CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Service Tax Miscellaneous Application (EH) No. 85142 of 2021
(On behalf of Respondent)
Service Tax Appeal No. 87231 of 2017

(Arising out of Order-in-Original No. 11-13/ST-VII/CD/2017 dated 28.04.2017 passed by the Commissioner of Service Tax-VII, Mumbai)

M/s. Hindustan Construction Co. Ltd. **Appellant**
Hincon House, B Tower, 247 Park,
LBS Marg, Tagore Nagar,
Vikhroli (W), Mumbai 400 085.

Vs.

Commissioner of Service Tax-VII, Mumbai **Respondent**
16th floor, Satra Plaza, Palm Beach Road,
Sector 19D, Vashi, Navi Mumbai 400 705.

Appearance:

Shri Bharat Raichandani, Advocate, for the Appellant
Shri Nitin M. Tagade, Joint Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. **A/86933/2021**

Date of Hearing: 24.09.2021
Date of Decision: 24.09.2021

PER: SANJIV SRIVASTAVA

This appeal is directed against the order in original 11-13/ST-VII/CD/2017 dated 28.04.2017 of the Commissioner of Service Tax, Mumbai VII. By the impugned order, the Commissioner has held as follows:

"47. In respect of SCN F.No.ST-II/HC/ Audit/ Gr.11759/HCL/11-12 dated 21.04.2014 for Rs. 13.54,77,297,- for the period from Oct 08 to Mar13

i. I confirm the demand of Service Tax of Rs.8,65, 45,559/- (Rupees Eight Crores Sixty Five Lakh Forty Five Thousand Five Hundred Fifty Nine only), as *payable by/ recoverable from M/s Hindustan Construction Company Ltd.., Mumbai under section 73(2) of the Finance Act, !994,*

ii. *I drop the demand of Rs 5,19,31,738/- (Rupees Five Crores Nineteen Lakh Thirty One Thousand Seven Hundred Thirty Eight only).*

iii. *I order recovery of interest at the appropriate rates, on the amount confirmed at para i, above from the due date(s) under the provisions of Section 75 of Finance Act, 1994 from l's Hindustan Construction Company Ltd.., Mumbai*

iv. *I imposed penalty of Rs.8,65,45,559/- under Section 78 of the Finance Act 1994, for suppressing the facts from the Department as detailed in Paras above, with malafide intention to evade payment of due Service tax. However, the penalty payable shall be 25% of the service tax so determined, provided service tax, interest applicable and reduced penalty is paid within a period of thirty days of the date of the receipt of this order issued determining the amount the service tax under Sub- Section (2) of the Section 73 of the Finance At 1994;*

v. *I also imposed a penalty of Rs.10,000/- (Rupees Ten Thousand only) under the provisions of Section 77 of the Finance Act, 1994 for failure to declare true / correct taxable value as required under Section 70 of the Finance Act, 1994, read with Rule 7 of the Service Tax Rules, 1994 in prescribed ST3 returns.*

48. In respect of SCN V/ST-II/Dn-VI/Gr. II/Per.SCN/HCC/156/20114-15 dtd 24.03.2015 covering the period 2013-14 for Rs.3,56,82,777/-,

i) *i confirm demand of Service Tax of Rs.3,56,82,777/- (Rupees Three Crores Fifty Six Lakhs Eighty Two Thousand Seven Hundred Seventy Seven only), made in the Show Cause Notice, as payable by / recoverable from M/s Hindustan Construction Company Ltd., Mumbai under section 73(2) of the Finance Act, 1994.*

ii) I order recovery of Interest at the appropriate rates, on the amount confirmed at para i) above, from the due date(s) under the provisions of Section 75 of the Finance Act, 1994;

iii) I imposed a penalty of Rs.35,68,278/- (Rupees Thirty Five Lakh Sixty-Eight Thousand - Two hundred Seventy Eight only) under Section 76 of the Finance Act, 1994 for failure to pay service tax in accordance with the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. However, the penalty payable shall be 25% of the service tax so determined, provided service tax, interest applicable and reduced penalty is paid within a period of thirty days of the date of the receipt of this order issued determining the amount the service tax under Sub-Section (2) of the Section 73 of the Finance At 1994;

iv) I also imposed a penalty of Rs.10,000/- (Rupees Ten Thousand) under the provisions of Section 77 of the Finance Act, 1994.

49. In respect of SCN F.NO. V/ST-II/Dn.VI/Gr. II/ Per.SCN/HCC/153/2014-15 dated 19.02.2016 for Rs.6,84,41,986/- for the period 2014-15,

i) I confirm the demand of Service Tax of Rs.6,84,41,986/- (Rupees Six Crores Eighty Four Lakhs Forty One Thousand Nine Hundred Eighty Six only), made in the Show Cause Notice, as payable by / recoverable from M/s Hindustan Construction Company Ltd. Mumbai under section 73(2) of the Finance Act, 1994.

ii) I order recovery of Interest at the appropriate rates, on the amount confirmed at Para i) above, from the due date(s) under the provisions of Section 75 of the Finance Act, 1994 from M/s Hindustan Construction Company Ltd. Mumbai.

iii) I impose a penalty of Rs 68,44,199/- (Rupees Sixty Eight lakh Forty Four Thousand One Hundred and Ninety Nine only) under Section 76 of the Finance Act, *1994 for failure o pay service tax in accordance with the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. However, the penalty payable shall be 25% of the service tax so determined, provided service tax, interest applicable and reduced penalty is paid within a period of thirty lays of the date of the receipt of this order issued determining the amount the service tax under Sub-Section (2) of the Section 73 of the Finance Act, 1994;*

iv) I also imposed a penalty of Rs.10,000/- (Rupees Ten Thousand only) under the provisions of Section 77 of the Finance Act, 1994 for non-filing of correct service tax returns.

50. This Order is issued without prejudice to any other action that may be initiated against M/s. Hindustan Construction Corporation Ltd under the provisions of Finance Act, 1994 or the rules made there under or under the provisions on any other law for the time being in force in India.

2.1 Appellant is engaged in Engineering and Construction of infrastructure development projects such as roads, dams, bridges, civil / industrial structures, nuclear/ hydro power projects, water supply projects etc. They with their other 23 group of companies hold of Centralized registration. They undertake varied activities in different field but the entire group companies have some common division like Human Resources Department, CMD's office, group office and aviation department for cost effectiveness. In order to have cost effectiveness, the noticee incur expenses towards input services such as, insurance premium, Advance tax payment, stamp paper/duty, Hotel expenses, Motor car expenses, Medical & sanitary expenses, conveyance /entertainment, Courier charges, Bank charges, stationary and printing charges, telephone expenses, electric charges, Data card expenses, record management, E-banking facility, water charge, Remuneration, xerox charges aviation/fuel expenses etc., for and on behalf of the other 23 subsidiary companies and cost of such services have been recovered from the group of companies as reimbursement by way of raising debit notes

2.2 During the course of EA-2000 audit, it was observed that Appellant had recovered amounts from their related parties for reimbursement expenses and revenue expenses incurred on their behalf by way of raising periodical debit notes but had not discharged the applicable service tax liability thereon. Therefore in terms of audit observations, a SCN dated 21st April 2014 was issued demanding applicable service tax for the period October 2008 to March 2013 under the category of "Business Support Service" of Section 65(105)(zzzq) of the Finance Act 1994. Followed by, another two Statements of demands were issued under Section 73 (1A) of the Finance Act 1994 for the period April 2013 to March 2014 and for the period 2014-15 respectively.

2.3 Prior to 01.07.2012, the term 'service' was not defined in chapter V of the Finance Act 1994. However, the basic principle or legislative intent was to levy service tax when the service is rendered by a person to another person for a consideration.

2.4. On the basis of the above revenue held the view that these reimbursable expenses were to be included in the gross value of the for determination of the value of taxable service. Accordingly a show cause notice dated 21.04.2014 was issued to the appellant asking them to show cause as to why:

i. *Service Tax amounting to Rs 13,84,77,297/- (Rupees Thirteen Crore Eighty Four Lakhs Seventy Seven Thousand Two Hundred and Ninety Seven only) inclusive of education cess and secondary higher education cess as detailed above for the period from Oct 08 to Mar 13, not paid by the assessee should not be demanded and recovered from them in terms of proviso to section 73 (1) of the Finance Act, 1994.*

ii. *The interest should not be demanded and recovered from them under Section 75 of the Finance Act, 1994,*

iii. *Penalty should not be imposed on them under section 77 of the Finance Act, 1994 on each of the following contraventions:*

i. *Failure to furnish information and documents as called for in accordance with the provisions,*
ii. *Failure to file the prescribe ST-3 returns by declaring the correct taxable value as required under Section 70 the Finance Act, 1994 read with Rule 7 of the Service tax Rules, 1994.*

iv. *Penalty should not be imposed on them under section 78 of the Finance Act, 1994, for suppressing the facts from the Department as detailed in paras above, with malafide intention to evade payment of due service tax*

v. *Penalty should not be imposed on them under section 76 of the Finance Act, 1994 for their failure to pay service tax in time for the period Oct 08 to mar 13 as required under Section 68 of the Finance Act, 1994, read with Rule 6 of the Service Tax Rules, 1994.*

2.5 This show cause notice was followed by two demand notices issued under Section 73 (1A) of the Finance Act, 1994 for subsequent periods as detailed below:

i. dated 24.03.2015 for Rs.3,56,82,777/- for the period 2013-14
ii. dated 19.02.2016 for Rs.6,84,41,986/- for the period 2014-15

2.6 The show cause notice and the subsequent demand notices have been adjudicated by the Commissioner vide the impugned order referred in para 1, supra. Aggrieved by the impugned order appellants have preferred this appeal.

3.1 We have heard Shri Bharat Raichandani, Advocate, for the Appellant and Shri Nitin M Tagade, Joint Commissioner, Authorized Representative for the Revenue.

3.2 Arguing for the Appellant Learned Counsel submit that the issue involved in the matter is for the period prior to 2015 in respect of inclusion of reimbursable expenses in the Gross Value of the services provided. The issue has been settled by the decision of the Hon'ble Apex Court in case of the Intercontinental Consultants and Technocrats, holding that prior to amendments made in Section 68 in 2015, Rule 5 of the Service Tax Rules was not in consonance with the section. In view of the above addition of reimbursable expenses to determine the tax able value of the service provided cannot be justified.

3.3 Learned Authorized Representative re-iterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 In the impugned order Commissioner has recorded as follows:

"30. From the submissions made by the noticee in the referred Paras, it is clear that noticee, a holding company had sourced and procured the various input services for and on behalf of their 23 group of companies for better management and cost effectiveness and the cost/expenses incurred under various heads are allocated to group of companies by issuing debt notes. In view of the accepted facts and circumstances, it is explicit that noticee has provided the services to their group of the companies of procuring input service for them. The consideration involved is of better management and cost effectiveness to enhance their profitability as well as of group of companies. Thus, it is evident and undisputed that in the impugned transactions, services were provided by the noticee to their other 23 group of companies, having distinct and independent legal entities and consideration of better management and cost effectiveness has flown in. In terms of Section 66/66B read with Section 68 of the Finance Act, when there is provision of service and element of consideration, the service tax is leviable on any amount received for provisions of taxable services.

31. It can only be argued that in the instant case that consideration is not ascertainable in the context. I find that provisions of sub- Section (1) (iii) of Section 67 of the Finance Act 1994 are explicit i.e. 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. In a situation manner has been prescribed under Rule 3 of Service tax *(determination of value) Rules 2006. The Rule 3 of the Service tax determination of value) Rules 2006 reads as under:*

3. Manner of termination of value.- Subject to the provisions of section 67, the value of taxable service,

1. *where such value is not ascertainable shall be determined by the service provider in the following manner:-*
   a. *the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in ordinary course of trade and the gross amount charged is the sole consideration;*
   b. *where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent value of such consideration which shall, in no case be less than the cost of provision of such taxable service.*

32. Since in the facts and circumstances, value of consideration of taxable services cannot be determined in accordance with clause (a) of Rule 3 o! the Service tax (determination of value) Rules 2006, the same has to be to be determined as equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service. Therefore, in the instant case cost of services or consideration shall be on value based on actual costs incurred or the amount that is payable for the taxable services provided i.e, nothing but reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. The issue has been fortified by substitution of clause (a) of the explanation of the Section 67 of the Act, under the Finance Act, 2015. As per substituted explanation (ii) under clause (a) of the explanation of the Section 67 of the Act under Finance Act 2015, 'consideration includes reimbursable expenditure or cost incurred by the service was provider and charged, in the course of providing or agreeing to provide a taxable service. As mentioned above where consideration was not ascertainable, the machinery and method of determining valuation of such services was very much *in force and applicable under Section 67 of the Finance Act 1994 read with the Rule 3 of the Service tax (determination of value) Rules 2006. Therefore, the substitution of clause (a) to the explanation under Section 67 of the Finance Act neither substantive nor expand the scope of Section 67 of the Finance Act. It is clarificatory in nature and shall have retrospective effect in the facts and circumstances of the case. Further, the decision of the CESTAT, relied upon by the noticee in the case of M/s Reliance ADA group P.Ltd., vs CST Mumbai, reported in 2016-TIOL-603-CESTAT-MUM also does not help to the cause of the noticee, as department has preferred an appeal with the Hon'ble High Court, Mumbai against the said order and therefore cannot be said to have achieved finality.*

33. Further, the noticee has also submitted that they being a holding company, having more that 23 subsidiary companies and they share/ allocate cost like Pure Agent under Rule 5(2) of the valuation Rules merely because the services procured by them were not attributable to any particular group company and the aforesaid valuation rule did not stipulate any condition as to one on one identification of service recipient and service provider in order to fall within the ambit of 'Pure Agent'. Further, the cost allocations/ sharing of expenses with group companies were without any mark up or allocation of cost was revenue neutral and in absence of any value addition as consideration, such cost allocation was mere accounting transaction per se could not be taxed. Further, they stated in their submission that the Debit Notes were distinguished only for accounting purposed and they were one and the same and relied upon the case of CCE, Goa V/s Machado & Sons Agents & Stevedores Pvt. Ltd. [2016 (44) STR 459 (Tri-Mum)].

34. In this regards, it is relevant to refer the term of pure agent defined under Rule 5(2) of the valuation Rules, 2006. The Rule 5(2) of the valuation Rules, 2006 reads as under

"(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the

taxable service if all the following conditions are satisfied namely:-

- *(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured*
- *(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;*
- *(iii) the recipient of service is liable to make payment to the third party;*
- *(iv) the recipient of service authorises the service provider to make payment on his behalf;*
- *(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;*
- *(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider is the recipient of service;*
- *(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and*
- *(viii) the goods or services procured by the service provider on the third party as a pure agent of the recipient of service are in addition to the services de provides on his own account.*

Explanation 1 For the purposes of sub. rule (2), "pure agent" means a person who-(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service; (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service: (c) does not use such goods or services so procured; and (d) receives only the actual amount incurred to procure such goods or services.

Explanation2.- For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration *consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.*

35. As per the provisions of Rule 5(2) of the valuation Rules, 2006 and the defined under the explanation 3 to the Rule, "pure agent 'means a person who- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure 'on costs in the course of providing taxable service: (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service; (c) does not use such goods or services sc procured; arid (d) receives only the actual amount incurred to procure such goods or services and the person who satisfy all the conditions stipulated under the provisions. It is abundantly clear in the facts of the circumstances that the noticee does not fulfill any of the conditions specified from (i) to (VI) of the conditions specified under Rule 5(2) of the Valuation Rules, 2006 nor fulfill the requirements specified at (a) to (c) under the explanation 1 to the Rule 5(2) of the valuation Rules, 2006. In the given facts of the case, the noticee cannot be construed as 'pure agent under the provisions of the Finance Act 1994 and hence benefit of pure agent cannot be extended to them.

36. In view of the above discussion it clear that noticee had provided services of 'Business Support services' during the period October 2008 to 30.06.2012 as defined under Section 65(104) of the Finance Act 1994 and were taxable services within the meaning of Section 65 (100) (zzz) of the Finance Act 1994 and service' within the meaning of Section 64B (44) of the Finance Act 1994 from 01.07.2012 onwards. Therefore, the service ax is recoverable from them as demanded under the impugned SCNs on the amount of consideration recovered from their related parties as reimbursement expenses and revenue expenses incurred by way of raising periodical debit notes.

....

37. In the nutshell after taking into submissions of the noticee, I conclude that the noticee is required to discharge the service tax liability totaling to Rs.19,06,70,322/- (Rs. 8,65,45,559/- for *the period October 2008 to March 2013, Rs.3,56,82,777/. for the year 2013-14 and Rs.6,84,41,986/- for the year 2014-15)."*

4.3 We find that issue involved in the present case in respect of reimbursable expenses, and the period involved is upto March 2015. In the case of Intercontinental Consultants and Technocrats [2018 (10) GSTL 401 (SC)] referred to by the learned Counsel, Supreme Court while upholding the order of Hon'ble Delhi High Court quashing Rule 5 of Service Tax Valuation Rules, 2006 has held as follow:

"21. Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assessees. As per these Rules, these reimbursable expenses also form part of 'gross amount charged'. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5. As noted above, prior to April 19, 2006, i.e., in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act.

22. Section 66 of the Act is the charging Section which reads as under:

"there shall be levy of tax (hereinafter referred to as the service tax) @ 12% of the value of taxable services referred to in sub-clauses of Section 65 and collected in such manner as may be prescribed."

23. Obviously, this Section refers to service tax, i.e., in respect of those services which are taxable and specifically referred to in various sub-clauses of Section 65. Further, it also specifically mentions that the service tax will be @ 12% of the 'value of taxable services'. Thus, service tax is reference to the value of service. As a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.

24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

25. This position did not change even in the amended Section 67 which was inserted on May 1, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider.

26. It is trite that rules cannot go beyond the statute. In Babaji Kondaji Garad, this rule was enunciated in the following manner :

"Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the byelaw, if not in conformity with the statute in order to give effect to the statutory provision the Rule or bye-

law has to be ignored. The statutory provision has precedence and must be complied with."

27. The aforesaid principle is reiterated in Chenniappa Mudaliar holding that a rule which comes in conflict with the main enactment has to give way to the provisions of the Act.

28. It is also well established principle that Rules are framed for achieving the purpose behind the provisions of the Act, as held in Taj Mahal Hotel :

"the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect."

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."

4.4 Since we find that issue in respect of the reimbursable expenses has been considered and decided by the Hon'ble Apex Court for the period prior to amendments made in 2015, and we are concerned with same issue for the period prior to 2015, we do not find any merits in the impugned order.

5.1 The appeal is allowed and the impugned order is set aside.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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