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र असील - काइल साम्या -अनुरूप्तर / 1915 No म्हान्द्र (BY) (25418-13 ্রুত প্রশিদ্ধ নার ০০.২.২.২ ৪০৬৬ সালে সম্পর্কের সময়ের ব

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19.02.2019

कुमार संगीय, म्यानि यापूरः (श्रमीच्या), संवर्धनेत्र द्वारा प्रायिन 🦯 🗉

Pristed by Shri Kuman Santushi Principal Comparisoner (Appendix), Rafkot

ग । असर स्टर्ज्ज्ज्ज्ञ सेन्द्रण अस्ट्रिका सम्प्रमुख आहेत्य के दीन करणवा कुलाए से अवस्थान हुए। से पाव आज के हो जानक स्ट्रेन्संग्रेट्या स्ट्रेंस देव देवे दिन आसी मन असेन के राजिय के राजिय स्ट्रेन्स हुए। से पाव असेने के सार्वे अस्टि स्ट्रेन्स् केले की राजवादित के सार्वे के राजिय स्ट्रेन्स को साथ का स्ट्रेन्स के सिल्क राज इस्ट्रेल सेन्द्राच्च्यूक/दिवासीली द्या स

्यु 👘 🐘 अमीलमली & प्रतिपादी का ताम तुम पत्रा /basie & Address of the Appellants & Respondent

11/5 Onjhirar Industrial Development Corporation, GIDC, Validativeda Reavinger.

ат иле «Умпления и или е мак мане или става». Тике к полно и болко Ампреков и конструкти с конструкт. Ону рокуу в galook шкуу на укија на барин. Азрад је да Прона зарајна иле наст је насе међуе не је на конструкти

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- ¹⁰া কাৰিছে প্ৰশিষ্ঠ কৰাছে বন্ধ নিৰ্মাণ বিশেষক ভাৱত ব্যক্তিয়া বিভাগত কৰি বিভাগত বিভিন্ন কৰি জিলা কৰি নামক হয়। আনহাতে প্ৰশাসনাম বিশেষ বিভাগ বিভিন্ন বিভাগ বিভাগ বিভ

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प्रदेशे के से देशे निर्माल के इसके ने के रहता हो के लोग की आदि जीवन जुन के दीन कराइ जुन का किया के उसके सीम का पश्चिम (1996) कि सीम के प्रायं के साम दिया कर कर कि से से दुस कर सुध प्रहार कार के साम के कार्य का कि कर की सीम का परि (1999) कि सिंह कर कि मिल्ली के सिंह कर है. कि कार्य के से साथ प्रायं के कि की सिंह के कि कि साथ के कि कार सिंह क अब के दिया सीम्प्रेस 2000 के साथ के हुएक क्रम्यत के के सरकार का के स्वार्थ के कि की कि की कर से कि कार से का की

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(B) अपिये का करिया का स्थान स्थीत कि का उनकी पर पाछ के बना छन्दु के ताले के नरस कि रूपनी 1995 के कि राज के की ताल पिछरिय कर 21 के पिछर से पिछ से पाछ के से पाछर्ग के उनके रूप के नारक के फिल्ट भी ए मैं की एक साथ के स्थान रुपा कर (साथ के एक रोगे सारक इनके का भए और राज के साथ कर रोगे कर पाछ के साथ की कि राज के लिए साथ के पाछ के साथ करना कर (साथ क पाछ रोगे सारक इनके का भए और राज के साथ कर रोगे कर राज के साथ की कि राज के लिए साथ के पाछ के साथ करना कर (साथ क पाछ रोगे सारक इनके का भए और पाछ के साथ कर रोगे कर राज के साथ के कि राज के लिए साथ के साथ के आधान साथ की साथ क पाछ के साथ के साथ के साथ के साथ का साथ का साथ की का साथ के साथ के कि राज के लिए कर की साथ के आधान साथ की नाम साथ का साथ के साथ के साथ कर राज की का साथ के साथ के साथ के साथ के साथ के कि साथ कर के साथ के साथ के साथ का साथ की क साथ का साथ के साथ के साथ कर राज की का साथ के साथ की साथ की साथ की साथ के साथ की साथ के साथ के साथ कर के साथ के साथ के साथ के साथ की कि साथ की कि साथ की साथ की साथ की साथ की साथ की साथ की की साथ की साथ के साथ का साथ के साथ के साथ के साथ के साथ की की साथ की की साथ की के साथ की साथ की साथ की साथ की साथ की साथ की साथ के साथ का साथ के साथ के साथ के साथ के साथ की की साथ की की साथ की की साथ का साथ का साथ का का साथ की साथ की साथ की साथ की साथ की साथ का साथ साथ का साथ का साथ की साथ की साथ की साथ की साथ का साथ का साथ का साथ की साथ साथ का साथ साथ की साथ का साथ की साथ की साथ का साथ का साथ की साथ का साथ का साथ की साथ का साथ की साथ की साथ का साथ का साथ की साथ की साथ की साथ की साथ की साथ की साथ साथ साथ का साथ साथ की साथ की साथ की साथ का साथ साथ की साथ की साथ की साथ की साथ की साथ की साथ साथ की साथ की साथ का साथ का साथ का साथ की साथ का साथ साथ की साथ की साथ का साथ की साथ का साथ का साथ का साथ की साथ का साथ की की साथ की साथ की साथ की साथ का

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Fig. 2. A set of the set of the Poly Servers in the Sector state of the Let Set. And Labor How Reserved. State in some set of the set of the Poly Servers in the Sector state of the Set. And Labor How Reserved. Set of the Sector state Sector set of the Sector state (Poly state set) and the Sector state of the Sector state of the Sector state of the Sector state of the Sector state (Poly state set) and the Sector state of the Sector state o

- নৰ বিভাগ কৰে বিভাগ কৰে সময়ে সময়ে বিভাগ বিভাগ বুকৰাৰ বাবে বিভাগ বিভাগ বিভাগ বিভাগ বিভাগ বিভাগ বিভাগ বিভাগ বিভাগ এই ভাৰ বিভিন্ন কৰে বিভাগ বি দিশৰ বিভাগ উপৰ বিভাগ কৰে বিভাগ কৰে বিভাগ কাল বিভাগ . 5
- भूतम् । अपने स्वीः स्वाधितानी दियोग अपने उत्तरितिमां प्रायम्भवन्त्री भारतान् प्रेण्डीवर्तन स्वार पुरावे आतंत्री में अपने प्रायम्भियाः सर्वेषम् विवास् म्यून्स् म्यून्स् म्यून्स् स्वार्थ्यस्य प्रायम्भवन्त्रीयां स्वार्थ्यस्य व मे अपने स्वीः मे व्याप्त अपने स्वार्थ्यस्य म्यून्स् स्वार्थ्यस्य स्वार्थ्यस्य स्वार्थ्यस्य विवास्य व्यवस्य स्वा मे स्वार्थ्यस्य स्वीः मे व्याप्त स्वार्थ्यस्य म्यून्स् स्वार्थ्यस्य स्वार्थ्यस्य स्वार्थ्यस्य स्वार्थ्यस्य स्वार्थस्य đ٦
- ्रों, तरह से स्ट्रांत की आग है से लिए तीना आग के कारण प्रतान के प्रतान का साम ताम का किस कर की है. इस्ट्रांट की को बीन देखा रही के दिस्ती के से स्ट्रांट की की मुख्य की सीम के साम के साम के साम के साम की साम के h."
- भूमध्य अन्यति अगरन कुन ते प्रतास किसि प्रती करते किसि का स्टब्स किसि का प्रदर्श किसि का प्रती कि स्टब्स कर किसी के से किसी के किसी में प्रायम होगा के बाल्य कि बाल्य के स्टान कर का करता होता के सामग्री के साम के बाद करना सी कि स्टान के के साम क (14)(c) (i) Technological systems of system ways to proper of experiences of a probability of a the press of all the Article's to be experienced as a second of the Article's Article's Article's Article's Article's and the press of the Article's Article's the Article's Article'
- अभ्यत्र अवस्तर हो हो होनेत आहर स्वता है। इस राजी के केहीब अभयत हो से (ब्रांगे 2) भिन्न के कि कि का अभ्यत सिथिटि है पूर इस की संस्तर के अन्य के देवने की परियोगित के इस्तेन्द्र अपनेत की मुख्योगित की पति के मानवारी स्वरूप के माने काम में अभ्यत के स्वता के प्रतिस्तर की कि बात 2018 के स्तार की माने के कुछ के सरकार की साथ के सी मान्द्र की भी की भ नामने से अभ्यत के स्तार की सिक्तर के स्वार्थ अपनेत की स्वार्थ के अन्यति की से साथ के सी मान्द्र की भी की सीमा क मानक स tr e NINE () generation of the frequency of the control of the frequency of the state for the frequency instruments for ex-(a) and the first of the term the data of the first index states of the states of the states of the terms of the data back of the states of the frequency of the states of the first of the first of the states of the
- n for halo for the Confidence of the start of parent to the fifth of the start of the start of the start of the An experimental start of the start (1999) and the start of the Start (1999) and the start of the Start (1999) and the start of the Start (1999) and the start of the s \mathbf{r}
- नाने स्वाध्यक्ति में की पुरा स्वरंभ अपराध के प्रायं के अस्य आवश्व के स्वाधक प्रायं के प्रायं के प्रायं करिया का स्वाध के प्रायं के स्वाध कर का स्वाध के प्रायं के प् तो कि देवे के प्रायं के प्रायं के प्रायं के प्रायं के प्रायं कि का का स्वाधक के प्रायं के प्रायं के प्रायं के प् तो कि दो के प्रायं क प्रायं के प् प्रायं के प् प्रायं के प् प्रायं के प् ŕ.
- त प्रदेशित रुपयुगर शुरू भा सेम्बन १८८३ व भवाकी व भवगर पुरा शास्त्र एव स्पन्न प्रवस के सेने स्वावशामित 556 वास क २०१४ के अन्य से से प्रायत गाँउ फिल्ल जुल अन्वता दिया मार्ट (८८३) के प्रायत रहत कि site as order on to reach subgroup for firstly distance so an toy and your २०१४ के प्रायत के दिया मार्ट (८८३) के प्रायत के सेने के प्रायत के कोटी के स्वावशास्त्र के कि जिस प्रायत के का क $U^{*} \widehat{U}$
- Program (2), and the set of the set of the set of the PBET Descended ATE and yield and AtE and the Field ATE was the featured of the first end of the set of the set of the set of the set of the first one. For example, the ATE set of the set of the first end of the set of the set of the set of the set of the first one. For example, the ATE set of the first one. For example, the ATE set of the set of th 1.1 - - . .
- ': p ্ৰেৰ গোঁৱেটা বাৰ্গিয়েই বা প্ৰথম ব্যক্ত কৰে যু গ্ৰীণৰ মন্ত্ৰ গুৰুত্ব গাঁৱ কাৰ্যিকৰ মেনে।বা হৈ কিন্, মেৰিমেটা ব্যক্তিক কৰ্মানে এখনৰ উৎস্কৃপটাৰ্ঘ ব্যক্তিয়ে আৰু গ প্ৰথম প্ৰৱেশ্যম মেনেটো কোনাটোৰে অভয়েৰ প্ৰথমৰ টা বাহৰুকা সমূহৰ আগত বিৰুদ্ধ ব্যক্তিয়ে অভাৱত হৈ বিভাৱস্থা হা মেৰ প্ৰথম নাজৰ উদ্ধাৰণ বিষ্ণাৰ্থ কৰা বিৰোধ বিভাৱস্থা হয়।

:: ORDER-IN-APPEAL ::

m/s, Gujarat Industrial Development Corporation. Bhavnagat (hereinaliten rolinities to as "ApptLant") filed appeal No. V2/4D/6V8/2018 19 against Ordenin-Original No. BriV-EXCUS-000-JC-58 2017-18 dated 26.7.7018 (hereinafter referred to as "impligned order") passed by the Jt. Commissioner. COST 8. Contral Excise, Bhavnagar (hereinafte: referred to as "Lower adjudicoting sutherity").

2. The brief facts of the cose are that the Appellant, a Groomneet of Gujarat undertaking, was established theer the Gujarat Industrial Development Act, 1967. The Appellant was registered with Service Tax asving registration ho. AABCG6032050003 for 'Renting of Immovable Property Service'.

2.1 The Aucht of the records of the Appellant revealed that they were generating incomes from various operations and booking these fecomes uncer different heads like Non Agnoulture Conversion Charge, Transfer Fee, Infrastructure Upgradation Charge, Plot Full Payment, Administration Coasge, Mise adowance, Service Charge, Security Fee, Late Construction Approval, Late Plan Approval, Gonown Rent, Lease Rent etc. which were taxable and the Appellant was liable to pay Service fax under the category of "Renting of minuvable Property Service" The Audit also felt that the Appellant was receiving consideration in the form of "Water Charge", which was liable to service tax under the category of "Support Service Tax on these for Commerce". I owners, the Appellant was not paying Service Tax on these incomes.

2.4 Show Cases Notice No. V.S(715.167/vidit-17/SCN716-17 dated 3.10.2016 was issued by the Addl. Commissionen. Central Excise, Audit-11, Rajkot, for the period fmin 2011 12 to 2014-15, calling the Appellant to show cause as to why Service Tax of Rs. 1,82,69.0747 on respect of rRenting of Immovable Property Service', 35.14,18.2407- under Support Service of Rusiness on Commerce' and Education Cess and S. I.E. of Rs. 35.4427- short paid during 2011-12 should not be certained and recovered fmin them under Section 73(3) or the Finance Ad1, 1944, along with interest and Shore baid fmieres of Rs. 2,25,7437, under Section 75 of the Art and why behavior sections 76.77 and 78 of the Act should not the imposed on them.

2.5 The above Show Cause Nutrice was adjunicated by the Joint Commissioner, CGST and Control Excise, Shavnagar vide the Impugnet order, refined confirmed Service Tax domand of 35. 1,82,69,3747, in respect of "Berning of Indervable Property Service", Rs.14,18.2407, ander "Support Service of

Business of Contributes I and and it back taken in the Kassished Secondary and Higher Education Cost proceeding to the SilverO in the ordered in the train economy under Section 78(1) of the Act and a second million of the Class 78 of the Act, also ordered recovery of interest of the Sulface into the Peter Section 79 of the Act and imposed backford of the Sulface spatial condet Section 78 of the Act and Ast 10,000% under Section of the Sulface second

 Deing aggrichted mither and oppgracht die Uther Appeller uites proforred appeal on various group of and a the point of a

(i) That the Net York was shall a closed too Galactic industrial Development Are, 1962 (a) Closed (c) Closed (c) Closed for the purpose of securing orderly baladds) real incluses for the dimensioner in industrial establish of fully a condition of dimensional reaction with the contrologies of the real of the dimension of securing community. Vertices and new industrial vertex for the contrologies of the control of securing community. Vertices and new industrial vertex for the contrologies of the control of the control of the control of the and new industrial vertex for the control of the control of the control of the and new industrial vertex for the control of the control of the control of the willing industrial vertex for the control of the control of the control of control are control of the willing industrial vertex for the control of the willing industrial vertex for the control of the cont

(ii) (not Section (2.5% 0.0)), and the section of contrast to separate by the Appellon which have a contrast of contrast development of lend on its own sections provide and the contrast of contrast development of lend on its own sections provide a first order of the property of forsi taking the location of independent of operations of the property of the sections of forsi taking the location of independent of operations of the property of the sections of the section of undertaking schemes for the operation of the section of the sections of the section and development. The Appellant of the section of the section of the section of the water supply, states of the provide of the section of the section of the section of the provide of the section of the section of the section of the sections of the maintenance and uppeak for the section of the section of the sections of the Appellant inclusions of the section of the section of the sections of the section of the Appellant of the section of the section of the Appellant inclusions of the section of the sections of the section of the Appellant of the section of the sections of the Appellant inclusions of the section of the sections of the section of the Appellant of the section of the sections of the Appellant inclusions of the section of the sections of the section of the Appellant of the section of the sections of the section of the Appellant of the section of the sections of the Appellant inclusions of the section of the sections of the section of the section of the Appellant of the section of the section of the section of the test of the section of the test of the section of the test of the section of the section

(iii) The Appeliant instra Section Trace. The first the surgest of transfer of title in tark? Piol for each we also be served a sincites. At our collected as "Interfer for is not in each we also serve to be graph to Section of maxible." Property Service: and no we also we have been from Sector strange of Servers of Sector property includes motion, for all the Sectors Constants of Sectors of

commerce. The transition fee cannot be satulated be callected framework? Leasing / Leasing / Letting on any other similar affaitgements. (We service tax demand has been reaffirmed under the category of fronting of incluvable property service? without giving loginal measuring as to have the amount collected as transfer fees satisfies the conditions as stated under the committion of the satisfies the conditions as stated under the condition 658(14) of the Act, mansies of the infinite test property by way of wells, gift on in any other magnet is excluded from the levy of service tax. Hence, they are not liable to be y Service Tax on "Transfer Fee" collected by them during the method 2011-12 to 2014-15.

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The Appellant revelops infrastructure like roads, sustained watch supply, üvi drainage etc. within the incustrial areas or estatos which is their primory. responsibility in view of Section 37(1) of GID Act. For any estate developed. enner GID Act, 56% of the contribution is made by the State Government and balance 50% contribution is made in the ratio of 60:40 i.e. 50% is contributed by the Appeliant and 43% is contributed by industrial association. The contribution towards development of the estate as unilented by the Appeilant is included as "Intrastructure Obgradation Fund". Post development of the estate, the Appellant recovers total fund contributed by them and industrial association. from the plot allottees and transfers 40% of the field to respective industrial wark is time. The Appellant is discharging service tax on their 60% contribution. w.e.f. 31.07.2010 moder service category of Renting of Immovable Property. service). However, they are not liable as pay service tax on 40% of contribution. since the same is not rotained by them but tassed on to respective industrial association and a so shown as hability in their financial statement. Since there is su provision of service, service tax demand under the service entrepry of 'renting of Errouvable property service' is not systemable.

(v) The Appellant acquires land from the state government and converts agricultural cano intri non agricultural purpose in order to develop industrial estate and makes payment of Non Agricultural conversion, tharge to the State Revolue department and recovers the same from the plat alketree. The Appellant is discharging service tax w.e.t. 01.07.2012 i.e. after introduction of negative list. As there was no specific entry prior to introduction of negative list. In Appellant had not discharged service tax on the same. The impugned order has confirmed service tax domaad under the category of "Renting or introduction from the amount opticated as INA Charges" satisfies the conditions as stated under the definition of the same. The definition of the same specific actions as stated under the definition of the same the definition.

(v) The Appellant budget, and every sub-control budget of som utilization of data for busives, points to a separate control of the Appendix Some utilization penalty inside control of the sub-control of fines / penalties and not service budget fines a control of the subsystem toder. Renting of Immovable Property Social 5.

(vin) The Aprelia Conduction of Control terminipoly of water to the plot hulders. The activity carried the bumperform is supply of water and since water being goods, service test above to be level of the supply of water to the part holders. Further as per Guiscol Parts for all fas Act, 2006, water is exempted vide entry number 68 of spheric to a the local Statistics is placed on the thermition of the legislature is so classify value as good. Statistics is placed on the tase low of Radius Water End. (2015 (20) she first on the local statistics is held built supply ut water to the State Computation of the local ingling service and hence service tex liabury under Business Supplied Statistics.)

(viii) Plot full payment and Vick payment, recolumn' and beam premium itelone time collection does by the Spontham Some its allutitee at the time of allotment of plots, as per Secure 104 to the Finance Act. 1994, inserted vice Finance Act. 2017 (or service tax & existile on one time upfront amount (prentium, salabit, cast, proce, taxwhepment charge or by wratever name called) and the same has been great improving the comption where 01.06.2007. Here, the Appellant is not fabite to proce the vice Trip.

 Notwrithstanding accurrence is stated in obtwe pares, the appellant being a governmental authority is sitglicle for exemption wielf. 0v.07.2012 pursuant to entry No. 39 of wegs "interfication No. 25/2017 ST dated 20.06.2017, which reads as protect.

"39. Services by a governmental politarity by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution."

As per the said exemption analy, and services provided by government authority in relation to any function entrasted to muncipality under article 243W of the Constitution and excepted from the lowy of service tax. The term igovernmental authority' is defined in order clarke 2(s) of the nonification supro. The Appellant has been established by the Legislature of State of Gujarat under the Gujarat Industrial Dovelophela (aux, 1992 and performs its functions in accordance with the 'provisions' contained on the Aut and the Rules made "thereurider. The Appellant coubles vias eligovermental, outhority and performs "Warious functions which are entrasted to a couldipatity under Article 243W of

Page 6 of 17

the Constitution and Schedule XII of the Constitution. Thus, it can be said that any activity performed by approach in reached to the purpose for which, appellant has been established, would qualify for exemption from service tax under entry 35 of the mega Exemption Notification No. 25/2012-ST dated 20.06.2012 and hence service tax shall not be teviable and relied upon Judgement of Bompay High Court passed in rase of MiDC reported as 2018 (9) G.S. 11, 372 (Bom.).

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(x) Since the Appellant is not liable to pay Service Tax confirmed in the implighted order, no interest is payable by them tader Section 70 of the Act.

(x) The impogned order has confirmed demand invoking extended period of limitation under Section 78. Larger period of distation can be invoked only in case where there is fraud, collusion, willful misstatement, suppression of fects of contravention of envision of any Excise law with an intent to evade payment of duty. The onus to prove that there was an intent to evade payment of duty is upon the department which has not been discharged. The Appellant was established under the provisions of Gujatat Industrial Act, 1962 for performing statutury functions. The Appellant being a government bring could not have a matafree intention for non-payment of pervice tax. Reliance is placed on one following judgments:

- CCE v. Sharat Petroleum Corporation Ltd. (2016) 344 ELT 657.
- (b) Komatoka State Tourism Dev. Corpri. Ltd. v. CST (2011) 21 STR 51 –
- (c) woharashtra State Seed Certification Agency v. CC0.CF (2015) 37 STR 655-(Tri-Mumbar)
- (d) Gujarat Narrada Valley Fertrizers & Chem. Ltd. v. CCE (2015) 37 57R 796. (Title Abroit)

4. Personal Hearing in the matter was altended by Shri Devang Gagar, Chartered Accountant and Shri Sagar Makadya, Assistant of the Appellant who refereted the grounds of appeals and submitted that GIDC has doon created by an Act passed by Gujarat State Legislature; that GIDC is a 'Government authority' and hence mega exemption patification applies to it: that the issue has already been decreed by the Honible High Court of Mumbai in the case of CCF, Kashik Va MIDC and this case law is applicable. On query as to now MIDC is similar to GIDC in various aspects as decided by the Honible High Court, he submitted that he will make additional submissions within a furmight.

1.1 The Appedant vide letter dated 17.11.2019 submitted additional ¹¹¹ Septembers as Ender:

(f) The Appellant reproduced various provisions of Sujarat Industrial Development Act, 1962 and Maharashtra Industrial Development Act, 1961 and

submitted Blac object is a second of follows: Subatrial Development Corporation are easily as Shally in a value of Userne, StakeLopment Corporation and furnished obvics of GS in a follow. In Tay, 941

(if) The first equals i_{1} and i_{2} and G_{1} D. Repeak i_{2} and G_{2} D. Repeak i_{2} and G_{2} D. Repeak i_{2} and G_{2} D. Repeak i_{2} and i_{2} Repeak i_{2} and i_{2} D. Repeak i_{2} and i_{2} D. Repeak i_{2} and i_{2} D. C. from black holders are completely i_{2} and i_{2} by constraint the discharge statutery functions in terms of Shotian the Alex i_{2} of i_{2} and repeak equation discharge i_{2} and repeak equations of the Hoolble Subscription i_{2} (see all of the Case of CCE Nasik VS M/s MacD.C.- 2048 (9) 0.977 (i_{1} Completely and descend that copeliant is not disclet to pay service to unit diages of i_{2} CCE.

(iii) Refed apen Understanding on Converting Converting 19, 09, 2016 passed by the Converting Co

4,7 The Appellant vide ervsit oxied 16.15 2008 submitted body of Order No. A/12479/2018 dated 30. (0.2016 person) by the Honible CESTAT, Abricalahad in them own case. The Appeliane vide on ail fiscael 33.1.2519 submitted bifuncation of muture booked under siteame Beed inside Receipt/Recovery1 along with description of coordinates?

Findings,

5. If have carefully gone G Kugh the lock of the Case, the impogned order the appeal memorandum and protocol skill as scal submissions made by the Appellant. The issue in be deviated is whether the Appellant is finite to pay Service Tax, on various charges/rees collabore ty them, under the categories of 'Rending of Encrovable Procesty Service' and 'Support Service of Business on Champerce' or put.

6. I find that the Apprilian was established under the Gujarat industrial Bevelopment Aut. 1962 for the percesse of securing orderly establishment and organisation of industries in industrial areas and industrial estates in Gujarat and for establishing commercial costs of it consists ion with the restablishment and organisation of such industrial action 15 of the Gujarat Industrial Development

Act, 1962 prescribes functions to be performed by the Appellant which reads as under:

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"Ib. The process of the filo preation shall be."

- (i) proteining to promote and assist in the rapid and orderly astablishmold providand development of index need in the State of Objects [and
- (ii) in particular, and without projudice to the generality of algoes (i) to -
 - (a) establish and manage indestruct establish places sciented by the Sinte Government;
 - (b) develop industrial area: selected by the State Government. An up any process of a mass them requirible for undertakings to establish abereasives;
 - (c) develop land on its own account of the Slote Growen, new for the purpose of facilitating the location of institution and commercial contrations.
 - (d) essist litteratedly by losits indestrict to move their esclories into soch estates operate;
 - Continueerroke schemes for providing industrial units and commercial gatabasia wate with such structures and locities as may no natessary for their orderly establishment, growth and dowdogment,
 - (e) premote, organisal sponsor or undertake schemes or works, either roledly with other corporate badies or combining, or with Government or local authorates: or on an agency basis, in full-backness of the borroses for which the Corporation is established and all matters connected material?

7, i find that the lower adjudicating authority has confirmed Service Texderived on one incomes booked by the Appellant under the Heads of Non-Agriculture Conversion Charge, Transfer Fee, Infrastructure Upgradation Charge, Plot Full Payment, Administration Charge, Nisc allowance, Service Charge, Security Fee, Late Construction Approval. Late Plan Approval. Godowo Rent, Lease Rent etc during the period 2011-12 to 2014-15 under the category of 'Renting of Immuvable Property Service'. I find that Section 65(90a) of the Act defines (Renting of Immovable Property) as under:

v2.Ats) meaning of non-avable or quary? Includes on tagging thing, basing, Steaming or other similar arrangements of introducible property for use in the course of the hereace of business or commerce but does not include –

- (i) Antipe of Immovable property by stellations body on to a religious body; or
- (a) the number of conclovable property to serve acational bedye imparting aking or knowledge or kasens on any subject on field, other from nonumercial training or ceasing centre."

7.1 Inditrom the recurds available that detail descriptions of above mentioned income Heads are as under:

Non Agriculture Conversion Courged

The Appellant acquires agricultural fand from the State Government and converts into non agricultural purpose in order to develop inclusifial estate and makes payment of Non Agricultural Coviersion charge related State Revenue department and recovers the same from the plot allottees.

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and the Aller (1995) and the

- (ii) Transfer They Shows a state of the sector of the purpose.
 (ii) Transfer to the sector of the sector of the sector of the sector of the sector.
- (iii) Intrastructure Uppradation Instruct

The appellant devices μ increases of a small, water topoly, definage etc. within the induction of the scale of the view of Section 37(1) of GD Act. For any assault of and 40 2005, 1.6 Act, 502 of Sht contribution is made by the State Concrement and replace 505 contribution is made in the ratio of 60:40 GeV 10.5 is contributed by the Appellant and 400 is contributed by Relation 10.5 is contributed by the Appellant and 400 is contributed by Relation 10.5 contribution is common as flattestructure Upgradation Human Port Contribution of the estate, the Appellant recovers rate, from our contribution of the estate, the Appellant the p.D. allottees and plattes μ (with the function from the p.D. allottees and platter of the function test function from the p.D. allottees and platter of the local section from the p.D. allottees and platter of the function of the function the p.D. allottees and platter of the function from the p.D. allottees and platter of the function from the p.D. allottees and platter of the function from the p.D. allottees and platter of the function of the funcsion of the function of the funcstation of the function of the funcpoint of the function of the function of the funcsed of the function of the function of the funcpoint of the function of the function of the funcpoint of the function of the function of the funcpoint of the function of the function of the funcpoint of the function of the funcpoint of the function of the function of the funcpoint of the function of the function of the funcpoint of the function of the func-

- (iv) Service charge : The Appenant optic conserved charges from plot initiars.
 (or maintenance of initiastrumule factifiers like orad, streetlights doe
- (v) Plot full regreate in large star plantice, the one time collection done by the Appeliant from its subtles so 0% (time of all strengt of blots.

7.2 I find that the Appeltancias contacted the confirmation of Gemand Under the category of iRenting of strike with Property forvice) on the grounds tractine. appeltant, being a governmental option of 3 et gible for exemption weetly 21.7.2012 pursuant to entry hist 30 of News Exemption Notification No. 25/2012-ST dated 20.06.2012, which dubulation that the services provided by government. authority in relation to any substitutient usted to menicically under Article. 243W of the Constitution are prompted from the Cevy of service tax; that the Appellant is covered by the truer (governments) authority' defined under related 2(s) of the notification suprolass the Appediant was established by the Legislature. of State of Gujarat under the Gojera: Incustrial Development Act, 1962 and performs functions in accordance with the provisions contained in the Act and the Bules made thereunder: the Functions beformed by them are same as entrusted to a municipality upder Astrone 243W of the Constitution and Schedule. \sim 10) of the Constitution: that they would shall by for examption from service tax. under ontry 39 of the Megal exemption. Noticeation we - 25/2012-ST cated

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20.6.2012 and relied upon Judgement of Bombay High Court passed in case or MIDC reported as 2018 (9) G.S.T. (1, 372 (3pm, 4) m)

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 Yad that Notification No.25/2012-ST dated 20:06-2512, inter after Б. exempts certain services from payment of Service Tax vice SLNO.39 of the said. nstification as under-

739. Survives by a Governmental sucharity by way of say activity in custom. to any function entrusted to a unumprishing probability of the state o Constitution."

I find that the term governmental authority' has been defined under 8.1 Notification Mn. 2572012 ST dated 20/06-2612 as under th

r (spronvernments) authority) means a board, or an authority of any offen body. established with 90% or more participation by way of outry of control by to average out that set up by a vider of Parliament of a Suite Legislature to correour any function entrusted to a municipality under article 240W of the Constitution:"

8.2 The definition of "governmental authority" has been amonded w.c.f. 30-

31-2014, vide Notification No. 02/2014 ST dated 30-01-2014 as under:

r(s) merevise vertex similar any increases are noticed by given based as leavy other. Peda:

(i) So up by an Act of Parkament of 0 State legislature, or

(ii); Esthal shad by Grower marg

with 90% on more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution?"

8.3 I find that the Appellanu is a corporation set up by an Act of States Legislature of Sovetament of Gujarat. As per various provisions of the Gujarat. Industrial Development, Aut, 1962, this Government of Gujarat has full control. over it. Tomorfore, there cannot be any coupt that the Appellant is a governmental authority: However, I find that exemption under 5 No.39, Unser-Notification No. 2572012-ST dated ZD-06-2012.is available only to the services. provided by a governmental approxity in relation to any function endoused to a municipality under Article 243W of the Constitution, the functions entrusted to a Municipality have been presended under Twelton Schedule under Arbinic 243W. of the Constitution, which reads as under:

"TWELTIN SCOPIDITE(Article 240W)

User planutory including town planning
 Regulation of and use and construction of balls again

3. Planning for economic and social development.

Roads and Infégua.

Ware couply for concerns, in estual and elements of curvess.

Public health, subination conservancy and solid waster management.

- N 7. Findsavarea
- $\sqrt{-8}$. When forestry, protection of the environment and aromation of ecological 0403274
 - 9. Salagazzding the interests of weaker sections of sectory, hirelading the handloapped and coentally retarded.

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- Standaugree dates in the second s second sec
- Up to a start, all extract
- (5. Free similarity crossing solutions to the state of the states, (1,2,3,3,3)playgrausels.
- Carta Control aspecta Prodokta v p. 90 (21)
- 14 Bologs and therein generally the table of the white grounds store as the a entop of statu
- Call's pounds, provident of activity of the sec-
- 16 Wital statistics of a contract the factor of a contract death. In Provide american including a set (\$950 grant days), so stops and public. converiences
- 18. Regularian of size given in eq. () we can $\sim 10^{-11}$

traditions the obove is the visualization variated to a municipality, that the 3.1 services of "Renting of item. As the Property Stavice" is not an even of under Twelfth. Schuble under article 2434 of the Diracial whereas curversion of agriculture land into non-agriculture and a worker of their operation test to another allotted is been, built 1, ose appoint on behalf of State while performing statutory function is an Sr_{1} with $2\pi a^{2}/(2^{2})$ Schedule. I find that afrastructure Upgradiation Chartle set of collected for prevelopment of infrastructure withing incostrating and distance, is a structure of function in terms of Section 13 of the Grijsest Reduced. Severationers Act, 1962 and is covered by Sru-No. 3 of 12th Scheaule, in this days service and get is collected for maintenarice of intrastructure within industrial control and conversel by Sri Nu. 4 and 17 OF 12th Schedule and honce, the Aspellant is eligible for exemption from payment of Service Tax on Non Agriculture Clinkersion Chorges, Hitusion Free, Infrastructure, Upgradation Charge and Science Charger - 0.5, 1.7.2002. The Appellant Has volumently paid Service Tax Autorisidants receiption 60% contribution made by them week. 1.7 2010 and has contrated bandled Tax demand only on 40% of contribution transferred to respective industrial Associations. They can get benefit only to the extent what has been challenged by them in these proceedings. I, therefore, set as for demand confirmed vice the imported proof. on the above charges for the partial work 1.7.2012 to March, 2015 and consequent penalties imposed on the April Provide this pread-

Regarding Service Lax demand on the income booked under the Lead. 9. 'Plot fail payment' under the detersion of Rentring of Immovable Proparty. Servicer, the Appallant has contended that it is a lease premium collected all the Core of allotment of piots and as per Sousses (04 of the Finance Act, 1994, the Appellant is not liable to pay Service Tax. Then that as per Socion 104 of the Finance Act, 1994, Inserted vide Finance Act, 1277, no service tax is loviable on inne time opforer amount (eromoun), solarra (cost, price, development charge of by whatever name called) and the same was been given retruspective exemption. Wig. (101.06.2027. The provision of Section 204 ibid is reproduced as under:

ia ni.

"SECTION 104. Special provision for exemption in density cases relating to tone tone losse of industrial plats, < (1) — Notwithstanding unyoing contained on section 60, as in shock provide to the fail day off-only, 2013, or to section 66B, to service tax, leviable on one time upfront conduct (premium, selemi, cost, price, *Cost*-Opment obsection by whatever name called) in respect of textble service provided of network to be provided by a State (procession) in using the development corporation or undertaining to industrial plats, shall be levied or calleded during the occupration or undertaining to industrial plats, shall be levied or calleded during the occupration of undertaining to industrial plats, shall be levied or calleded during the occupration of undertaining to industrial plats, shall be levied or calleded during the occupration for a factor of industrial plats, shall be levied or calleded during the occupration factor of industrial plats, shall be levied or calleded during the occupration 2016 (both days) points variable.

9.4 I view of above provisions, Thold that the Appellant is not liable to phy Service Tax on the income pocked under Head 19(of HQL Payment) during the period 2011-12 to 2014-15 and therefore, set aside confirmation of Service Tax domand and consequent penalties.

10. Regarding service tax demand for the period from April, 2011 to 30.6.2017, the Appellant assignmented that it is performing statutory functions as per G.LD. Act, 1962 and G.LD. Rules. 1963 and various charges collected by the Appellant from plats holders are compulsory levy which are collected by them to discoarge statutory functions in somes of Section 13 of the G.LO. Act, 1962 and relied upon decision of the Hor fple Bombay High Court passed in the case of CCE Nasik Vs *Mis M.LD.C.-* 2018 (9) G.S. LE. 572 (Bom.) and pleaded that appellant is not liable to poly service tax.

10.1 The Appellant has realed upon the judgement of the Honfold Bambay High Court in the case of Commissioner of Central Excise. Nashik Vs Maharashtra industrial Development Corporation reported as 2018 (9) C.S.T.L. 372 (Bom.), wherein the Honfole High Court has held that,

""E. We have already interval to Section 14 of the MHC Activities, intervices, that the function of the MIDC is not only to develop industrial areas but to establish and manage industrial estates. The reprof MiDu, is not hundle only toeanth ishing industrial estates and allotting the plats or buildings or factory. shous to industrial andemaxings. The function and obtination of the MIDC is also remeasing, and metatate the said industrial estates as presided or Section 4. (herefore, this measurery obligation of the VIDC to provide americales as defined in clause (a) of Socion 2 of the MID Act to the motatrial relates. established by a Husel and the scheme plate gatters of MLAC to provide and maintain ameninies in its industrial estates such as coads, which supply, should lighting, durings, etc. Thus, we find that the second state of ather the contents. was a sectore part of the searchery functions of the MIDC under MID Act. As <u>stated</u> explicit the domand is in respect of survivo <u>glagraps policyled must him</u>. Solders for proyedings them<u>e sources for times inclusing pari</u>ntenance, many and and reasting As provided in the circular deted 18th December. 12.006, for providing amenicies to the plot below -, the same or lines or service. charges collected by MI (Clare obviously in the nature of compulsion law). which is used by MIDC in discharging stateory obligations index Section 14. We Contribute even to the Orace-metric hall, there is no finding of last eccorded. that the service readered for which betwice Tax was traight to be levied was not in the nature of statutory abligation.

 $(\widehat{V}_{i})^{(i)} = (\widehat{V}_{i})^{(i)} = (\widehat{V}_{i})^$

(D) Therefore, we find the standard distribution of the Averagian distribution. Not substantial quasilogical systems.

(επιρημές ει οριγεσ)

10.2 The Ironic el CFSTAD, in this weight in Final Andre Ro. 47 2479/2018 cated 30.10.2018 procession in the second structure insulated.

11. We associate the second state of the second state of the system of the sides and gauge in the rescaled, we of the second state of the second state of the pulgment of Box 8. The bay filled theorem in the vasions. Another second state of the pulgment of Box 8. The bay filled theorem in the vasions. Another second state of the pulgment of Box 8. The bay filled theorem in the vasions frequency as a filled to the the bay filled to the the transmission of the poly and the bay filled to the the bay filled to the the bay filled to the bay filled to

(Erophasis supplied)

10.3 In view of above judge nerve of the evaluate High Court and Order of the CESTAT. I hold that the Application on the Bicket to can Service Tax or Non-Agriculture Conversion Charges, Cervice Courted Cransfer Ford during the period from Agric 2007 of the evaluate Courted Cou

11. Regarding confirmation of Storvice Law demand on Water Charges' Lotent the category of thoppart Service of dustricts on Confirmence', the Appellant that contended that they called ted Water Charges' for supply of water to the plut holders; that water being goods, annote Realized externation contended on supply or water to the plut polities. I fore next Water Charges' were recovered by the Appellant for supply of water, writes is being done by the Appellant for supply of water, writes is being done by the Appellant for supply of water, writes is being done by the Appellant for supply of water, writes is being done by the Appellant for supply of water, writes is being done by the Appellant for supply of water, writes is being done by the Appellant of the Constitution aynear og at Pala 2.5 supply. Hence, this service rendered by the Appellant is complete upder SLNe 139 of Notification No. 25/2012-57 dated 20-56-2012 and come center by no lipple to service tax wield. (115-4.7.2012 to March, 2015) For the period here optical, 2011 to lune 2012 also, the Appellant is not date a pay service tax is the were of judgement rendered by the Appellant is not date of service tax. it was of judgement rendered by the Appellant is not date or pay service tax. it was of judgement rendered by the Appellant is not date or pay service tax. it was of judgement rendered by the Appellant is not date or pay service tax. it was of judgement rendered by the Appellant is not date or pay service tax. it was of judgement rendered by the Hub/file Berobay High Court is or to use of service. Hence, confirmation of Service tax is the court of the part of service tax work is the court of service.

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Tax demand on "Water Charges" is not sustainable. It therefore, set uside the Service Tax demand of Rs. 14,18,2507- and contequent penaltics.

12. Regarding Service Tax demand on the income booked under the Hoods Adminishiation Charges, Misc allowance, Security Fees, Godown Rent, Lease Rent et illuring the period 2011-12 to 2014-15. I find that these incomes were generated on account of services rendered by the Appellant which are not in the nature of statutory functions as per 12th Schedule under Article 249W of the Constitution as detailed in Para 8.3 of this order and hence, these charges are not covered under the judgement of the Honfble High Court. I, therefore, sphold continuation of Service Tax demand on these incomes. Since, common is payable, the Appellant is required to pay this demand along with Inverses, at applicable rates under Service Tax of the Act.

13. Regarding confirmation of domand for shull payment of Education Cess and Secondary & Higher Education Cess of Rel 35.4427- and Interest of Rel 2.25./427-, the Appellant has contended that demand has been emphasized confirmed without giving obtails as to now did these flat-raties arise and hence. The same is fielde to prioritize acide. Find that Pare 4.0 of the Show Cause Notice has given acteiled calculation for short payment of interest of Rs. 2,25,7427coming the period 2011-12 to 2015-16 for delayed payment of service tax of Rs. 30,34,8547- as uncer:

	Finanasi Yasi		° ≫luch was not	Interest attours which was already heat paid	
ĺ	2017-12	- ' <u> </u>		-	
	20:२२ ए	— —	2,51,8035-		
	2019-14	-	<u></u>	-	
	2814-12		2.32,008/-		
	2013-16	•••	1.80.1814		
•	' ::Iû	!	2,55,24024	V.27.00.QC	2.25,7427-
				· - · · · ·	

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13.1 Turther find Deliter and in the UNAC payment of Education Cess and Secondary & Higger Source of application (2006) 4427- White also given in Para 5 of the Show Esuse Notice 5 (1997)

15. We apply the store of the store of the store of the store of models wise reserve from the particle by the birst of the store of

Yezt	 Service Tux prime True Science collected as the collection of the service per filmaticity product size Stationary Collection Science (Science) (Red) 	and this	. d.Der-me : (Ra) ·
2011-12	-5,80,532	<u>,</u> 07,498	35. 4 / 2/

13.2 In view of above, the block rists of viewapoliant is factually interesting therefore, upmoid contributions to stational of Contaction Cress and S.F.F. Cost of Rs. 35.4427- and interest of Soc 7.25,7-27 in the brick interest should be paid by the Appeliant forthwith.

14. If find that the issues (massed in Lids case are interpretation of law and agains, no penalty is impossible on the Appendix under Section 78 of the Act as per the judgment of the Hotrois Supremational Court in the case of Shree Rejettion. Syntex Etd. reported as 20% (0.16) $\frac{207}{207}$ 57.8 (0.1), where in it has been held that.

#5. Insolar as the question to extra by each direction is encound, we need quest the question to the 0.25 direction and are of the opinion (as the task that q has the encoded residue of finitesion as put the movies of Sector 15A(1) of the Cost of exclusion Act, 1944 would be applied by the question q_{0} .

6. <u>In worker, worker of the standard in Argense</u> like the present one, where the <u>open insertion and interpretation</u> of unsurended Society 4 and the position <u>offer the amendment</u> in the said provision with classifying <u>approximation</u> flat ensure the class <u>of the receiver</u>.

7, you the offeress of encourters the process argen's are hiltered in part by suscenting the Commussionar's Order-co-Grieinal passed on 30-3-2003 insofar as it relates to the period from 7-7-2000 to buy 2000 but 0 vigon/09 is 22 each. Hereever, these areas by note of an to period.

(Emphasis scoul ed).

(2) 14.1 I also rely on Final Order Pasked by the Honfixe CESTAT, New Dethi in the case of Tata Consultancy Services Ltd (enterted as 2018(18) G51L 478 Hint (2010) doty affirmed by the Host ble Supremix Court as reported at 2018(18) GSTL (2127(SC), which help that censity is not inducable when dispute relates to (2012).

•.....

Hange 10 pt 17.

Interpretation of statute. Therefore, a service Repretation immosed vice one impogned order.

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15. — अनीसकतो चुलक रहते को अङ्गे 3 जन्म भा क्रियताल उपतेमस सरिवेगसे किन्द्र जन्म 🤾

15. The appeal field by Appelia in the preven off as above.

	aanisata Kaliji Reference Setelence	्रियुत्तः स्टब्स् (मुखास्टर्स्सम्प्र) अथसा अतम्बद्धः (अभीवन्दी)
To, Gujarat Industriak Bewelepmank (GIBC, Vietnatvad), Bhavnagar	Composed ion	गति गुरासाः इंशस्ट्रियलाइंब्लममेट रुपनेपेशन. जीवाइंडीसी, विधलवाझे, ुंस्टल्लस्य

<u>पतिन्ति मि</u>ः

a

- प्रधान मुख्य अव्यक्त वस्तु उर्व सेवा कर एवं केन्द्रोन अन्यव भुज्यक गुजरत धोर,महमद्रायद को जलवन्त्री तेन्
- अयुक्त वरस् एवं रोवा कर एवं केन्द्रीय उत्त्याव शुरुक आज्जनर आयुक्तालय. सातनायम् वो अप्तरेवर्थ अवस्तेराही हेस्
- 3) रागुंकत आयुष्ट्र, पश्चनु २४ मेरा कर एव केन्द्रीय अभ्यत शुक्क आवस्थर % युवधालय. भावनगर को अख्यक्ष्यत अन्यंथाही हेन्

. ब)्रमाते प्लट्रम

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