

ः १८८ म् अपूर्ण (जानेक ) का कार्यात्म अनुसूद्ध होता कर शेर केन्द्रीयः, आव कुल्हरः एन्प्रे रक्षक्ष मध्यस्य स्थानिक (अस्त्राहरूक स्थानिक स्थानिक स्थानिक स्थानिक स्थानिक स्थानिक स्थानिक स्थानिक स

## दियांच राजा की एस दा भागन / <sup>160</sup> Hillian GS : Bravian देश कोर्य दिन देश : Resp. Co., 50 thou Read - यानकीट : Ref cat = 550 000



uele Pag No. 1290 - 347755 D440142 | Enpaide da appele aj mejga militerani

<u>ांक्षेत्रले आहार है, हो है है</u>

তু । কৰিও অসম কৰে। ১০ জন ২০১১

> MICESANCEMINETO MECHENISCOMICENS

andream of the second of the s

foreg

17-140721015

31/16/2019 31/16/2019

 $\mathbf{B}_{ij} = \mathbf{A}_i \left( \det \left( \mathbf{A}_i \mathbf{A}_j + \mathbf{A}_j \mathbf{A}_j \right) \right) \cdot \mathbf{A}_i \left( \det \left( \mathbf{A}_j \mathbf{A}_j \mathbf{A}_j \right) \right)$ 

## KCU-EXCUS-000-APP-011-TO-012-2019

reflerer Bereit. Date of trider:

28.01.2019

वाही करे की लेख

"Fate all essue.

29.01.2019

कुमार मेहीय क्रिक्ति । क्रुक्ति रही रहा, र जन्मेर जान चरित्र ह

Passed by Shri Kuman Santush, Principal Commissioner (Appealis), Jajkan

र । । अन्य राष्ट्रभा अन्य क्ष्मि अस्तु स्वरूपक्षि स्वरूपका अस्तु का नार्वे स्वरूपका अस्तु स्थान स्वरूपका स्वरूप स्वरूपका प्राप्तका स्वरूपका स

Ond equal of a second condition of the search of the first of the representation of A , and A is a second set of A (A), A (A), A (A) is a second condition of A (A).

का अपने करणे के पारवर्ष का राम गर्भ रहा अधिकार % Address of the Appelloon & Respondent

M/s Sciptes Various section Service, For No. - 300, Stop No. 13 to 19, because Planc X, to I (simples) Services Relative Rel

The Communicate GSC & Court of Parish, Pint Ann. 82. 8-(b): 6, Upp Namilyon Manage Geneticities. 9702 1

သည်။ သေးရေးကို လုံးရေးသည်။ သို့သည်။ မြေသို့သော မိုးသေးသည်သည်။ လူလေး အေရာက မော်ကရောက်ကောင်များ မြေသည်။ မိုးသည်။ သည် ရေးကျင်းသည်။ မောင်ကြီးကောမိုကျင်းပြီးသော မြေသည်။ ကို မေသည် ရေးသည်။ မေသည်။ လည်

भी संभागत है। है कि कार पर पर कि का अपने देखार विकास करोड़े होते. कार्यक महाम श्रुप्त महोगाता है (2) का पहा (3) है। का प्रकार का पहा (3) है। का प्रकार का प

्री प्राप्त कर समाने नक हैंबा को हैन कर हो । जा के के 1999 कर एक एक मानिक का निकास के किया होता कर साम है प्रा जन्म कर है जाना नो, ना का भाग करका है

And stocks process a Companie, Discours & Sermon For appletters Total Will Discours May Companies of the Property of the Companies of the Comp

Laterapes, by the Alors that forther algebraic better in quantical consumers. Fig. 1 are arrested by under Taple 6. If the days the property of the property o

(2) 19 (2) 19 (3) 20 (2) 20

The argus is miles in the plan of \$1.00 the \$1.00 the \$1.00 the argued at \$1.00 to \$5.00 he fled at production of the pr

 $\pi_{ij} : [n] \hookrightarrow g \mathcal{J}_{ij}$ 

:!

24

The state of the s

2006

....

. ..

நாகு இது இரும்படுக்கு பெற்ற பிருப்பிற்காக இது பார்க்கும் இது இருக்கும் இது பிரும்படுக்கும் இறிக்கையில் பிரும் இந்த நாகர் இது அரும்படுக்கு இரு இரு இரு இரும்படுக்கு பிரும்படுக்கு பிரும்படுக்கு இது இருக்கு இருக்கு இரும்படுக் இந்த நாகர் இது இது இருத்து நேர் இது இரும்படுக்கு முற்ற முற்ற இருக்கு இருக்கு இருக்கு இருக்கு இது இருக்கு இருக்கு இது மேற்ற இது இருக்கு மேற்ற இருக்கு இது இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு

giệ lào, lệ lật, mộng cá minh lày mọc là lị quy số lại bango quốc nhữ số quant quốc có cón chương số số là chuẩn là có các là giái là chuẩn chuẩn là là chuẩn là là chuẩn là c

and a confident pay to the efficiency of the companion of the second of the companion of th

्रें कर के पुरस्का कर का कि <sup>प्र</sup>ाप्ति के लिए हैं कि प्रशास माने अपने सामान कि लिए होंगा होता था। **त रुक्क माहित्य (special special success** halo seem, to Mondo, Blacket, Kansett, Santon, Village, 

पुण्यात कर्याद्य सम्पर्क स्थान अस्तर संस्थित का कर्ष करीय सम्बद्धि तर यह गोराधिकित का असे के साम का राहि सहे हैं और ऐसे अहे का सुक्त भूतरोग् के क्या किए अवस्थित कु 25,599,5की भूत्र 59,क क्या और की भी कर्या करवा समस्यक राज कर का कर का क 141

് നാട്ട് ഗ്രാമ്പ് വിവരം പ്രത്യക്കാര പ്രത്യ വര്ക്കാര് (ക്ഷോവ് എല്ലാവും കാര്യമാക്കും) പ്രവര്ശന വേശ്യക്കാന് വര്യാക്ക് വര്യ ഗ്രീസ് അവര് പ്രത്യക്കാന് പ്രവര്ത്തിന്റെ പ്രത്യക്കാര് വര്യാക്ക് വാന് അവര്യാക്ക് വര്യാക്ക് വര്യാക്ക് വര്യാക്ക് പ്രത്യക്കാവ് പ്രവര്ശന്ത്രം (1995) പ്രവര്ശന്ത്രമാന് പ്രത്യക്ക് വാന് നട്ട് വര്യാക്ക് വര്യാക്ക് വര്യാക്ക് വര്യാക്ക

्रमुख्य राष्ट्रकार अपनुष्ठा प्रधानिक स्थान है। प्रणान क्षेत्रकार कृति का किया कि का कि किया के राम के किये हैं है। क इत्याद को का 19 मा जा किया के बाद का उपने पाद्यों के किया का किया के किया के किया के किया की किये हैं। के किय को किया के का किया की किया के किया कि किया के किया किया के किया के किया के किया की किया की किया की किये की किय इति के किया के कुर्क देखान के किया कि का किया की किया कि किया कि किया कि का किया की किया कि की किया की किया की

arm til. The Above application Above to a selected to bloom in long file. Get til selected to be side to be distinct. Paparati integral Automorphism og selected from til til selected til selected great grouph, knot fre apparet ugsgam for til not of til til selected for paret i bet selected to the Advanta Antheron Apparation of Antheron Selected from Antheron Select

รอดังพากใช้ โดยสัติ ได้ในเรื่องให้กุล (ค.ศ.ส์ โดยสำนาน) กูโลย กลาย สายสัตว์ และส่วน เกิดสำนัก เกิดสำนัก การคระทัก เกิดสำนาน เลือน สายสาย สำนัก สาย ผู้สำนัก สุดภาษาสาย (Param) The Paramining of the Color of the Color of the Color of the Paramining Color of the Color of the Paramining Color of the Color ٠..

परि १८ व्यवस्था के क्षेत्रकोट । १ १ दान के अस्ति १८ वर्ष के भाग के दिन के प्राप्त के दिन के स्वाप्त के प्राप्त भी को किया हुए का में क्या के की प्राप्त के भागकि का मिहत्व का कि भी दिन की तथा के प्राप्त किया बात है। ० दे अबत में कि परि एक एक किया के प्राप्त के किया के समान के प्राप्त के प्राप्त के समान के प्राप्त किया बात है। ० दे अबत में कि परि परि एक प्राप्त के 100 के 100 किया के प्राप्त के 100 के 100 किया कि किया के 100 कि [::]

aurentifia especie, es si Martin III — स्वानीत के तहारा पूर भवता है तहार भवत है पहिला है पाल 6,9 हाई कालात के इन्हें निकेत्रण बात बोहित : The Tip of a print from Co. One the second so to and the ride of the dependency applications in the second oracles size to a second of second control (Martin) in care to all the Carlin Televill (Martin) is the Leit 1111

ıΕ

होता हुन्य, बहुन कुन्य भून कर हिन्दा रहायोग नामर मिल्ल हुन्य मार्ग्य हुन्य हुन्य हुन्य हुन्य हुन्य भून कर हुन्य रहायोग नामर मिल्ल कर हुन्य मार्ग्य हुन्य ह ıL.

### :: ORDER-IN-APPEAL ::

Driving Service, Gandhidham (hereinafter referred to as "Appellant") and Assistant Commissioner, COST Gandhidham Urban Division, Gandhidham on behalf of the Commissioner, Central GST & Central Excise Gandhidham (hereinafter referred to as "Appellant Bepartment") in ourseance of the direction and authorization issued under sub-Section (1) of Section 84 of the Finance Act, 1994 against Direction-Original No. 17/3C/2017-18 dated 31.10.2017 (hereinafter referred to as "Impugned order) passed by the Joint Commissioner, Central Excise & Service Tax, Gandhidham (hereinafter referred to as 'lower adjuditating authority").

- The brief facts of the case are that the Appellant was engaged in providing underwater services relating to ship like proceder and bottom cleaning, survey, recovery, repairing, ship hull cleaning, welding, sunker ship is a vage, underwater complition, block sinking, photography, viceography, hydro electric project works and all work relating to oil rigs. Investigation carried out against the Appellant revealed that services rendered by the Appellant were taxable under the category of "Port Service", however, the Appellant had not taken Service Tax registration and had also not paid Service Tax during the period 2006-07 to 2010-11.
- 2.1 Show Cause Notice No. V.ST/AR GND/ IC/170/7031 dated 26.9.2019 was issued to the Appellant calling them to show cause as to why Service Tax of Rs. 23,95,493/ should not be recovered from them under Section 73(1) of the Figance Act,1994 (pereinaller referred to as fact) along with interest under Section 75 and proposing imposition of penalty under Sections 76,77 and 78 of the Act.
- 2.2 The above Snow Cause Notice was adjudicated by the Ut. Commissioner. Control Excise, Rajkot vide Order-in-Origina. No. 90/UC/2012 dated 29.10.2012 who held that the Appellant was risble to pay Service Tax under the category of 'Port Service' and Confirmed Service Tax demand of Rs. 21,56,728/- under Section 73 of the Act along with Interest under Section 75 and imposed penalty of Rs. 21,56,728/- under Section 78, Rs. 5,000/- under Section 77 and penalty as prescribed

| \$\rightarrow \rightarrow \r

under Section 76 of the Act. However, the demand of Rs. 2,38,7657- was dropped holding that services were provided to developer of SE7 or unity situated in SEZ and hence, eligible for exemption under Notification No. 4/2004-ST dated 31.3.2004, as amended.

- 2.3 Being aggrieved, the Appeliant preferred appeal before the then Commissioner (Appeals). Rajkot which was decided vide Order-in-Appeal No. RJT-EXCUS-000 APP-410-13-14 dated 30.9.2013 by way of remand to the lower adjudicating authority (i) to verify and extend benefit under Notification No. 12/2003-ST dated 20.6-7013, if the Appellant is able to prove digibility with documentary evidences and (ii) to verify and reduce the service (ex demand in respect of services rendered outside port area on the basis of bill wise worksheet to be produced by the Appellant in decade adjudication.
- 2.4 In de-novo adjudication, vide the impugned order, the lower adjucicating authority extended the benefic of Notification No. 12/2003 ST to the extent of materials used for providing output services and classified the services rendered outside port area under the category of 'Maintenance & Repair Service'. The impugned order confirmed Service Tax demand of Rs. 2.28.526/ under Port Service and Rs. 7,07,111/- under 'Maintenance & Repair Service' under Section 73 of the Act along with interest under Section 75 of the Act and imposed penalty of Rs. 9,35,637/- under Section 78 of the Act, Rs 5,000/- under Section 77 of the Act and late fee of Rs. 2,000/- per return for failure to file ST 3 returns under Section 70 of the Act.
- 3. Being aggrieved with the impugaed order, the Appellant has professed the present appeal on the grounds that,
- (i) The impugated order has travelled beyond the scope of Show Cause Notice inasmuch as SCN was issued to recover Service Tax under the category of 'Port Service', however, the impugated order has confirmed Service Tax demand of Rs. 7,07,1117- under the category of 'Maintenance & Repair Service'. Therefore, the impugated order confirming Service Tax riemand of Rs. 7,07,1117- and imposing equal penalty under Section 78. is bad in law and hable to be quashed.

- (ii) The confirmation of demand of Service Tax of Rs. 2,28,5267- under the category of 'Port Service' is not betable inasmuch as the Services were provided prior to 1.7,2010, when 'Port Service' was defined as any service rendered by a port or any person authorized by such port in any manner in relation to a vessel or goods. Since the Appellant did not hold any such authorization, they are not Mable to be taxed under 'Port Service' and relied upon case law of Aspinwall & Co-2011(21) STR 257.
- 3.1. The impugned order was reviewed by the Appellant Department and appeal was also filled by them on various grounds, inter-alla, as below:-
- (i) The adjudicating authority has not carried out proper verification and has failed to accere to the terms of remand order of the Commissioner (Agreets), Rajkot and hence, the Impugned order is liable to be quashed.
- Notification No. 12/2003 ST in respect of goods/materials used for providing 'Port Service'. On verification of audited final accounts of the Appellant for the years 2006-C7 to 2010-11, it is evident that no expenditure was make by the Appellant on account of purchase of goods. Hence, the materials used/consumed in providing service as certified by the Chartered Accountant is contrary to the audited final accounts. Thus, the certificate is not relevant for the purpose of allowing exemption under Notification No. 12/2003 ST. There are many judgements that merely certificates issued by Chartered Accountant cannot be reflect upon and it has to be corroborated by material evidence.
- (iii) The acjudicating authority has not bassed any speaking order regarding verification of value of the goods/materials sold by the Appellant to the service recipient. The impugned order is sitent about documentary evidences specifically indicating sale value of the goods of involves issued by the Appellant; that crucial requirement for exemption under Notification No. 12/2003/ST is that materials are sold and not consumed. The cittle of the goods should be mansferred from service or ovivides to service recipient in terms of the Sale of Goods Act. The

. <sub>Бр. (</sub>-и, Мо. 95 (22/2<del>5/3/27). Т</del> Кара 2 (24/22)БИССО 7

materials consumed while providing service are not intended to get benefit of exemption in terms of Notification No. 17/2003-ST.

- (iv) The Appellant has not provided replies of relevant work orders to substantiste that services were provided outside port so as to cover under the port service. Various transactions claimed to be pertaining to other than port services' were actually required to be classified within 'Port Service'.
- The adjusticating authority has not recorded any findings for arriving at a conclusion that goods and materials were sold by the Appellant; that no attempt has been made to distinguish the services provided, within port and outside port. The impugned order has been passed without any conscious afteropt of verification and examination of case records in the cough mather. The impugned order has turned out to be not speaking order as field by the CESTAT in the case of M/s Ramchandra Revines Pv. Ltd- 2006(205) ELT 865, wherein it has been held that, "Non-recording of reasons would make a not speaking order".
- 5.2 Personal Hearing fixed on 23.10.2018, 13.12.2018 and 27.12.2018, however, no one appeared on behalf of the Appellant or Appellant Department on any of the given dates or thereafter. I take up both the appeals for decision on the basis of Appeal Memoranda.

#### <u>Findings:</u>

- 4. I have carefully gone through the facts of the case, the impugned order, contentions made by the Appellant and Appellant Department in the Appeal Memoranda. The issues to be decided in the present appeals are
- (i) whether the Appellant is eligible for benefit of Notification No. 12/2003-ST dated 20.6.2013 or not;
- (ii) whether the services rendered outside port area are taxable or otherwise;
- (iii) whether the incogned order is correct, legal and proper?
- 5. I find that the impugned order was passed in delinew proceedings in persuance of the directions contained in Order-in-Appeal No. RJT EXCUS-

People of The

500-APP 410-13-14 dated 30.9,2013 issued by the than Commissioner (Appeals), Rajkot, Which read as under:

The Appellant had turther, contracted that they provided the services exacted to under water repair with the authorise classified for the purpose, and they had just mixed the involves, inclusive class of consequables and therefore they me eligible for the benefit of the metification to 12:2005-8 flastors. In this regard I find don't the appellum had reither submitted any documents evidencing that they had sub-commuted their work related to repair and institutionate nor submitted any documentary proof specifically indicating the write of the said goods and misconers used towards the provision of providing such services, as includifically required under the provisions of said necification.

Enchor, the nicroment to the extent of value of material paid. Not feetfor No. 12:2003 ST supra as elaimed by the analysis of the transfer of the provisions of the said Note Lead on. The appellant is hopely directed to produce the masses of decomposition evidences and hill wise workshoot belong the said Note Lead of the land with the terms of the provisions of the said Note Lead on. The appellant is hopely directed to produce the masses of decomposition evidences and hill wise workshoot belong too own purpositions three week of society of light on an exposition proper, reduce the same and of service too along with consequential reduction of penaltyes.

- 8.1 The alternatively the appellant contradal that during addresses services are customer requirement, research and the same two given but only or the ports one also of the equirement factories done riverfrance and customer site etc. And therefore the same connectic classified under the two services.
- I do fine force in the above communion of the appel and, if the services have not been provided in the port area, the same cannot be covered under the Box, service. I beselves on merits allow the pass of the arealised or this count. Since, the lower authority would be now almost to decide the same, the appellant is directed to produce the hill wise worksheet for the services provided at other than pure against the lower authority within three weeks, who shall after verifying and an affect his highest for dentance of anytics (as, along with consequential reduction of penalties.)

(Simpliesis supplied).

5.1 I find that the lower adjudicating authority extended benefit of Notification No. 12/2003-ST and reduced service tax demand on the basis of documents along with calculation sheet certified by the Chartered Accountant regarding material used while providing the services within text area and outside port area submitted by the Appellant. I find that the Appellant Department has argued that crucial requirement for exemption under Notification No. 12/2003-ST is that the materials are sold and not consumed; that the title of goods should be transferred from Service provider to service recipient in terms of Sale of Goods Act; that materials consumed while providing service are not intended to get benefit of exemption in terms of Notification No. 12/7003-ST; that no expenditure was made by the Appellant on account of excursor of goods

thining the period 2006-57 to 20:0-11 as per audited final accounts of the Appellant and hence the Appellant is not expelled for exemption under Notification No. 12/2003-57.

5.2 I find that it is perlineer to examine the provisions of Notification. No. 1272003-5T dated 20.6.2013, as amended, worth reseas under:

The exercise of the powers confor of by section 93 of the Finance Act. 1991 (30 of 1994), the Central Covernment, being satisfied that it is discressing in the public invoresties to to co. becopy exercises an initial of the value of all the accessing in the public services. See a count to the value of people and materials said by the satisfies program of the region of services, them the service task leviable task contributes around 166; of the paid Act. Subject to condition that there is documentary proof equilibrally indicating the expressed the said results and reverse as

(Emphasis suspiced)

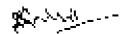
i find that the provisions of Notification No. 12/2003-ST sugra very clearly state that if the sends are sold by the service provider to the regripjent of service. Their value of such goods are allowed for deduction. from value of taxable service subject to condition that there is documentary evidence showing value of such goods. I find that the loweradjudicating authority extended the benefit of Notification No. 12/2013. ST merely based upon the calculation sheet submitted by the Appellant. The adjucticating authority has not given findings to the effect that the Appallant submittee documentary evidences specifically evidencing value. of goods and materials sold by the Appellant to the service recipient. It also find their the lower adjudicating authority erroneously considered. goods/materials consumed by the Appellant for providing output service. while extending benefit of Notification No. 1777003-ST. The lower adjudicating authority failed to observe that "consume" and "sale" are different and have distract meaning. When the goods / materials are sold. title of goods / materials are transferred from one party to another and such goods/materials are subjected to payment of VAT, then only guoch/materials can be said to have been sold. So, when the googs/materials are used or consumed by the service provider while providing output service, it cannot be considered as goods / materials. having been sold by service provider to the service recipient. There is no sale transactions by the Appellant during the years 2006-07 to 2010-11 as:

per their final accounts for the Said period. Thus, the lower adjuditating authority has not correctly read the provisions of Notification No. 12/2003-ST and has grossly erred in extending benefit of Notification No. 12/2003-ST in respect of goods/ materials used/consumed by the Appellant while providing the output service.

- 5.4. Thety on the order passed by the Honftke CFSTAT, whimbal in the case of 6.5. Electricals reported as 2017 (52) S.T.R.  $322 \ \{To. Mumbal\}$ , wherein it has been held that,
  - The next issue raised by the appollum calcus to the benefit of Norification (2.2003-8.1) and to exclosion of the cost of material used during the provision of the service. There is no general exemption to the nonzora used ending provision of the service. However, but floar on 192003-8.1 provides exemption subject to certain conditions. For the purpose of sessi jugathy exemption 1 to so efforts were exquired, to medical existence of sale of material to their effects. Simply by equality the material they do not become off-jips to Norification 1779014 in president adject to the client and produce asserts of the provision of service to the client and produce ascersary evidence like paymon of MA to establish massere.

(Emphasis supplied).

- 6. I, therefore, hold that the Appellant is not aligible for benefit of Notification No. 12/2003-ST dated 20.6.7913 in respect of goods and materials used/consumed for providing 'Post Service'. The impugned order, to the extent of granting benefit of untification supro and excluding the value of goods and materials from assessable value, is set aside. The Appellant is directed to pay service tax in respect of services rendered within LXXL area After including value of goods and materials in the assessable value along with consequent peopley under Section 78 of the Act.
- 7. Regarding issue of taxability of services rendered outside port area. the lower adjudicating authority in the impogned order has confirmed Service tax demand of Rs. 7,07,1117- In respect of the services rendered outside port area under the category of "Maintenance & Repair Service", by giving findings as under:
  - $113.7 \pm 1$  find that the Caronisse west Appending rescal the appellant to ence as the hill was worksheet for the services provided at other term may are to be lower orthodog. The Appellant circ main latter when their factorisations along with the decolation's left



which was sectified by a Cherchia! Accounted regarding service provided within partagon, on side partagon, as 5 (SEC, an per the coloniation shearshe total value of services people at one to SEC, an per the coloniation shearshe total value of services to the color of services at one of services. Not 12/1007-97. The appropriate the colorage of the services of the color of the colo

7.2 | Find That the Appellant has challenged the above findings by contoning that The Impugness order has travelled beyond the Stupe of Show Cause Notice trasmuch as SCN was issued to recover Service Taxo under the rategory of 'Port Service'. However, the impugned order has confirmed Service Tax demand of Rs. 7,07,1117- under the category of iMaintenance & Repair Service: I find that the Appellant Department has also contended that the impagned order has been passed without any consujutes attempt of verticalities a examination of case records in a proces manner. I also find that the lower adjudicating authority has not followed the terms of the remard order of the then Commissioner: (Appeals) who had allowed the plea of the Appellant by holding that if the services were rendered outside port area, then the same cannot be covered under "Port Service". The matter was remarded to the tower adjudicating autionity for timpled purpose of verifying the documents to ascertain whether the services were provided within port area or outside. port area. Thus, at was not open for the lower adjudicating authority to determine classification aftern and covered the services rendered outside. port area under 'Maintenance and Repair Service'. I also fice that the impugned order is a non-speaking order Insamuch as no defailed libdings. have been given by the lower adjudicating authority as to which documents and records have been verified/examined, by him and what is: the outcome of such verification/examination. The lower adjudicating authority has miserably failed to follow the directions of the then Commissioner (Appeals). The impugned order, so far as it relates to the issue of taxability of service rendered outside port area, is not sustainable. in its present form. It therefore, set aside the impugned order to the extent of service tax demand continued under the category of 'Maintenance and Repair Service' and remit the matter to the lower. adjudicating authority with indirection to pass speaking order after carrying out verification of the documents submitted by the Appellant and give: gietai; ed finoings whether services were rendered outside poin area or not.

If the services are rendered outside port area as claimed by the Appellant, then same is not liable to service tax and consequent penalties. The lower adjusticaling authority is also directed to re-calculate service tax demand in respect of services rendered within port area and consequent penalty number Section 78 of the Act.

- The Appellant has contested the (collimation of Service Tax) Я\_ semand of Rs. 2.28,524/- under 'Port Service' and consequent penalty. under Section 78 on the grounds that said services were provided prior to 1.7.2010 when "Part Service" was defined as any service rensered by a port or any person authorized by such port in any manner in relation to a vessel or goods; that since the Appellant did not hold any such authorization, they are not liable to be taxed under 'Port Service'. I find that the then Commissioner (Appeals), Rajkou in Order-th-Appeal dated. 4.10.2013 has uphold the confirmation of demand under the category of 'Port Service', If the Appellant has not contested the said Order in Appeal in higher Appellate Jonann, Theri It has attained finality. It is not open to the Appellant now to contest the taxability of services under "Port" Services". The scope of impugned order in de novo adjudication was limited to etigibility of exemption Notification No. 17/2003-ST and taxabitity of services rendered outside port airca. Thus, the contention of the Appellant is without any merits.
- 8.1 I rely on the Orect passert by the Honfble CESTAT, Mumbat in the case of Shree Krishna Nylon Pvt Ltd reported as 2015 (327) E.L.T. 626 (Tri.) Mumbath, wherein it cas been held that,
  - Them the above findings is to observer manifes learned Commissioner (Appeals) has given a car direction to the original authority to decide the cost in the light of OVGCO case (septa). The matter was to be admitted for the original authority only for each car on of the documents. It is admitted less that the Revenue has not challenged this order by Elling an appeal before the Tribunal. Hence the same attained (hodisy. Prevefore, the Revenue did not have liberty to file appeal before the Commissioner (Appeals) to second would challenging the finding of the final order-opposit dated 5-2 2008, in view or this, too toward Commissioner (Appeals) could not have token a different view as agains, the view is so in the entitle order in appeal car(d 5-2-2008).

- 9. In view of above, I addw the abpeal of the Appellant Department and reject the appeal of the Appellant.
- 9,1 अमेलिन्हरे द्वार दर्ज के यह अलेखे का भिन्दार अस्तित तरीहे से किया जन्म है .
- 9.1 The appeals filter by  $Ap(x,0,x_0)$ , is discosed off as above.

eryffilo Klyfs Peganetic Alline (sakki) ्रहें प्राप्ति प्रियम् । (कुमार संतीष) <sup>चहुन्</sup> विश्वार

एकान्य आयुक्त (अपीएस)

# By R.P.A.D.

ľo,

- M/s Dolphin Univerwater Driving Service Plot No. 305, Shop No. 11-23.
  Komal Complex, Gandhidham.
- The Commissioner, GST & Central Excise, Gandhidham.

#### Eopy to:-

- The Principal Chief Commissioner, GST & Central Excise, Ahmedacad Zone Ahmedabad for his kind information please.
- The Asst Commissioner, GST & Central Excreç Gandhidham Urban Division, Gandhidham Commissionerate for necessary action in the matter.
- ,3) Guard File.