

হয় কৰাৰু । বুলাটিনে বা বাহামৰ বাবু চৰ দিবা হৰ মীত ইনটাৰ প্ৰেণ্ড সূত্ৰত কুন্তু সভাল প্ৰভাগৰ সংগ্ৰহ আহম্মত চেড্ড কেন্দ্ৰহন্ত্ৰ ১৯, ০ড়া ও প্ৰভাগৰ ১৯, ০ড়া ও প্ৰভাগৰ ১৮, ০ড়া ১৮, ০ড়া ১

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Date: 21,424,2017

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BUJV-EXCUS 000-APP-054-2019

अस्ति। या है। ५० Date of 3 dec

29.02,2019

जारी करते की भूगों भ The confession

20,02,1019

जुलाह महोत्र, 7%ल अव्यक्त (अर्थ ५०% र करोट साथ गोरा ४

Passed by Shei Sine at Saktosky Principal Localmissioner (Appeals). Dajkot

अस्य अपूर्ण आहुन अपूर्ण (१८ ६५८) यह १८८ वह १८५ (१८५) है । ५ १८५५ (१८५८) वह नगरन स्वाप्त है । भारत्ये ग्रीतिक अंतर पूर्व और पार्ट के भारतात्र भीती होती हुन भारता न सुनित्यः , ।

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If the sale of construction is a factor of the sales of th condition for the transfer that the alternative $\delta z / \delta M_{\rm per}$

रही है । अपने के पार का अने कि को के के कि अने का बाद करते हैं , को दी का मान का कर के 1994 के दीवर दें कि करत अमेरिक पार है । इसे का रहिंदी में की आकर्षा के अधिक प्रतिकार का कि सुधारिक के **की पूर्व कर्षा के पार** कर की उन्हाल कि बहुत के के कि का सुधार करें के का के कि का असे कि का असे की हैं की हमार की की बीच का का कर दूरी है कर की [fi]

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- कि अभिनेत्र (१९६६ हो । जा १८ का का भाषाबा १९ का एक इस का को साथ प्रधानक कर के छ छ । एक के ने एक के छ । अप के अ १९६६) ने कहा के प्रधान कर पा १९ अप के हा निर्देश के प्रधान के एक उप एक अप एक उप का का कर के छ छ । एक इस का का कि अप के कुछ । १ कि पहर का की के सामान्त्र के का प्रधान के प्रधान के एक का अप को अप के प्रधान के प्रधान के छ । एक कि अप के कुछ से का अप की के सामान्त्रित के के प्रधान की का निर्देश के का अप को अप के प्रधान के कि प्रधान कर के छ । एक कि अप के अप के अप के अप के प्रधान के कि अप के अप अप के अप अप के अप अप के अप के अप के अप के अप के अप क .1
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- $\mathbf{q} \in \nabla q \cap \Omega(\mathbf{q}, \mathbf{q})$, $\hat{\mathbf{q}} \in \hat{\Omega}(\mathbf{q}, \mathbf{q})$, $\hat{\mathbf{q}} \in \hat{\Omega}(\mathbf{q}, \mathbf{q})$, $\hat{\mathbf{q}} \in \mathcal{Q}(\mathbf{q}, \mathbf{q})$. .
- प्राचनकार्यः शुक्तान्त्रः भवत्त्वव विकासकाः भवत्रकात्रात्रात्रः स्थानस्य स्थानस्य स्थानस्य विकास । १००० । भवत्रकारमञ्जूष्टिकारम् । विकास स्थानस्य स्थानस्य स्थानस्य स्थानस्य स्थानस्य स्थानस्य स्थानस्य स्थानस्य स्थानस् 715
- ्रिकेश कर के देव के देव के किया किया है। किया के कार्यक्षित कर में किये कर अर्थ कर कर नाम की अर्थ के पत्र की क जिल्ला के 1941 के अर्थ के किया किया कि 25 किया के किया के किया कर कर के किया के किया की किया के किया के किया क कर्मिक के मुक्त के किया किया किया किया किया के किया के किया की किया के किया की किया के किया की किया की की किया reger. Hager in de dag all rower vick all foot wood uit in reger in de reger uit dag verdaat gegeble program in die Amerika Halle de Palle footbas voor die de die word planteer na verdaal dat die dag die blakke opper na die die word d Halle Brance (Na Shan 1991)
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- щ
- ्य प्रतिक कार्यका पुरुष्ट प्रतिकार (१६०६) । १५० विकित्य के १०० विकास कार्यक की उन्हें के विकास के अधिक कार्यक तक देखा कार्यक की भी क्षाप्त (१९९५) की प्रतिक के प्रतिक के अधिक के अधिक कार्यक की अधिक की किस्सार के अधिक की अधिक की किस्सार की स्वाप्त की (१९९५) के किस के किस के अधिक की प्रतिकार के अधिक की अधिक कर कर (Pr
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- Application of the property of 14"

:: ORDER- N-APPEAL ::

W/s Winson World Expure, Plot No. 105/2, GIDC Estate, Yeraval (harainoftan referred to as "Appellant") Gled Appeal No. V2/528/BVR/2017 against Order in-Original No. AC/JND/46/2017 dated 21.12.2017 (hereinoften referred to as 'impugned order') passed by the Asst. Commissioner, Central Gobels E. Service Tax., Johnsyadh Division, Bhoyrogar Commissionerate (bereinoften referred to as 'lower adjudicating authority').

- 7. The brief farts of the case are that the Appellant was holding Service Tax Registration No. AABFW1982050001 under the category of Transport of Goods by Koad Service1. The Appellant was engaged in export of frozen fish and was availing GTA service for transportation of frozen fish but was not submitting any Service Tax records showing these details, the jurisdictional Service Tax Roage Superintendent contined that the Appellant was tiable to day service tax on transportation service being recipient of service, on reverse charge basis but was not beying service tax. It appears that GTA service used for transportation of export of goods were exempted from service tax in terms of Notification Not31/2012-51 dated 20.6.2012, however, the Appellant had not fixed/submitted Firm EXP-1/EXP-2 prescribed in valo Notification and hence, the jurisdictional Range Superintendent clasmed that the appellant was not eligible for exemption under the said notification and was required to pay service tax on GTA, heing recipient of GTA service.
- Show Cause Notice No. V/ADJ-30/5TAX/DIV/ZD16-17 dated 10.4.2017 was issued to the Appellant calling them to show cause as to why Service Tax (SCN mic not quantify demand) should not be recovered from them under Section 73(1) of the Finance Act, 1994 (horomafte) referred to as 'Act') along with interest under Section 75 and proposing imposition of penalty under Sections 76.77 and 78 or the Act.
- The Show Cause Notice was adjudicated vide the impugned order which continued demand of Service Tax of its, 2,09,768/ Linner Section 73(1) and ordered for its renovery along with interest under Section 75 of the Act and imposed penalty of Rs. 68,587/- @50% of service tax availed for the period from Aurit,2011 to March, 2015 and penalty of Rs. 72,615/- @100% of service tax evaded during 2015 16 under Section 78 of the Act and Rs. 10,000/- each under Section 77(2) and Section 77(1)(d) of the Act.
- 3. Being aggrieved with the impugner order, the Appellant has preferred appeal, *inter-alia*, on the following grounds:

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- (i) The SCN is time period. Non-submission of deturns are not ground for invoking extended period of importation. The adjudicating amposity has failed to submit any proof of any willful act as prescribed under Section 73(1) of the Act to evade service tax.
- (fi) The abjudicating authority has excelled in interpreting Section 65(105)(22p) and Section 65(50)(b) of the Act as service received directly from truck camer do not fail under the definition of GTA; that service received by the Appellant directly from the truck owner falls using the service of GTO(Goods Transport Querator) which is exempted from Service Tax under Section 65(0)(p) of the Act.
- (iii) The adjudicating authority has failed to prove as to why certificates of CHA are not admissible and also failed to prove that trucks were arred by them from GTA.
- (iv)— (the argudigating authority has failed to interpret Notification No. 372013-ST. Their expurt item fruzen fish is known as marked product or sea food and hence, covered by said notification
- An expectant desting, Strill Jignesh Vyas, Advocate appeared on celebrary the Appealant and reiterated the grounds of appear and submitted written submission to say that they have not taken service of GTA but trucks have been bired by them from individual truck owners through CHA or Clearing B. Forwarding Agent; that the goods which have been transported are grozen Fish, which is sea food and hence, exempted otherwise also vide Notification No. 3/2013 dated 1.3.2013; that since the services have been provided in them by CHA and C B F, reverse thange is not applicable.
- 2.1 in whitten selumission submitted during Portonal Hearing, it has been contended that,
- The Appellant received transportation service directly from truck owners and drivers through their CHA and they have not availed sortaces of Goods Transport Agency as reflected to be titicates received from CLA declaring that trucks were not nired from any GTA. The Appellant has received transportation behavior but no consignment notes have been fested and hence, transportation in this case is not powered within 'Good Transport Agency' in terms of Section 658(26) of the Act.
- (fill Food stuff has been exempted from service tax from 1.4.2013 vide Natification No. 3/2013 dated 1.3.2013. They had exported Fish(PSN No. 03038930) which is povered under food stuff. However, the adjustinating authority denied exemption on the ground that marine product is not spreafied.

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in the said notification, which is not correct. Even as per SCN, the Appellant is engaged in the pushess of Sea Food. Thus, it is accepted by the Department that their export item is road. So, they are eligible for exemption of collification signal.

- (iii) The Appellant received services from CHA like Customs clearing, Decument preparation. Customs verification, Transportation, cargo handling, Torminal handling etc. for which CHA charges them by raising one common bid. Thus, all the services including transportation service was cart of CHA service and service tax is payable CHA and they are not liable to pay service tax and revied upon the case law of Single Tradina Company-2018(9) GSTL 201.
- (iv) The penalty under Section 79 of the Act is not impossible when issue involved is interpretation of statute as held in Phoenix International Freight Service Pvt Ltd-2017 (47) 5TR 129.

Findings:-

- 5. It have carefully gone through the facts of the case, the impugned order, the Appeal Memorandum, and written submission made at the time of Personal Hearing. The issue to be decided in the present appeal is whether the Appellant is liable to pay Service Tax under the category of "GTA Service", as recipient of GTA service or not.
- 6. I Sort that the Appellant had availed transportation service for export of frazer Psh. The lower adjudicating authority held that the Appellant tiable to day service tax of Rs. 2,09,7887, or transportation charges, being recipient of service during the period from April. 2011 to March, 2016. The Appellant has not disputed about transportation service availed by them for export of fruzer Cahout contested confirmation of service tax demand on the ground that they had exported Fish HSN. No. 03036930) which is revered under food stuff and transportation of food stuff is exempted from service tax with effect from 1.4.2013 vide Notification No. 3/2013-51 datorin, 3-2013.
- 6.1 I Bind that Notification No. 25/2012-5T dated 20 6/2012 was amonded vide Notification No. 3/2013-5F dated 1.3.2013 offective from 1.4.2013, *inter-alia*, as under:
 - nut. Rervices mavided by a goods transport againty, by way of ususport in a goods contage of,-
 - ng gloods ng) mohilling flours, too, enffee, j**agger**y, **sugar, milli pro**ducts, said soid edible officeach ding shipholic beyonkgks."
- 6.4.1 Since, there is no exemption for the period from 1.4.2011 to 31.3.2013.



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the liability to pay Smirice Yam $r_1 \in TA$ available by them randouble disputable in thus, have no option by the appear in Lower strike of exchange for the period from $1.4.2011 \pm 0.35.3.2012$.

- 6.2 | Figure that Notification of 1.75/25 (Let) depend 20.5.25 if was further amonded vide Notification of 1.725 (5). Astrod 1.3.2015 of factive from 1.4.2015, inter-site, as smooth
 - first) in only 21, for stort of) the following term shall be substituted. Family, $P(\theta) = \min_{\theta \in \Theta} R(\theta)$ sait and the option of the policy forms, pulses and then
- 6.2.1 If is existent that toockyof got distributed with offert from 1.1.20% and replaced by milk, salt and food gots and by an streeth of imagination frozen fish namine considered as milk or shift or food grain, bende, claim of the Appellant Lannot be considered as valid for the pentit from 1.4.2015 to 31.3.2016 and true, tuphoid confirmation of demand for this entire also.
- find that the Appellant Evalued Crassportation service for export of 6.3 Prozen fish and the Appellant has distinct that frozen fish is required to be considered as food stuff because Fish is sea food. In this regard, I find that Induced fish has not been specifically storitioned in clause(c) of Fathy No. 74. sa**produced at Para 6,1 supro**, given wearfand on hyndae product has not been listed in clause(d). As per the extraciples of equations generis or muscitar a societ, which are well sattled principles of interpretation, I the words or general and wider import used it an entry corrected by other solowant terms has to draw its obtain and meaning from such surrouncing words and that should not be $\log r$ signt of. The iteras appearing in plause (d) are flours, beat coffee, pagety, sugar, milk products, sait and adible of: and frazed Tableis no way related to any of the items covered under foodstaff. I, therefore, hold mian frozen rish is not eligible for exemption contained in Entry No. 21(d) of Natification No. 25/2012. 5T Gated 20.6.2012, as emended over during the period from April, 2013~
 m kmManch, 2015 also. For the period from $1.4.2011 \pm 31.3.2010$ as well as for the period from 1.4.2015 to 31.3.2016, the Appellant is not eligible for exemption in any case as hold at Para 6.1.1 and 6.2.1. , therefore, uphold the confirmation of service tax demand of Rs. 2,09,7967. $\sim \sim 3$
- 6.4 The Appellant has also argued that they have not arranged trucks but their ChA alranged tracks for transportation of frazen fish as expert goods and that transportation service was part of CHA service and home, service tax or transportation service was part of CHA and not by them. I find that it is not disputed that transportation service was available by the Appellant in connection with export of frazer fish. Morely because trucks were arranged by CHA for transportation of expet specified the Appellant and the fact that

transportation charges were paid by CHA as pure agent of the Appellant and later recovered from the Appellant, does not make CFA lighte to pay service tax. on transportation service. I also find it pertinent to reproduce findings of the lower adjudicating authority as under-

 $^{\circ}$ 14. $^{\circ}$ $^{\circ$ transportation charges by the CHAs. On going Arough sample copies of such invesces, it is seen that the same specifically mentioned that service that on menoperation and pest will the head by the consignee. It is therefore clearly, comblished that the Noticee has to pay service axion the transportation charges. involved by the service provides

- Regarding imposition of penalty under Section 78 of the Art, I find that Ţ the Appellage has suppressed the facts of non-payment of Service Tax and also availment of transportation service as they have not submitted Service Tax Returns showing these details to the Department and hence, penalty under-Section 78 of the Act is mandatory as has been held by the Honible Supremo. Count in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (258). Γ, U, T, B (S.C.). Since there are ingredients for invaking extended period of limitation for demand of duty. Imposition of penalty under Section 11AC is: mandatory. The ratio of the said (adgment applies to the facts of the present) case, ', therefore, uphold the socialty @50% of Service Tax demand for the period from 1.4.7011 to 14.5.7015 as per proviso to Section 78 of the Act and @1006 or Service Tax demand for the period from 15.5.2215 to 31.3.2016, as per-Section 78 of the Actistrice these transactions have been shown in their books of account by the Appellant.
- 8. In view of above. I uphoid the impugned order for demand confirmation. and modify the penalty imposed under Section 78 to the extent, as above.
- अनोलकर्ता द्वारा दुने की राष्ट्र अनोक का शिल्दाना अनरीक्षा तसीके से फिया जाता है 🖡 7.
- 9_ The appeal fixed by the Appellant is disposed off as above .

प्रधान आयुक्त (अपीत्स)

[<u>[w R.P.A.D.</u>]

-ċ.

: rM/s Wheen World Export.

Plot No. 105/2, GIDC Estato, Veraval-362 269.

Gjr Sommata District.

' विज्ञसर वर्ष्ट उक्सपीर्ट,

ं मुर्थात स. १०४५, जीआदेशेयरे इसहेत्,

ं देशवर्ष । ३६५५७, जिल्ला विर क्षेत्रकायाः

<u> प्रतिक्षि :-</u>

- 1) प्रधान सुक्रम आकृष्य, नश्यु २४ शेश कर १० रेशकेष अस्ति शुक्क, युजरात सेय. अहमदाबाद को साक्ष्य ! हेम्!
- 2) आयुक्त, बरतु १७ संश्व के राजिन्द्रीय आग्नर शुक्तर, आज्ञास अध्युवनात्स्य आवन्यर को आवश्यक कारणाही हेचू
- 3) तहारक आधुकत, वस्ता एवं ंश १८, जूनाया अण्डल को तुरः अवश्यक कार्यकारी हेत्।
- , 🖊 4) आडं प्रदेश,