

ः प्रवेशन अञ्चलः (अपोस्पा) का नामीलम्, यस्त एवं लेगे कर और केन्द्रीय उत्पाद धृतकः। CAO THE YRINGHAL CONGRESSIONER (ÁPPEALS), G91 & CEMHUNI ÉXCINI

ਤੁਸਿਰੀਆਰਕ, ਕੀ.ਵਗਤੀ ਬਾਪਸ (12°-515... 635 ਉ±ਾਪੜ रेश को से रिक सेंड - Slace Corres Ring Rose



<u>ন্দ্ৰকৃতি (</u> Phylodel (1990)

Tele Fax No. (25) | 14979-1444 <u>| 12 | Small-bourge-Jury Bet Grand</u>-bour

√ਮੁੰਤਰ ਮੁਕਾਸ਼ ਹੀ ਨਵਾਲ ≔

≽्षात - सुबद्धान सरकार $\Delta \mu_2 M / (\Gamma/4N)$ U24923/8436201 •

हाशाउ**ल्लेख** र ४

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াৰ্মান প্ৰাইখন হল উল্লেখনীৰ স্বৰ্ভন সৈত্ৰী 盂

BHV-EXCUS-000-A<u>PP-075-2019</u>

आहेश का दियांगा

06.05.2039

जन्मे करने की तारीखाः

12,03,2019

Paten 1.5 cm

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Date of issue:

कुमार संतोष । ५० - आयुक्त (अपील्स), राजकोट द्वारा गारित 🖟

Fassed by Shri Kumar Santoch, Principal Commissioner (Appeals), Pajkor

लागर आधुनन्य अंतुनन्त आयुक्ता आधुनस्य सत्यक आयुक्ता केन्द्रीय ज्ञागर शुल्तुव संवानस्य वस्ता एवं सेवानन्त Л राजकोड े या गाउँ पार्र मेनिसास द्वारा अवस्थितित करी . क्राप्त देश से ्लिने. र Ansing our of active mentioned OiO issued by Apriltons Color by Apriltons Color by April 5 are selected. Colors Englisch in der Frankrisie innagen/Genüblichen in in

अपीतज्ञत है 👉 तेवादी का नाम एने पना (Nome & Address) et the Appellants & Respendent 🤫 ਜ K.Y. Booklin 134, Jat Floor, Marketing yard, Kadinar .

्र अपरेशानको के क्योंकि कोई अपरित विकासिक्षित तक्षके में उपालत पापलते हैं आधिकारण के राजनात के शास क्या कर राजना हुए भाग प्रकार मानुस्त करतो कर किया कि किया किया किया जाए और जार समुख्य कि किया जानकामित्र सर्वकारों के किया किया

- ਜੀਜ਼ ਵਾਲੇ ਨੂੰ ਹੈ ਕੇ 15 ਵੇਂ 15 ਦੇ 15 ਤੋਂ ਕੇਸ਼ਕ ਭਵੇਡੰਕ ਜਗਭ ਵਿਆਸ ਦੇ ਸੰਭੇ ਭਵੇਸ਼, ਵਾਲੀਬ ਤਰਸਤ ਸੂਬਲ ਤੋਂ ਜਿਸਾਸ (1944 ਦੀ ਸਭ 265 ਵਿੱਚ ਸਮਾ ਵਿੱਚ ਸਿੱਧਿੰਦ (1924 ਦੀ ਸਭ 26 ਨੇ ਸਮਾਤ ਜ਼ਿਲਮੀਸ਼ੀਸ਼ਨ ਸਮਝ ਨੂੰ ਭੂਪਤ ਦੀ ਹੈ। Appert In 10 march, Bedge 6, Soykor Tau, Appellate Tributal under Section 255 e. 1554, 1944 e. distlet Suction 25 e. Le Internal Ref. (2011 en appeal 20) (19 . J. .
- वर्षोक्तर है, सं ः । नेस्क्रियेन अर्था स्थलने से साथ-भारते को शास्त्रकार प्रमुख्य स्थलित सारकारी करण की विद्या की, बहर को अने दें ते पाने पान प्रमुख्य की कि साथ दिख्या कि है। The special reson of Georgia, Besuc & Bourse Tax Appellace Library in West Coak No. 2, 186 जिल्ला, Nove Dulla : 13 (1995) के संस्कृत के संस्कृतिक के अर्थ अर्थ अर्थ अर्थ के
- и вотин
- अनिर्मात स्थान के उन्हर अर्थन परमुख करने के दिए केन्द्रीय प्रानात कुरू (कृतिन) सिटामधारी (३००) के सेवान ५ के अंदरील লিপ্ৰতির কিংখন সমস্থানের বা হল নটানা ও হল নিজ এক। এটিখে। কেও ও কিং তিক টাক। যক এটি কিয়াক, বস্তু ক্রমেত মুক্ত আয়োন, iII: मार्च की सीमाप्त लगाना कुर्ण का उपाद अञ्चल कड़कों कार्त द साथ व्यवसाय 5 साथ व्यवसाय अवदा का साथ कर है आसिक स ो स्थायः १ 000 रुपन् ६०३६ रुपर्यक्रेयम १५,७७४ रुप्ते कानियारित - १८५**०क स्थानित तंत्रमा वर**्मीनीत भूतक स्वक्रातास् सर्वेदिक भोजीय स्थानविश्वरण की शक्त के सहायक राजेस्टक रेडराज के लियों को जार दिन ताईन के दिन _{किसी} जा है है _{जि}सिन केने हुएस इत्तर किया रामा पार्टन । नेटरिंग भग्नर ए कुन्नक, अन्य के उत्तर १६६ अन्येच आहेत छहा रामारेट अनेहरेन रामारेच्याम के गासा िन होते. प्रेस कर न रेपा हो अधिक ने लिए हार्यटक रहा ने कर अध्या क्या का नैपायिक शुरू करा कर प्रसार है के स्थाप

The Appendix is an activity of the plant the first in quadrup between the provided and of 8.66.5 of the real ways. Imposed 5.47 in 2015 and if it for a contractive graph was returned tendent to be accompared to be accompared. Down will fix in it contains all dynamic of \$1,000/s.

কংটালিক লবা নাটিকং লবা পাএলেকৈ প্ৰতি জেতুলিকে, এছেং টিলাতের ১৯০৮ কাজেলোল ক্রমতা টিক্সজন্ম, এজংলাল লৈক্ষ গ্ৰাণ্ क्या विवर्धिक स्थापना असे वास प्रदिशी में के जा सकेनी को सकते एक जिल्ला स्वीध के विकास स्थापना का अपने परि सका लेत∞ को १५०% - १५५% तिथ एपिट (को नहिए) और क्वारों से जन से जन रक होते के साथ, उद्धानेतल र की होता , पान की साह अस ्र लाखा कर सुरास आर अंक्षा था अर्थकेन, प्रसाद अर्थ साथ भारतम् अप्रतास अ**र्थ** सुरा हान्य हान्य अर्थिक हैना इनकार 19**00**° ু কৰি, 5,00% আৰু এখন 10,000- আই কা ডিটালৈ আৰু ।চুক শী মুঠা কম্মান কৰি ডিটোলৈ প্ৰক কা সুৰৱাৰ, চনগাঁৱ এইছিল। में क्रांकिन के भी के का शास तक श्रीवरदार में नाम से कियों भी सार्वित्तार अप के बोब द्वार पासी क्रिकेट केन दूरण द्वार किया जन्म नाहिए । सर्वन्या ह्यार के आहरण, केन की उस भएका से होता गाहिए अहा सर्वारित अमेरिक जिलाहिकामा की धारता सिंधत है । सम्बन्ध के क्षेत्र हुन। में $\sim \chi$ ों कि अपने केंद्रसमात के समय 2016 के 40 % की प्रतित महास्था सामा सामा होता कि

The appear province section (Cricl Section 65 or the Finance Act, 1954) to the Appellup, Interest Section (Appellup of Appellup Interest Section 6.9) in the Appellup Interest Section (Appellup of Appellup of Ap Form S.T.S as year took under the Signal Standard for the Section of the Section The management of the control of the

- (1) (1) provided in the following of the provided of the prov Τı
- क्ष्म ६,ता निर्देश प्राप्त क्षम का किस्त क्षामित प्रतिकार अस्ति के कि के अध्यक्ष सम्भी कर्मा कुरू होते। उन 1944 में १८० १८० में १.व्हें के की विस्ति क्षिणित, १९९६ की मार ११ के क्ष्मोर्थ किस्ता के कि के अधिक के कि कि के कि कि अधिक की निर्देश की निर्देश की निर्देश की कि अधिक के कि अधिक अधिक के अधिक क ٩.

ी व भी वी के शिर्दारी करीत सम्बद्धी में समस्यास महिल

ार । अस्य अस्ति । इत्याद उत्तर की ही नहां उद्देश गाँधि इंडिट्र कार्य किन्तु कके के विकार हुने, बहुबहु है, बाकर

कुले करोग प्राप्तक पिरिके हुने हे *कोर्डिकर र 118 के कोरा ने पूर्व* किया करिके पार्टकरें। काराज विद्यालयों काराज अले 14 किया की राह art in a

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बारक के बका कियाँ गांच के कियों के उने के विविधारिक महिता करती है। या करते और अपने के कार के हान कर है, जो उसक कैंद्र कर करते हैं के बार की किया की किया के अध्यक्ति के उसके के अध्यक्ति के किया के किया के किया के किया के अध्यक्ति के उसके के अध्यक्ति क ξı

- ৰ্বা একং ক্ষুত্ৰ আৰু কোনো লগে উপ কৰে লৈ। জ্বা উচ্চ আধ্যান কৰি কৰু কি গৈছিল কৰে সাধি কৰ্মতাৰ প্ৰকৃতি কৰে পৰা বিশ্ব বিশ্ববিদ্যালয় স্বৰ্ধক কৈ Hand ক'বল কৰিবলৈ কৰিবলৈ মুক্তাৰ কি আছিল।
- නම්සිය කොර මහාර අතර අතර වෙන්නේ වෙන්නේ සුර සම්බන්ධ වෙන්නේ එයා ගැන්නේ සියින්නේ සහයාමේ මහාර සහයාම අදි දී ඒ එම නො ක් අතුත් සහයාද වී අතර වියාත්තිවිත්වේ සිට දී 1968 වී වියාහර වෙන්නේ සිට වේ මහාර සහයාවේ මහාර වෙන්නේ සිට සිට සිට සිට Chall of any cay allowed to be falled towards agreement a state of the products area the greatest of the Adria the Ballon and the care agreement a personal by an Unit responding place of the allowed and the Adrian and the second and the Adrian and 7.7 100 to the hearth (March 44, 1998)
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- ਪ੍ਰਦੇਸ਼ ਅਤੇ 1 ਵਾਲੇ ਗੁਰੂ ਕਿ ਸਾਹਿਬੰਗ ਵਿਚ ਸੰਗਰਜ਼ਾ ਦੇ ਸਥਾਈ ਦੀ ਸਾਹਿਬ । ਹੋਈ ਸ਼ੁਦਸ਼ਾ ਸ਼ੁਰੂਸ ਕਾਸ਼ਨ ਨਾਲੇ ਸ਼ਾਮ੍ਰਦੇ ਦਾ ਸ਼੍ਰਾ ਵਿਚਾਏ ਕੋਟਿੰਸ ਜਾਮ੍ਹਦ ਦੇ ਜਾਮ ਲੱਗ ਸਮੇਂ ਜਸਦ ਸਭ ਜਾਮ ਗੁਰੂ ਦੂਜੀ ਜਾਮ ਜੋ ਜੋ ਦਿਸਤੇ 10% ਦਾ ਜੋ ਸ਼ੁਰੂਸ਼ਾ ਵਿਚਾਕਨ 3.1

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চুক্ৰ কটাটাৰ সামিলটোকা আমিল আমিল আমিল ও এছা জিল্ল ছবি এলং লাগৰ গাণী ইংলিছে প্ৰতিয়াই ইংলাইন কলেছে কলে ছবি পুৰু $\mathbf{E}^{T} \mathbf{E} \mathbf{e}_{T} + \mathbf{e}^{T} \mathbf{E}^{T} \mathbf{e}_{T}$

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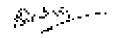
:: ORDER-IN-APPEAL ::

Ans K.V. Barad, Rodinar thereinsfeer referred to as "Appellant") filed Appeal No. V2/523/BVR/2017 against Order-in Original No. BHV EXCUS 000 JC-25-2017-19 dated 30.11.2017 (hereinafter referred to as "impugned maker") passed by the Jonat Commissioner, Central SST 8 Central Excise, Bhavragar (hereinafter referred to as "lower adjudicating authority").

- 7. The brief facts of the case are that the Appellant, heating Service Tax. Registration No. AACFK2974RSDDD2 under the category of "Works Contract Service" but was not paying Service Tax and honor, detailed inquiry was initiated against them. The inquiry revealed that the Appellant had rendered the following services under Works Contract but oil not pay Service Tax-
- (I) Construction service provided to Agriculture Product Market Committee. Version for construction work of RCC covered short, Grain Elemning ruom B. RCC ESR primarily for the use of agriculturalist.
- (II) Construction service provided to M/s Gujarat Ambuja Cement Ltd for improvement and development of National Highway Road and plant expression road with bitumen work for Road to Port, services of laying semi-serise bitumen carpet and hitumen patch, Road re-careeting job; Road repairing job from front gate to NH etc.
- (iii) Construction service provided to Somnath Kelavard Mandal, Kodinar for obastruction of school building.
- (iv) Construction service provided to Gujarat Energy Transmission Corporation

 Lvd (GETCO) for construction of C.R. Building, Foundation Cable Trench,

 Compound Wall, Road Staff Quarters etc.
- (v) Construction service provided to Gujarat Council of Florentary Education.
 for construction of diassrooms in various primary schools.
- (viii Stristruction service provided to MVs Kelan Construction Ltd. Rejkou for widowing and strongthening of Veraval Sutrapada Boad.
- (vii) Service provided to M/s Paver Industrial and Construction Corporation for transportation of goods.
- (viii) Construction service provided to M/s Raj Trisbul Construction Co. Pve I (di as a sub-contractor for construction of bridge.
- (tx) Construction service provided to Musicipal Council, Diu & P.W.D. Diu for various construction activities.
- 2.1 Show Cause Notice No. 9715-3705m/S172017-18 datan 5.5.2017 was issued to the Appellant calling them to show cause as to why Service Tax of Rs.



66,98,8557- for the period from 2011-12 to 2015-16 should not be tecovered from them under Section 73(1) of the Finance Act, 1994 (hereinafter seferred to as "Act") along with interest usde: Section 75 and also proposing imposition of penalty under Sections 77, 78 of the Act and penalty under Rule 75 of Service Fax Rules. 1994 (hereinafter referred to as 'Sules').

- 2.2 The Show Cause Notice was adjudicated vide the impagred order Which confirmed demand of Service Tax of Rs. 86,98,855/- under Section 73(1) and priored for its recovery along with interest under Section 75 of the Act and improved penalty of Rs. 66,98,855/- under Section 78 of the Act Rs. 10,000/- under Section 77(2) of the Act and labe fee of Rs. 13,400/- under Rule 70 of Rules for late filling of 5T-3 Returns.
- 3. Being aggrioved with the impligned order, the Appellant has preferred appeal, inter-alia, on the following grounds:-
- The benod curing which the appellant executed works contracts for . (1) ΑΡΜΟ, Veraval is grion to ammedment of the exemption Schröde w.c.C. D1-D3-2016, and therefore payment from service tax was exempted if the client was inthe nature of the Covernment or a local authority or a governmental authority. for whom the service was rendered in respect of a structure meant predistributely for use other than for commerce, circustry or histogram APMC is a committee, constituted under the provisions of the Gujarar Agricultural Products Market Act, 1963 with the objective of regulating marketing of auriculture. produce. The provisions of this Act clearly lay down that ar APAE is in the nature of a governmental automotity, and all notified agricultural commodities. are tegatly required to be bought to the market yard of such APMC for heing sold. The show course action and the amoughed order has passed any dispute. about the nature of APMC, Veraval as a Governmental Authority, but it alleged shat the Committee was engaged in commence and business because it collarsed market fees, because the main source of income of the APMC was license fees. and market focs, and also because the functions carried out by such APMC at the market yard were not tabse that were entirested under astrola 240W of the Constitution of India. But all these reasons are incorrect and unsustainable. because on APMC is undoubted, y "Governmental authority", and collecting "linease fee" or "market fee" would not alter the public function decried out by the APMC: and charging such ansuents from the farmers or agric dructists whose goods are bought and sold at the market ward of APMC would had render the Public function and activities of the APMC to be "commerce" and "business". The Statute lays down that notifies agricultural commodities can be bugget and sold only at the market yard under the APMC, and thus the control or regulative.

function of APMC is not only a Statistory function but is also in the nature of local authority or a Governmental Authority specifically constituted for regulation of ingriketing of agricultural produce. A Committee obviousity requires funds for carrying out its functions and therefore contain amounts as filicense feel and "market feet are collected by the Committee, but such amounts are collected only from the farmers and agriculturists who east/clipate in buying and seding their communities and produce as the market yards managed and institutioned by the APMS, Only because license fee and market fee and this callected by the APMC home the larmers and agriculturists, the functions of the Committee could not be nets to de activities of commerce and besiness because the APMC is not constituted under the said Act for any compense or business. The exemption under Sr. No. 12 of notification (sat 25/2012-57) was therefore admissible to the appetuse. (or providing works contract services in favor of APMC, Versival and reffect come case laws of AFMC-2014(36) 51R 382, (iii) A.B. Projects Pvt Ltd-2017 (5) GS 1, 195 (Ith Sainteev K. Gaddamwar, 2017 (5) GS:L 206, Therefore, the domanti of service tax for such works is therefore illegal and without jurisdiction

The appellant provided construction (maintenance services to M/s. iiiı Ambuja Centent Ltd. for improvement and development of national, highway ruad and junction in between Corridon road serry and plant approach mad for road to port, laving of Mitumen concrete Juaitif on mad from D Birok to Chibachest connewsy junction on Sugara infaes road. Laying of billioningual Condition from Ambuja Gate to Gajampuja Cate and lastly taying of bituminous concrete from front gale to national nighway junction. The Adjudicating Authority chroneously proceeded on the whose presumption that the said work relates to traintenance and development of a private read when in fact it was related to public modul. This said roads and junction are in fact public mads regularly used by M/s. Ambuja Cement Ltd. as well as by general public. however, to ensure smooth movement of trucks and vehicles carrying the minerals, from and to the factory of M/s. Ambuja Coment Ltd. the said sement company has taken it busin itself to maintain and develop these toads and junction. Merely because these roads and junction was maintained and develoy rent work was engaged by ≪/s. Ambuja Coment Ltd., would not door the said reads to be private roads, as a matter of fact, the said roads / junction are used by public and are open to public access. Moreover, the department has not blought on record any evidence to show roat the said roads in curstion word private property of ambuja Cement and that the road in question fail within boundary of the Mas. Ambuja Coment Ltd. and thus, the Adjudicating authority has disadly erred in demanding service tax for services provided in respect of reads which are public road.

- piji) The Inwer adjudicating and comy eraction including that the Appellant Is not digible for exemption on respect of movieurs given to Wis day unished. Construction as a sub-contributer for exemption of Damb Bridge, in respect of the adoresaid transaction, who use lacts are that the appellant has endertaken-shedges of exercition of dentil Yadige. The ray if Dambi Bridge is baseted at Kuchnan and its used by general public for crucking Dambi river. The nature of construction work undertaken by the Appellant Leannel be disputed. Talerefore, in view of Sh. No. 13 of the Wage Exercition Rotification, it is clear that construction services is respect of bridge for used by general public in prompted from levy of service tax. No alregation has how made in the show cause notice to say or suggest mat said pridge is and pure to public and bridge intended only for provided use. Also the appollant has produced copies of relevant work orders from M/s Ray Thishull and the same have not been considered by the adjudicating authority.
- (iv) The lower adjusting authority exserved that the Appellant rendered services to Mas Retain construction for indenting and letrongthoning of Vortival-Subracede Road as sub-contractor newsyon, rejure of service provised by short is not diean since the Appellant did and provide dupy of sub-contract agreement. and involves and hold that amount received by from was not be excount of construction of road and hence, exemption under 13(a) of Notification No. 25/2012-5T dated 20.6.2012 is not available to the Appellant. On the other hand, the Appellant has argued that the reasoning given by the lower adjudicating authority is based prefety on assumptions and presumptions. inazimuch az a copy of the work pider dated 26,05,2009 had already boon. provided during the adjudication prochedings. The true factual matrix is that the activity was undertaken by the appellant as construction services for wisening and strengthering of Veraval to Sutrapada Road. As in the case of A/s. Ambujal Cement Ltd. and M/s. Raj Trisaul, the said road is meen to general public and not our arrivate road and therefore, no service tax is payable on this construction activities relating to such public roads. Even with respect to these activities, no allogation much less any evidence has been brought on record by the department to suggest that the aforesaid med is not public mark and the entire. demand has been confirmed on many presumption and assumption and without arw basis.
- (v) The Adjudicating authority absenced that the services provided by the Adpellanc to M/s Paver Indestrial construction corporation for building public roads in Kodinar Tatuka is not eligible to exemption since the appellant is not able to prove the nature of services. The Adjudicating authority has failed to

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consider the work orders presented by the appellant, which crure the nature of the work and that it is exempt from service tax. Therefore the embugged rederinged to be set aside.

- (vi)—It is submitted that Somersh Kelwari Mandal is admittedly an Institution which is not engaged in commerce, insustry or business or profession. The unit consequation work for Semnath Kelvani Mandal, Kndiran was admittedly in the actual of civil structures and the like meant productionably for use other than for commerce, and therefore such services were exempted for test several years by writte of the nonlinearious issued by the Central Government. However, the Government has restricted above exemption for cases where a munifical had been entered into prior to 01-3-2015 and applicable stamp duty on such contract had also been paid prior to such date. The appellant was not award above that such activities were not taxable, and therefore no service has had been charged or categories by the appellant. In such directionalistics, it cannot be said that the Appellant had evaced payment of service has, and dienefure, benance for the agreested transaction for the exempted period of limitation is workly linegal and without jurisdiction in the facts of the last case.
- rendered construction service to GETCO and that the transmission of electricity and that GETCO is construction between the GETCO and that relating to transmission of electricity. The appellant pleaded that they had not changed or collected service tax from GETCO as the income generated by their from taxable services during that relevant period was much below the small scale exemption limit. Further, at later stage the Appellant vide Challan dated 19.7.2511 discharged the service tax lightliny. However, the lower adjudicating authority had not considered disciplinations and confirmed service tax lightliny again, making it duplicate demand. Therefore, the impugned order is required to be set aside.
- (with The Inwer adjudicating authority hold that services provided by the appealant to GCEs is not object to exemption, since the said exemption was withdrawn vide Statification No. 6/2015-5T dated 1.03.2015 with effect from 1.4.2015. The Appellant has contested that construction services rendered to Sujarat Council of Elementary Education are exempt from payment of service tex because the Councils is a body constituted for imparting education and services were rendered for the construction class ruches and school infrastructure and such activities were exempted for the last several years by virtue of the notifications assued by the Control Coveniment.

- (ix) The adjudicating authority erred in invaking extended period of limitation and amporing penalty under Section 78 of the Act. They rendered services to Soverement/ educational institution who are not engaged in any commence, industry or business and hence exampted from payment of service tax. Only because the Department encommend a different view about the habitity of the transactions, invocation of larger period of limitation is empresus. The impagnosization is therefore liable to be set asido.
- 3.1 In Personal Hearing, Shri Antal P. Dave and Shri Activa S. Tripathi, both Advocates appeared on behalf of the Appellant and referated the grounds of Appral and submitted that they have constructed APMC Shed; that APMC has been crosted under the Art passes by the Gujarat Legislature for agriculture purpose and not for commercial perposes: that road is connecting to Mational Highway and also operated mad to put and dence exemption is available; that Dambi Widge has been constructed by them and being used by general public; that work order for Veraval-Sutrapada Road has been given by the Executive Engineer, Ruad E Building, Government of Sujarat and will produce evidence to that effect; that Challan dated 19.2:2014 will be produced evidencing payment of Servict Tex by them and hence cannot be demanded again; that Somnath Kelvani wandal Sonnal is reorganized by Government of Gujarat Board as is evident from Certificate issued by Securiary, Gujarat Secondary Crucation Board, Candhinager; that demand relating construction of classrooms at Danod District and new Vegetable E Fish Marketing Building at Druits time Samed.
- 3.2 If find that the Appeliant paid Service Tax of Rs. (4.69.0987) which has been appropriated in the impugned order. Thus, the Appellant has complied to the provisions of Section 357 of the Act and therefore, I take up this appeal for decision.

Findinus: -

- 2. These carefully gone through the facts of the case, the impugned order, and writing supprissions made by the Appellant. The issue to be decided in the present case is whether construction services concord by and Appellant is eligible for exemption under Natification No. 25/2012-ST dated 20.6.2012, as amended or not.
- Froguet Warkert Caramintees, Varsive, for construction of RCC covered shed; Grain cleaning round & RCC 658 primarily for our by farmers/agriculturalists during the years 2019-14 and 2019-15. The edited cating authority storied exemption

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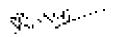
contained in Sr. No. 12 of Notification No. 25/2012-S1 dated 20.6.2012, as amended on the ground that though APMC was mostificated surder Sujarat Agriculture Produce Market Act. 1963 for regulation of marketing of agriculture produce but functions carried out by APMC are not covered under functions connected to municipality under Article 243W of the Constitution and therefore APMC cannot be considered as 'Governmental authority' as defined under 2(a) of mega exemption notification supra and that activities carried suchly AVPC are activities of 'business' and 'commerce'. The Appellant has consisted that APMC was constituted under Gujarat Agricultural Produce Market Act, 1963 and provisions of this Act clearly lay down that APMC is in the nature of a governmental authority, and all notified agricultural commodities are legally required to be crought to the market yand of such APMC for being sold and that collecting Tissense feet on "market feet would not alter the public functions carried out by the APMC.

- 5.1 I find it pertinent to examine Entry No. 12(a) of Notification No. 25/2012-57 dated 20.6.2012, as amended, which is reproduced as under:
 - F12. Services provided to the Covernment, a local nutbority of a governmental authority by way of construction, erection, commissioning, installation, completion. Esting on, repair, maintenance, renovaled, or alteration of -
 - (a) a circlistracture or any other original works menus predominantly for use other than librarymence, industry, or any other business or profussion;"
- 5.7 " Mind that the term 'governmental authority has been defined under Nothingstonn No. 25/2012-St dated 20/06/2012 as under:

"(a) governments, enthosity' means a hourd, or minushority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Ax, of Pandament or a North Legislature to carry out say (paging correspond to a municipality under article 243W of Jun Constitutions"

- 5.3 The definition of "governmental authority" has been amended w.e.f. 30-81-2014, vide Notification No. 02/2014-5T dated 30-01-2014 as coder:
 - ngs) ingovernmental authority' means an authority of $\Gamma_1 \otimes \mathbb{R}^n$ of any other body:
 - (i) Signifying an Alerief Parliament of a Scale logististical \sim
 - (ii) Established by Covermount, with 90% or more particularities by way of equity or sourced, to one y OT 80Y. Bigggon connected to a municipality under 1900to 744 Winfros Constitution."
- Finduct Market Act, 1963 duty passed by State Legislature of Gujarat Agriculture in it is required to examine whether APMC is carrying out function(s) entrusted to a municipality under Arricle 243W of the Constitution or act. The functions patriole 243W of the Constitution, which reads as upder:

- PLA GOVERN SCHTTERT PrActicle 243W7
- 1. Urban pisening including town planeing.
- 2. Regulation of land use and construction of buildings.
- 3. Planning for occapitud and about development.
- 4. Jünde and oddgos.
- 5. Water signify for demestic, inclustrial and commercial purposes.
- 6. Public health, senitation conservancy and solid waster management.
- Επικρομέρες
- University, protestion of the environment and promotion of ecologicals
 agrees.
- Satisfyrenting the interests of weaker sessions of society, lineboding the handlemped and mentally returned.
- 10. Some inegrowers and operations
- 1. Union powerty allovintion.
- Provision of urban amenities and facilities such as parks, garders, assygnounds.
- 33. Promoriou of output libehosticus i and aesthorie paperna.
- (4. Exprists and huris) graunds: cremations, cremation grounds and electric attenuations.
- 13. Cattle poends: provention of emply to anguists.
- 16 Vice learner on including registration of births and devise.
- 17. Phblic amerides, including sweet lighting, parking loss, but stops and public conveniences.
- 18. Regulation of slong termonises and attaches."
- I find that Agricultum Product Market Committee, Veraval was constituting under Gajarat Agriculture Produce Market Act, 1963 for regulation of marketing of agriculture produce. The basic purpose of constituting APMC lpha to prevent and protect farmers and agriculturists from exploitation or the intermediation and ensures transparency to pricing system so that farmers and agricult vivis of that area get fair page of their agricultural conduce. The APMC puts least trainework in place mandating wholesale trading of agriculture. produce to be corried out tirrough AMPC only. APMC treates necessary rafnastructure for purchase, said, storage, weighment and processing of agricultures, produces, show antivities aid in economical development of the great where ANAC functions. The activities confind out by APMC are, thus, in Fry. considered view covered under Sr. No.3 of Twetth Schedule under Article 243W of the Constitution and horre, AGMC needs to be treated as 'governmental authority), a further find that construction services rendered by the Appellant to ΑΡΜΟ, Various I were primarily for use by farmers /agriculturalists and not for commence or industry, I, connective, hald that construction services rendered by the Approximation A2mC , Vertical promovered under Entry No. $\pm \delta(z)$ of Nutfficetion. No. 25/0012-ST dated 20,6 2012, as amended and consequency, the Appollant is eligible for exemption of Notification suggest, it therefore, set aside service tax demand of Rs. 9,69,1217- on the services hendered to AFMC, Veraval and consequent demaity imprecil discentification (vs. of the Act.)



- 6. If find that the Appellant rendered services to M/s Ambuja Cement Ltd for improvement and development of appreach road between factory gate to National Highway function, factory to mines and factory of M/s Ambuja Cement Ltd. The adjudicating ambunity denied exemption contained in Entry No. 13(a) of Notification No. 25/2012-51 nates 20.6.2012, as amended on the ground that epphasel; make were constructed to facilitate transportation of raw materials and finished goods manufactured by the tectories of M/s Ambuja Cement Ltd and the said approach roads cannot be considered as public roads. The Appellant has contested that morely because these roads and junction were developed and maintained by M/s. Ambuja Cement Ltd. would not make the said public roads as private roads as said roads / junction are used by public and are open to the public access; that the Department has not brought on record any evidence to show that the said roads in question were private property of M/s Ambuja Cement Ethica the roads in question lall within boundary of the M/s. Ambuja Cement Ltd.
- **6.1** If 11rd (it is pertinent to examine Entry No. 13(a) of Nethroatten No. 25/2012/ST dated 20.6.7017, as amended, which is reproduced as under:
 - *13. Services provided by way or construction, creation, commissioning installation, completion, fining our, repair, maintenance, regarding, or alteration off-
 - 18) <u>8 pased, britise</u>. Remail, or reminal for road transportation for tike <u>by absent mining</u>.

(Emphasis supplied)

I find that approach made herwich factory to miscs of M/s Ambuja. Cement Ltd and between two factories of M/s Ambuja Cement Ltd. constructed and maintained by Mrs Ambuja Cement Ltd for their own need and smooth functioning of their operations and said roads cannot be said to be public. roads. Regarding services rendered for construction, repair and invintenance of road between National Highway junction to the factory. I find that the construction cost was borne by M/s Ambuja Coment Ltd to facilitate smeeth. transportation of their raw materials and finished goods and there is no participation of the Government of Gujarat, Hence, any road even if being used. by Public cannot be said to be road constructed or maintained for use by general. public, M/s Ambuja Coment 1td gut three seeds consciouted for Corin own. corpose aixi therefore services rendeted by the Appellant for construction and ina $^{\prime\prime}$ itenance of sald approach road cannot be held to be for $^{\prime\prime}$ iblic use, $!_{1}$, therefore, note that the services pardnered for construction, espair and matatenance of roads to m/s Ambuja Coment Ltd would not be covered under Entry No. 10(a) of Notification No. 25/2012-57 dated 20.6.2011, as amended. Consequently, the Appellant is liable to pay Service Tex of Rul 8,83.4017- on the , (Services rendered to M/s Ambuja Cement Ltd.)

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- 7. If the that the Appellant rendered services to Somnath Robust Mandal, Kodinar for construction of school quilding. The lower adjudicating authority held that the services provided by the adjudicatin Somnath Retvani Mandal, Rodinar are not eligible to exemption since Summath Retvani Mandal, is a registance trust and therefore, school run by said trust danger be railed a school run by government, local authority or Governmental Authority. It is pertinent to examine Entry No. 12 of Notification No. 35/70:7 ST dated 20.6,2012, which is regresured as under:
 - 162. Services provided to the Covernment, a local authority of a sovernment. against the local authority of a sovernment. against the local object of constant and provided and approximately of a solution of contract of the contract of the
 - (n) a crivil structure or tray other original works means medominately for use other than for commerce, industry, or any other business or profession:
 - (b) a historical trimmunical and sociogesal aito or remains of national importance, archaeological occavation, or antiquity sociolist and the Account Moreometra and Archaeological Sites and Semains Acr, 1953 (24 of 1938);
 - (c) a signification of executional execution of the second of the sec
 - (d) —conal, dum or other irrigation works:
 - (i) epolicity conduction risk of for (i) water supply (ii) water treatment, or (iii) servers generative to a displacity or
 - (f) to residential complete predictionality intent for self-tise or the use of their employees or other persons appointed in the *Gryslanation*. I to clause 44 of section 658 of the scalabor.

(Einchasis supplied):

7.1 I find that Notificator: No. 25/2012-ST dated 20.6.2012, Intervalial exempted the services rendered to Government, a local authority or a governmental authority for construction of a structure used for educational purpose wide entry No. 12(a) during the period from 1.7.2012 to 31.3.2015. I find that Someoth Kestvani Mandal; Kodinar to whom the Appellant rendered service is a trust and benefit of said exemption is available only if the services are rendered to Government, a local authority of a governmental authority, cam of the view of that Someoth Kelvari Mandal is not covered by "Government, a local authority" and consequently not eligible for exemption under that y No. 12(a) supra. The argument of the Appellant that Someoth Kelvari Mandal is not prograd in continence. Industry or business or procession is irrelevant for the purpose of claiming exemption under Notification supra. I therefore, hold that the appellant is table to pay Sorvice Tex of Rs.

4,42,464/- on the services readered to Semnath Kelvani Mandet. Kodinar for construction of school building.

- I find that the Appellant rendered services to GFTCO for exhibition of CR building. Foundation Cable Trench, Compound Wall, Road Staff Quarters etc. The lower adjudicating authority hold that the Appellant rendered anistruction. service to GETCO, which is commercially engaged in transmission of electricity. If find that the Appellant has not disputed about the services rendered to GETCO. or taxability of service. Only defence putforth by the Appellant is that they had discharged service tax liability vide Challan dated 19.2.2014 but use lower adjudicating authority had not considered it and again confirmed service tax in the impugned order making it dupilicate demand. I find that the Appellant was required to pay sorvice tax of As. 59.4427- In respect of services rendered to GETCO and the Appellant has paid service tax of Ps. 30,5277, vidt Challan dated. 19.2.2314. Third that the Appeliant has paid total Service Tax of Ro. 44,69,0967. , including service tax of Rs. 30,527/- as per Annexure-A of SCN and the said service cax amount has been appropriated in the impugned order against confirmed demand. So, service tax of Rs. 30,527/- paid vinc challen dated 19.7.2014 is appropriated in the impugned order and there is no sliphication of deniand as argued by the Appellant,
- Ŷ., I find that the Appellant rendered services to Gujaret Counțil of Elementary Education (GCSE) for construction of classrooms in various primary. schools. The lower adjudicating authority hold that the services provided by the appellant to GCEC vide Work Circlers dated 29.5.2015, dated 7.9.2015 and dated 30.5.9935, are not eligible to exemption, since the exemption contained in entry. No. 12 of Notiffication No. 25/2012/ST dated 20,6,2012 was withdrawn vide Nothication No. 6/2015-ST detect 1.03.2015 effective from 1.4.2015 and said. Work Orders were issued after 1.4.2015. The Appellant has contasted that construction services rendered to IGDEF are exempt from payment of service tax. because the Council is a body constituted for forcerting education and conviguawere rendered for the construction of class rooms and school intrastructure and such activities were exempted for the last several years by yietig of the notifications issued by the Central Government. I find that Notification No. 25/2012 ST dated 20.6,7032, inter alia. exempted services concered to Government, a local authority or a governmental authority for construction of a structure used for educational purpose vide entry No. 12(c). However, said. exemption was withdrawn vide Notification No. 6/2015-ST detect 1.3.2015 effective from 1.4.2015 and the construction services rendered by the Appellant. to GCEE vida Work Orders dated 29.5.2015, dated 7.8.2015 and cated 30.5.2015.

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are for the period after 1.4,2015. Hence, the appellant is but origible for exemption under Notification No. 25/20:2-5T dated 20.6,2012, as amended. (, therefore, uphold service wax demand of Rs. 15,79,880/- (A respect of services rendered to CCEE.

- The lower adjudicating authority observed that the Appellant rendered services to M/x Ketan Construction Ltd for widening and instrengillening of Veravai-Sutrapada Road as sub-rousinactor. However, nature of services provided by them is not clear since the Appellant distinct provide copy of sub contract agreement and involces and held that amount received by them was not on account of combination of road and heade, exemption under Entry No. 13(a) of Notification No. 25/2012 97 doing 20,6.2012 is not available to the Appellant. On the other hand, the Appellant submitted was uppy of the work order dated 28.05.2609 was provided during the adjudication proceedings. The Appellant further submitted that they rendered construction services for widening and sarmiguationing of Victaval to Sutrapada Road which is a public road and hence, service tax is not payable it have gone through the work order cated 26.5.2009. and office order deced 16.6.2009, both issued by Executive Engineer, Government of Gujarat, Rose & Building, Junegadh as well as notice cated 22.6.26% issued by M/z Keyan Construction Led to the Appellant to start the work. I find that the work proper was issued in the year 2009 Whereas the Appellant has shown receipt of Process of Rais57,51,9117- In the year 2013-14, I find that the work was to be completed within 18 months as per Work Order datori 36.5.2009 whereas the Appellant has shown records of income offer 4 years of Work Order catel. The Apprilant has not produced any evidence of the Government of Cultaratias to when the work was completed. I also find that the Appeliant has not produced copy of sub-contract agreement or involves raised for the said transactions neither before the lower adjudicating authority not periore us a Appeliant Authority. The Appellant has thus been not able to prove that throme of its, 57,51,911/ portained to the construction services rendered ton widening and strengthening of Merava; to Subrapada Road, I, thorofore, have no option but to hold that the Appellant is not eligible for exemption under Entry No. 13(a) of Notification vis. 25/20:2-57 dated 20.6,2012, as amended and to upgota confirmation of service terral mass of Rs. 7,10,9367 .
- 11. If find that the Aspellant booked "transportation income" in their bucks of account during F.N. 2013-14 and F.Y. 2014-15 in respect of services provided to MVs Paver Industrial and Constitution Corporation for transportation of goods (sand and gritt. The Adjudicating authority is had consect in holding that the services growided by the Appollant on MVs Paver Industrial construction

າ ເຂົ້າທີ່ ເຂົ້າທີ່ ເຂົ້າທີ່ 2 ຂອງ 14 of 17. 2 ຂອງ 14 of 17. corporation for halfding public roads in Kadinar Taluka is not eligible to exemption since the appellant is not able to prove the nature of services. However, it is not disposed that income was correct by the Appellant for providing services to M/s Paver industrial and Construction Corporation for transportation of sand and grit. I find that the recipient of transportation service is liable to day service tax on reverse charge basis in terms of Rule 2(1)(d)(B) which is reproduced as under:

S(B) in relation to service provided or agreed to be provided by a genes transport agency in respect of transportation of goods by road, where the person limble to pay freight is.

- (I) surjectory Equatorial nuder of governed by the Factories Ast., 1965 (65 cf., 1948).
- (II) any society registered under the Societies Registration Act. >(3) (21 of 1860) or and a no other law for the time being in licece in any part of India:
- (III) is ny pa-aperatrya society est abanyi by o ni adahany inwi-
- (FV) any dealer of excisable goods, who is registered under the Central Excise. Apr., 1944 (1 of 1944) or the rules made thereunden.
- (V) Any body corocrate catabilismed, by or under any law; or
- (Vi) my portnership firm whether registered count; under any law incoming association of personal

any posetra who pays or is highly to pay fireigh, either hunself or durough his agent, for the muranertation of such goods by yogo in a goods cargage."

- 11.1 I find that M/s Pavar !adustrial and Construction Corporation, who beid freight, are covered by seb-clause (V) above and consequently M/s Pavar Industrial and Construction Corporation are tiable to pay service rac or reverse charge basis, being recipient of service and not the Appellant. !, therefore, sevastic service tax demand of Rs. 53.369/ in respect of transportation services rendered to M/s Paver Industrial and Construction Corporation and consequent penalty imposed under Section 78 of the Act.
- 12. If find that the Appellant rendered services to W/s Ray Trishol. Construction as a sub-contractor (or construction of Damid Bridge and available exemption from scriptor tox in view of Entry No. 13 of Notification No. 25/2012-97 dated 20.6.2012, as amended. The Appellant contested that they rendered services so M/s Ray Trishol Construction as sub-contractor for construction of Damid Bridge in Kodinar, which is used by general public for imposing Damid siner and therefore they are eligible for exemption from service tax. If find that the services rendered to construction of pridge for up by general public is exempted from Service Tax in terms of Entry No. 13(a) of Notification No. 25/2012-5T dated 20.5.2012, as amended. It is not disputed that the Appellant rendered service to M/s Ray Trishol Construction as sub-contractor for construction of Damid Bridge in Kodinar which is used by general public for exemption under Notification supro and not liable to Service Tax. Accordingly, I set aside conformation of service tax

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demand of Rs. 59,7827- and consequent penalty imposed under Section 78 of the Act.

- 13. If find that the Appellant rendered construction services to Municipal Council, Div and IP.W.D., Div during the year 2015-16. Iffind that the Appellant has not disputed confirmation of service tax demand on morits but contested on the ground that the demand is time barren. I find that demand was confirmed by invaxing extended period of limitation of time on the ground that there was suppression of facts. I find that the Appellant had not paid service tax in respect of construction service rendered to "Wartingal Council, Div and IP.W.D., Dividing the year 2015-16. The non-nayment of service tax on sald services was ungarring during investigation carried out against the Appellant. The Appellant had subpressed the fact of providing above service to Wartingal Council, Div and P.W.D., Dividing and extended period of limitation was rightly provided in the impugned order. I, therefore, discard this contention as devoid of morit and uphald continuation of service tax demand of 8s. 25,43,333/-.
- by Aphellant assued that they rendered services to Government/ 14. educational institutions who were/are not engaged in commerce, industry on business and hondor, sometime provided to drem are exempted from payment of scrying raw; that only because the Department entertained a different view about the libidity of the transactions, toyocation of larger period of limitation and imposition or behalty under Section 79 are enomeded. I have discussed and held to cares supported to how the Appellant had wrongly classed momphism of Nothfield for No. 25/2012-5T detted 20 6,7617, as amended to respect of services rendered to M/s Amouja Comissi Ltd. Sujarat Council of Elementary Education. GETCC: Somnath Kelvani Manda., M/s Ketan Conscriction Ltd etc. The Appellant did not schmit ST-3 Returnship time to prevent Department to unearth nonpayment of service cax on the said services, which was uncarthor during Investigation corried and by the Department against the Appellant. So, there was suppression of facts and extended period of tightation was rightly invoked in the Impugned order. Since the Appellant suppressed the facts of non-payment of Service Tax, persony under Section 78 of the Act is mandatory as has been hold by the Unnihle Sepreme Court to the cover of Rejecthan Sprening & Weaving Wills reported as 2000 (235) \pm U.T. \pm (S.C.), wherein it is sent that when brond are ingrandents for invoking coversed period of amplation for demand of duty, $ag{massic}(lpha)$ of pertity under Section 11AS lpha manuality. The ratio of the said juingment applies to the facet of the present case. I, therefore, up told that penalty under Section 78 of the not is from sold to the extent of buty evaded.

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- 14.1 It is a fact that the Appellant had not assessed the Lax on the services provided under the category of "Works Contract Service" and therefore, penalty of Rs. 10,0007: imposod under Section 77(2) of the Act is required to be upheld and I do so.
- 14.2 Regarding late fee imposed under Rule 70 of the Rules, I find that the Appellant late filed ST-3 returns for the period from April, 2011 to March, 2015 and honce rightly held liable to late fee of Rs. 13,400/- by the lower adjusticating authority. I, therefore, uphold the late fee of Rs. 13,400/- Imposed under Rule 70 of the Rules.
- 15. In view of above, I modify the impugned proof to set aside confirmation of service tax domands on construction services rendered to APMC. Veraval, construction of Pamili bridge and on their transportation income as detailed above and calculated amount of the impugned order.
- अमीलकर्ता द्वारा दर्ज की गई अमील का लिपराया उंपरोक्त सरीके से किया जाता है ।
- 76. The appeal fixed by the Appellant is disposed off as above.

| | si wi90) 25∮3 | (कुमार सतीष) प्रधान अध्युवन (अपील्स) |
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| Ву <u>Р.Р</u> .А.D. | | = . |
| To, M/s K,V. Barad, 124,1 ^{st a} loor, Marketing Yard, Kodinar. | सेवा में, में, केंद्री करहे, 124, प्रथम नदाला, भाषेगीर्टेश ਦੇ ਤੇ, कोजिसला | |

प्रतिसिपे :

- 1) प्रधान कृष्ट्य आलुक्त, वरतु एव सेवा वस उर्व केन्द्रीय उत्पाद सुक्क, गुजरात क्षेत्र,अहसटाबाद को जानकारी हेत्।
- 2) अन्युष्टत, संस्तु एवं फेब्रा कर एवं फेब्र्फीय अन्याद शुल्ल, भावतरार आयुक्तालय, भावनगर को आवश्यक कार्यक्षित्रे।
- 3) अधुकता आयुक्त, वस्तु एवं सक्ष कर एवं वेस्क्रीय उत्पाद सुक्क. भावनार आयुक्तालय आवनार को आवद्यस्य कार्यवादी हेतु।
- 4) गई फ़ाइल।

