:: 7	राज अन्द्रत (अर्थ	ेरनः) ग कातापत	' गम्मु एने सेग	' स्त और संस्तेष	ि उच्च न शुव	F ::
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गीलमधी साथ र का द्वार .

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BUY EXCUSION-APP-037-2019

कुमार संत ४.प्रथल भयुत्त । तनित्मः, रणकोट झरा गर्वरत 🦉

Passes, by Shri Kumar Santosh, Francisci Commensation (Appeals), Rajbet

- Π अबर आयुक्त) संयुक्त आयुक्त) स्वायुक्त (संयुक्त अयुक्त अवदेश को प्रदेश) देवा कही। स्वायुक्ते स्वायुक्त आयुक्त (संयुक्त अयुक्त अयुक्त अयुक्त अयुक्त अयुक्त (संयुक्त अयुक्त प्रतियोग क्रम विद्य अयुक्त अय अयुक्त प्रतियोग क्रम अयुक्त अयु
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- પ્રયુપ્ત કરે છે. આ ગામમાં આવ્યું છે. આ ગામમાં પ્રયુપ્ત આ આવ્યું છે. આ ગામમાં આવ્યું આવ્યું આવ્યું આવ્યું છે. આ ગામમાં આવ્યું આવ્યું આવ્યું આવ્યું આવ્યું આવ્યું આવ્યું આવેલું આવ્યું આવ્યું આવ્યું આવ્યું આવ્યું આવ્યું આવ્યુ આ ગામમાં આવ્યું આવ્યું આ ગામમાં આવ્યું આવ્યું આવ્યું આવ્યું છે. આ ગામમાં આવ્યું આવ્યું આવ્યું આવ્યું આવ્યું આ ગામ આ ગામમાં આવ્યું આવ્યું આવ્યું આ ગામમાં આવ્યું આવ્યુ આ ગામમાં આવ્યું આવ્યુ આ ગામમાં આવ્યું આવ્યુ
- े. अनुमरम् कर्मान्ड में सम्पर्क के प्रायम कोन अन्य कार्यन उत्पाद अन्य के वैक्रमन और दियम के कि कि विद्योदय के के दे भार करवरेंद्र जानकों, के बीभियों के देखा

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्रम्पत्र मोनकोट (1) के बन्दर कर अनेतर्ग के भागपुर भग करने अभिभाषित स्थान के के प्रायं के स्थान को से स्थान समित (संग्रेश) ने के किस्ती कि बार से विकास स्थान के साम के आपने के भागपार के दिस्ती के साथ के प्रायं के साथ के कि म संग्रेथ (a west repose theodar) Cavarra (Selay 5 Selay ke Tre American Trian के प्रायं के प्रायं के मिलता की मिलक अन्यर के मिलकोट) है है में किस बहर में प्रायं के प्रीर्टनी के के स्थान के स्थान प्रायं के प्रायं के साथ के मिलक

करी के गांध की रहा के सामक आधित अन्तु कर मैं के दिए देन्द्रीय प्रमान सुमन आदीत? जन्मा नमा, 2001 के लिया सके प्रमाह करतिन्द्र हरू र त्ये अन्त्र अन्त्र से साम के साम कर कर साम करीं प्रायक्षणें के की क्लाएक विकित्य कर सुरक्ष साथ पुरस्त कि का साम कि जिस कर

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(3) अत्रोगेक प्राण्ड भेगा कर उन्हें प्रयाप कि भारते देखें (2.24 की देखें) (2.15 में अवार विषयां की विषयां की कि विषय (2.11 में उन्हें की स्थानिक प्राण्ड के प्राण्ड के स्थान के सिंह के देखें (3.25 में की देखें) के स्थान के सिंह के साम के सिंह के स प्राण्ड के सिंह के सिंह के सिंह के सिंह के सिंह के सिंह के साम के सिंह के सिंह के सिंह के सिंह के सिंह के सिंह क पा के सिंह के स सिंह के सिंह क राजी सिंह के सिंह सिंह के सि सिंह के सिंह सिंह के सिंह क सिंह के सि

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- तित भा विकेश, 1999 सा तथा 20 के तत प्राण्य (2) पत्र (2) के स्वतंत का की प्रती भवति, स्वतंत्र सिक्स्वानी (2) के लिएन अश्व हुए (22) के तकत समर्थित उपत 20,20 के बात स्वतंत पत्र साम सार्थण कार्यस प्रकार भवा भरता भरता (20) के दिस साथ एस से बातर साथि या पर्वता प्रयत की स्वतंत्र के पत्र पत्र पत्र साथ से प्रता कार्यस स्वतंत्र भवा भरता (20) के सिंह स्वय विकेश के स्वतंत्र प्राण्य कि भारत भारत भ्यापत्र (2) की भारति के साथ के साथ भरता भरता भरता (20) के साथ से साथ (2 विकेश के स्वतंत्र प्राप्त कि साथ के प्रवार के स्वतंत्र के प्रता के साथ के साथ के साथ के स्वतंत्र (2) के सिंह स्वय विकेश के स्वतंत्र प्राप्त (20) के भारत (2) की के साथ के साथ के साथ के साथ के साथ के स्वतंत्र के सिंह कि प्राप्त के साथ के साथ के साथ (2) की साथ के साथ कि प्राप्त के साथ के साथ के साथ (2) की कि साथ के साथ कि प्राप्त के साथ के साथ के साथ (2) की कि साथ के साथ कि प्राण्य के साथ के साथ के साथ (2) के साथ के कि साथ के साथ के के कि साथ के कि साथ के साथ के कि साथ के कि कि साथ के कि साथ के के साथ के क साथ के के साथ के साथ के साथ के के साथ के क साथ के के साथ के साथ के साथ के के साथ के क साथ के क साथ के सा ...
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्त मार्ग्स कर हर में के पित्रम करते हैं। सिल्ट के प्रतिकार कर कर कर स्थान कर मार्ग्स कर के सिंग कर कर सार्थिक से प्रायं कर कर कर कर कर का स्थान कर का मा सिल्ट कर सिंग के साथ कर कर कर से कि का स्थान कर कर सिंग कर के द्वार के कर से प्रायं करते कर साथ कर कर मांग सामय गारम ।

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्रियान का को स्वयान के समयों से बात कर पर से सामय के सिंहा आपकों से भीता पुरान के सामय का साम हुई सम का को स्वयान के समयों से बात करना के सामय के दिसा आपकों से भेता पुरान के सामय के सिर्म के लिये के आई आई आ निर्मार के साम कि देने के सिंह के सिंह के से साम के साम के साम के साम के साम के समय के के की साम के साम के साम निर्मार के साम कि देने कि साम मार्ट निर्मार के साम कि देने (See Constant of the Constant of the second of the second of the second of the second of कि साम कि देने (See Constant of the Second कि साम कि देने साम कि देने (See Constant of the second कि साम कि देने के साम कि साम के साम के प्रति के साम के कि साम कि का • 1

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- দুটি দিবা আৰম্ভ নিয়াৰ কৰে প্ৰথম আৰম্ভ কৰে বিভাগ বিভাগ কৰে সময় সময় হয়। মেনাৰ প্ৰথম মুটি দিবা আৰম্ভ নিয়াৰ মেনাৰ প্ৰথম মাহ দিবা এই বিভাগ নিয়াৰ প্ৰথম বিভাগ মাহ বিভাগ কাৰ্ব্য সম্পৰ্শ আৰম্ভ প্ৰাৰ্থ এই এই মুখ্য এই বিভাগ মেনাৰ বিভাগ দুখা মুখ্য মুখ্য মাহ ১৯ কাৰ্ব্য কৰাৰ বিভাগ কৰে বিভাগ মহাৰ বিভিন্ন সম্পৰ্শ কৰে হ মাহ হয়। মাহ হয় na 802 Tana ang baga bawa waka pilawi wa agapat awaka daraki na masana anangira protoka isanifikati an Pale tanènina aka kata tana aka gila tananya ang jarakya aka daraka daraka aka disang pertakan pertakan ter Pale tanèn (402) katabita
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- 30) Some som den den den den i hullen som den som en som e andere andere som en 1997 som en s 1997 som en s Constant som en e et
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- ि से भी के समय से प्राप्त के भी कि 1905 के बहुत में भी करने के प्राप्त के साथ के साथ पर प्राप्त के साथ के साथ क अने के के बार देवा जो के प्राप्त जिसके के विद्युप्त के साथ में 10 करने के का का कर कि प्राप्त के प्राप्त के सुरुष्त के स्वर्ण के आज कि बाल जाता कि आज कि जिसके 2006 में कि साम के 10 के रही के रही के साथ के साथ के साथ के साथ के दूर की स्वर्ण के कि बाद जाता कि आज कि <u>(</u>•)
- পানা নালক লাভাৰ সমাৰ পাল বিভাগৰ লগে স্থাপীয়ে নাম্য গৈছে পালে পিওঁ। উপল নিশি প্ৰথম নিশি নাজৰ নাজিৰে বা পিওঁ নাই মহাপেটি পিজি নিজ সমাহ বা নামজন নাজৰ নামট উল্লেখযোগ্য সমাজ বিভাগে সমাহ সমাহ সময় বিভাগে বিভাগিত বিভাগে নামজন নামটো কোনো নিশা সংখ্যাল ইয়াসে জন্ম উপলতে ন নামজন নিজ বিভাগি নাম নামজন হৈছে বিভাগে সময় সময় বিভাগিত বিভাগিত বা বিভাগে নামজন নামটো বিভাগ সংখ্যাল ইয়াসে জন্ম 17-
- ан на селото со селото на селото на кака и как на селото и селото по прави на била на била на селото парта и базат и та сапрат предста и обще обла 11° жите била е Кака на селото и прави и прави. Селото на селото селото селото селото селото се предсерена селото на била и село Работо на била селото и прави селото и била село Работо селото и била селото Работо селото Работо селото 161

:: ORDER-IN-APPEAL ::

M/k. Guj matrixeductria: Development Contoration, Supendranagar (hereinafter celemed to as "Appetiant") filed appeal No. VZ/142/SVR/2018/19 against Oncorin-Origina: No. 18/Demand/2018/19 called 27.4.2018 (hereinafter referred to as "unpugned preen") passed by the Assil Commessioner, COST & Central ExcSe Division, Surenoranager (hereinarten referred to as "luwe: adjuckating authority").

). The brief facts of the case are that the Appellant, a Government of Gojarat undertaking, was established under the Gojarat Industrial Development Act, 1962. The Appellant was registioned with Service Tax having registration No. AABC08033DSD011 for 'Renting of Immovable Property Service'.

2.1 The Audit of the records of the Appellant revealed that they were generating incomes from various operations and booking these incomes under different. Heads that inon Agriculture Conversion Charge, Transfer Real infrastructure Upgradation Charge and Promium Receipt, which were allegeous taxable and hence, trable to pay Service Tax. The Audit also frame that the Appellant was receiving consideration in the food of Nor utilization pedalty and Misc. Receipts/ Receivery and honce, itable to service tax under the category of 'Brisiness Auxiliary Service', the Appellant was not paying Service', the Appellant was not paying Service Tax.

2.2 Show Cause Notice No. VI/8(a) 115/EA 2020/Addit-117V(2)/15-16 dated 25.11.2016 was issued for the period from 2011-17 to 2014-15, cating the Appellar Lip show cause as to why Service Tax of Rs. 8,69.4857- under "Business Auxiliary Service" and Rs. 38,75.011/- in respect of "Recting of Immovable Property Service" should not be demanded and receivered from them under Service 34:01 and Rel 1996. Long with interest under Section 75 of the Act and why behalty under Sections 74.77 and 78 of the Act should not be Imposed on them.

2.3 The above Snow Cause Notice was adjudicated by the Assl. Commissioner, CGsT & Central Excise, Science anger Division vice the impugned order which field that "Premium Receipt Income" is not liable to Service Tax in view of Section 104 of the Tinance Act, 1994 and drooped the oppendion Rs (2,69,6227-). Gropped service tax demand of Rs, 29,1597- Under the category of "Business Advitiant Service Tax demand of Rs, 29,1597- Under the category of "Business Advitiant Service Tax demand of Rs, 8,40,3257, Under the moughed i more confirmed Service Tax demand of Rs, 8,40,3257, Under Novices Advitanty (Service' and Rs, 06,05,9907- in respect of "Rending of Immutable Property

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Service) and undered for the Annual Control (1999) 2019 of the Actualous With interest lenger Sectors 70 of the Proposition Constant Annual Sec. 44,50,4667 under Section 78 of the Actions 100 Course Control Sector 77 phone Act

3. Being aggrieved with the program with the appendict has breferred, appeal on various grounds. Attempting as we have:

(i) That the appellant who expended contract contracts Sujand industrial Development Act, 1962 by the low shirt of Sujand for the purpose of securing orderly collabilities in a 2 organization of industrial small and industrial estates in Remark Contract and Substring optimization contraction with the combinement of sub-science of such industries. Variation are and rew industrial some who is used to be a structure contraction of such industrial some and new industrial some who is used to be a structure of such and who about the who is a structure of such about a structure of such about the who about the who is a structure of such about the contraction of such about the who about the who about the contract of such about the structure of such about the contract of such

(ii) That Section 13 of GE Act, oceanibes various functions to be performed by the Apheolani which includes provide by and essistance in rapid and prophy establishment: growth and development of industrials development of hub on its own account or for the State Government of industrial assistance by way of contrian of industrials and compreheits can be. Financial assistance by way of contrian of industrials and compreheits can be. Financial assistance by way of consists industrials for providing strife and industrial establishments with such solutions as may be received for the industrial establishments with such solutions are upperformed also beneficial astronomic like roads, sustained water supply, crossnap etc. within the industrial areas or estates. Further, industrial and up gradation of the external infrastructure like roads, sustained water supply, crossnap etc. within the industrial areas or estates. Further, industrial and up gradation of the external infrastructure is also a crimery responsibility of the Appellant of the external infrastructure is also a crimery responsibility of the Appellant, in view of Section 37(1) of the GD Act. The Appellant innurs expenditure to industrial these facilities and columpts maintenance charges from (so, holdons.

(iii) The Aphellant has delicated inforestion heef for the purpose of transfer of trate in land / plot from one allocate to enother allocate. Amount collected as 'Transfer food is not folling incer the service calegory of 'Ronting of Improvable Property Service' and no service tax is payable. The 'Renting of immovable property' includes renting, leasing, retring, coording or similar antangements of immovable property for use in the decise of furtherance of business an commerce. The biansfer fee bank to be and to be service tax userial for the decise of furtherance of business an commerce. The biansfer fee bank to be and to be service tax be renting / leasing / leating or any other similar antangements. The service tax behavior' the constrained to be property service' and the colegory of 'renting of lineshed to be property service' and the service' and the bank to be an allocated to be property service' and the service' and the service tax behavior to be property service' and the service' and the bank to be property service' and the bank to be back to be property service' and the service' and the service' and the back termine index to be property service' and the service and the service' and the service' and the service' and the

Page 4 of 16

wishuld giving toglual reasoning as to how the amount to lotten as transfer lees satisfies the conditions as stated under the definition of the sate category. Forther, as our definition of 'service' contained in section 650(44) of the Act, transfer of title in thirdowable property by way of sate, gill or in any other manner is excluded from the lawy of service sat. Here, they are not table to pay Service Tax on "Transfer Fre" collected by them during the period 2011-17 to 2014-15.

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The Appoliant provelops infrastructure like rosus, sustained water supply. 1841 drainage etc. within the incustrial areas on estates which is their primory. responsibility in view of Section 37(1) of 610 Act. For any estate developed, under GID Act, 50% of the contributing to made by the State Government and paiance 50% contribution is made in the ratio of 60:40 i.e. 50% is contributed by the Appeliant and KBS is contributed by industrial association. The contribution towards development of the estate as collected by the oppollant is formed as finfrastnisture Epyralistion Fundful Post development of the estate, the Appellant recovers local fund contributed by them and industrial association. from the plot allottees and transfers 40% of the fund to respective industrial. propriation. The Appellant is discharging service taxing their 60% centrabution. w.ett. 61.07.2010 under service category of Renting of Immowable Property. shrweed. However, they are not uable to pay service tax on 40% of contribution. since the same is not retained by them but gassed on to respective adustrial. association and also shown as Bability in their financial statement. Since there is to provision of service, service tax demand under the service dategory of fremving of immovable preparty service issnot sustainable.

(v) The Appellant acquires land from the state government and converts agricultural (and into non-agricultural purpose in order to develop industrial estate and makes payment of Non Agricultural charges to the State Revenue department and recovers the same from the plot allottee. The Appellant is discharging service tax whelf, 01.07.2012 file, after introduction of negative list. As there was no specific, ontry prior to introduction of negative list, the Appellant has not discoarged service tax on the same. The impugned order has confirmed service tax demand under the category of "Renting of Immovable Property service" without giving logical reasoning as to how the amount collected as "NA Charges" satisfies the conditions as stated under the definition of the same tategory.

(vi) Fre Appollant is charging penalty to plot holders in case of numulfilization or plot for business activity within stipulated period which is control as 'non-

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artization generity' As the control of a line of the Generalize of America produces and not service precedence to America The Low Zebes Color (Contress Auxiliary) Service).

[vii] Notwillistand the engineering of some second cores, the appendix being a governmental authority is nogledy for the 4.4 memory with 5.01.07 2012 pursuant to entry No. 19 of Maga correspond sizabilities for 25/2012 51 datast 20.06.2017, which deeps as update

"29. Services by a given real set of z = 0.1 way of any militiply in relation to any function momentum to a municipality matrix active 243 w of the Constitution."

As per the said exemption during, wy services provided by government. authority in relation to any function encrusived to municipality under invide 243W of the Constitution are electriced from the lowy of pervice tax. The left-'governmental substity' is defined in code, clause R(s) of the hobitication. suprative the Appellant has been established by the Legislature of state of Guarant. under the Gutarat Industrial Deresotment Act, 1992 and performs its functions in accordance with the provisions connecturel to the Act and the Rules made. therearder. The Appendix : qualities as a volationantal authority and performs. various renderions which are entranced to a municipality under Article 240W of the Constitution and Schedule X3 of the Couplination. Thus, it can be said that any activity performed by appeliable in solation to the purpose for which, appellant has been established, would qualify for exemption from service tax. under deary 39 of the Mega Exception No. 25/2012/ST deted. 20.06.2012 and benue service text size not be leved for the particle form. 01.07.2012 on the amount of [ui] callering by appellant from its abottees and retted upon pudgement of Bonday Righ Charl Desset in case of MDK reported as 2018 (9) G.S. F.L. 372 (Dove Sci

(vm) Since the Appellant 13 bot Hable to Day Service Tax confirmed in the impugated orders no interest is payable by Cham under Section 70 of the Act.

(ix) The integrad order has confirmed deteand invoking eater deciperiod of createrion under Section 78. Larger period of limitation ran be invoked only microst where there is freud, collision, withtic mestatement, suppressing of facts of contravencien of provision of any Excise raw with fact attent to evade payment of duty'. The onus to prove that there was as intend to evade payment of duty'. The onus to prove that there was as intend to evade payment of duty'. The onus to prove that there was as intend to evade payment of duty' is upon the department, which has not been discharged. The Appellant was established under the provisions of Suppressing Act, 1957 for performing statutory runctions. The Appellant being a government dory gould not have a

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Page 8 🕫 10.

statalide intention (or con-payment of service tax, Rollande is placed on the following ; idgments:

- (a) CCE v. Bharat Petrolaum Corporation Ltd. (2016) 344 EcT 657.
- (b) Karnataka State Tourism Dev. Caron. Ltd. V. CST (2011) 21 STR 51
- Maharashira State Seed Certification Agency V. CCECE (2015) 37 ST8 655 (Tru-Wambal)
- (d) Cujarat Narmada Valley vertuzers & Coom, 1 td. v. ССП (2015) 37 STR 796. (1717 Altindi)

4. Personal Dearing in the matter was attended by Sort Devarg Carran Overtered Accountant and Shri Sagar Makadia, Assistant of the Appellant who relterated the grounds of appeals and submitted that GEX has been croasing by an Art massed by Gujara: State Legislature; that GEC is a 'Government authority' and hence megal exemption notification applies to it; that the issue has guready provided by the Lon'ste High Court of Mumbel in the case of CCE. Nasolk Vs MIDC and this case taw is applicable; On query as to now MiDC its similar to GIDC in various aspects as courded by the Hon'ble High Court, he submitted that he will make additional submissions within a formight.

4.1 The Appellant very retter dated 17.11 2018 scenttted additional submissions as under:

(1) The Appellant reproduced various provisions of Gujarat Industrial Development Act, 1962 and Maharashtra Industrial Development Act, 1961 and submitted that object and functions of the Gujarat Industrial Development Corporation are same as that of Manarashtra Industrial Development Corporation and furnished corres of GID Act, 1962 and MID Act, 1961.

(ii) That the Appellant is performing statutory lithesions as per G. (b. Act, 1962 and G.LD. Rules, 1963 and various charges collected by G.LD.C. from plans indiffers are compulsory levy which are collected to discharge statutory functions in terms of Section 13 of the G.LD. Act, 1962 and relied upon decision of the Lowloke Bombay High Court bassed in the case of CCE Nasik VV W/s M.LD.C.- 2018 (9) G.S.T.L. 372 (Brind) and allowed that appellant is not tracted by Stryler tax on charges collected by litera.

(60) Relied Louis Order-in-Original no. AHM EXCLS COM-UT-18-19 Gated 18:09:2018 bassed by the Commissioner: CG5T E Sentual Excise, Annihoasso South in their own rose who dropped the Service Law demand for the period post 1.7:2012 by relying upon entry no. 39 of the wega Exemption notification No. 25/2012 dated 20:06:2012, Considering G.LD.C. as a governmental authority. Wish relies upon Order in-Original rel. RAJ EXCLA QU0 COM 04-12-18 instead.

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25.13.2018 present by the Galacies of All Contract States and a second states of the second s

4.2 The Appendix Mostler (2017) 2017 ADD (it is hopy of Order No. A/124/9/2018 dated S0. 9700 Any and the toking OSS100, Appreciation in their own case. The Apple bit of Revisar Order 19, 12039 (abrilled billercation of meane booked bidge (2003) Alward order Appendix Recovery: 2002 with perception of each Appendix.

<u>Findlogs</u>:

5. These carefully poterons againshe include the case, the impognonionder, the appeal momoraneous and writted as well as use, substituing made by the Appealant. The state us de decised is whereas the Appelant is table to pay Service Tex on various charges being done that by these, under the recessories of "Renting of Immovable Property pervice' diving theses Auxiliary Service' or foll

6. If the that the Apendere was eaced, used under the Sujarat Industrial Development Act, 1962 (an this puscose by requiring orderly establishment and organisation of industries in vacuo not pressions and industrial estates in Gu arat and for establishing commendial candes: A consection with the establishment and organisation of such industries, pactice 33 or the Suparat Industrial Development Act, 1962 preserves to report to brief and by the Appellant which reads as uncertice

- (ii) B. The functions of the Corporation deal (Sec.).
- (i) generally to promove and extension the proof and up blacking test in the size of Gajarya, and
- (ity in particular, and without premium to we wondow dy observe solutions)
 - (a) generation and manage industrial ratates at places smoked by the Sixter Covernments;
 - (b) develop industrial areas selected by the State Covert and f(), r_s, purves, and make the always we go the telephickings to establish transchoos,
 - (c) Sevelop land on its even account of the the State Constrainent for the purpose of facilitating the location of industries and communication on mercon;
 - (d) prejet financially by where additions to interventional sciences into each estates enaltable.
 - (da) undertake schutnes für providing industrial units and environmental establishments with such structures and for finite as any factoresary for their orderity establish data synessite or between provide
 - (c) promoted prastices sponsed or codestates to remain them is an injustic promoted property bodies on institutions, at we have compared bodies on institutions, at we have compared by large bodies, in furthermore of the purposes in which the Corporation is established and all manage consolited theres the "

Hage 9 of 16

7. I find that the lower adjunicating authority ass confirmer Service Tax cemano on the focomes booked by the Appellant unner the Heads of Non-Agriculture Conversion Charge, Transfer For and Intrastructure Upgradation Charge during the period 2016 17 to 2014-15 under the category of "Renting of Immovable Property Service". I field that Section 65(90a) of the Act defines "Renting of Immovable Property" as under:

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"(NOs) "Londing, of herebox, do prevents" increases contrag. letting, leasing. Receiving, or other somilar press generate of introducible projector for use on the coverse of forthermore of bushness of containered but does not mapped. —

(A) randing of immovable property by a religious body or to a religious body; to (4) seating of immovable property to an obtactional body. Imparting skult on k producting on 5 searches any 30 gets of field, chemicker a commercial training or ceaching centre."

7.1 find from the records available that detail descriptions of above mentioned income Heads are as uncert

Non Agriculture Conversion charges.

The Appellant acquires agricultural land from the State Government and converts into non agricultural purpose selendes to develop industrial estate and makes payment of Non Agricultural Conversion charge to the blate Revenue department and recovers the same from the plot allottees.

- (ii) Transfer fee: The Appellant rise collocated 'Transfer Fee' for the purpose of transfer of title in land / plot from one allottee to another allottee.
- http://infrostructure/Cogradation Charge:

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The Appellant develops infrastructure like roads, water stuply, drainage etc. within the industrial areas or estates in view of Sortjon 37(1) of GIB Act. For any estate developed ander CID Act. 52% of the contribution is made by the State Greenment and balance 90% contribution is made in the ratio of 60(40 i.e. 604 is currefluited by the Appellant and 40% is non-inducted by industrial association which is termed as intrastructure Upgradacion. Fund', Post development of the estate, the Appellant recovers total fund contributed by them and industrial association from the plot allottices and transfers 40% of the fund to respective industrial association. The Appellant has been paying service tax on their 62% contribution which is termed as industrial association. The Appellant has been paying service tax on their 62% contribution which is termed on 40% of the contributed by contested service tax domand on 40% of the contribution of the protective industrial association.

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I find that use is the first of strength in teaching of domand under t 7.2 the category of "Recting or any multiplication by for event control groups is that the supervalue, being a correction with the horizon k engines for elementary with k01.7 2012 pursuant to every Solid Child Moy Coll (1) gillon NorthEstion No. 25/2012). ST gates 20.06.2012, which such as a loss of a services provided by government. sutherity in relation of any result of contracts to soundigately under Article. 243W of the Construction are assigneed to be leaved service tax, that the Appellant is covered by the teny representations of the frequencies at 2(s) or the notification suprawa the Apamic's was established by the Legislatural of State of Sujame values the Selenal Houstmat Levéndroom Act, 1967 and performs substants in accordance with the chicklene curselized in the Actient. the Fullys marks there are easily to all the performed by them are some as entrusted to a municipality upper under 2+3% of the Contribution and Schedule. XII of the Constitution that they would quark find examplion in xit service tax. under entry 39 of the Maga Evenuation Multilication No. 25/2012-51 pated. 20.5.2012 and relied upon Judgetters of Lembay Ligh Court season in pass of MIDC reported as 2018 (9) G.5.7.1, 372 (Burn).

7.3. I find that Notification (0.25/2012 ST denor) 70.96-7017, inter offs, specify contain services (near payment of Service Tax vide 50No.29 of the value contribution as under:

739. So that s by a tracker in enable of the by very of any polarity remainder to any function entrusted so a magnetizativy under article 046. What the Constitution."

7.4 find that the term 'geventemate suchericy' has teen delibed under Notification No. 25/2012-57 dates: 26-06-2012 as undes:

"(c) SpowerLengental authority "means a Second of an authority of any area is with established with 2010 of minic performance, by usay of equilation second by Generation, and secuples at that of Parliament of a Sinte Capitable of the certa-(c) any meetion calculated so a municipality under article 243% of the Constitution."

7.5 The definition of "governmental classripy" has been amended wield, 32-31-2014, which reads not 02/2014-37 pales 30-25-2014, which reads as under:

"(a) Equivitationical authority" relation and vority α_{0} proves for any other loady:

(C. Set up by an Astrophy furthermore form formellogistic matrix).

(in Fishchistical by Grower concer-

[403] SUSA or look a contraction for two of equate or control, to every not negfunction entrusted to a manodyplicy scale (control of 24.6%) or the Control of gravity.

P#je 10 pt 16

7.6 | find that the Appeliant is a corporation set up by an Art of State. Engission of Soveroment of Gularati As per valious provisions of the Gularati Industrial Development Act, 1962. The Covernment of Gurarat has full control. over R. Lacrefore, there cannot the any ideate that the Aparulant is a envolumental authority'. However, I find that exemption under SLNo.39, L1def. Not Tituation, No., 25: 2012-ST, dated, 20-26-2012, is evaluable only to the services. provided by a governmental authority to relation to any function entrustric to a municipality ander Article 243W of the Constitution. The functions entrusted to a Munic extite maye been prescribed under Twelfth Schedule under Article 245W. of the Coastitution, watch reads as under:

"FWILD IN SCHEDUE DIARSE 243W)

- Urban planning including town planning.
- Regulation of land-use and construction of buildings.
- Planning for exceptions successful evolution month.
 Reads and bridges.
- Water sepady for demenie, industrial and communicies purposes.
- 6. Public het thi savitar on conservancy and so id susse, monegament,
- Lize cervices.
- It will focusity, invitation of the anxiety mention converting of earling early .smechs.
- Satisguarding the interase of weaker sections of society. Eindocing the includications and included y retain both
- 10. Show up exercit and upg-adaron,
- 11. Urban powerty alleviation.
- Frowisher of most intentities and meltities such as parked particular, ulaveraisida.
- 13 Premotion of cultural, concational and aesthode respects.
- 14. Buriols for buriol predicts, a cutations, decoation predicts and electric orematori ams.
- In Correction a prevention of eracity to mirrals.
- I.e. Wital statistics including registration of hit manual (korigs)
- 12. PON to A neutrino in charles in charling states, lighting, parking loss, hus stops and public. conveniences.
- 18. Regulation of sourchtor houses and tanneries."

I find from the above list of functions corrusted to a Wundoballity, that the 7.7 services of "Renting of Immovable Property Service" is put covered under Twatfilh. Schedule under Artifold 243W of the Constitution whereas conversion of agriculture land into non-agriculture and transfer of tand from one attrifted to another allottee is being done by the Appol ant on behalf of State while performing statutory function as at Sr. No. 2 of 12th Schedules I also find thesi infrastructure Uppracation Charge, being collected for development of inhastructure within industrial area/estates is a statutory function in terms of Section 15 of the Gujarat industrial Orvelonment Act, 1962 and is covered by Sr. (No. 3 of 17¹¹ Schedule and mone, the Appellant is eligible for exemption from payment of Service Tax on Norl Agriculture Conversion Charges, Transfer Fees and Infrastructure Epgradiation Charges w.e.f. 1.7.2012. The Appellant res-

35.000

visuousliky usia 5% and 5% and on four interesting of enformation trace by them wield, 1.7.3931 and the sub-trace is a Tox Semicol only on 40% of contribution protected to much and in cloud Associations. Trey can set bondfit what has been dealenged and an an an protectiongally therefore, set aside demand constance vide collaboration and in the travelogical protections inspections for the period from S.7.2012 to Marcha Refs. and an appendix protections inspection the Appellant in this report.

8. Regarding eachies text uses and the best denied from Ann's 2011 to 3016,2012, the Appe Sant Sas probenden drift 3 of the forming subscorp lumitions as per Gubble Appe Sant Sas probenden drift 3 of the forming subscorp lumitions as per Gubble Inon place between the compositive values charges collected by the Appeliant from place between the compositive of Section 13 of the Gubble Appeliant from place between of the 1992 bill Bornow high Court passed in the case of CCE Nasik Vs with Multi U-2000 (2005) i Low/2 (Sectional and place of the Section of the 1992 bill between the place of place of the 1992 bill between the place of place of the 1992 bill between the place of the section of the 1992 bill between the place of place of the 1992 bill between the place of place of the 1992 bill between the place of the section of the 1992 bill between the place of the place of the section of the 1992 bill between the place of the section of the 1992 bill between the place of the place of the section of the 1992 bill between the place of the place of the section of the 1992 bill between the place of the place of the section of the 1992 bill be placed by the place of t

8 S. Tifte Appellant has actively approximately experient of the Koalble Bombay High Court in the case of Commissioner of Castral Excise. Noshik Ve Mahamahtra Industria: Development Corporation, reported as 2018 (9) G.S.T.L. 372 (Bond), wherem the Hambas High Court its used that.

*12. We have already related as Social 34 as the MID Activation of Jos. that the function of the ABOU is that only to develop 1 which is intervalide so establish and manage industrial estates. The prior of NIDC is not furthed only to could is high industrial activity and after any tax relats to the during or twenty. shods to industrial undertaking). The function and obligation of the MDC is also to manage and membring the cool of hysical battles by received all to Section (4) Unstruction is factorized by obligation of the MEXC to provide uncertainty of defined in clause (a) of Section 2 of far NBD. Act to the inclustrial essents established by a state in a the genue yinbligstical of 41000 to playtic state nucintair, emenifies in its locks, their states such as peaks, water supply, street, righting, craining, etc. Thus, we und that the activities lie ballon the demandwas made the part of the statutory functions of the MDC encer MULAct. As statich carlier, file demand is in easplate geber vige energies collected. From plat-<u>redeas for recordente tonto victors facilities actorizate mandare ses</u> management and repairs. As provided in the praction dated (8th December, $\overline{2008}$, for providing amounts to the plot colders, the service tests of service charges so there by V-DC are a minimized in the nature of the optic large large which is used by MIDC in discharging susubory obligations under Section 14. We and the second the Osteriz-Cligani, there is no hadely of Second could this the service rendered for which Service Tax was shught to be revied was not. Endle native of statistery excipation.

13 There are, we find the order of the know taken by the Appellete uniburat. Net substanced question of law arises."

 $c_{\rm s} = c_{\rm s}^{\rm emphasis}$ (Emphasis supplied)

8.2 The Pontala CESTAT, Annedersal vide Final Order No. A/12479/2018. dated 30.16.2018 passed in GIDC case only that held that.

¹⁵. We have excelully considered the submissions made by both the sides and occused the records, we find that the two is the larger excellappened of the fight of the light Court in the case of Mahateshira factorial Development Corporation (Supra), as well as Tribunal order reported of 2018 (100 M, 1428 and 2018 (100 M, 280-CES) 400 Me to participation of 2018 (100 M, 1428 and 2018 (100 M, 280-CES) 400 Me to participation of 2018 (100 M, 1428 and 2018 (100 M, 280-CES) 400 Me to participation of 2018 (100 M, 1428 and 2018 (100 M, 280-CES) 400 Me to participation of 2018 (100 M, 1428 and 2018 (100 M, 280-CES) 400 Me to participation of 2018 (100 M, 1428 and 2018 (100 M, 280-CES) 400 Me to participation of 2018 (100 M, 1428 and 2018 (100 M, 280-CES) 400 Me to participation of 2018 (100 M, 280-CES) 400 Me to part

(Emphasis supplied)

8.3 In view of above judgement of the Hon'ble High Court and Order of the CESTAT. I hold that the Appellant is nor upble to pay Second Tax pa Kan Agriculture Conversion Charges and Transfer Fees during the period from April, 2011 to 30.6.2012 also. The formand confirmed for payment of Service Tax on 4E% of Infrastructure Upgradation Charge is also not correct. If therefore, set aside Service Tax demand confirmed on these charges for the period from April, 2011 to 30.6.2012, which have been challenged by the Appellant. This Appellate Authority cannot decide on any issue which has not been challenged by the Appellant in tasks appeal proceedings including on the issue of service tax parts by the Appellant on 60% of Infrastructure Upgradation Charge.

9. If find that the tower acjudicating authority has confirmed Service Tax cemand under "Business Aux Pary Service" on income booked under the Heads "Non Builisation Penalty" and "Wisc. Receipt/Recovery". I find it is pertinent to examine the Edition of "Business Auxiliary Service" under Section 35(19) of the Act curing the period, which was as under:

" (" v) influsiness cowill stylsent cell means any service its relation to ...

- promotion or marketing or size of provides provides (or provides) by or introgen, to the chord of
- (i) the matter of the faring of service provided by the client, or
- (iii) any container care service provided on behali of the clients of
- Two proceedent of goods or services, which are inputs for the clicate or

(a) in reflection or processing of goods for, or on behalf of, the clicate) -

(vi) introvision of service on hebalf of the clicute or

(vii) a service incidental or auxiliary to any autivity specified in susclauses (i) to (vii) status to here, i-such a constant or recovery of chargers, pryments, methodiance all accounts and roughbors, inventory management, as a attent of development of prospective sustained or vendor, public relation serveses, causegeneral or apprecision.

 (a) includes services to a commission space, but does not include any perivity the effects to manufacture of eveloping period.

Hitts From 2 Roberts and 3 a Robert Law Billisation Peneloyi cas been Ÿ.1 recovered by the Approximation in the Approximation been involved and been started by the maxtace of the model of d provides the trial the time. Thus, it is in form of penalty for role Riccards in the signals by the allotheas as per the terms and condition of the rill on hit of the views but shown as recovery of fine. from contractors and initiatively incomes the lifetic is not for eavy statutory functions. being performed as to be reproduced by loss opposition as the 12^{10} Schedule on the Article 243W of the Construction, as gets (2, 11 install/us or one and hence, this unarge is not superval by the judgement of the lipshift sign fourt, the transactions theolyced herein are such downed to definded each service' which include "agreeting to the oblightion on reform from an act, or to tolerate an act, una situation, or to do an Refill of terms of flattion 650(d) of the Finance Act. 1994, and hence ideatance on 2018 crasts; is correct, legel, and property, , unusefore, huld that the hoodban' to tracke to pay Service The of Rs. 5,09,5087. demanded on income cooked index (dead from Utilisation Penalty) wieth 1.7.2012 to 2012-13 to 2014-15.

W2 Regarding Service Tex commond on the mean blocked under the Head W32. Receivery's the Appellant Yak functioned bifurcation of income blocked under the said Head along with description of additing on period income, find that the Appellant blocked income stating to bue lotting, property, capital receipt relates to with have of demonstrating to bue lotting, property, capital receipt relates to with have of demonstrating to bue lotting, property, capital receipt relates to with have of demonstrating to bue lotting, property, capital receipt on tale payment of lease twentum etc. Under the Head, it therefore, find that these incomes were generated on teception of the services rendered by the Appellant, which are but in the nature of statitory functions but devered within the generation of fluctness successive fax of Ref 3 30,897% on the focume to feed under Head Misc. Receipt/Recovery) as this function is not powered under 12¹⁷ Senerate of Annue 343W of the Capital provident and/or the above said judgement of the Han'ble Figh Grunt.

9.3 In view of Para 9.4 and 9.2, conformation of Service Tax nominal of Rs. 5,09,5067- In respect of "Non-Still strin Privaty" and Rs. 3,09,8177- in respect of "Nisc. Receipt/receivery" is upnetd. Stillet, cemand is payable, the Appelleter's required to pay this demand along with interest at the applicable rates, during the period, under Section 76 of the Act.

10. I find that the issues involved in this case are interpretation of law and hence, no penalty is imposzole us the Appellant under vection 78 of the Act as

ter the judgment of the Honible Supreme Cuuri in the case of Shree Rajesthan Syntex Ltd. reported as 2015 (258) EU (626 (60), wherein it has been held that,

*3. Inselar as the question of reasonal period of dimitmon is concerned, we have go to the eighthe officer of the Commissioner and set of the ophrical fait. We have tightly acti that the extended before of limitstances per too provise of Section 11 ArT (sof the Contral Excise Act, 1944) would be uppliedly in the given circumstances.

6. However, wy ago of the egotion <u>it at a scalar like the mesory and whete</u> a <u>the weat we not and memory of an after respective</u>. Section 4 and the product after respective from 4 and the product after respective from 1.7 2000 was in a fluid state, it would not be appropriate to keys the gatality.

7. The distributes of endowed in a measure oppeals are allowed in part by transming the Commissioner's Order in Criticinal grastic on 10-2-2003 insolar as it relates to the period from 1-7-2000 to bety 2000 hold for twist fy is set uside, the waver, there shall be to ander as to restau?

(Emphasia supplied)

10.1 In also help on Final Opper Passed by the Bonfold CESTAT, New Debrims the case of Tata Consultancy Services Etchreborted as 2018(18) GSTE 478 (Tri-Det.) cub altermed by the Honfble Supreme Court as reported at 2018(18) GSTE (127750), which held that penality is not imprisable when support relates to interpretation of service.

10.2 In view of above, it set aside the penalties imposed, for Service Tax, nayable under these two heads, vide the impligated order.

11. अभीसकर्ता दुनास दर्ज की गई जापील का सिपतास उपसेक्त तसिके से किसा जाता. ह

The appeal filed by Appellant is disposed off as showd.

2₩ R.P. 4.D.

To, Sujara, Industrial Development Corporation, Wadhwan, St /endranager,

পরি, :
- गुज रात हलसिंहलल इंच्लपगॅट रणमी(सम,
तव्यापा,
सुरेन्द्रनगर।

प्रधान आतुक्त ।अपोल्पा।



া) তটাল দুরম ওপন্যন্য) কাম ও এবং না ও এন্যুক প্রবন্ধ কুলমা, কুলংক

प्रतिनिषिः-

ব) আই জাহন।

भोज, आहमार स्थान स्थान अवस्थर में भाषा ह

भावलगर को आपरणक कारका हा -

को सुरंत आवश्यक जाएर से संस्थ

2; आयुका, वस्तु उने देश दश २० सेवर्मन शरामा सुनन, शत्मनगर आयनतालय,

3) सहायक सायुक्त यहतु यह जेश प्रेय एव अभ $^{\circ}$ ए स्ट्रमाट फूल्स लगभग सुरेन्द्रसम्ब