्रभाष्त्रणः (अफीलम) का जायोलव, वस्तु तयं संचा जर और केन्द्रीय उत्पाद शुल्क... 翻發訊明 O/O/FHE COMPRESIONER (APPEALS), GST & CENTRAL EXCISE. , i i i i i रहेकनीय सन्तर प्राप्त **है। भन्म** १६२ सेटल सहर Biaran MARKET रत कोई हैंगा रोड. - Rose Clause Ring Devel



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14.12.2018

कलाग संतोष, भागमन (अपोन्स), अक्षकोट दक्का महित ह Passed by Shri Kumar Santosh, Commissioner (Apocals), Rejkot

ग লয় প্ৰমূষ্ণ নিৰ্দেশ সময়ল। চেম্বৰ প্ৰমূষ্ণ ৰাইছে হয়ত প্ৰথম সম্বাদ, নাৰহৈ ' বাৰ্মনাৰ - নাইছিলে। কৃষ্ণ জনবিভিন কৰি চুন 106.447.551 son "plan of state contains. We added to see the state product data the second of the discussion of the second

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स्त अविश्वभाषित के स्वतित स्वर्ध कार्यता विकासितित इतीय व प्रमुख अधिवर्ता के विकास के अल्ल (को) ⊒ाद सरकार के प् स्वरूप्त के स्वायक स्वायक के प्रति के स्वायक्षित के स्वयं के स्वायक के कि स्वायक करते के स्वायक के स्वायक व्यक्

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या २ २६४ के के में मुख्य के 1 २५४ जा कर दुख्यान दिया जान की किस कारणती है। एस उस कि प्रायमका के देखा हो किसे (इय कुछ्यून) था तिम जिला प्रश्न कार्य प्रतिक रहे कि विद्युत स्वेदक के दे प्रतिक किस कारणती है। एस उस कि प्रायमका के देखा हो किसे कारणवा के तिसी तैसर उस साथ प्रतिक रही खाद के दे थे के जिला जिला के अंग्रेस के किस की प्रतिक के दे प्रतिक के देव प्रतिक के दिया के प्रतिक कि के स्वित्र की दिया के किसे इस कि के अंग्रेस के किस की प्रतिक के देव के देव प्रतिक के साथ के स्वेद के साथ के देवता के स्वेद के स्वेदक के स इस के किस के अंग्रेस के कि की स्वेद के किस कर के साथ प्रतिक के साथ के स्वेद के स्वेद के स्वेद के स्वेद के स्वेद इस की प्रतिक के कि कि की स्वेद के किस कर के साथ प्रतिक के साथ के साथ के साथ के स्वेद के के स्वेद के साथ के स्वेद के स्वेद के अंग्रेस के कि का की स्वेद के साथ के साथ के साथ के साथ के के के साथ के स्वेद के स्वेद के साथ के साथ के के साथ के के के कि के की की के साथ के के के साथ के साथ के साथ के साथ के के साथ के के के के के साथ के के के साथ के के के साथ के के साथ के के के साथ के साथ के साथ के साथ के क के के के साथ के के के के की की के साथ के के के साथ के साथ के साथ के के साथ के के के साथ के साथ के के के के के के के साथ के 200

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- अन्तेन्त अधिकानी अधिको भवन स्टन्स 2008 के जीवन के सार अगस्त मुख्य प्रभाव के वयतां 2001, में दिनाव के मार्क्स्टन आवर्डक हैं। इस सामग्रे के सेविकों के अगस के भएकी की सामित्र के रहे हैं। उन्हें के दिने कुछ अर्थक अर्थक अर्थक के स्टन्स के आ अगर मार्ग्स के सेव्हेस उत्तर करने के सेविका मार्ग्स कर सार उत्तर के सुरूप सेवहील स्टन्स की स्टन्स के स्टन्स के आ अर्थकार्थ के सामग्रे (2011) 2-1 nerver of a start (2017) The move applying the bit for model is subclear in Pars too FARC empressing enter Rue is the Second Robert provider the subble sphere to a start for a short of second subble coupling or buckled without some must be an the too a support by two many support to the test of the second second provide a start of the second second second secon exclanation to the pressonal Recompression of the second second second second second second second second exclanation to the pressonal Recompression of the second second second second second second second second sectors of the test pressonal Recompression of the second second second second second second second second second
- ित्रम अन्तर्भ के अस्त मैन्स्सी/फेल मैन्सी/स्थान के (अल्ला) (* ्री ार्थ । "जनाम स्थानमा प्रमान कर का रागी बना हाला जनाम ३४४ व्या बहुत्वान के लाग कर प्राय करें तलना का राग करने के स्थान (* میں ہے۔ معنیہ ہے۔ د مرجب 1-1 even 1910 elle sonar. Als solo Histore alexandrative a ruli tel popor varies ovid lan villa 1921, voran dra a noura i volvad in Eupaez. Sne tav or Hav Histore alexandrative i sonar una even avenação de la grav, ençuitor
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 - িয়ে এইবলৈ ভূমিনি হৈ হৈছে। ব্যক্তি প্ৰতি হৈছে বিশেষ হয়। এইবলৈ মাজত প্ৰথম কি উঠা কি প্ৰথম দি বিশেষ হয়। এইবলৈ প্ৰথম বিশেষ হৈছে প্ৰথম হৈছে প্ৰথম হৈছে হৈছে বিশেষ হয়। ইয়াৰে বিশেষ হৈছে বিশেষ হৈছে বিশেষ হৈছে প্ৰথম হয়। এইবলৈ বিশেষ কেনেটে প্ৰথম হৈছে প্ৰথম হৈছে বিশেষ হয়। ইয়াৰে বিশেষ হৈ বিশেষ হৈছে বিশেষ হৈছে বিশেষ হয়। বিশেষ হয়। এইবলৈ বিশেষ হৈছে বিশ্ববিদ্যালয় হৈছে বিশেষ হয়। বিশেষ হয়। ইয়াৰে বিশেষ হৈছে বিশেষ হয়। বিশেষ হৈছে বিশেষ হয়। বি 1.51.

CROFE IN APPEAL

Mis. Adam Power Lid., 7th Floor. Samenav Building, Judges Bunglow Road Booakdey, Anneoabad (sereinsiter referred to as appellant) filed present septial against: Order-In-Original: No.: 717/ST/Ro8/2010; patert 29.11.2010; (hereinafter referred to as "the Impugned order") passed by Assistant Commissioner, Service Tax Division: Rajket (hereinafter referred to as "the lower adjudication authority").

The prior feats of the case are that the appellant depirefund dation of R3. 2. 3,34 E0.435/- on 5.11.2029 in respect of service tex paid towards services received. by them for sufficienced operations in SEZ under Notification No. 8/2008-51 pates. 3.3.2009 as amended vide Notribation No. 15/2009 ST dalied 20.5.2009. Show Cause Norke No. V/13 118/ST/Ref/C9-10 dated 26.5.2010 was issued to the appellant proposing rejection of reform plaim on the grounds men cried literain. The lower actudicating authority vide knowched order sentitioned returns start to the bident of Rs. 3.05,88,188/ jout rejected returns blach aggregating to Rs. 21,50,3104. out at which refund of Ra. 1,030/- was rejected for the meson that refund clarin was (lef) adyand presented time, init, refund of Rs. 20,75.77 by rejected on the ground. that the services were not exclusively consumpt in SE7 infinition of Rs. 77.2517. rejected as the involve did not mention purpose of visa and thereby category of service could but be correlated with the specified convices approved by the Approval. Committee, refund of Rs. 25R4 related as services of dismantling of sit conditioners. were availed at their Annecabad office. The lower acjubitating autourity also rejected refund of Education Cross of Rs. 6.27.961A and returns of Secondary & Higher Schendary Education Cess of Rs. 3,03,981/- on the ground that livere was no provision in Nulfication, No. 9/2009-\$7 dates 0.0.2009 to grant exemption to Houdation Cess and Secondary & Higher Secondary Education Cess. \$\$~~~~___

3. Being appriated with the incoughes extent the appealant prefated present appeal, *into all*s, on the grounds so uncert

() The apportant complied with the conclutors set out in the said NotiPeation and submitted file executed excoments and hence, the appetant was entitled to get refund of online amount of service tax as canned by them without rejection of any amount. There is no dispute that the services were received by the appellant for SEZ operations and that service in dispute has been specified and approved by the approval committee. Once it is admitted that services have been used for SEZ activity and were mentioned is the filet of sepreved authorized operation in SEZ, the appeared is controlled for refune and the same cannot be denied on technical grounds it is achieved and the same cannot be denied on technical grounds it is achieved appeared, it appeared to be conduced and substantial rights accound to be prevential part is regulated to be conduced and substantial rights accound to the appeared autopart is and cannot be the appeared and approved autoparts and capital regulations of Notifications, tapees, it any on fundiment of procedural part is regulated to be conduced and substantial rights accound to the appeared autopart and capital rights accound to the appeared autoparts and capital appeared to be conduced and substantial rights accound to the appeared autoparts and between and capital appeared to be conduced and substantial rights accound to the appeared autoparts and by the service appeared to be conduced and substantial rights accound a claimed by the service appeared to be conduced and substantial rights accound account appeared by the service appeared to be conduced and substantial rights accound account appeared by the service appeared to be conduced and substantial rights accound account appeared by the service appeared account appeared account appeared by the service appeared account appea

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appellar, as refund had accually deen paid, other conditions, as montioned in the said Notification would be considered as procedure, conditions and refund pught ant to have been dening on technical@nucedurg_pround.

The Notification like statule must be construed having regard to purpose and <00 object t sacks to achieve, hence, statisticny scheme for issuance of such Nuliffaction. also needs to be considered. The appellant relied on decisions in the case of Malwa industries I meed reported as 2009 (235) FLT 214 (SC) and Tallow Judia and Operational Limited reported as 2005 (189) EL | 401 (SC) to say that exemption ontification composite construct in a way, which prove to be operative in pathret.

The lower adjudicating authority denied refund datm of Re. 20 71 771/- on {iiI) the ground that the appearant ought not to have field refund claim in terms of amended Nulfication since the entire service has been consumed in SEZ. It was submitted that when the service in question was provided to the appellant, the amended Notification was not in existence. The service provider V/s. Shandong, Tiejun Eleparid Power Engineering Ltd. raised interim bill dated 21.5.2026 for sorvice provided by them in April 2009. The appealant produced letter sated 28.1.2011 5' the service provider certifying that invoice No. APL STEPG-0-014 dated 21.5 2009 was issued after completion of work. The lower edudicating authority case not adduced any evidence to substantiate rejection of claim on this account

fis). The lower adjudicating authority denied refund of Rs. 77,25% on the ground that the appellant did not give any explanation in respect of up shown to innonhoop made from Ahmedapad – Mundra – Mumba: – Ahmedaead, it le subht teel that the appellant block service of Kamavali Aviation. Private Limited for visiting their employees for business thip to Ahmediabad and Mumbail dvall how have to viel. Ahmedabab, Mumbai and other various locations on many pepealors for official meetings with Covernment officials. Bankers & Investors and used for authorized operations. It is undisputed fact that service of transcortation of passengers by air services' has been used in relation to authorized operations in SEZ, duly approved by the approval coning the and that the appellant paid sorving. tax to the service providen therefore, rejection of retund claim is erroneous and มก สพรณ

ivi The lower as adicating authority coning refund of case on the ground that the self. Notification does not conts hisny deuse of exemption to cass. The lower adjudicating authority failed to appreciate that Section 95(1) of the Finance Aut 1934 (hereinafter referred to as "the Aut") has specifically provided that Education. Cees levies and collected under Section 91 shall be service tax. Inst Section 95(2) of the Act states that education cess on taxable service shall be in addition to

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sorvice tax chargeable under Charter V of the Act. Her be, when refund inf scruice tax is to be allowed, the cessipe dior service tax is site to be refunded. The lower actualing authority failed to appreciate that the No ifination provides exemption from whole of the service bax Invialion thereor under Section 66 of the Act. Sing ceed is levied and collected under Section 66 of the Act. Sing ceed is levied and collected under Section 66 of the Act. Sing ceed is levied and collected under Section 66 of the Act. Sing ceed is levied and collected under Section 66 of the Act. Find same is dovered under the section form tax and imposition of censity shall, as (a) may be acplied in relation to dow and collection of education cess on related sections in the sections for refund of cess. The appellant relied understones in the sections of the Act and substantial thereinder. There is/was no need to issue apparate Notification for refund of cess. The appellant relied understones in the case of Vipor Chemice's Pv., Lic. resonant as 2009 (200) ELT 44 (Cup.) and Ranswara Syntex Ltd. recorted as 2007 (216) ELT 16 (Ref.) in avoport of their contentions.

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3.1 The present appeal was kept in Call Book due to appeal field by the papartment in a similar case in the Humble Supreme Court against access on of the Humble High Court of Jaromu & Kashmir in case of Bitarat Box Factory Ltd. reported as 2008 (231) ELF 416 (J&K). The decision of the Homble High Court was approved by the Homble Apex Court and reported as 2017 (055) FLT 481 (SC). This appeal was, thus, taken cut of Call Book for passing order

4. Personal heating in the matter was allended by Shri Robul Patol, Chartered Accountant who uniterated the grounds of appeal and submitted heat the services provided to SEZ are exempted and hence, refund nodes to be allowed to them; that CESTAT Almeeubad in the case of links Pharmal, the reported as 2013 (32) STR (44) (Trill – Ahmd) and CESTAT Mumbar in the case of Sears IT & Managementi Services (I) Pvt. Ltd. reported as 2018 (8) GSTI 425 (Trill – Mumbai) have given decisions in fevour of appellants and against the department and the department has accessed linese orders, that service tex of Rs. 20.71 takts need to be refunded; that Faluration Cross & Secondary & Higher Education Cress are the early of appellant service tex of Rs. 20.71 takts need to be stated separately in the Nutification of service tex, that if no service tex is bayacte, cass is automatically not sayacte as held by High Courts in Vicor Chemicals Pvt. Ltd. reported as 2009 (233) ELT 44 (Guj.) and Banswara Syntex Ltd. reported as 2009 (216) ELT 44 (Guj.)

Eindinge:

b ______have carefully gone through the facts of the case, the moughed order, she grounds of sopeal and the submissions made by the sopelant. The lasues to be decided in the creaent sppeal are: -

() Whether the appellant is eligible for result of service tax paid on the services received for authorized operations in SE2 in view of Notification No. 9/2009-ST dated 0.3 2009 as amended vide Notification No. 15/2009 ST dated 20.5.2009 or not, and

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(i) Whether the appellant is a gible for reland ∞ Soucabor Ceas and Secondary.
8 Higher Foucabor Case paid on services or otherwise.

8 The lower adjudicating automity has rejected refund of Re. 1 539/. for the reason that the appellant paid service tax towards service received under invoice No. 331 dated 31.3.2009 and filed refund datin on 5.11.2005 and hence time barred to view of Notification No. \$/2009-8T dated 3.3 2009 as amended. I find that Para 2(f) of the said Nulification provides that the claim (critication shall be filed, within als months on allow extended period as the weelgtant Commissioner of Central, Excise on the Deputy Commissioner of Central Excise, as the case may be, shar permit from the cate of actual payment of service tax by such developer on ontitlo service. provider. It is settled legal position that word ishall' pas to be read and construed as mandatory and not discretionary. I also find that Sourian 26(e) of SFZ Act. 2005. provides unotractional exemption to SEZ unit from payment of service tex on services received for authorized contration. Socilor 51 p18E7 Act, 2005 provides that provisions of SEZ Actishall have overriging offect over other law/Act in case of snymonessioned as has a solution planified by CBFC in Para 3 of CBFC Circular No. 1001/8/2016-CX.3 dated 28.04.2015. The SEZ Act and the rules have not provided. any conditions for quanting exemption from payment of service tax and therefore. I riold that refund diskni of Ra. 1.030% cannot be held time barred. R. V2--

6.1 The ower adjudicating aufhority has rejected returd of 3a, 20,71 77.0, on the ground theil the involve towards repeict of service was issued after issuance of Nutification No. 16/2009 ST patch 20.6 2006 which exempts service tax or services which consumed in SHZ whereas the appellant contential that the service provider has provided service in April, 2009 and involve doed 21.5.2009 was report after dated 28.1.2014 of the service provider certifying that involve Nn. API-STEPC-3-014 dated 21.5.2009 was issued after controllation of work. The service provider details are service to service for authorized operation in SEZ and psyment of service tax to the service provider is not under dispute. Further, the service tax to the service provider service tax on the service provider service tax on the service provider is not under dispute. Further, the service tax on the service tax of page and service tax at Rs. 20,71,7014 is also the service tax of the

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0.2be lower adjusting authority has released refund of Rs. 77 201/- as the invoice divinot mention purpose of visit and thereby category of service could not be corelated with the specified services approved by Approval Committee whereas the appallant contested that they bired sorvice of Karnavati Aviation Private Limitos for visiting their employees for business the to Atmedabad and Mumhal; that they have to regularly visit Ahmedabed. Mumbai and other locations for official meetings will the Government officials. Bankers & Investors and used for authorized operations and that serving of ittansportation of pessengers by airservices' has been used in relation to authorized operations in SEZ approved by the approval committee. I had that an dominionts in support of erguments bucklibe crucuoed by the appellant. The appecant is duly bound to demonstrate that the service was used for autimized operations in SEZ. In absence of any such doministrations with documentary evidences, refund for hirsd services of Kernaval-Aviation Private Limited can't be allowed. Lagree with the rejection of refune decides in the impugned order

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6.3 I also tind the lapsellant has availed services of diamenting of air coordinates for their Registered of the st Ahmedabad and half used the service for authorized operations in GEZ, they are not entitled for return of Rs (253/ paid towards receipt of the service for use other than authorized operations (Control of the service for use other than authorized operations).

The lower adjudiceting authority rejected reland of Education Gess of Rs. 7 6.07,951/ and refund of Secondary & Higher Secondary Education Cees of Re. 3.03,9914 on the ground that there was no provision in Net Testion No. 9/2009-97. kbiles 5.5.2006 for grant of exemption to Education Ceas and Secondary & Higher Secondary Education Cess whereas the appellant contorded that Section 95(1) of The Act provided that Education Coss Joving and collected under Section 91 at 94. to service tax: that Section 35(2) of the Act states that education cess on laxable. service shall be in addition to some or rax chargeable under Chapter V of the Arg.; that when refine of service tax is to be allowed, the beas paid on as wes tax is also to be refunded, that Section \$5(5) of the Actienvisages that annoisians of Chapter V of the Act and Rules framed thereunder including these releting to refund and exemptions from tax and imposition of penalty shall its far may be applied in relation in lowy and collection of education coss on texeble service as they apply in relation to levy and collection of tax on such taxable services under Chapter V of the Act and Rules made thereunder. I find that somice tox includes Education Dess and Secondary & Higher Education Coss in terms of provisions of Section 95 of the Finance Act, 2004 and Section 140 of the Finance Act, 2007 and herce, the provisions of refund and exemption of the Act are also i applicable to Education Cess and Secondary & Higher Soucation Cess, that the exemption from service lax under Molification, No. 9/2009-ST dated 3.3.2009 as amended is also

applicable to Education Cess and Secondary & Higher Education Cess as discussed, pelow.

7.1 The Education Goss was levied wile under Sections 93 & Section 95 of Chapter VI of the Finance (No.2) Act 2004, when read as under.

<u>"31 Education Case</u> - (1) Without preparise to the provisions of subsection (11) of marino 2, there shall be levied and enlocted, in secondance with the provisions of the Chapter <u>as surcharge</u> for purposes of the Union, a case to be called the Education<u>i Case</u>, in fulfithe commitment of the Government to provide and headed universatised quality basic education.

(2) The Control Sourcement may after one epercentation made by Perflament by law in this technik utilize, such come of propey of the Education Cess leved under sub-zeution (11) of realism 2 and this Chapter for the purposes specified in sub-section (1), as it may consider necessary.

85. Education Cexin on locable services — (1) The Education Cesslevied under section 91, in the case of all services which ere taxable services, whell the origin (in this section referred to as the Education Cesic on toxobic services) at the rate of two per certs, satisfied on the loc which is levied and collected under section 66 of the Finance Act 1994 (32 of 1994)

(2) The Education Ceau on laxable survives shall be in addition to the fax chargesble on auto taxable survives, under Orapter V of the Finance Act, 1994 (32 of 1994).

(3) The provisions of Chepter V of the Finance Act, 1994 (32 of 1994) and the rules made theorem.dor, including those relating to refunds and exemptions from tax and imposition of penalty shell, as far as may be, spoty in relation to the invy and collection of the Education Costs on taxeble services, as they apply in relation to the lawy and collection of tax on such taxable services under Chepter V of the Firmong Act, 1894 or the roker on the case may es.

7.2. The Secondary & Higher Education Coss was levied vide under Socions 136.

& Section 140 of Chapter Vilof the Hinanco Aol, 2007, which read as under

<u>138. Brownstony and Higher Education Germ</u>

(1) Williaut prejuition to the provisions of sub-section (12) of vention 2, there shall be level and collected, in excertaince with the provisions of this Chapter as surcharge for purposes of the Union, a cost to be called the Secondary and Higher Education Cess, to fulfill the communication the Gavamment to provide and finance secondary and higher education.

(2) The Control Government may, after due appropriation made by Parisment by law in this trahaif, utilise, such some or money of the Secondary and Higher Education Cess levied under sub-section (12) of section 2 and this Chapter for the purposes specified in sub-section (1) as it may consider necessary.

140 <u>Secondary and Higher Ed</u>position Cess on ta<u>ket le receiens</u> — (1) The Secondary and Higher Education Cross Inviort under section 136, in the case of all services which are taxable services, shall be a lax (in this section referred to as the Secondary and Higher Education Cess on takeful services) at the rate of and per contr, colouisted on the tax which is inviorit and collected under section 66 of the Finance Act. 1994 (32 of 1994).

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(2) The Secondary and Liigher Education Cross on texable services shall be in addition to the tax chargesble on south texable services under Chapter V of the Finance Act, 1994 (32 of 1994) and the Education Cross chargesble under section 35 of the Finance (Mr. 2) Act, 2004 (22 of 2004).

(5) The onexisions of Chapter V of the Picauce Aut. 1994 (32 of 1994) and the rules made theraparton, including mass relating to refutus and exemptions from tex and exposition of recently shall, as far as may be soply to relation to the lawy and collociton of the Recent tary and Higher Follocition Cese on taxable services. An they apply in relation to the key and collociton of far on such texable services under Chapter V of the Pinance Act. 1994 or the rules made therawaker is the case may be

A2 Thus, the Education Gees and Secondary & Higher Education Cess were in nature of surcharge and were level under Section 91 of the Finance (No. 2) Act. 2004 and Section 135 of the Finance Act. 2007 resenctively as service taxial the rate of 2% and 1% respectively to be defoulated on the aggregate value of taxable services and are level and collected by the Control Government. The provisions of the Act and the rules made thereinnee, including cruse reacting to refunds and exemptions from refunds and exemptions from tax and structure of behavior of benafty were made applicable to the day and collection of the Foucation Cess and Secondary & Higher Education Cess on taxable services as they apply in relation to the levy and collection of taxable poly in relation to the levy and collection of taxable poly in relation to the levy and collection of taxable poly in telephone to the levy and collection of taxable poly in telephone to the levy and collection of taxable poly in telephone.

7.4 and that Notification No. 9/2009 ST called 3.3.2009 had granted total exemption from lavy of service tax in respect of services used for authorized operations in SEZ. Education Cess and Secundary and Higher Education Cess ware levied on taxable services and when the service tax on taxable services itself was exempted by way of refued, thes the Education Cess and Secondary and Secondary and Higher Education Cess also get exampted thereby. Herbel the question of lavy of any surprises or dess or wherever name is called therebot would not shee.

7.5 CBEC vide Circular No. 134/3/2011/ST datable 09.04.2011 clarified that since Four-alium Class and Secondary & Higher Education Class were levied and collected as percentage of earlying text, no Education Class and Secondary & Higher Education Class would be payable, when and wherever service tax is n't by virtue of scomption. Cycular No. 134/3/2011/ST bateo 08.04.2011 is reproduced as under.

Subject: Education Cess and Secondary and Higher Followikin Cess . Mag.

Representations have been received from the field formations, sheking clarification regarding the implicability of entraice law excerption to Education Daws (refers to both Education Cess leviable broder Finance (vol. 2) Act, 2004 and Secondary and Higher Education Cess leviable under Finance Act 2007), under notifications where whole of service tax' stends esempted Act Apparently the doubt anses in the contract of Tribunal's Order in the mother of Was Balastice Alloys Ltd. v. CCE. Customs and Secondary Reserved (AUD-T)(c) -1669-CESTAT-KOL) = 2016 (20) S.T.R. 506 (Titlans).

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2. The issue has been examined. Trikingh Tribunal's Order referred above is to fevor or revenue. If its inconsistant with the policy intention of the Government to exempt advaation cess in sublicer to service test where whole at service test stands exempted. According to section 85(1) of Finance (No. 2) Act, 2004 and reaction (49(1) of Finance Act 2007 Follocation Cess and Sectorizing and higher Education Cess are reviable and collected as service test, and when whole of service test is exempt, the same spaties to sourcetion cess as well. Since Education Cess is levied and collected us percontage of service test, when and wherever service test is NIL by write of exemption. Education Cess would also be NIL.

3 This being the principle link! Introductors are disculated not to initiala proceedings to recover the education case, where "whole or service ray" stands exempted under the notification. <u>Extending the same principle, whore advortion case from here refunded to exporters along with service tax.</u> () <u>unlue of exemption</u> notifications where whole of service tax is exempt. <u>The</u> same need not be recovered.

7.6 I find that on the issue of levy of Education Cees when the Central Exclae duty, was exampted, the Hongle Aptx Court in the case of SRD Nutrients Pvt. Ltd. recorded as 2017 (355) FLT 481 (SC), has neklias under.

20. One aspect that cleany emerges from the reading of these two obgains is that the Governmont Real has taken the position that where whole of excise daily or Service Tax is exempted, even the Education Case as well as Secondary and Higher Education Case would not be payable. These circulars are histing on the Department.

Even observice, we are of the opinion that it is more rational to 21 accop he almosad position as desided by the Midsley of Finance w bie etoreseld piloulars. Education Ceasi is on exclae duly in means that these assesses who are mayired to pay exclosiduly here to shell out. Education Cess as well. This Education Cess is introduced by Sortions. 91 to 93 of the Finance (No. 2) Act. 2004. As per Section 91 thmmol. Education Cess is the surpliance which the assesses is to pay. Similar, 83 meksa II dear thet this Education Cesa is beyoble on readiable. goods' i.e. in 162pect of goods specified in the first Scheoole in the Dontral Evolor Tartif Act, 1985, Austrey, bus Education Cess is to be levied @ 2% and calculated on the organizato of all district of garging which fire levied and collected by the Centrel Covernment under the provisions of Cembal Excise Act. 1944 or under any other law for the htte being in force. Sub-section 73; of Section: 95 provides that the provisions of the Central Excuse Act. 1944 and the rules made. Dereunder, inclusing those related to refunds and chillen rate, what has for as may be soplied in releases to levy and collectors of Education. Cess on excessible goods. <u>A conjuling resulting of thisse previsiones would</u> <u>umplic demonstrate plat Fallogtion Cess es a surpherge, is lev</u>red 🧶 2% on the dulies of parise word, are projette under the Act & can therefore, be cleany infenso that kneep there is no excise doiry pawidile. <u>na ir is exempted, there would not be any Education</u>. Case as well, <u>masmosti as Education Coss & 2% is in the calculated on the</u> soprepsie of duties of except. There cannot be any continues when basic dury typeff is Nit-

24. For the atomsain reasons, <u>we allow these appeals</u> and hold that th<u>e appeliants were entitled to refined of Education Coss</u>, and <u>Orghor</u> Education Coss which was paid along with cucies dury once the excess



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dully ilbe<u>ll' was exampted from levy</u>. There shell, however, he no order as to cost."

(Emphasis sopplied)

7.7. Herde I hald the line appellant is cligible for refund of Education Cess and Secondary & Higher Education Cess paid on taxable services used for activarized operations in SEZ under Notification No. 9/2009–81 deted 3 (3.2009, as amended)

8 in view of above, I set aside the impligned order except rejection of refund of Hs 177,2017- and refund of Rs. 2584 and allow the appeal filed by the appellant with consequenced relief, if any, and appeal for refund of Rs. 77,2914 on related invoices issued for mining of black to Ahmediabad, Bornbay, etc. and refund of Rs. 2587 for dismenting of air conditioners at their office at Ahmediabad, singletted

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P I he appear filed by the appellant is disposed off in above terms.

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्रिय् स्टब्स् (कुमांर स्टब्स् आयुद्धत (अपील्स)

<u>By Rogd, Post AD </u>

Tu, M/s: Adani Power L.C., 7th Fleor, Samphev Building, Judges Buinglow Read Bodakdov, Attrineated Attrineated Attrineated

<u>Copy to </u>

- The Chief Commissioner, CCSF & Central Excise. Annotabad Zone. Annotabad for his kind information please.
- The Commissioner, COST & Central Exclusion Kutch Commissionerato, Genehicinam for necessary action
- The Assistant Commissioner, CCS is Central Excise Division-Rhuj, Generalities for further occession action.
- 4) Guard File

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