

्या स्थापना वर्षे केर्ने विकेश विकेश स्थापना वार्त्राच्या । एतः १००० व्यवस्था । इ.स.च्या १ मृत्य (२०१७) । स्थापना १९१७ व्यवस्था । एतः १०११ । व्यवस्था स्थापना स्थापना स्थापना स्थापना THE BEST PROPERTY OF THE PROPE

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कार्डन का अंबांक र

कर्मी करते की करते गरी

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Date of Crace t

21.01.2019

हुमार बंदीर,पदार अवस्त (सांकित, राजकार ३०० । दि

Passer by Shri Kannar Soutoste Friedrich and answarter (Appeals), für ist

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Mrs. Northi, Largetics, & Services, 174, Ltd., Your Copy. Dysonics, Visitoria Pvt. Pol. (2011). 302,3m) Flagor, (Jayla Flace, Master Johnson, Wiser, Moglicer Sit Scald B**hir b**ugar-**36(00**7).

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প্ৰান্ত বুলি ক্ষেত্ৰ সামৰ ক্ষেত্ৰ কৰে। তেওঁৰ বা নামে কিছে বিজ্ঞান কিছে বা কাৰ্য্য কৰি কিছে এই বাংলা হৈছে কাৰ্যট কোনোৱা বিজ্ঞানিক সামে বিজ্ঞান কেই বিজ্ঞান সময় কৰি বাংলা কৰে।

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मार्थक मुख्यिक का प्राप्त मार्थक को नाम किला के जाता है। जान मार्थिक कर का नाम के जान का मीठ नाम भिक्त के प्रि पुष्ताक के किला क्षेत्र के किला कर कर का अनुकार का अनुकार के अपने का जान के अपने मार्थिक के

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- ရက မရုတ္ကု ပြုချင္း သင္း ပိုင္ပါးသည္။ မရို႕မြို႔မိုင္းရည္းရွိျပည္။ မရို႔မည္းခ်င္းေပးႏိုင္းေနာက္သည္ မြိန္း အာဏာက္ မေတြကို သင္းမြဲရေသည့္ မေတြကို မြိန္းမ်ား မေတြကို မေတြကေတြကို မေတြကို မေတြက်သည္။ မြေတြကေတြကို မြဲလိုင္းမြဲသည္။ မေတြကို မ
- र्वात प्रमुख्य सम्बद्धाः । त्रा स्थापनित्र विकास सम्बद्धाः स्थापना । १९८७ मः प्राप्तान्य सम्बद्धाः सम्बद्धाः अ स्थापना स्थापना स्थापना स्थापना । १९९१ मः १९९४ मः १९९४ । १९९४ । १९९४ । १९९४ । [. i]

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- us on some uniquity and the months of the property of the pro 1.00
- प्राचनित्रित साम्पाद क्ष्म अभीता । 125 प्रकार कि ने साम स्थानीक एक साम हरेश कि विकास कि प्राचनित्र स्थान स्थान स्थानित के स्थान कि ने पात साम, इक्ष्म के स्थानित के प्राचनित्र के साम के स्थान के स्थानित के स्थानित के स्थानित के स्थानित के स्थानित के स्थानित के साम के सा 2.0
- रोगा तुम्भ क्रिकेट्याहर के क्षेत्रक होते हैं । पार्टिक कर के विदेश विश्ववर्त कर का कि राज है । व्यक्ति स्मार्ट में वार्टिकाई इस पार्व के विश्ववर्त के इस मार्टिका के कि अ सी कुल एक्टिक क्षेत्रक के प्रकृतिक इस सीका कहा हो। स्वीत क्षेत्रिकों स्वाय के साम का का का का का का प्रकृत हुआ सुद्रुष्टी के कर का मिलाबी को कि एक इस 7-2
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M/s National Logistics & Services P Ltd. (Now Leafa Business Venture P Inc., 301-302, Leafa Efces, Nero to Akshar Waq. Waqhawad, Kajad Bhavnagar (Lerematter referred to as "the Appellant"). Continues appeal against the Order-in-Origina. No. 05/Service Tax/ Demand/ 17-18 dated 31.01.2018 (hereinalter referred to as "impugned order) despect by the Assistant Commissioner Gemis' GST Division Bravnagard, Bhavnagar Charcinafter referred to as lower adjudicating sulfunity").

- The fails likely sols of the case are that the Appolant is registered service tax assesses and constructed a realizamial complex "Leda Nano" consisting of 176 Flats apread among "A" to "K" blocks. Aud.: revealed that appellant had account flowered for various expenses as "work expenses" in their blocks of account towards psyments made to various isbour contractors and hance, Audit was of the vitay that appellant levelled services of "Varipower Retruitment of Supply Agendes" and was required to pay service lax under Reverse Charge Mochanism under Notification No.30/2012-ST dated 20.6.2012. However, sapellan, had not paid service tax of Rs 7,63,8744 on services received by them from July 2012 to March, 2014. Show Cause Notice was issued demanding Service Tax under Section 73 of the Act elong with Interest under Section 75 of the Act elong with Interest under Section 75 of the Act elong to the Act. The eard notice was should like all Impugned order confirming demand under Section 72 and Interest under Section 75 of the Act and imposing penalties under Section 75 Section 77 and Section 75 of the Act and imposing penalties under Section 76 Section 77 and Section 75 of the Act and imposing penalties under Section 76 Section 77 and Section 75 of the Act.
- Belog aggrished with the impugned order, appellant preferred the present appeal on the ground that Appellant modered. Input services falling under "Construction of Residential Complex" services for providing output services under the head of "Construction of Residential Complex" services mat this case stands obvered by several decisions on Identical issues which was not appropriated in the inforgred order; that appears that dispharaged service tax listifity on the entire project of residential scheme falling under "Construction of Residential Complex" and were eligible for Central Credit of service tax pard, if any and horse, the case is revenue neutral.

Broken-

- Personal hearing in the matter was obtended by Snii Jayesh Mental CLA on behalf of the Appellant who relievated the grounds of appear and submitted that they are in the business of construction of residential and paid 18:52, alkhalof Service Tax during the period involved in the impagree on an that they have utilized the services of sub-contractors and pale them on the pages of submitted work some by them and not for supply of manpower as is guident from Dilb also, that they have not asked for supply of Manpower and hence, SCN, as well as impagned order is not connect at air that they free writer submission admitting associations with supporting association.
- 7.1 In written (submission appellant state) that (i) construction work automorphis and Table to tax under "Manpower Supply / Recruitment services" under reverse charge mechanism (2) entire dispute being revenue/ fex neutral demand raised is filegal (3) as input tax redit immediately available. There entire have been no intention to a vade payment of duty und consequently the extended period of limitation was not invokable and (4) appellant bald service tax of Rei.52.28 lacs for services of construction of residential complex provided by them.
- It is submilled by the appellant that they constructed Residential flats and got the work of construction and related work done singuity various labourcontractors on culsuarce basis, that labour contractors were beginning the besis of specified work executed by them; that no labour was provided to appellant, and the contractors conflict out work by employing subpurs on their own, then adjudicating authority at gare 4 of the maugned order also recorded that payment to the confractors were paid by appellant on the basis of suappyrt of work carried out and not on the basis of number of workers provided or number. of manpower hour etc.; that at para $21.3\,$ of the imaginer order t is also recorded that the contractors got completed the given work relating of construction of flats, that the lower adjudicating authority has margy raigo on phacryations of the audit feam and not considered the audiniseions of the appellant flait appellant had outsourced cossit iction work to 29 aifferent Isbour. contractors having specialization in different work of construction and fixes. contractors were not organize for supply of manprover, that lessance of the definition of Manpower Supply or Recruitment agency is that the service provider. must only all responsible for supply of manpower, the malbour combacture.

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employed by them worked independently by using their own skills and expertise; that the impugned order does not disruss as to how services received by them can be non-sidered as. Mangower Requilibrer, or Supply Agency; that it is not the uses that appealant had engaged manpower supply agency and used the manpower under his supervision to carry out the construction activities.

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FINDINGS

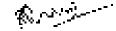
- 5. If have carefully gond through the facts of the case, the impugned order, the contentions of the appellants and records of postural meaning. The issues to the decided in the present appeal are whether the services received by the appellant falls under the nategory of 'Maspower Reprotoment or Supply Agency Service' and was the appearant required to pay service fax under reverse charge mechanism or not?
- 8.1 I would like to reproduce definition of 'Marpower Recruitment or Supply' Agency' given under Service 85(88) of the Act, which reads as under :-

manpower recruitment or supply algency means any personorgaged to providing any service invectly or indirectly, in any morner for recruitment or supply of manpower, improvelly or otherwise, to any other person."

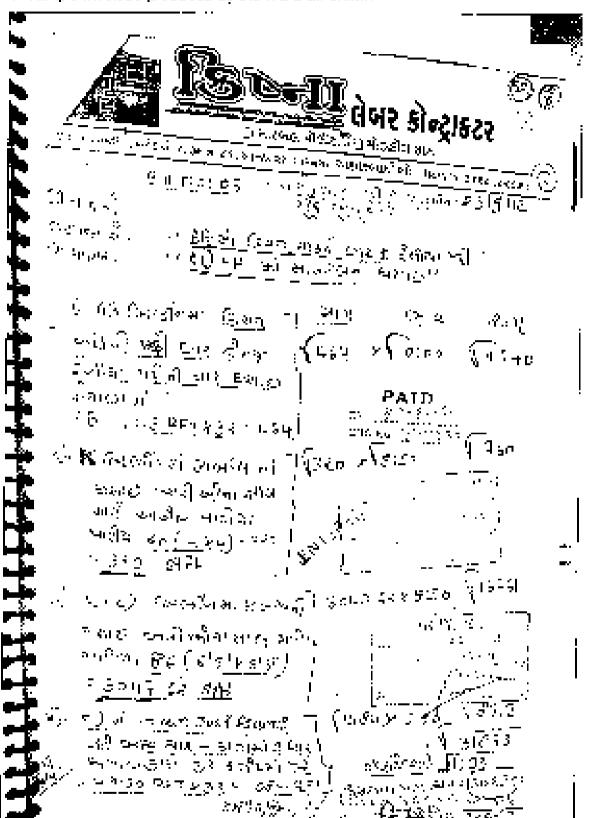
6.2 The '⊕in supply of mancower' has been defined under Rule 2(1)(g) of the Service Tax Rules 1994 as under:

I 'supply of manpower means supply of manpower, temporarily or otherwise, to another person to work under his supprintendence or control?

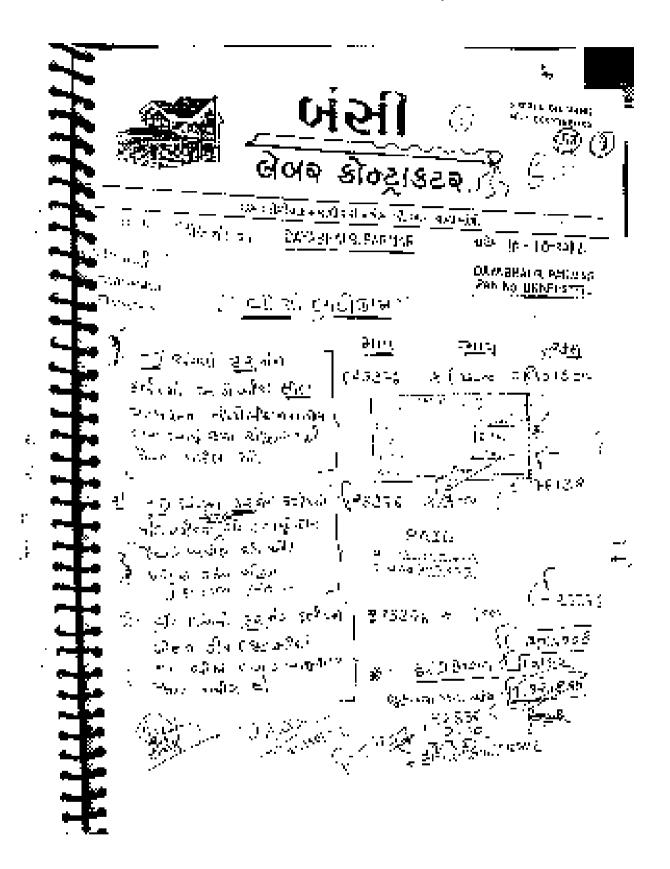
- 5.3 After proper reading of above reproduced positions. I find that there has to be () supply of marpower and (ii) mappower so supplied desite work under superfruendence or control of the aery os recipient for gothing service laxisale under category of "Manpower Radio" ment of Supply Agency Service under revolve charge mechanism w.e.f.1.7.2012.
 - 6.4 The appellant's contention is that the services in displac are not "Mendowan Supply" and they have submitted list of 29 such contractors from whom they received services white providing their output service of "Construction of Rosidential Complex" and stated that no manipower was supplied to them.



Instead, offerent work rotating to construction activities were subsquiced. Codies of sample invoices produced by them are as under:



James 6 of 15

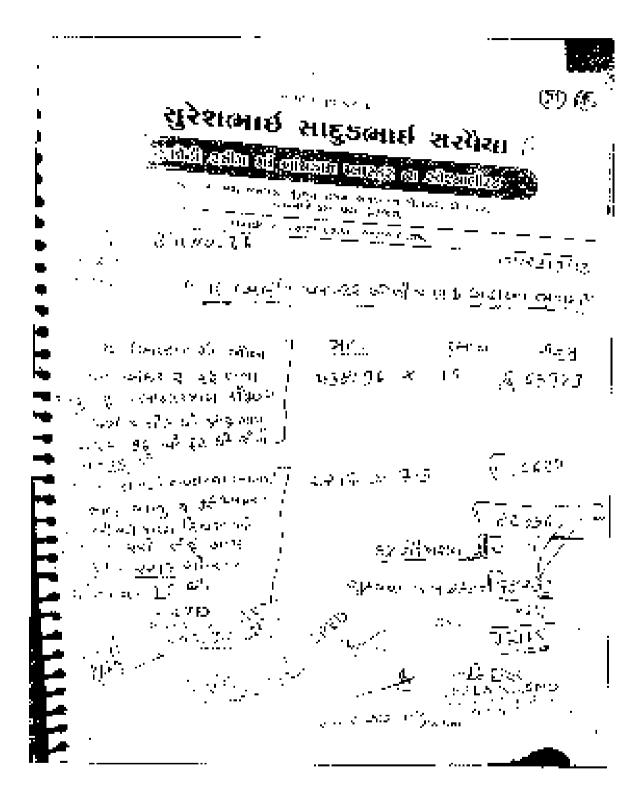


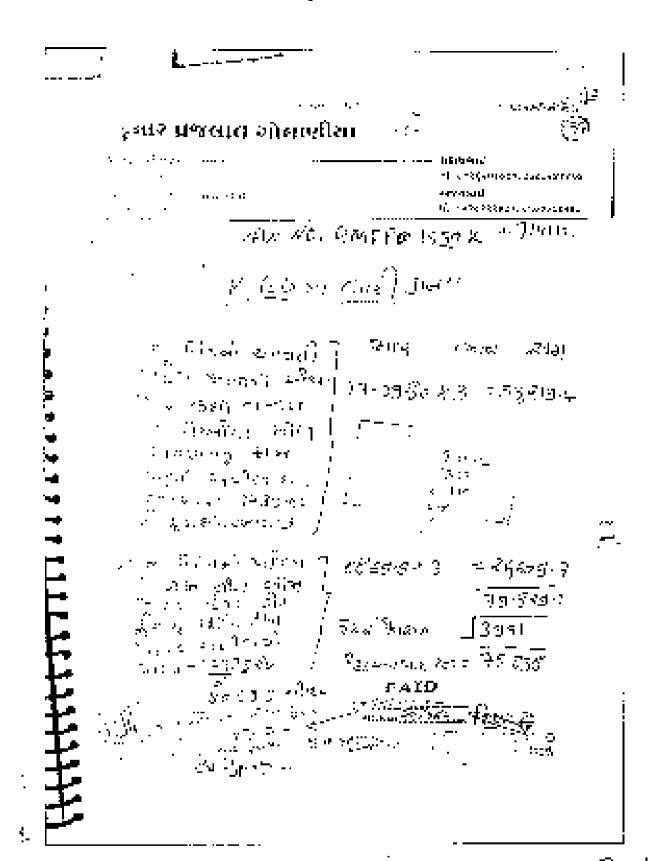
If find that Bills reisled by M/s. Krishne Labour Comragon are in relation to work relating of Marble Friishing in Kitchen Sink. Window and Main Doct in Wing A.B and K end contractor has charged on por square feet basis for carrying our such faishing work. Similarly in case of M/s. Bener Labour Contractors the contractor had earned out specific work of seeling of Bathroom Vertilation Seel and tixing of Kota stone and Woodstone in 32 flats in C & D Wings of residential samples.

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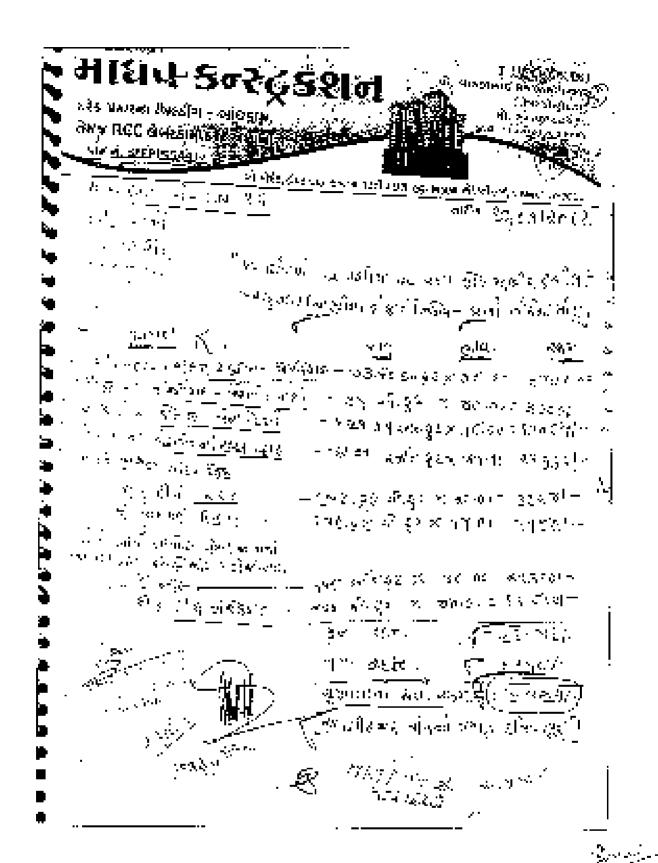
6.6 i find that Bit No.25 dated 23.9.2512 raised by Sh Suneshshal Sadudhhai Sarvaiya is Towards Plastering Charges of tK Building', Similarly, Bit ide ed 7.11.2012 of Preksh Kumar Vrajal Governance for Scaling, as reproduced telowing.

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5.7 Bit No. LN-16 detect 10.7.2012 of M/s. Madhay Construction towards RCC work in 16" wing partial cut by the service provider by charging the services on Running Feet basis of Cubic Heet basis. Copy of the Bit is reproduced delow-



§ § I find that appellant has produced list of those 29 contracts from whom they awaited various services to establish that each contractors are deployed for different activities in respect of awatell construction activity as under -

LECLA BUSINESS VENTURE PVT LTD (Carlier NATRA) LOGISTICS & SERVICES Pvt. Ltd.)

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	SPDDA SBATS A CITED AT SAMERONA
٠	¹ BISMARE REACHLISTS

find that the services received by the appallant are specific activity like prastating. Tarry Marbie, finishing works, RCC Work etc. and all these works are related to construction activity and specific task. I done by specific skilled manpower and to carry out such specific work, specific confiscions were deployed. Into that the lower adjudicating authority has also recorded that Sill were taised by the labour contractors depending upon the cature of work carried but by the labour contractors depending upon the cature of work carried but by the labour contractors depending upon the cature of work carried but by the labour provider that meation between the service recipient and service provider are for providing specific work and not for providing manpower or y. This this no evidence is accluded other, in the SCN or in the repugned order establishing that service provider has supplied manpower to be

used upgen the superincencence of appellant. I find that services received by the sopallant are in relation to lexacorion of specific work at a prelitives rate with their service provider as inflicated in their involocal and charged consideration based. uson the quastim of work executed. I find that the lower adjudice inglaid thoray has not discussed from manogwor was supplied by the confractions and used by the appellant without discussing any apacitic contract/ invuice to shake at such a conclusion. It also find that the lower according authority has faced to establish First the manipower deproyed were under augernitendance or control of the appelant in any marrier. It is an record that the Appellant gut the work done from the service provider in relation to posstruction of residenties complex without any control over any manpower used in the work by the appelled. Thus, Vts. ingredients required to private activity under the assegory of Managedon Requirement or Supply Agencyl are missing in the proson case. On the curulary, the facts emerging from records indicate specific work of construction activity. being undertaken by specific contractors and there is no evidence of supply of manpower perise by them. Therefore, the services resolved by the appellant cannot be classified under the category of Macpower Recruitment or Supery. Agercy'.

6.10 They on an order passed by the ponicle CES: All in the case of Canesh Dod reported as 2017(4) GSTL S23 (Tr. Doll), wherein it has been hold that demand of Service Tax under "Manpower Recruitment or Supply Agency Service" is not sustainable in absence of evidence of supply of muripower with details of number and habite of mancower duration and other case tons tensities for such supply I also rely on an order passed by the Humble CESTAT in the case of K. Damodstareday reported as 2010 (19) STR 590 (Tr-Rang), wherein it has been held that,

*8. We have hoard both sides. We find that the appellant had carried out the activities of loading of appent cass into wagers, spllage dearing, etaphiling, wager door open actioning wadep cleaning etc. for Ms. adia Coments Ltd., duting the material cered. We find that the appellants went compensated that the various items of work, st separate rates prescribed under the contract. The appollants 2d not supply mandower charging for the labour provided up plantative basis of man-hour plants. The appellants carried but the work as a contracture condition to over labour. Sugh an adopting a not class table as intrincerved recruitment of supplyaceday.

(Emphasis supplies)

6.11 Introduction Final order passed by the Hen'tke CESTAT In the case of M/s. Divya Entererises reported as 2010(19) STR 370 (Tri-Bang), wherein It has been held that

*9. On a careful consideration of the above reproduced letter and facts from the critice case papers, we find that the contract which has been given to the appellants is for the execution of the work of osciling, unloading, pagging, stacking deatacking etc., in the entire records we find that there is no whisper of supply mandawer to the said M/s. Aspin Wall & Oction any other recipient of the services in culti-these appeals. As can be seen from the reproduced comments are the involces resued by the appellant that the entire assence of the contract was an execution of work as understood by the appellant and that the Hoofble Supreme Court is the case of Soper Poly Fabrics (16) v. COF, Polyab (supra) in paragraph 8 has laid driver the rollin which is as under the

There cannot be any doublewhatevers that a document has to be read as a whole. The purport and object with whigh the parties thereto entered into a contract night to be ascendified only from the terms and conditions thereof. Neither the nomengature of the document nor any particular activity undertaken by the parties to the constact would be because."

An identical view was taken by Honicle Supreme Court in the gage of State of Aut v. Kone Elevators (India) (1d. (supra) and (IO) v. Mathindra and Mathindra (supra) in a similar issue. The ratio of all the three judgments of the Honicle Supreme Court, is that the tenor of agreement between the parties has to be unconstand and interpreted on the basis that the said agreement reflected the role and understanding of the parties. The said ratio applies to the current base in hand. We find that the entire tenor of the agreement and the purchase orders leaved by the appollants' service recipient decrip adioaces the execution of a lump-sum work. In our combinative ump-sum work would not fall under the satisfact of providing of service influency of manpower temporarily or otherwise either directly or indiffectly."

(Emphasis supplied):

0.12 Index roly on the clarification issued by the Boars vide Girculat No. 190/5/2015-5.0. dated 15-12-2015 issued from F. No. 354/153/2014 TRU, wherein it is plainfied that. $\frac{1}{2} \frac{1}{2} \frac{1}$

12. The matter case been examined. The nature of manpower supply service is dutte a strict from the service of job work. The essential characteristics of manpower, supply service are that the suppler provides manpower which is at the disposal and remorarily under effective control of the service recipient caring the period of contract Service providers accountability is only to the operation duality of manpower. Declaration from manpower controlly rests with the service recipient. The Vs.ue of service has a direct correlation to manpower declayed lies, manpower deployed

mulliplied by the rate. In other words, manpower supplier will sinable for supply of maspower eyon, fighaupower reflixins itself (Emphasis autoplied).

- 6.13 By respectfully tollowing the above case laws and the nioresaid Board's. Circular, I hold trigt the services rootived by the Appellant are not covered under the calebody of "Manpower Rescuilment of Buoply Agency, and appellant is not required to pay service tax under reverse charge motherism under the provisions of Thance Act 1994.
- 7. In view of above, I I do that the Proughed order confinning demand by classifying the services received by the appellant under Mandower Recruitment. or Supply Agency" is not conect, legal and proper. Since The demand of solving tax has not sustained, démand of interest and imposition of penety vide the in Sugneti order carnot survivo and are required to be set aspo-
- I. Therefore, seriaside mulimpugned order and allow the appeal Ë
- अपीलकर्ता। दवात दर्ज की गड़ अपील का भिष्टामा अपोक्त तथ के से किया आजा है। ٧.
- The appeal filled by the Appollant stands disposed off in allowements.

षधान आयरसः (३७५-४)।

By R. P.A.D.

Τŋ

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अक्टर वाही के बार

, धारताती रोड



<u>Copy (p</u>:

- 1. The Pr. Chief Commissioner, GST & Central Excise, Ahmedahod Zone,
- Asmedabad for kind information please.

 2. The Commissioner, OST & Central Excise. Bhavnage: Dommissionerate.
- Bhavnagar for necessary solid t. 3. The Assistant Commissioner, GST & Central Expise Bhavnagar Division I, Enavirage, for funder necessary actions.
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