a शास्त्र (असीरम्) १० कार्याका कृतन् पुरु होना क्राप्टर केन्द्रीय हता। १,०५० स्थानसम्बद्धाः स्थानसम्बद्धाः १८०१ व्यक्तिका स्थानसम्बद्धाः १८०१

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श्रीमान्। नापार । का अर्थालहरू करोट हारा सरिवर

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े । अस्य के कि साम अपन्य मा। कि प्रकार का अपने के लिए एक अपने के अधिक राज्य के अपने हैं के अध्यक्षित के आहे है

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ा प्राप्त कर प्राप्त कर कार के अनुस्तर विभागने का कुम्यून प्राप्त कर का कर का प्राप्त कर कर कर है. तर्मिक कर कर के अपने के प्राप्त कर प्राप्त किया कर किया विद्यालया है जो किया कर के किया के किया किया किया किया

े प्राप्त कर साथा क्यांच क्या पर्व करून समित क्यांकी कर के गर्न अर्थ करों देशी क्यांचे कर के अधिनेत्र के शासी कर के भीता. वर्त कर के साथ देश की बाद कर के अर्थ कर के अर्थ के अर्थ के अर्थ के

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ार कर राजना के अरम्भित को दिवसों के पहले में बीच कर रहन कुमर के कि कार में बीच महत्व कि उन्ने से के स्वरूप कि क अरम के पहले के समान समित है

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ं वर्षात्र के छन्। कर प्राप्त का प्रवेश ने समान्य का प्रवेश कर के स्थाप कर का प्राप्त के का कि को निर्देश के क मिली के के से से प्रवेश के कि का को अने से समाने के प्रवेश के समाने के स्वीतिक हैं के स्थाप के स्थाप के स्थाप क

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े मां अपेटी, न्यानी प्रस्ता के सुन्ध अनिक स्वतंत्र कार्या एउद्देश अस्तात में अहें होता है। अहें की स्वाह में असे मिला के स्वाह के स

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पान क्या करोड़ ह्या अस्त का महरू भीता महिंदाना अध्यात राजामा साम्ब्र है प्रश्ना का का कि का 10 1 के का 10 1 के का 10 महरू का महरू का महरू का 10 की कि का 10 की की का 10 की की कि का 10 की की का 10 की की का 10 की की का 10 की की की का 10 की की की का 10 की की की की 10 की 10 की की 10 क

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more है, तह है के दान है है के हुन्देन है, अपने कियंग नहीं कहा स्थानक कर में का इसके समाय कर कर है। कि का मानव मानवाम समय किया कि है कि पान के मानवाम कि का कि का कि कियं के कियं के कियं के कि कियं के कियं के कियं के कियं house word would, कियो कियं के कियं के कियं के कियं के कियं के कियं के अपने कियं के कियं के कियं के कियं के कि house sandading of the analysis of the sandading of the sandading of the desired

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er des representations de Secretary en montre des secretarios de l'action de l'action de l'action de l'action names aux-liquité l'action de l'action numerous de l'action de l'action de l'action de la communité de l'action j i.

aggen el, de la posicione de la lacción y les la lacción de la copa, en elegado for transfer en personario. « l'Hau saligna de misimo de la completa de la completa de la completa de la completa de la lacción de la completa del la completa de la completa del la completa de ĮΓι

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age of the property of the state and a reflect and state of educations of the entire of the following of the control of the education of the

- For a place or premise to be termed as place of removal for the purpose. of the Art, that place on premise should be the place or premise from where the axaisable goods are to be sold which means that such goods are to be transferred by way of transfer of possession of goods by the seller to the buyer. in the course of trade or susmess for a consideration, after their clearance from the factory. Bonca, any interpretation of the term foliace of remove: " without, factoring the definition of place of removal as contained in the CCR, 2004, readwith definition of sale would make that clause in the definition redundant and icis an accepted rule of interpretation that every word has to be given include. meaning and that legislature has not introduced any word without any objective. and horizor in terms of the decisions of Supreme Count as explained in the Board. Sincular of June 2016, the buyers premises would require to be treated as $z_{\rm c}$ plact of removal, an satisfaction of the other terms and conditions as explained. above. Thus, going by the CBEC Micular dated 8th June 2018 as well as definition of the term "Place of semioval" in the CCR, 2004, it is clear that the law envisages a location even beyond factory gate of even depos, of any promises other than that of the pranctications, to be considered as place of commute. The findings reconced in the impagned most being contrary to such setHerlites/All position as well as the very definition of the term "hput service". cannot therefore be sustained and as such, the impugned order deserves to bo quashed and sat asked.
- (vii)—5) the cuty has been gaid on treight component, even if place of removal is held to be factory gate for any reason, such duty payment must be treated as good as credit has already been reversed and denial of credit once again carnot survive and reflect upon case taws of (a) Tripura Containors P. Ttd.-7011(264) ELT 339(Sun) and (b) Ajinkya Enterprises 2013(294) FLT 200(3nm)
- (viii) The Grand Chousers nated 23.68.2007, 20.10.2014, and 28.2.2015 are still multing the Colorand the Board has not withcrawn these circulars and when saturing the Colorand the Board has not withcrawn these circulars and when saturing the Colorand the common perception of the term place of removal was as clarified by the Horibie Apex Court in the cast of Escorts UCS Ltd.2002(146) ELT 01(50).
- (ix) In light of the various circulars issued by the Board in the year 2014 & 2015 and in 2018, there was no ground to Impose penalty as it is a settled position of law that when shere is a dispute on banafide interpretation, penalty carnot be in posed.
- It is formand hearing in the matter was attended by 5hri Saurabh Dixit, Advanate on bahalf of the Appellant who reliterated the grounds of appeals and

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submitted additional submission dated 13.8.2019 and regressed to allow the appeals on the grounds thantigrad thereign

- In written submission dated 10.8.2019, at has been, inter allo, protended 4.1 that,
- 71 In the present date, equire sale was on FOR pasts onto and in support of which, CA cortificate is produced which is issued after analysis of concerned 20m sand Control Excise inverses under which goods were supplied, Further, it is also i not discuted by the adjudicating authority that sale was on FOR pasis as evident. from para 24 and parz 29 of the impagned order.
- When sale price was factuaive of freight on which Control Excise duty was: 613 paid and where no separate ideight was recovered from the imposs which qgp . also been acknowledged in the impugned order that sale is on FCR back, they are eligible for Cenvat credit of service tax paid on outward ${\sf GTA}$.
- They becamped CA contificates, whileh contifies that sate was on FOR besiand ownership passes on to boyer's discisteds as also auroitized in the impugned. $arphi_{
 m def}$. Chookal technical exponentiate Chartered account at U chartered engineer. has committed something, unless the Revenue Authorities show bow such findings. are wrong, the said technical evidence has to be followed and the penel 1.5as 12° be allowed to the assessee as held in following case laws:
- (a) Panashnio Energy India Co. Ltd. (2017(5) TMI 1934-CESTAT AHM.
- (5) Tata Franciscopies Etd. 2016(42) STR 290(Tri Much)
- pp) Jakap Wei (nd PullEtdu 2017(206) ELT 279(Ti (Waini)).
- (d) Kirkssar Dil Engines Ltd. 7017(349) FLT 299(Tri-Mum)
- In identical circumstances and descrip with the very same Gaue, can Hopfole CESTAT Abundahad in following cases allowed Cenvat Crodit of serving tax paid on transportation of finished gnody from factory gate to and post ofexport, or place of buyer in case of coinestic sales since ownership of godda passed on to customer at such continution itself, just as in the present case.
- (a) Bluiziech Comera I td 2019 (2) TMI 1467CESTATAbin. (b) Sanzhi Industries I td. 2019(2) (w) 1488-CESTATAbin.
- je; Salasar Copper 2019;4) TMI 11-CESTAT Ahm.
- [ქე GAM Pfaudler . td 7319 (5) 1406 CESTATAუთა
- je). Panati intermediatos incia žvt. Ltd. 2019(5) TMI 1405 CESTAT Ahmi
- (ii) Alembia (td vida Order No. A/10997-41307/2019)1. 6.6.2019
- While maying the duty as full rate on Transportation of goods, the Cenval Credit of service tax band on abouted value of the same transportation charges. has been availed by this issuesses. As such $oldsymbol{\pi}$ ich $oldsymbol{\pi}$ ore duty atready stands poid of the reverse convery to the amount of Gredit actually taken and as such nothing. further remains to be baid by the Appollant in this regard.

<u>প্রক্রাইড়ে,</u> t was always so derceived that place of removal in case if ০০০০েছনাৰ সং 🖏sses on to the gustomer at their doorsteps and where freight forms that

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Followed that of the assessable value of the goods on which early whosnly wards paid, the Central Credit of such service tax paid on such freight being up to place of Terroval within the normal understanding of the term, therefore has to be allowed to the assesses. Whether requires or not, back the assessable value of the goods has already in-built within as scope the transportation rost, and rank stands paid on the transportation value as well accordingly, the Central Credit of service tax paid on such freight element cannot be benight to the assesse in the focus and circumstances of the case.

- b. These carefully gone through the facts of the rase, the impogned order, grounds of appeal and submissions made by the appellant. The issue to be confiden in the present appeal is whether the impogned order passed by the invest adjusticating outhority disablowing Convet credit of service tax pass on outward charges taking thanges is correct, proper and legal or otherwise.
- I find that the Appellant had availed behvat credit of sandoc tax gaid on natward GTA service during the period form Jaquary, 7014 to December, 2016. The lower adjudicating authority disallowed said Cenval applit of service and on the organic that outward GTA service was available by the Appellant for cransportation of their finished goods from their ractory to austomen's premises. tile. Devend place of removal, and honce, not govered under definition of "inputservice" in terms of Rate 21.1 of CCR, 2004. The Appellant has numbered that onthing serie was on FDR basis and hence. Cerryat of 56/Vice Tax paid on triansportation from factory to puyer's premises bught to have been adjuving inview of the Harrible Supreme Count's judgement, in the case of M/s. Rublik ддт 364 (30), which itgrid down general principle as to what constitutes bloch of removal convicering one point of sale where the ownership and risk passes on from the baller to the buyer; that the term "Place of temoval" is officed in the CCR, 2004 envisages a togation even beyond factory gate or even depot, or any promises other than that of the manufacturer, to be considered as place of remayai.
- fund that indimittee of "imput service" as provided under Rule 2(f) or Censal Credit Rules, 2004 reads as under.

"the lipp a service" means any service.-

- (ii) It used by a toevider of taxable solvier for providing solution (4) 7.83×30 .
- (ii) used by the manufacturer, whether through or indirectly, in or in relation to the manufacture of final graduats one electrone of final graduats open the place of controls.

well includes convices used in relation to satting up, modernization, renevation to repairs of a factory, generals of provider of output service or an office.





relating to such thetery or premises, at vertisement or sties manufactual enotice to start, some general premises of temporal prediction of inputs, to enothing to differ in the place of removal, predicting or order of training, computer for accessing, credit rating, show registry, and seek by invaridual prediction of imputs or capital processing outward transportation of imputs or capital processing outward transportation of imputs or capital processing outward transportation on the place of removality.

(Emphasis eupolied).

- 7.1 From 2009e, it is posserved that "Input service" recens any service used by the international products and clearance of final products and clearance of final products upto the stace of remayal, with the inclusion of outward transportation upto the place of remayal, with the inclusion of outward transportation upto the place of remayal, it is, therefore, exident that as post unin classed, the service should be used by the monufactural which has direct or indirect vehiclion with the manufacture or final products upto the place of remayal and the inclusive clause restricts the indivend transportation upto the especial and the inclusive clause restricts the indivend transportation upto the especial remayal. The place of removal has been defined under Section 4 of the Act. As post-Section 4(3)(c) of the Act. "place of removal" means a factory on any other place of promises wherein the excisable goods, a warehouse or any other place of promises wherein the excisable goods have been termined to be stored without payment of duty or a depot, premises of a consignment agent or any other place or promises from where the excisable goods are to be sold.
- 8. If find that the issue is no more restintegre and stands decided by the Humbels Subreme Court vide judgment dated 01.02.2018 passed in the case of Ultratech Cement Ltd reperced as 2018 (9) G.S.T.L. 327 (S.C.). wherein it has been held that.
 - and the mentioned above, the assessed is unvolved to packing and elenting of common it is supposed to pay the supposed two on the afforestid services. At the same time, it is entitled to avail the benefit of Convet Credit nears and of any rope geometrom and, in the instant case, it is a service tax available paid to the normalic managementation of the pervision from factory to the sustematic premises of which the assessed cinimed the arealis. The question is 48 to whether it are no premise to premise the premise of premise to premise the arealist.
 - 5. அழர் தான்னி is defined in Rule 2(I) of the Rules, 1904 which reach உள்ளன.
 - $\mathbb{C}_{+}^{\infty}(t)$ "supports envice" means any services:
 - populared two a province of caseble service for providing an output sorvices; or
 - (ii) Used by the manufactories whether an only an orbitable, is only relative to the relative to the manufactors of final products and observes, of tool products upto the place of receival and befores services used in relation to artifug operated modernization, removation or repair, or a factory, premises of provides of output service, or on office relating to such factory or promotes advertisement for sales occuration, decided examine, storage upon the place of the relation.

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Selivery under the term FOR at the nustomen's premises as risk was haring by them till cellivery and price obarged by the appellant was inclusive of freight and in spite of the same, the adjudicating authority disallowed the Converged by holding that service was received beyond the place of removal ignoring the policipies enuminated and advised to fleta formation by the figure in them streams cated 8th dune 2018 and hence the impagned order is limite to be one saids.

- (iii) That the Hamble Subreme Court in the base of M/s, Roofit industries thus 2015 (315) ELT 271 (30), isotal industries Etd 2015 (324) ELT 670 (50) and in the case of Firoto Etd (2015)322) ELT 394 (50) has take down general principle as to what constitutes place of removal considering the point of sale where the ownership and risk ussues on from the baller to the boyer as held by the Homble Apex court in the case of Escort 203 Etd reported at 2002 (144) of Titl (50), and considering the satiofard down in the case of Ottra Tech Gement Etd 2018-T.Oct-47-SCCX, the COSC, wide Circular doted 08.05.18 pay righting that in series of Para 3 of the said circular works is the general principle to determine what is the point of sale ite, place of removal, on facts and circumstances of each case, in light of this analysis, the Cenval of Service Tax path on transportation to to such place of removal point to have been allowed as expressly diamford by the Spard in the abovementioned discular and rehad upon case law of Balaj Muttiplex Pyt. Etd vice Final Order No. A/ 17/78-12029/2018 (alter 25.06.18).
- (iv) The term *Flace of Removal' has been defined under Role 2(97) of the Convet Cresic Roles, 2004 vice Notification No. 2772014CD (NT) dated 11.2772014 which means.
- (i) a factory or any other place or premises of production or maint between the excisable goods:
- (ii) a warehouse or dny other place or premises wherein the excessor goods have been permitted to be deposited without day tent of outy:
- (fill) a deput, promises of a consequence egent on any cozer place or premises from where the excitable goods are to be sold often their ideals are formation. From where such goods are removed .
- (a) The term "Sale" is defined in Section 2(h) of the Art, as the "any transfer of the postession of goods by and person to another in the ordinary course of trade or business for each or selected payment or other valuable to interest and this definition is made applicable to interpretation of Convex Crodic Rules.

சுந்திரும் of Rule 2 (U) of CCR 2014.

Noll

 $[P_{\rm eff}]_{\rm tot} \neq 0.0144$

:: ORDER-IN-APPEAL (J.

w/s. Saurashtra Cement Limited, Ranavav. Porcandar (heromafter referred to as "appellant") filed appeal Nos. V2/7-10/BVR/2019 against Order in-Original No. BHV-EXCUS-000-ADC-1 (04-2018-19 dated 31,12,2018 (heramafter referred to as "Impugned order") bassed by the Additional Commissioner, Control Gardial GST D Control Excise, Chavnagai (heramafter referred to as "lower adjudicating accounty").

- 2. The brief facts of the case are that the appellant was eagaged in the panufacture of Coment and Coronal Staker falling under Chapter 25 of the Central Extra Tariff Ant, 1965 and was holding Central Extra registration No. AARTS5711.00w001. Buring scruliny of E3-1 Relucia for the months of January, 2014 to June 2014, it was found that the appellant had availed Convet credit of Service tax part on outward GTA service used for transportation of their finished goods from their factory to customer's premises i.e. beyond place of removal, which is alleged to be not proper in view of definition of flight service. As given all Rule 3(t) of the Craval Erectt Rules, 2004 (heremafter referred to as 1000, 2004)). It appeared that any service availed after clostrance of floridge goods beyond the place of removal is not an "open service" and Chaptelory. One Appellant was not cligible to good Corval death; of service tax paid on outward STA service.
- 2.1 Show Cause Notice No. V/15 71/Dem/I Q/2014-15 date: 23.1.2015 was issued to the appellant for the period from January, 2014 to June, 2014 for recovery of wrongly availed Cenvat credit of Rs. 42.83,755/- along with interest coder Rule 14 of the CCR, 2001 and proposing imposition of penalty under Rule 15(1) Jolu. Subsequently, three more Show Cause Notices were also issued for similar matter for the period from July, 2014 to December, 2016.
- 2.2 The above Sarw Cause Notices were artifulicated vide the impugned order which can himse demand of Rs. 2.66,52,4937-, along with Interest, under Rule 14 of CCR, 2004 and imposed penalty of Rs. 2,96,62,4967- under Rule 15 of CCR, 2014.
- 3. Fring appreved with the impligned order, the dapellant preferred the prosent appears on the following grounds, intervalid, contending that,
- (i) The impugued proof was presed without appreciation of the provisions of the Add and the Rules thereof and the base laws solved upon.

if The adjusticating authority made a relativistic of para 29 of the National Order that the Appel and cultiplied the concritions regarding the 30

Page 3 of 64.

procurement of inputs, activation relating to business, such as accounting, auditing, financing, recomment and quasity control, coaching and training, computer networking, and profit only, share argustry, and security, inward transportation of imputs or copical goods and octward transportation open the piece of tempose. "

- 6. If it on so, yield position that the instent case does not fall in selections of) and the lastic is so no decided on the application of sub-plause (ii). Reading of the attarget id provision makes it obtain that those services are installed which are used by the monitoothers. Approach directly on subjectly, as or an adiation to be measurable as final products and elemence of final products improvide principle country country.
- It may be relevant to point out bere that the anglest definition of taget. service) contained in Rule 2(t) of the Roles, 2004 used the extression from the place of removal. As per the said delimition, service used by the enstacketures of clearance of final modules "from the piece of removal" to that ware bost or enstoners place that was exigible for Clervai Crouit This stands find by decided in their Anneal No. 14710 of 2016 (Lonenissioner of cleatral Excise Belgram v. M.a. Vasavadatta Sements Edd.) vide judgment. acced January 17, 2018. Unwever, vide amendment certied out in the atoruskid Robes in the year 2008, which became effective them March 1, 2008, i the word three this pphood by the word $h_{0}(\phi)$. Thus, it is only top on the proced of removal' and service is treated as imput service. This omendment has changed the entire scenario. The benefit which was admissible even beyon. the pittod of items validately gets terminated at the place of contoval and doors to the convet each) of input tax gold gets closed in that place. This result content make intereferent in becomes ricentificen meinare reading of this amended Rule. which applies to the period in question that are Goods Transmot Approxy. entagent sed for the propose of outward transportation of goods, the from the from g to restante is promises, is not devered within the embit of Rule 2(0,0) . of Rivies, 2004. Whereas the wood, from its the indicator of starting points too. expression "upin" signifies the terminating point, putting an emit to the consport journey. We, therefore, find that the Adjuctioning Affecting was $\operatorname{dig}_{\mathcal{C}_{i}}$ is interesting Rele \mathbb{F}_{i}^{n} , in the will averaging manner.
 - he input service has neen defined to mean any service used by usemanufactorer whether directly or indirectly and aiso includes, interests, services, and in relation to inward manyomation of ingues un export. goods and activate transportation apto the place of receival. The two disuses in the definition of figure advices these sectors may incline record by stateing that substantinged in polation to the electronic from the processor metabolisand secures used for outward transposition upin the of see of iremoval are to be treated as input service. The Eost along door nos munition transport services in parties at 1100 sections closes reseriess. the raph it gogletogic lydicing and the police of removal. When these two clauses: are read bagether, in hecomes clear that comport services could cannot po-Newtonal transgers up to the piece of concersi. The two clauses, the oneoutding with placeal provision and other dealing with a specific item, oreerat to be send disjugetayely so as to bring about morth of to defero the rows : consider the greepost of geographics is to find homony and econdiliation among the various provisions.
 - The credit see Jobilate is in regard to singure. The credit covers dury point an imput materials as well as tax paid on services, used in or in relation to the manufacture of the "final product", for first products monotonial by the essence in their factory premises and once the final products are may manufactured and a sense from the factory premises, the question of the product sense as such provides connect be considered as more in a sense which may be considered as more in a string to be provided to a large the provided as a such provided connecting the provided as a partial of a string to be provided as





payment of duty would be southery to the scheme of Central Credit Rules. The result clause on the delimit on states (not the service in the end to which i and firefiles in sought, should be used in or in relation to obtain the of the final products from the place of removel. The definition of importants are should be read as a whole and should not be tragmented in order to swall. racherale erecul. Ones the charactes have taken place, the corasteur of t granting import service stage except does not orise. <u>Transpo</u>gari<u>an</u> is <u>or</u>, ent<u>icely</u> different, activity from manufacture and toils position remains: settled by the judgment of Honortole Suprema Cote, in the lases of Bombox Two Interesticae, 1983 (14) EEG = 2002-TIOL-374-SC-0X4. , A. Tadion Toegger, (ed. 1988) (30), EUT (303, SU = 2006-1104-48-805). CX and Barada Tiecnic Meters 1997 (94) BLT 10 SC = 2000 Tiedt 98. SC-CX-LB. The post removal transport of manufactured goods is not an imput lip<u>e the meandacturer</u>. Similarly, in 100 na σ of May σ σ σ σ Commus 134 \times COF, Bharnagar 2009 (6) STR 3/4 (Th) = 2607 TSM. 41,941) BS (14,140%), <u>in task held that offer the final pro</u>ducts are gleared. <u>from the misce of removal, there</u> with be no scope of subsequent use of service to be treated as impact. The above observations and volves expects. The scope of relevant prove-tions clearly, contactly and in scope dance with the legal provisions ".

- 8. The allocated order of the Adjudicate 3 Acthropy was upon by the Commissional (Appens) in heighbly on the ground that the Board is its Circular dated August 20, 2007 had clarified the deligition of 5 and 6 amount and the raree conditions continued therein, speed satisfied insolvings the area of the respondent is concerned, i.e. (a monthly consist of the goods fill the delivery ad the goods at the prochasers door step, (ii) select hearing the fish of or less or consequent the goods during transit of the destination and, (iii) fields charges to be integral part of the prior of the goods. This approach of the Commissioner (Apoles 8) was been approved by the CESTAT as well as by the High Court. This was the main argument advanced by the learner counted for the respondent supporting the judement of the Court Lipis Court.
- We are ideald that reclassificated improach of the Courts below is electly unusuable for the following research
- 10. In the final historical in needs to be keep in from that Hot rits Circular cored frague, 23, 2007 was, second in confidentian of the definition of his just service as exist, at or that done has it related to unanomes out of niner. Relevant portion at the said birector is as each or

TISST for Lip to what smooth manufacturer consigned continue of 1 on the service the paid on goods transport by read?

COMMENTS This base has been examined in great detail by the CRSTAT in the case of Mis Gejorn Ambeja Concede Ltd. vs CRS, Individual [2007 (5) STR 1249 Tri ID] = 2007-110 L-4204 RSTAT ATM. In this case, CESTAT has made the following observations:

Fifther post sale incaspect of the inflationed goods is not an input. (so the manufacture/consignor. The two discusses in the delimition of the our services' rate corone communication input orbital by stating that service used in relation to the clearance from the place of temporal and service two for to the outgrand unasportation upon the place of removal and to be two an input service. The first place does not mention transport service in particular. The special clause restricts transport, so who credit open the place of removal. When these two clauses are read together, it becomes also not removal, the two clauses, the one dealing with general provisions and other dealing with a specific item, so and to the read disjunctively so as to bring about one first to defeat the laws'



sections. The outputs of interpresence is to find harmony and reconcilention of many, the various provisions." Similarly, in the case of M/s Ultratesia flements Include CCT Bhavnagar - 2007-101L-499-CF91AC-AFM, it was held that aftering flood products are closed from the place of removal theorem will be no scope of subsequent use of service to be troubled as imput. The above observations and views explain the scope of the recovery provisions closely, correctly and in accordance, with the tag of provisions. In conclusion, a man, factions of consignor can take and it or fee service tax paid on outward tours on all goods up to the place of congruent and not beyond that.

Si2 to this correction, the planse tolese of comoval scales determination is any man account the facts of no individual case and the applicable powisions. The phrase 'place or removal has not been defined in CaNMAT Credit Rules. In terms of subsection (Collecte 2 at 0 kps. 4 miles, if any words or a consent subsection the CENMAT Fredit Rules, 2004 and are not defined them in him are defined in the Central Excise Act. 1914 or the Publica Act. 1993, they shall have the same meaning for the CENMAE Could Rules assigned to them in those Acts. It is propose place of courses. It is safes that

Tolkice of temoval!! means:

- the a lattery of any other place of promises of production of mountainer. Child excitately, some ;
- fii) a watehouse or any other place or premises wherein the excitation goods. Jove been permitted to be sored without psymbol effectly a
- (iii) a Hapet, teemises of a consenuant agent or any other place or problems from whom the excisored goods are to be self-offer that release from the factors:

from synere saidh goods are removed."

 ii. Honoford, place that for a manadiaptures conscience, the chefoch was availarues in of the second sector going a rough respectation mining, enhand of excissible : goods would depend around he place of versional as per the definition. In case, of a tactory gate safe, sale from a non-duty paid systehouse, or from a duty. n. It lepet (from where the excessole goods are sold, after their elements) from the frozery), the determination of the optice of temporal loves her pase. much problem. <u>However, there may be situations where the manufacturer</u>. consignor may alaim that the sale has buten pluse at the destination point. pacause in writing of the kale contract (agreement (i)) the pwindrship of goods. <u>ever</u> the groperty and the greens remained with the solver of the group (ii<u>)</u> the dal<mark>ijsa krafitra njagća iz prepojable eoro ija grito ILC uprebaja natinis dagi step i</mark> filt the seller bare the risk of loss of or damage to the proofs during transit to the destinations and (iii) the decipht charges were an integral part of the prijoc <u>ellipsends.</u> Le space gassa, the bredit elliptic vervice lest poid gerbie histopre totian. up to such place of sale would be comissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (interms of the definition as one or eaction 2 of the Counse Expise $Ax_1 1944$ as: also in terms of the maxisus a male: the Role of Cloods Act, 1980) accorded at the bad place?

As as a no saw, literal the reading of the althousing nonliter of the ansatz, the issue was examined after weapily in miled judenness of CFSCAT in Cujasa. Ambuja Cement if the anal M/s. Throtech Cement inch Those plug nears, their way, doubt with manners of Raw 2(t) of Radov 2004. The Halo conditions which year inequipped excipining the follow of nanovalities defined under Section 4 of the Act. there is no quoted upto this stage. However, the important expect of the motion is that I court Creat is



permissible to respect of ingest seregor and the <u>Qirouque</u> polate to the constrained regime. These five, it country to applied tefter out on, ugant in the unsimily profiling the service which through a good a total chance. Now, the desirabilities of "place of reproved" and the possibilities where are to be attential limits to be at the proved the place of removal. It is the attential limits to be an applied the context of high place of removal. It is the standard residual three made the out to difference, That associates got deals with an the said Bound's circular, much could be.

- 12. Secondly, if such a <u>director is typical</u> applicable <u>even in respo</u>s of post applicable <u>even in respo</u>s of post applicable <u>consist</u> it would be <u>confined of Rights 2(f)</u> of Rights, 20<u>14 on Figure a</u> situation compatible configured.
- 15. The upshor of the aforest discussion would be to hold that Convat Crudit (migrods transport agency service by at Tip transport of goods from pronting remove to head) promises was not admissed to be discussionable. Accordingly, this appeals a discoved, judgment of the Wigh Chart North Side and the Order in-Original dated August 72, 2001 of the Assessing Officer is testured."

(Egichasis supplied).

- 8.1 also take note of the Scand's Chestan No. 1085/4/2018/4xt, patro 8-6-2018, wherein it has been clarified than.
 - The CTINVAT Chefft on GTA Services Biol 2. The ornor issue its at all generalitie Suproted Court in relation to place of nemoval is in case of CDA 8. ST v. Const. Then Constn. Lett. dated 1-3-2018 in Civil Appeal No. 1126. For 2018 on the issue of CENVAT Creat. For Goods Transport Agency Service availed for homogon of goods for a transport fixed by the Royanup and held the Appeal Court has allowed the appeal tiked by the Royanup and held the CLNVAT Credit on Goods transport Agency stars or available for tone-port of goods from the obsect of removal to mayor's promises was not admissible from the ecosogy prince. The Appea Court has observed that after emendment of a the definition of Empor service according to Service as East-2019 and the CENVAT Credit, Khass 2004, effective from 1.5, 2008, the service as East-2019 appropriate only implied the place of removed in
- 3.2 In view of obove law settled by the Appellant for outward treaspointation of goods on GTA service availed by the appellant for outward treaspointation of goods from place of removal to puvelt promises is not admissible wielf 01,04,000%. The period involved in this case is from auguary, 2014 to Detember, 2016 and hence, Cenvat credit of Service Tax paid on 6 fA for outward transportation of goods cannot be allowed. Therefore, uphalo the impugaed order confirming the demand of wrongly availed Coawai Credit along with Interest.
- 9. Regarding contention of the Aspellant Shall transportation from foctory to buyer's premises degrit to have been allowed in view of the Horizia Supreme Sourc's Judgement in the case of wis. Recall Industries Indiand Color Liu, I find that in said case raws, issue involved was pictusion of freight in researable value for the purpose of charging Central Espace ducy. The Hearbac Asses Court held that to the case of FOR destination sale where the ownership, risk in transit remarked with the sellon till goods are screpted by buyer on delivery and till.

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of Disposal. Theight is required to be included in assessable value. Whereas, to the present case issue involved is whether outward GTA solvice availed by the Appellant can be considered as imput senderi in terms of Rule 7(f) of CCR, 2004 and whether the Appellant had rightly availed Convex credit of service tax pald on outward transportation charges. Hence, issue involved in the present case is entirely officered and stand decided by the Honible Suprame Court in the case of Blazakan Cement Ctd supra. Hence, incold that case laws of Roofit Industries I to and Embo Ltd. relied upon by the Appellant are not applicable to the facts of the present case.

- 10. I have also examined CESTAT. Almedabad's order passed in the case of Sangas industries Ltd and other case laws relied upon by the Appellant. I find that case have are not relevant and has to be held per incuriors in the Egot of judgment of the Illenthic Appel Court in the case of M/s. Ultratech Coment Ltd. supply since (judgement of the Apex Court prevails over any decision/process possed by the subordinate courts/time rats.
- Page 15. Regarding penalty imposed under Rule 15(1) of CCR.2004, I find that doe Appoilant wrongly availed and editized Cenvat credit of service tax paid on theward GTA service used for transportation of their finished goods from their factory to payer's promises, which is not admissible as discussed subra. The Appellant, thus, contravened the provisions of Chevat Charlit Folas, 2004 and therefore, the Appellant has been rightly help liable for penalty under Rule 15(1) of CCR. 2004. I, therefore, upoeld penalty of Rs. 2,66,62,4987- imposed in the Impugned order.

12. In view of words, implied the impliance order and reject the appeal.

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- 1) प्राप्तिः मुख्य अयुवन, कन्_{षु पर}ारः । । । । । । । । । । वे केन्द्रीय ३०५€ भूकर, सुरुवार क्षेत्र अवस्थायद्यस्य स्था स्थानकारे हेतुः
- 2) आयुक्त ज्यात् एवं रोवा का एरं व्यवश्य शुक्क, भावनगर अध्युवनावयः भावनगर को आवश्यक कावजरी हेन्द्रः
- 3) अपर आयुवत, तस्तु ६० छे० वर्ष ६० केल्सील इत्याद शुलक, श्वानगर आयुक्त लय आवतागर, को आवश्यक कार्यवाही हैंसु

्रो, रशंडि फाइसा