

ः ११६। न आयुक्त (आरिप्रद) का कार्योक्य, वस्तु १९४ सेवा फराकौर केवीत द्रव्याय शुःभिः : HAN THIS PRINCIPAL COMMISSIONITE JAPPEALSI, COLOCTRATICAL EXCISE

<u>ਜ਼ਿੰਨੀਕ ਨਾਲ, ਅੰਦਿਆ ਨੇ 'ਜ਼ਬਦ 7.2' 1</u> Place GSC Bases)। देश कीर्स किंट केंड / Race Cohes Ring Road राजुकीत/ <u>Rajkor - 360</u> 931.



ુર્ગંતુ Faw No. (128) \pm 2477952224(139) \cdot Finally હત્યમું **ક્લાકસ્પરિસ્**ચિ**ટાપર્સ**ો છા

<u>√िस्टर्र बार</u>ु ए.बी. बार ५

अर्थेट असमून प्रवण : Accoming No.

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अभीत अदेश मेकार (Shika-164)हुन्द्र्य (Ski).

BHV-EXCUS-000-ARP-BI3-2019

आवेश का जिनांग ं

14.01.2019

ज़ारी काने को नाना**ा** ।

Date of Code:

Date (Aissue:

1KAL.2019

कुमार संतोष प्रधान आयुक्त (अनिन्छ), राधकोठ द्र ६, पारिन /

Passed by Shri Kumar Santoali, Principal Commissioner (Appeals), Rojkat

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हरा नाम्यः भारत्मः । त्र वर्षान् कार्यः **व्यासः पित्रां पेत्रं स्ट्रांकः प्रतिकृतिः** प्रतिकृतः संस्थानः कार्यः । स्ट्रान्यः । हे । त्रेष्ठा प्रतिकृतः प्रदेशः अस्ति । अस्ति

वीमा उत्तर हार्जात प्रकृत को हैनाक प्रतिनित सुन्तिष्ठिक के और प्रतिक शासन वर्षण प्रकृतिक उपने के प्राप्त 250 न यो जीन को उत्तर, विकेश के बात 25 किया जाया कि अल्बार हुई जो नामा है है (0)

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हित्य कर्मात्रक पुरुष्टिक नमी अस्ति केला पुरुष्टिक कर का शुक्तकों नेपाल असे मीत का करियार की विशेष की है हैंदा काथ में शु कों के पुरुष्ट के किसे के किस की मानदार है :11

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र केल भी केला, है के अपना पर अधिने के बनाया हैया गयी एकोर्च सीता सुरू, बहाय सुरक एक मेयुकर राष्ट्रिय जासाहकाला (प्रोचन) के निर्मार निर्मात करें , तेवाय कर, बहुमारी बचन भागके भागकाल में १८०० हुए की मिली अहिन् हैं O:

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त्व शिष्ठ व अतः विकास के प्राप्त करान्, जान प्राप्तान्य, 1994 मा धार (६०) है। कार्या, जान्य के प्राप्त करान है (२००० है) कार्यान कि एक कि प्राप्त करान है। उन्हें करा कि एक कि प्राप्त के प्राप्त के

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कार्य हरूका अन्य का कुछला किए जिसा (एस के आहा है) से आ पुरस्तानी साथ दिनों, कियों का के हैं आहार के प्रकार करते हैं हैं, जिसी की किया कि एक किया के किया के सिवारण के सिवारण के स्वापन का कार्य करते हैं, Ţ

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्रमध्येत्रिक कात्र्यक स्टब्स् सर्विका, 1, 16, वे अभूको | वे अन्य ८ ६० अदेश हर अस्य आधारण कार्यक रूपा कर्म के सामान्य सुरुष्ट स्टिक्स असार विकास के ति है। से कार्यक कर्म क्रिक्स क्षेत्रिक क्षेत्र के अस्य कार्यक कर्म के अस्ति कर्म के स्टब्स क्षेत्र के स्टब्स के स्टब्स के स्टब्स कर सिक्स कर

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a ORDER ::

Shri Jiyabhal Bhimebha Sutrela, Proprietor M/s M V & Co-Sharad Chaw, Koshod (nominafter referred to as 1 the Appellant*) has field sgalos. the Criter In-Original Nu.AC/JND/44/2017 dated 15 12:2017 (horomafter referred to as 1the impugned order) passed by the Assistant Constités direr. Central GST, Junegach (here halter referred to as 1the adjuditation suthpoty).

- 2. The facts of the case are that the Appellant is a design of Incian OF. Company Lxi ("M/s. IQCL") for Superior Kerosone Giff gereigaffer referred to as "SKO"). Appellant received Goods Transport Agency services (GTA) Sorvices) and made payment towards transportation charges for the said. goods transported from Depots of IOCL to their business clade, inquity made. by the jurisdictional Range Superintendent rovealed that the Appellant baid. transportation charges of Rs.92.18,7597, during the period from 2008-09 to 2012-13 but falled to obtained registration under the provisions of Finance. Act 1994 (horeinafter referred to as "the Act"; under takeble escapely of GTA. services ("Goods Transport Agency services") and not paid service tax under Royarso Chama Mechanism, Show Cause Notice dated 4 4,2014 was issued. to the Appelant demanding service tax of Rs.2,50 823/ under Section 73 of the act along with interest Section 75 of the Act and penalty under Section $7 \, c$ and Section 78 of the Act. The said notice was decided vide impugned order confirming domand, and recovery of interest and also imposing ponetics. under Section 75, Section 77 and Section 78 at the Act.
- 3. Being aggreeou with the impugred order, appellant prefaces the present appeal on the grounds that the show cause nation was time barred; that the lower adjudicating authority email is interpreting Service 06(105) (22p) and Section 65(50) (p) of the Act as services received by him from Truck (Cankar owner do not fell under the definition of GTA; that Section 68 (2) specified apely to prophetary concern; that the lower adjudicating authority has not considered the case laws relied upon by there

- 4. Personal hearing in the matter stielded by Shift agreed types, Advocate on pehalf of the Appelbut and submitted written such ission stating. that be was directly bining includes flows one tanker covery $\mathfrak{s}_1\mathfrak{q}_1$ $\mathfrak{q}_0\mathfrak{R}_1$ transportation was done through that one tacker; that ROM was not applicate. to sary proprietary from this transportation made by Individual truck owner. does not fall under the satisfical or CAA, that there is ou GTA service provider. In this case, that is ince no consignment note was issued services do not fall. under the dategory of 'Goods Pransport Agency' as defined under Section' 65(50)(b) of the Δc_0 that the services received by turn is not G(A) as vice, that they felt upon the Judgment of Hon'ble DESTAT in the case of Mis. Nordbanj. Sinori Sugar Corresponded as (2014)47 texmand com92 (New Detri-CES, AT). that show cause notice is time barred; first ingredients of invoking extended period under Section (3(1) do not exist, that mere non-registration and non-Fling of ST 3 relums or non-payment of sérvice tox are not suppression of facta; that they rely upon the becasion of the Hon. CESTAT in the case of Mis. MIP Laghu Dáyag Nigam Ltd reported as (2015) (37) STR 398 (7) Del), that reverse charge mechanism is not applicable to any proprietary concorn as per-Notification 38/2004 dated 31.12.2004 end also under Nullibration No. \$0.7017-ST dated 20 5 2012.
- Appropriate has submitted that the matter lavolves interpretation or law and hence no penalty is imposable upon them and relied upon the decision of the Thinble CESTAT's decision in the case of Ma. Phonix International Preight Service Pilitid reported as (2017)47 (S1R) 129 and M/s. General Pharmaconificals Extraported as 2007(128) ELT86 (that it was their bona fice cells) that no service tax was payable by them and dence, there is reasonable cause for nonlineous globality, that they rety upon the decision of the Horbbe CESTAT in the case of M/s. Fas Fas Engineering reported as (2011) 31 STT 548 = [2010(20) 8)[R980 (TruBob) in this regard.

FINDINGS:

5. I have carefully gond through the facts of the case, the impugned order the contentions raised by the epoet anti-ording during personal ligating. The

issues to be decided in the present appeal are whether the services received by the appellant fall under the category of "Goods Transport Agency Service" and whether service tax was required to paid by them under reverse charge machanism or not?

- The contention of the appellant is that the services received by them are from individual truck owner without consignment note using single vehicle and hands, the services received by him od not leclumes. The exceptly of GTA service, it is also contended that the appellant was not the person liable to pay service tax under 6 [A Service as ser Rule 2(a) of the Service Tax Rules, 1594. The appellant being a proprietary time.
- 6.1 if find that if the definition of the regreen Habis for paying service text is given at Rule 2(1)(a)(b) prevailing up to 30.08.2012, which reads as under-
 - '(c: "cersor liable tor paying the service lax" meens.

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(d)...

<u>ರ್ ಭರರದಕ್ಕ</u> is. -

"(V) in relation to reveble service provided by a goods transport agency, where the consignor or consigned

- (n) any factory registered under ar governed by the Factories Act, 1948 (63 of 1945):
- (h) any company established by or under the Companies. Aut. 1956 (1 of 1956):
- (c) any corporation established by unutider any tax.
- (d) any society registered under the Societies Registration. Act, 1869 (24 of 1860) or under any law corresponding to that Act in fame in any part of thats,
- (a) any co-sperence society established by or under any law.
- (f) any dealer of excisable goods, vivo is registered under the Central Excise Act. 1944 (1 of 1944) or the roles made thereunder, or
- (g) any findy corporate established, or a partnership final ragisterad by or under any law,

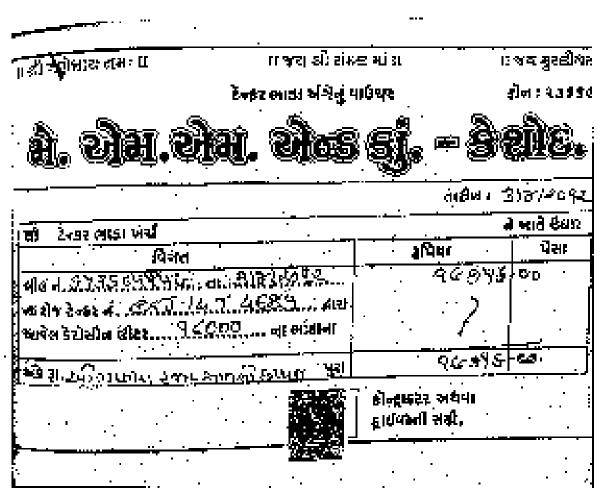
<u>any person who pays or is liable to pay freight</u> either himsuif or through his agent for the trensportation of such goods by read in a goods comingo?":

Arriva June

1.2 If find the as por the perhitton, and sees where, dithor the consigner or the consigner falls within the provider of category (s) to (g), the present who pays the freight is padde to pay the verying tax as the Goods Transport Agency. There is a fact no dispute that the consignor is Wist iCCL a company datablished under the Companies Adi.1958 bit the appetant pays the freight and since the payment of freight is that do by the Appellant they are to pay service tax. There is no exclusion if or proprietary firm or proprietor as is evident from the above definition and hence, any person who pays the freight is resulted to pay service tax and in this case the experient has paid the freight

Appellant produçes live sample popies of vouchors to claim that the services received by them were not from Goods Transport Agency. (here is no shorts grifficht note and hence, the services had been provided by the appellant to themselves by hiring vohicid from a chopic Tanker owner and their entire transportation has been done in one tenker only. Copies of the samples are sepredicted below:

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6.4 If no that these documents do not just to the appellant's claim that he was the service provider since the services of Goods Transport Agency was not involved and the appellant does tall under the delegory of Occups Transport Agency The definition of Goods Transport Agency under Section 65(59)(3) of the Actireass as under

"goods transport agency" means any person who provides service in relation to transport of goods by read and issues consignment note by whatever name called.

6.5 Infinitely provisioning of the service in relation to panaportation of goods by road is not in dispute and the said two documents are cash receipt acknowledged by the service provider is the name of "Voucher" rowards transportation charges of Rs.162626 and Rs.197669 ps.d on 16-3-2012 and on 3.4.2012 respectively for transportation of kerosene by two different values Reg. No. CJ-31-1082 and Reg. No. CJ-14-1-4689 and included details like consigning description of goods registration no of vehicle, etc. Thus, provision of services has been recorded in the form of these youthers and home, the appellance data is devoid of ment. In view of facts of this

case. I hold that the squellers in required to pay service tax under Reverse Charge mechanism, being radiplent of CRA service. The class of the appellant that they have used only one Track from a single. I suck owner is also found factually wrong as there are two truck subsers in two sample voughers.

- 7. If find that definition of the person table for paying service tax has been substituted with 1.7.2012 and Rule 2 (1) (a) since then reads as under-
 - "(d) "delean lieble for paying sorume text meeps, -
 - (6) In respective the turnion nearest joiner then orders information and infebses ecuess or rulifoxus sonators i notified under ecu-section (2) or section 68 of the Authorise.
 - (A) in relation to
 - fla; <u>in totalion to 1957/198 introduct or egreeo'</u> to no <u>provided by a</u> goods transport agency in respect of barreoutstick of goods by r<u>emainders the years</u> to get in the pay finged in.
 - By Bny feolog requeleted under at governors by the Hartogles Agg. 1946 (63 of 1945);
 - (II) Rhy society registered under the Sociation Registration Arti-1885 (21 of 1885) or unifor any other less for the time being in force in any part of finance.
 - $\langle B
 angle =$ are an energiage society established by or other any law,
 - (IV) any dealer of expanding groom, who is registered uniter their Central Excluse Aut. 1944 (1 of 1944) or the rules make more independent
 - $\{V\} = 807/200$ ý spipovale established, čiz or uvdenomi rozusta.
 - $\langle V \rangle = 807$ parthership four whether registered or not under any low-symbol passociation of passociate.

any nomina wan pays on a listile to bey freight either dimedia: Buoppi, <u>the equal</u> for the transportance of such goo<u>ds by road to a acody</u> centers.

7.1 As per the above definition also, the person liable to day sorvice tax on CTA service is the person who pays the freight. Thus, the plain of the appoint that they have been excluded from payment of service tax w.e.t 1.7.2012 is not correct as no excluded from payment of service tax w.e.t service tax has been provided under Reverse Charge mechanism even after introduction of rephresed definition w.e.f. 1.7.2012. If therefore halo this, the appellant is required to pay service tax even after amandaments made w.e.t. 1.7.2012 as was the case becare.

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- The appellant contended that the demand was time barred as there. was no superession, with intent to fixus onto evade payment of service tax. that they have not paid service tax on account of their paneticle belief that they were not person liable to pay service tax. I find that the appellant has not oblained service tax registration and not paid service tax on presumption. case. Appellant is rediction, of GTA service for quite a long time and concept. of reverse change mechanism and payment of service tax by recipient of G.A. services was not embiguous and was available/ known in gubic demain. Therefore, the appellant's claim of écos lide belief or being non taxable person : dues not sustain and non-payment of sorvice tax by the appellant game to the knowledge of the Department only upon inquery was initiated against the appellant. Hence, required ingradiant of suppression of feats, with intent to evecs payment of service lax for invoking extended period exist in this case. Therefore, I had that the extended period is rightly invoked and imposition of penalty under Section 78 of the Art is legal and proper
- ! Find that the appoilant failed to obtain registration and tile ST-3 returns: and therefore, genalty of Ra.200 per day imposed under Section 77/1(a) and Rai 19.900/- uniser Section 77(2) of the Act is legal and proper and Luphuki. the same
- In view of above. I reject the approximate by the appearant.
- अपोजकर्त द्वारा तर्व की गई अपील ४। भिषदारा उपरोज्त तरीके से किया जाता है। 4.4

The appear filed by the appellant is a sposed of in above terms

प्रधान आयक्त (सपोल्स)

<u>By RPAD</u>

l Shri Jiyabhail Sutreja Proprietar M/s. M M & Co. Sharad Chawk, Keshodi Dist Junagadhi

मोपाइटर मेससे एम ७८ १८ कंपनी शाह यांक वैशीद (जिल्ला जूनागढ)

Copy to:-

- The Pr. Chief Commissioner, CGS+ 5: Central Excise, Ahmedages Zone. Anmadebad for his kind information.
- 2. The Commissioner, CGST & Contra! Extract Bhavhagan Commissioners:c Chavnagar for necessary action.
- .. u Assistant C: neceasary sotion.. A. Guard Fila. ಗ್ರ 3. The Assistant Contrassioner, CG50: Division Junagach for further