

#### .<mark>ज्ञान शहुन्य । कर्ने नेन्स्य का कार्यन या वस्तु पर्यानचा । दर्शन केन्द्रीच क्रुपान ३० व्य</mark> CAUTUR PRIPACEAU COMMISSIONAR (APPRAILS), GST &CSN (CAL EXCISE)

<sup>19</sup> [14년 대학생 기원 대표 2<sup>22</sup>][26 (25] Short रेम रहिते किए साहर Kara Courte Black Room <u>rjarše sia koji</u>

Let  $(\pi_{2}, \pi_{2}, \pi_{3}) \approx 0.31 \pm 0.77951$  WHITP Products  $\rho_{T}(\pi_{3}) \approx 0.16 \rho_{2}^{2} (\pi_{1}, \pi_{2})$  with



राजनाते सामागुरसीरद्वार ३

न अमान - <del>प्राप्त</del>नारम्य wasan Zeilo Kari V2:109-04Tk:2815-19 ्राप्त का देश में र District

OLACOC CST/BYIR STOLY/30(5) IN:

TELLET. ت عادا 25011/2714

भवीत भविभव**वता** (२००५ - ६०) स्टाइटरा भागाः

#### RHV-FXCOS-000 APP 210 2019

भटे गया किन्ति ।

18/07/2009

करी को की समस्त Date - i--n.

16,072019

Description in

थी कुम र वेत्र महा स्थानका (क्या अयोजग्र) , जल ठाउ द साधादि । 🚈

Name to a Shei Kumar Banteal, I had had loomisticate (Actions) (Action )

्यान भागम् । स्थान्यात्रायम् । १५६६मा १ १४६६मा याप्त्यः हिन्दे । ५ ४ ५५ ५५ मध्य १० ५ ५ ५ ५८ ५८ । १ ४४६६ १ अस्तिमा १ स्थितिम इत्या स्थानीतिक स्थिति स्था सम्बद्धाः स्थानिकः । १ १८५५ - १८५५ १४ १८ १८ १८ १८ १८ १८ १८ १८ १८ १८

n Grand from the shared maintermatic 150 leagues by Roulleau, 20 or 10 or 1 This is the second of the conflictly Discontinue Mandata Aberra:

अमेरिकामी अपनिकासी का गांग गण वर्ष कर 1 (Sarah - Robinson of Julia Appeliazios & Julia (Coli

MS, K.R. Repress Cargo Moves. Near Normattet round fin. Taluka faftalad. Dist: Aducil 55590.

हुत भारत प्रकार न कारत नाम के प्रकारित सीहर में एक्स को लिए हैं के प्रकार के किया है कि साथ के किया है है है ह निवार कुछ के पूर्व के किया किया किया कि किया के किया किया है कि साम किया साम किया है कि सीहर कुछ छहा है कि की  $\lim_{n\to\infty} \frac{dx^n}{dx^n} \left( -\frac{1}{2} \left( \frac{1}{2} \left( \frac{1}{$ 

ो प्रमुख्य के दें प्रदेश के प्रदेश के किया है कि अपने हैं किया है जोगा, बहुती हमान करने भारतिकार प्रदेश के अब ह भेरतिकार के किया की प्रदेश की जाते हैं के अवस्थित किया करती है जो की स्थान क 120

we can be because the mode where the Appellon in the of the Lie Section 2008 of A . Let A be the Hermitian because the Hermitian A and A because A and A because A and A and A because A and A and A are the A-section A and A-section A and A-section A are the A-section A-section

ा कुल भवनिक्र आकृत्यात्रम् सर्वा करम् सामा अस्त । कस्तीय समानम कुल १४ तेव कर्य वितेत मात्र कि ४० विति विति तेव ते कि के कि के कि अस्तर कुल कुल को स्थापित कि समी को कर्य ш

The said had a first service and the service service and the service of the leading of the first one in the service of the ser

र को पार्ट के प्राप्त के पार्ट के कि के कि का कार्य के अपने कार्य क्या का प्राप्त का कार्य मुख्य कार्य के कि अधिक का कि कार्य के कि कार् Ьij.

 $\frac{1}{2} (p, w, g) \cdot g_{2}(x) \cdot H_{2}(x) \cdot f_{2}(x) \cdot f_{3}(x) \cdot f_{3}(x) \cdot f_{3}(x) \cdot f_{4}(x) \cdot f_{4}(x) \cdot f_{5}(x) \cdot$ 

The imperitor is expected in immersal to these increasing content of a August Section 1 is 2 or not 1 to a loss of the August Section 1 is 2 or not 1 to a loss of the August Section 1 is 3 or not 1 to 3 or not 1

ıB,

1. Topolet processor serious por flexion of a little Topolet serio Method be Appelled Tobolo. The control of th



For PDDS at 1961 of the Control of t

ি et latit delle og de jege witte digen.

All of latit delle og de jege witte digen. All og de skille jed elle og de skille gren gren er kritete filler de skille og de skil -16

1...

र का 1981 के विशेष्ट करेड्स : Reading oping to the company of many, The property of the property of many and the contract of the contract of

uic de la livite de promise de la complete del la complete de la complete del la complete de la 

. 1:

र प्राप्त कर के स्थापन के किया किया के किया है। से द्वार अस्तर का कार विशेष दिया करा है। सिक्ष कर (1997) के किया के 1991 किया कर कर किया के 1991 के 19

e differential of the specific of the first order or understand ground and the engine of the first of the first of the first order order

• •

ार्थन प्रदेश में देवीन कार एक कर हो। बेरना एक्स स्वास्त्र कर उसले में तेतृताकों, अध्यान है जब की जान देवित हो। ज **प्रत्यन** स्वासाय है जान की पास है है है है के कि कार कर कि अपने की कर रहे के कि स्वास की सम्बद्धित कि कि में दुर्शन के अपने के कि कि का को कि का कि का कि कि अपने के सम्बद्धित के सम्बद्धित के सम्बद्धित के कि की कि की में के कि कि कि कि कि कि कि कि कि का कि का कि कि अपने के अपने कि सम्बद्धित के सम्बद्धित के सम्बद्धित के कि कि कि The first of the stability models, a quality in term for each appropriate deriver Wills for Control Color Copyrity.

Rider 18 12 into 2 models from the dispersity in the course plank the product gravitation promitive and the delite in the dispersity in the copyright kills product gravitation of the copyright KAC value in the copyright kills of the copyright kills o

· Date · ıυ

कर किर्माण जनवान होने भितिस्ता । 1000 के भारतीय के कि प्रश्निक के अधिक के किर्माण के किर्माण के किर्माण के कि 1980 (1995) (1995) के 100 कि 1995 On particular health has been say to prote poly of production opening the first opening of particular to the first opening of the first opening openin 11-

বাং পাললিক বাংলিক কে পঢ়িত কৰিব ৰাখা বা বাৰ্থাই জ্যাক কেন্দ্ৰ বাং বাৰ্থাতো সেকাৰোঁ কাৰিব, কৰিবলৈ বিধানতি বিধান ও স্থানেক্তিকে কে মি বিধানত হৈছে । এক জ্ঞানেক্তিকে প্ৰথমিতি কৈ বাংলিক বাংলিক কেন্দ্ৰিক স্থানিক স্থানিক স্থানিক স্থানিক স্থানিক বাংলিক বাংলিক বাংলিক এক জ্ঞানিক বিধানিক ক্ষিত্ৰত নিজ্ঞানিক স্থানিক স্থানিক স্থানিক 23.5

## :: ORDER-IN-APPEAL ::

M/s K.K.Baralya Cango Movers, Taluka Jahrapad, District Americal (hereinafter referred to as "Appellant") holding Service Tax registration No. AHIPB2353EST051 (Seed appeal No. V2/139/6VR/2018-19 against Order in Original No. 01/AC/CGST/BVR-3/DV/2018-19 dated 27-04-2018 (hereinafter referred to as "impugned order") passed by the Assistant Commissional Central Goods A Service Tax Division, Bhavnagar-3 (hereinafter referred to as "lewer adjudicating authority").

- 2. The brief facts of the case are that the Appellant Was engaged Inproviding 'Emphy of Tangible Goods Service' and 'Transport of Goods by stood Service'. Buding audit of the records of the Appellant, it was found that the Appellant provided grailers to Mrs Lagix Park, Rajida on rental basis and classified the sale services under the category of "Goods Transport Agency Service" during the period 2010-11 to 2014 15. It appeared to the Audit that said service is risssifiable under the category of "Supply of Tangible Guods Service" and the Appellant had short paid service tax by wrongly classifying the services under the category of "Goods Transport Agency Service".
- 2.1 Show Cause Notice No. 77(191/Dem-ST/HQ/2015-16 dated 68.03.2016 was issued to the Appellant commoning service (2x of Rs.19,52,6257- and an amount to be quantified for the F.Y. 2014-16 under Section 73(h) of the Finance Act. 1994 (hereinafter referred to as "Act."). Interest under Section 75 of the Act, imposition of penalty under Section 77, Section 77(1)(n) and Section 76 of the Act with late fee of Rs. 20,000/ per return for our fitting of return.
- 2.2 The inverted adjudicating authority vide the impogned order confirmed demand of service lax of Rs.48.31,861/- under Section 70(1) of the Act along with interest under Section 75 of the Act and imposed ipenalty of Rs.10,000/- under Section-7/(2) for failure to file correct ST-3 Returns, penalty of Rs.10,000/- under Section /7/11(c) for failure to furnish information and documents as were called for by the Central Expise Officer and late fice of Rs.25,000 per ST-3 Return for late fulling of returns and denalty of Rs. 49,31,651/- under Section 78 of the Act.
- 4. Boing aggrieved with the impagned order, the appoilant professes appeal, interioria, on following grounds:



- (i) The impressed order is act regal, proper and correct. The adjudicating authority did not consider their plan than they did not receive any fixed charges from M/s. Logix Park its deployment of trailers as mentioned in Show Cause sketice but they were under agreement with M/s. Logix Park for transportation of goods per their that they had not provided any 'Scaply of Tangibic Goods Services' and charefore, they were not dable to pay Service Tax under the Category of Supply of Langibic of Goods Service.
- (ii) As par condition on 8.5.7 of the work order ideaed 16.10.2015 awarded by M/s Legix Park, Rajuta to the Appellant, it is clear that there is transfer of right of possession and chreetive control of goods i.e. deployed trailers for the time being during the agrees' deviation of transportation of containers from CFS to Pipavay Port and back to CFS as per tale Work Order / Convey Note Terms; that Condition No.6 and 7 forlow are reproduced as under ion further decisionation.

"Condition No.6 : All your trailers should be at the disposal of the Transport division in-Charge stationed at CFS.

Consision (ka7): All the trailers should be available for round the clock incomment of the containers, 2 days period per month will be provided for ratintenance, any break down period other than the allowed maintenance period will be deducted from the fixed charges."

That from above two conditions of the matracts, it is self-explanatory that in the instant case rigid of possession of effective control of the vehicles (trailers) was transferred as par the aferessid conditions of the Contract and therefore, there is no question to pay any Service Texturber the casegory of "Seppi) of Tangible Goods Service's since, the Appellant provided the container transportation Service at their cost to M/s. Logix Park, Tat Rajnia. Dist. Arrest and relied upon the case law of M/s Setish Ruman & Co. Vs. Convolsioner of Central Escise (CESTAT Mumbai).

(iii) The Adjudicating Authority mivinterpreted the Service rategory of GTA Service' as 'Supply of Tangible Goods Service'; that the Appeliant rightly classified their services as 'Goods Transportation Agency service and did not contravene any provisions of Act with any willful suppression of facts us evade Service Tax liability and terrefore, invocation of provise to Section 73(h) of the Act to demand service tax from the Appellant for the extended period of five year and interest leviable under Section 75 of the Act is erroreous; that for year 20th-15 Service Tax amounting to Rs.28,89,236/- has

 $\frac{x^{\frac{2}{2}}}{x^{\frac{2}{2}}} \alpha_{2,1} + \frac{x^{\frac{2}{2}}}{x^{\frac{2}{2}}} \alpha_{2,2} = 0$ 

been assived based on assumption, which is not foir and acceptable as well as permissible in law; that the spici service tax has been calcutated on assumed income of Rs.2.33,75,6957- with an 20% increase.

(iv) The adjudicating authority calculated service tax lixbidity for the year 2014-15 on assumption basis. Which is not accomplishe and also est permissible in law. The adjudicating authority wrongly assumed 20% increase in income is: Rv 7,33,75,6957- and calculated service tax of Rs. 78,89,7367, which is not viable and as well as against natural justice.

## 3,1 — in written submission, the Appellant has contended that,

- their serms and conditions of Work Diper / Convey Notes and as per circular no. 79/9/2004-5T cated 17-12-2004, those Convey notes should be created as one kind of a Consignment Note, since all requirements of consignment note is fulfilled, which invokes and work orders / convey notes are nothing but massignment hales.
- (ii) To cover service under "Supply of Tangible Coods Service", three tagredients are essential to (a) The service has to be in relation to supply of tangible goods to any derson by any other person (b) There must not be any transfer of right of presession of the grows from the service previoer to the service provident (c) There must not be any transfer of effective control of the goods from the service provider to the service recipient; that as per the Coodinion No. 6 and 7 of the Work Order / Convey notes, it is clear that in the Instant case there is a transfer of right of possession and effective control of deployed trailors for the time being during the agreed period of transportation of containers from CFS to Picavay Port and back to CFS as per the Work Order Convey Note Terms; that alonesate ingredients as mentioned above vide point (b) pad (c) which are the very important conditions framed as per rates. Under "Supply of Tangible Goods Service" are not fulfilled and hence, their service can not be classified as Supply of Tangible Good Service.
- 4. If Personal hearing Shri Mitul Kannaiya, Advintable appeared on behalf of the Appellant and reiterated grounds of appeal and submitted writted submitted cated 21.05.2019 to say that service tax payable by them is Rs. 29.02.9257- and they have paid Rs. 29.02.9267-. Chair SCN has wrongly equalished demand of S.Tax for 2010 11 to 2013-14 at Rs. 19.42,6257- whereas as per their exhaulation it is Rs. 27.10.9727-; that Suraw bagrifty on actual basis

## FINDINGS :

- 5. A have carefully gone in align the table of the case, the impugned order, the grounds of appeal membrokijus and one. & written submissions made by the Appellant. The issue to be largified in this appear is whether the impugned order, in the facts of the case, in course, wegat and princes of otherwise.
- 5. If find that the Appellorix 7 as required to pre-deposit 7.5% of centand of Service Tax confirmed to make Constructioner (Appeals) to entertain this appeal as per the provisions of Section 70F or one Central Excise Aut,1944, make applicable to Service Tax by where of Section 83 of the Act. The relevant provisions are reproduced as unit.

"SOCTION Dist. Deposit of contribute contribute of duty demanded (a panelty imposed by one Elec, appeals), as the case may be, shall not entertain any appeals.

(i) under sub-rection (i) is section 35, inters the probabilities deposited seven and a half per cert. of the duty, in case where duty or duty and penday are in dispute, at note by, where such pendity is in dispute, in page since of a decision or an index passed by an officer of Control Excise lower in rank than the Principal Control Excise or Commussioner of Control Excise in Commussioner of Control Excise in Commussioner of Control Excise in Commussioner of Control

i further find that the appellant has not made pre-deposit of 7.5% of the diconfirmed, which is mandatury to be pre-deposited as per Section 358.

 $\{ \frac{1}{2} \}_{i=1}^n : \{ \frac{1}{2} \}_{i=1}^n = 1$ 

Space  $\sim 2$ 

of the Central Excise Act, 1944. The appellant was required to deposit 7.5% of Service Tax atmost conformed vide the imprepried order and vide they have not poid the same, the appear is not maintainable and is required to be cismissed for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944.

- - -; .

- 8. In view of above, the appear filed by the Appellant is eismissed.
- अमीर कर्ता हवारा दर्ज की गई अमीर कर विषयात उपरोक्त वर्राके से किया जाता है।
- the appeal filled by the Appellant stants disposed off in above scrow.

हिन्द्रास्ति -्रीट्रेड्ड के विद्यास्त्र क्षेट्रेड समीक्ष्मा दुस्ताहिन्द्री

(कुमार सतीय) अस्ति आधुवत (अपोल्स)

पंजीकृत डाक् द्वार सेवामे.

| M/s K.K.Basarya Cargo Movers | Mr. Narmada Coment Co. | Tanuka Jafonbad, | District Astreti मेसने के के परेबर कागी मुक्सा करीया के देव कर्णा। के अपने, संभुक्त जास्त्रकार, किसा-अगरेकी

# <del>4</del> ::.

- प्रधान मुख्य आयुक्तः, केन्द्रीय वस्तु एवं भेवा वक् एवं केन्द्रीय इत्याद शुक्कः, गुजरात क्षेत्र, अक्षमदाबाद को जानकारी हेत्।
- २ आणुक्त, के•बीय वस्तु उर्व संका कर उन्ने फेट्ड्रीस ⊃रपाट शुस्का, आध्यक्ता आयुक्तालय, भाकाकर को आज्ञस्यक कार्यवाही हेत् ।
- $z_{ij}$  सहस्रक आधुरात, केन्द्रीय कस्तु एवं तेजा कर एवं केन्द्रीय  $z_{ij}$  मध्यक्र, सध्यक्र,  $z_{ij}$  के रहिम्ह, को जुरत आवशयक कर्यवाही हेतुः
- ुर्द्धः । साई प्रा<del>ह</del>लः

