STC-AHD/DSN/2013-14 dated 10.10.2013 & 38-40/STC/AHD/ADC(JSN)/2012-13 dated 29.01.2013** issued by Addl. Commissioner, Div-Service Tax, Ahmedabad, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Cliantha Research Ltd.(Earlier BA Research (I) 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 :

(i) 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 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.

(i) 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 अपील 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) निर्धारित 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) वित्तीयलिखित 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 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) इस 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 केन्द्रीय 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.

(6) 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 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

The below mentioned three appeals have been filed by M/s. Cliantha Research Limited [earlier known as BA Reasearch India Limited], BA Research House, Opp. Pushpraj Towers, Nr. Judges Bungalow, Bodakdev, Ahmedabad 380 054 [for short –'*appellant*'], the details of which are as follows:

Sr. No.	Impugned OIO & date against which appeal filed	Impugned OIO passed by	Appeal No.
1	38-40/STC/AHD/ ADC (JSN)2012-13 dated 29.1.2013	Additional Commissioner, Service Tax Commissionerate, Ahmedabad.	V2(ST)54/Ahd-South/2018-19
2	11/ORS/STC-AHD/DSN/2013-14 dated 10.10.2013	Additional Commissioner, Central Excise, Ahmedabad-I	V2(ST)52/Ahd-South/2018-19
3	19/STC/AHD/ADC)JSN) /2013-14 dated 12.11.2013	Additional Commissioner, Service Tax Commissionerate, Ahmedabad.	V2(ST)51/Ahd-South/2018-19

These appeals were placed in call book on account of a departmental appeal before the Hon'ble Supreme Court against the judgement in the case of Intercontinental Consultants & Technocrats P Ltd [2013(29)STR 9]. Since the departmental appeal stands disposed by the Hon'ble Supreme Court, the appeals were retrieved and are being taken up in this order, for disposal.

2. Facts limited to these appeals are that 5 show cause notices were issued to the appellant *inter alia* alleging that they had evaded service tax by not including the transportation charges and sample storage charges collected from their clients in the gross amount charged, for computing service tax. These notices were adjudicated by the aforementioned three impugned OIOs wherein the adjudicating authority confirmed the service tax along with interest and further imposed penalties on the appellant.

3. Feeling aggrieved, the appellant has filed this appeals raising the following grounds:

- that they are engaged in providing clinical research service covered by technical testing and analysis service under section 65(106)/65(107) read with section 65(105)(zzh) of the Finance Act, 1994 to foreign service providers;
- that as per the provisions of Rule 3(2)(ii) of the Export of Service Rules, 2005, export of service is not chargeable to service tax; that the service being provided in respect of new drugs is exempt from service tax under notification No. 11/2007-ST dated 1.3.2007
- that while forwarding of samples of drugs/medicines, appellant incurs transport charges/courier charges, which are reimbursed by clients as per mutual agreement;
- that the transportation of samples of drugs and medicines is as per the instruction of clients who procured clinical research service from the appellant & is in no way part and parcel of clinical research service and therefore cannot form part of taxable value of the clinical research service;
- that they would like to rely on the case of Alathur Agencies [2007(7) STR 402], APCO Agencies [2008(10) STR 169]. Nazeer and Company [2009(13) STR 672];
- that no service tax is payable on the sample storage charges considering them as a part and parcel of clinical research service or technical testing and analysis service; that it was based on the request of clients that the appellant store the sample of drugs and medicines in their premises for a certain period;
- that since the amount charged for storage is not a part and parcel of the clinical research service, the question of including it for valuation of service tax does not arise;
- that they would like to rely on the case of Intercontinental Consultants [supra]; BA Research India Limited [2009-TIOL-1981-CESTAT-AHM].

4. Personal hearing in all the aforementioned three appeals was granted on 23.10.2018, wherein Shri Dhaval Shah, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal. He produced a copy of the decision of the Apex Court in the case of Intercontinental

Consultants [2018(10)GSTL 401] and further drew my attention to page 82 in respect of appeal no. 52 to stress his argument that in their own case the Hon'ble Tribunal, had ruled in their favour.

5. I have gone through the facts of the case, the grounds of appeal and the oral submissions made by the Learned Advocate on behalf of the appellant during the course of personal hearing I find that the question to be decided is whether the *transportation charges* and *sample storage charges* collected by the appellant from their clients, is includible in the gross amount charged for computing service tax or otherwise.

6. Before dwelling into the legal points, I would like to place some of the facts on record. The dispute covers the period from April 2007 to March 2012. Further, there is no dispute to the fact that the appellant is engaged in providing clinical research service covered by technical testing and analysis agency service.

7. During the course of personal hearing, the appellant stated that in their own matter the Hon'ble Tribunal had ruled in their favour. A copy of the said order is enclosed with the appeal papers. The Hon'ble CESTAT, Ahmedabad vide its order no. A/2298/WZB/AHD/2009 dated 4.11.2009, decided the issue relating to whether technical testing through test done in India and the result when sent abroad is export of service or otherwise. The Hon'ble Tribunal concluded in para 10 that *"....We hold that the respondent satisfied the conditions of Rule 3(2) and accordingly the respondents are eligible for the exemption under notification No. 11/2007-ST dated 1.3.2007"*. However, the present dispute before me is relating to valuation and therefore, it is not understood as to how the aforementioned case law would be of any help as far as the present dispute is concerned.

8. Now moving on to the present dispute, I find that the show cause notices, allege that the appellant collected the amounts relating to *transportation charges* and *sample storage charges* through debit notes. The adjudicating authority therefore relying on Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 [*w.e.f. 18.4.2006*], concluded that these ought to form part of the gross amount charged, for calculating service tax. The adjudicating authority in his impugned OIO has further held that the appellant had not disputed these expenses relatable to the services provided; that they were shown as revenues in their books; that the receipt are from the clients who received the services; that without proper storage, the clinical trials/research cannot be thought of; that therefore there is no basis for saying that these expenses are reimbursable. I would like to reproduce the scope and definition of Technical Testing and Analysis Services, viz.

104. TECHNICAL TESTING AND ANALYSIS SERVICES

(A) Date of Introduction:- 01/07/2003 vide Notification No. 7/2003-S.T., dated 20/06/2003.

(B) Definition and scope of service:-

"**Taxable Service**" means any service provided or to be provided to any person, by a technical testing and analysis agency, in relation to technical testing and analysis.

[Section 65 (105) (zzh) of Finance Act, 1994 as amended]

"**Technical Testing and Analysis**" means any service in relation to physical, chemical, biological or any other scientific testing or analysis of information technology software or any immovable property, but does not include any testing or analysis service provided in relation to human beings or animals;

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this clause, "technical testing and analysis" includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations; but does not include testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals. [Section 65(106) of Finance Act, 1994 as amended] "Technical Testing and Analysis Agency" means any agency or person engaged in providing service in relation to technical testing and analysis.

[Section 65(107) of Finance Act, 1994 as amended]

"**Technical Testing and Analysis Agency**" means any agency or person engaged in providing service in relation to technical testing and analysis.

[Section 65(107) of Finance Act, 1994 as amended]

Now whether one holds the charges collected towards transportation charges and sample storage, paid by the appellant on behalf of their service recipients, as reimbursements or otherwise, the fact is that it on going through the definition and scope as reproduced supra, it can be easily concluded that both transportation charges and sample storage, had nothing to do with the services provided by the appellant i.e. providing clinical research service covered by technical testing and analysis agency 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 transportation charges and sample storage 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, held Rule 5 of the Valuation Rules, 2006, to be ultra vires. This issue is therefore 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 copiousness 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 such 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 from April 2007 to March 2012. Hence, the confirmation of the demand in the impugned OIOs is not tenable and hence, the impugned OIOs, as mentioned in the table at para(1), supra, is set aside and the appeals filed by the appellant stands allowed.

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

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

(उमा शंकर)
आयुक्त (अपील्स)

Date 31 .10.2018

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 Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Assistant Commissioner, Central Tax Division-VI(Vastrapur), Ahmedabad South Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.