

#### ्का पुरुष (अभीवरा) का करमंत्राय, बरसा एवं सेवा कर और केन्द्रीम जल्पमा भूरकः। О-Оптишей отминентиция (Америалы), аль и де си митеал, ко сивед-

୍ରଦିଶୌଦ ଗଳ, ବିବାସର ମି ଦେବ ମିଠ<sup>®</sup> ମହେ, ୧୪୦ ଲୋକରେ रेमा नरेश विमारीण परिकर (west Ring Base),



राजकोट::३८३८ - ३६३ छ।

Tele lim No. 0793 – 21779900541162 – Erzell krezpperlaw, kro $\chi_{\rm SM}^2$  of this

#### <u>श्रीतस्टर्ड डाक ए. डी. द्वात :</u>

र्जना अस्तुत्र स्टब्स्

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W2/245.400.462007

resultable.

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ार्योज प्रादिश पृथित (Cinter-In-Appeal No.)।

# KALIII-IS XXXIIS-000-ADDI-225-2018-19

अवदेश का किनांक र

14.12.2018

जारी करने की त‼क*े* D'ate ell'issue

.8.12.2018

Due of Order.

**धन्मार संतोष, आयमत (अवेत्स), गलकोट दनरा गरित**ी Passed by Shri Kumar Santosh, Commissioner (Appeals), Palicit

ंदर अवस्था तेवृत्त अञ्चल राष्ट्रका अञ्चल अञ्चल, विदेश करण कृतक तेवकर आकर शासकार । करीशका वकर सामितिक करी 41 ्र क्षांचार **पृ**क्षेत्र .

rando per el merco de cuerto del C.C. del en la Persona el mesa el meloso com librario Contra Pagest / Jenneger / Carcolonemi

अपीलकरों के प्रतिकारी के लाम एवं पना (Name & Address of the Appellant & Suspendent T Nest Bert Nageshwer' Loaders, (Proprietor- Ehlfubha Machubha Rathod) Milliage Lei Kukma, Bhul.

ना नारिक्षणान्। व क्षारिक को कार्यन दिवारिक्षित कोंद्रे के नार्यक क्षित्रके ' व्यक्तिक के तक शरीक कुछ के तक है तिम् अस्पर्य प्रकृतिक के विकरित्रक किस्तुक कार्य कि के विकर्ण के किस करणात्र कर असे प्रकृति के लिए के किस कर न

कीना करना में देश देश देश करना को केशन, उन्होंने कर स्थित हो ने को उन्होंने के देश हैं किया है हैं किया है किय असरेक कर किया कि सिंहर, 'कारा कि एक के कि असरेन किसी दिस करना के जा असरे हैं के 280

Appeal to Dumonia. District & Santha Tip Appeals Tributal under Seption (SC of CDV 1944 ) Under Seption (A of the Figure 1944 ) and a contract of the contract

भी स्टंग कुन्यास्त है क्रांस्ट्रेंग कार्य करण होता हुन्य, क्यांस कुन्य का शेवस अवस्थित संस्था से स्टंग विकास उत्तर उत्तर के अध्यक्त के प्राप्त के क्यांस के अध्यक्त कर कि अध्यक्त के अध्यक्त के

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र करना क्षेत्रक महिला स्वयं कर करील है जाए। कर नहीं कहा है असे कुछ करील उत्तर हुन का की कार नेलन कर है कि। हिल्हें के विकास में के विकास की के कहा की की कार का की कहा होता है। की की कारी की का की की क

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প্ৰতিটিং কেন্দ্ৰটোৱাৰে হৈ আৰু বাইল কৰেন কৰি ই কিন্তু ইন্দ্ৰীয় কৰাৰ প্ৰেক্ষা কৰিবলৈ ই ই কিন্তু এই ক্ৰমণৰ ইনিটিৰ কৰিবলৈ এই এই এই এই এই এই এই এই ক্ৰমণৰ কৰিবলৈ কৰাৰ কৰিবলৈ কৰিবলৈ কৰাৰ কৰিবলৈ কৰাৰ কৰিবলৈ ক

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- िस्तार विभाग के शिक्ष में एक दें के कर को है। या 1925 में उससे उस कि मिली के बिल सकता सेवास की किया के बेटल 199 पति 5,999 में 1991 कि कि 1975 के कि अपने कि 1995 अपने में से मिली प्रकार कुछ साथा अपने के बेटल के बेटल के प्रकार के 3911 की जारिक के प्रकार के समस्य की साथ के उससे का कि सामित की साथ के प्रकार के समस्य कि प्रकार के अपने के 35 2913 कुछ के बाद के अमेरीन समस्योगित के अमेरन को उससे का विदेश कि सो मिली की देंग का अपने अस्ति कर की है है। 3 -11 The signs of the Common Programs of the Common Programs of the Common Co with the provide wind the error at Tibard.
- नीर, पूनन के दीर का उन्होंने पर की ना बाति है। बीरिका (इस्टिका कार्य के हालने में रिकास कार, पूना बारिकार हिना की 180 कि राज (करों), को बिलिस को अंगर कि कि कि एक अन्य के बात है। कि सुन की पर पूर्ण कार की सीतित की परिचल में कोन करने कार प्रकार पूनारोग कर कार के 10 प्रतिक प्रकार में उन्हों की को बीरिका है, के सुने के प्रकार कि बीरिका है का सुनक दिना कर, बार्य कि प्रकार के की बारिका का सुने की की प्रकार की है। बार्य कर के सीतित है। कि सीति की अपने के की का समय जान कि का सुनक में किए का सिता है। 11 प्रकार की करने हैं।

- प्रदेश करते की एक समय प्रति . (

प्रकार अभिनेत्र के पार को आग को पूर्ण । Private poper to the Published to COSTATE Chart Section 251 जो use Commit Codes and 1941 which is set of section 25 of the Section 35 of the Pinaton Act. (19), as upone against with even until a suppose in The extension of the object of the

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provide a fin Bill for provide and his State in the large provide pro

िम्ह तेला बक्रमेशकोर के Constraint (Proba) इस १९७१ में स्टेडिंग, पात्र में सम्मानको, स्टेडिंग के अस्य मूल कार्ति में 1894 में 1997 1992 के प्रकार पहिल्ला करा परिच्यानक शिन्द, पुरिच्या करान हैंगी, विस्त सामन प्रकार विस्ता, करी प्रतिप्त, शीवन शैर अवस्थानको उन्हें समझ १९००, धा सेक्स परिच्या

neer transports on as to the chose Secret, or the Government of India, De-Hear Worldom and the Print, it was a By Maria India and a little of Maria Ways and by Therenia and What Common 2018 of the Way of the Cities Chat has a copyright of the Computer, present an addition of by the print to the Angle (1918) in

- াই এক গৈছিল চুক্তাৰ কি হ'বে প্ৰিক্ষা কুলাৰ কিটা কৰা কি কিটা আহকে বিধান বুলু কা হাসকে কি জুঁচক কি কিটা গৰা আনক আ বিশ্ব বিশ্ব কি বিশ্ব কি প্ৰেটি কৈ কুলা কৰি কিটা সমূহৰ আধি গোটো কোনে কোনি এই কিটা কি বিশ্ব কি কুলা কৈ বিশ্ব কি কুলা কি বিশ্ব কি কুলা কি বিশ্ব কি কুলা ক
- િલ્લાએ તમાર્ગિક્ટ કરે કે તો કોઈ ફોલ્યા છે. ફિલ્મ કે લિંગિકોલીએ વધુકાન માટે કહ્યું કે તો કહે કે તો કહ્યું કે મુક્ક પણ કર્યા છે. આપણ માટે મહાર કે માર્ચિક લેંગુ કે કે તમાર કે મહાર કિલ્માનો કે ત્રિકાલ કર્યા કે કે તમારે કે તમાર કે તમાર કે તમાર કે તમારે કે તમારે કે તમારે કે તમારે કે તમારે કે તમારે કે જ્યો કિલ્મ મહાર કે તમારે ફાલ્યો તમારે કે તમાર કે તમારે કે તમા
- e la desta general general desta est un respect de una desta en agran els arras desta d'acte una है . La comercia agranda de la medical de la comunidad de la desta de la desta de la comunidad de la desta de la de
- ৰ বিজ্ঞান আৰু বিজ্ঞান হ'ব বিজ্ঞান জনিক সংগ্ৰহণ কৰিছিল আৰু কৰিছিল সময় কৰিছিল সময় কৰিছিল কৰিছে এই বিজ্ঞান কৰিছ বিজ্ঞান কৰিছে প্ৰতিষ্ঠিত আৰু কৰিছিল কৰিছিল। কে বিজ্ঞান জনিক জনিক জনিক জনিক জনিক কৰিছিল কৰিছে কৰিছে কৰিছে কৰিছিল বিজ্ঞান কৰিছিল কৰিছে কৰিছে কৰিছে কৰিছে বিজ্ঞান কৰিছে কৰিছ কৰিছে কৰিছে কৰিছে কৰিছে কৰিছে বিজ্ঞান কৰিছে ব্যক্তিক বিজ্ঞান কৰিছে কৰিছ
- Certification of the first term of Early and the second second section of the first term of the second seco  $\Delta \mathcal{F}$
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- for gen made the second description is effective and first  $(x,y)^{-1}$ , (x,y), (x,y), (y,y), (y,y),
- The winds of the state of the second of the 1,51

# :: ORDER IN APPEAL ::

Wis Shi Nageshwai Loaders, iProphetor Chimble Madhuble Rathod Milage-Let Kukma, Bhu (horomator referred to as "apperant") have field present sopeal against Order-In-Original No. 15/ AC/ 2015-16 dated 0.6 2015 (horomator referred to as "impagned croer") passed by the Assistant Commissioner, Service Tax Division Gandhionam (hereinafter referred to as "lower adjudicating authority")

- tine great rects of the case and that during suddition records of ides. 2. Ashapura Volciay Ind. Bhuil il vois filleged that the "Appelant" had rendered. taxable services from 2009-10 to 2011-12 to Mrs. Ashapura Volcley Ltd, Bhuj and ncy obtained Service Tex projectation and falco to pay Service Tex on such services, Show Cause Notice No.M (a)/ 8/49/ IA/ ST/ AC-44/ 14/15 dated. 7.10 2014 was issued to the Appellant asking them to show cause as to why Service Tax of Rs.0.85,904() should not be demanded and recovered from them. under Section 73(1) of the Finance Act, 1984 (here naite; referred to as "Act") allogy with atterest under Society 76 of the Act, and proposing imposition of ponalities under Secretie 77, Section 73 of the Apt and also recovery of lare fee for nun fling of ST 3 returns under Section 70 of the Act. The Snow Cause Notice was adjudicated wide the impugued order, which confirmed Service Tax demand of Rs(9,95,9)4% and sn Section RS(4) of the Act along with interest under Section RS(4)of the Act, imposed consity of Rs./43,546/4 (HY 2009-10) and Rs.79,364/-(2010-11). under Rection 76, penalty of Re/13.3007 timber Section 77, penalty of Re-3.35,904) under Section 79 and last factor Rs 2,000% paying up to the year. 9003-10 and 2010-11, panelty of 4s  $20,000 ext{A}$  for the year 2011 12 under Section. 70 of the Auti
- Being aggridated with the impugned order the Appellant has preferred trespect suppose on the following grounds:-
- (i) The sopellar, was not served any notice for personal nearing as also mentioned in the inequand order which is violetion of natural justice.
- (i) The lower adjudicating authority has not discussed the activities carned out by the Appellant and how the said activities, were covered under taxable services of 'Manpower Retrustment & Supply Agency' or 'Supply of Tangible Goods'; that it is not discussed which activity was classifiable under what category and now

eery ceitex was calculated separately for both nathgory.

- Vangower Recruitment or Suspiy Agency Seavice', as they had never recruited of suspijed any maniposite to the service recisient and they had only undertaken the seasynest work related to construction, loading, unlinading, repairs and supply of treates, oeders, JCB, they never supplies manipower not they were under the control and direction of the service recipient. In all these activities, payment was made by the recipient at a direction faced rate for the work done, JCB used and volucles supplied. They provided tollowing services in Mis. Ashapura, Volctay, Etcl. as reflected in their work pides and involves.
- (a) Legging and unloading of materials within the factory promises of Mis. AVI ;
- (b) Supply of vehicles and equipments:
- (d) Repair works.
- (d) Activities) proceed in relation to manufacture of excisacio goods.
- (iv) Appelant has provided services to internal shifting of finished goods within factory area with the help of facours and using flooks owned by them; that though there is no processl in the same cause notice or in the impligand order processing the activity classifiable under locable category of "Cargo Handling Services" under Gooden 65 (2%) of the Acht that their activity closs not moritidates liteation under this mategory as iguides were not transported outside the factory promises thus tip dinor involve transportation of goods situations of Huntible CESTAT in the case of it/ls. Modi Construction, Coirecorted as 2008;12; STR 34 (Tri-Kolkata). M/s Surender Klimar reported as 2010(20) STR 678 (Tri-Da) and W/s. Scrap Material Hanking Co. 2008;19; STR 68 (Tri-De), that Shifting of material is not obvered under any of the boodble services as infilled during the material period.
- (v) As regards supply of vehicles and equipments by the appellant to the service recipient, it is supplyed if at the impugned order has configured the demand unpersing dischargery of services of "Manpower Recruitment Agency"; that as perdefinition of "Supply of Tangible Goods" under Section 65 (15)(v/zz/j), roughwith Mill. "C.R. Rotter C.O.F. No. 354/1/2008-TRU bated 25.2.2008, the taxable services must have (i) a supply. (ii) such supply must be of langible gends, (ii) it should not result in passage/reessignment of right of possession sinclor effective control over the said tangular goods to the essectuser at the expense of this lesso? Invited provider of tangible goods; that in view or this definition, the activities carried out by them are not "supply of langible goods".

- (vi) Appellant had carded out repair work involving supply of materials and this is not supply of manpower and the value of materials supplied is required to be deducted from the total value.
- (vii) Appellant has undertaken work assigned to them themselvas through their twin employees/hirod labour and not as a labour contractor; sorvice recipient is central excise assessee and activities carried but in its premises are in connection with those goods no which demial excise duty has been paid and novered under jud work, that OBEC Circular Not 1909/9015-QT dated 15.12 2015 can be made applicable in their case too as per which service crowded by them are not maneowersupply service.
- (viii) Extended period of imitation is not involvable in this case as more craission to give notice information is not suppression of facts unless it is delicerate to evake payment of tax. There bould be various reasons for non cayment of service tax, such us the assessed is under considered boild that they are not reduced to pay the service tax either relying upon the decision of various counts or trace practice. Therefore, argor period of imitation was illegally involved squires the Appenant.  $(C, r) \in \hat{\mathbb{R}}_{+}^{\infty} \times \hat{\mathbb{R}}_{+}^{\infty}$
- (x) If Service (fax is nealed as payable, the consideration is to be treated as industive of Service Tex payable and cumitax correft elecute be granted.
- 1 is settled position of lew that for imposing penalty engar Section 76 of the Act existence of suppression allots required to be proved by the Diegt., which is absent in the present case. There was no intention to evade tax by them, hence no point ty was imposed a upon them and relied upon the case laws of Tamilhagui Housing Board reported as 1954(74) FLT 9. Town Hat Committee. Mysore Coy Corporation reported as 2011(24)(51 High 172 (Karl) and others
- (kg). The Appellant was not required to say any Salvice Tax, hence, they into not filled ST-3 returns, and hence no fine can be imposed on them under Section 70 of the Api.
- (xil) The provisions of Section 20 of the Activit apply in the present case. The levy of pondity is discretions yis not the Officer is eatisfied that there is a reasonable cause, the penalty can be waived. The confession previolent in the section of the section

imonghes transactions.

. . .

- 1 Personal Hearing in the multer was attentied by Shr. R.C. Frased. Consultant, who rederated the grounds of sopeal and automited that the appallant has not been served any SGN or even impugned and rangithay semo to know that arson any when the lefficers agree for recovery of demons confirmed shall no hveebgegen has been made at their end, that neither SCN not order has any gyidency of any service being or have been provided, by them, that the integrals order abeeingt specify which service has been provided by them but take of  $\hat{z}$ services without quantifying the demand under each scrober that the activities uncertaken by them are a soussed in the written submissions; that none of the adjectives undertaken by them is, are covered under Managavar Supply Service of even supply of Tangible Goods somices as no goods have been supplied to service recipient for their use, that in a similar base vice OIA No. KCH-EXCUS-00(HAMF-138-2018-13 dated 28 8 2018, Commissioner (Appeal), Rajkot has held that the adicilies are not covered under Mansoccot Supply service; that what is not alloged in SCN or which service has not been povered by the impugned under carnotice covered/ secided by OIA as has been decided by the Honibic Sypromaaburt in the case of M/s. Toyo Engineering India Ltd reported as 2006 (201; EL1) 513 (SC) as the ground has to be natialist/letropic in the SCN.
- In wifee susmission, Appellant has submitted that the show cause negopoes not propose to dises by the service under any distegory of texable service and conceived that the appellant had provided taxable services under category of Wanpower Repruitment or Supply Agency' and (Supply of Tangble Goods) Service I that taxable value was shown to be taxen from Form 28AS/Profit & Loss. Account without verifying as to now much value of alleged service activity was received for it/languager Regruibment or Supply Agency, and how much to "Supply of Tangible Goods Service"; mat the order is bod in larg as much as them is no proposal to descrip the taxable service under which the service tax is being perpanded and also there is no difurcation of amount of taxable somicos; that the lower educioning authority without vertying the details of the work, had considered entire an our collingate towards provision of service and this, too under two different dategories of sessions that without accepting snything, superiant such fied that even for to make the payment of service tax, they must be convicunicated as to decormach amount is to be paid against. Vangower Recruitment & Supply againsy serves: end from much towards 'Supply of langible. guads enegod. Appollant referred Para 14 tino 14 8 of the Adjudgetion manus-

issued by Sentral Board of Excise & Customs to say that the order is not determinative.

- 4.2 Appellant reiterared the submassions mude in Appell memorandum and fulther submitted that we welcoe or equipment was given on rant, that the aspectant Ladesed its own vehicle to shift goods from one place in other place and that too onsome possions; that order income was for shifting of goods from one clade to another, that there is no such exidence on record to suggest that any whick and aguigment was given on rate por injurithat over if payment made at the rate per hour, it is an agreement for payment to: eniting of materials of goods and or trial type of payment arguing will not alter the nature of sist/des, that it such interpretation le allowed then all the declipporators, who obarge on per kilometer. basis, will have to be cassiled under 'supply of langible boods service'. that is classify a service, the applyings must fall under the definition of that service and not the made and nature of payments; that from the copies of the Bills/ Invaices and work orders it can be seen that the activities can be euromatized as (i) Water transfor through tankers (ii) Miscerandous civil work (iii) Waste transfer (iv). Cement Pice shifting (v) Loading of materials in goddwn (vi) taking out gypsumbentonias' Wg from waste water and (w) Gypsum shifting; that nane of the work relates to "Supply of manpower" or "Supply of langible goods ".  $(\sum_{j=1}^{\infty} j_j \cdot \sum_{j=1}^{j} j_j \cdot \sum_{j=1}^{$
- 4.3. Appallant submitted that department dannul havel beyond sonce of show dates notice by mentioning such facts in the order, which were never part of the show cause notice and reflect upon the Flumble Supreme Court's decision in the case of Mie. Toyo Engineering India Lia reported as 2008 (201) E.L.(1518 (E.C.))
- A 4. Appellant later but nited literative service tax liability is proprectly databased as basic exemption (implicit Rs 10 lacs tained considered for the year PB06-10 and 2030-11, that he service tax is payor dicy thom for F.Y. 2008-10 and 3 would be Rs.35,278/ for FY 2010-11 as against proposed service tax demand of Rs 1.58 728- for FY 2010-11.

#### Tindings:-

- 5 the waterfully game tarough the facts of the case. The impagned order, whiten as well as oral submissions made by the Apparant. The issue to be decided in the present apparal are
- (i) whigher the services rendered by the Appellant are findle to Service Tux or not
- (ii) whether the services are covered under the category of 'Manpower'

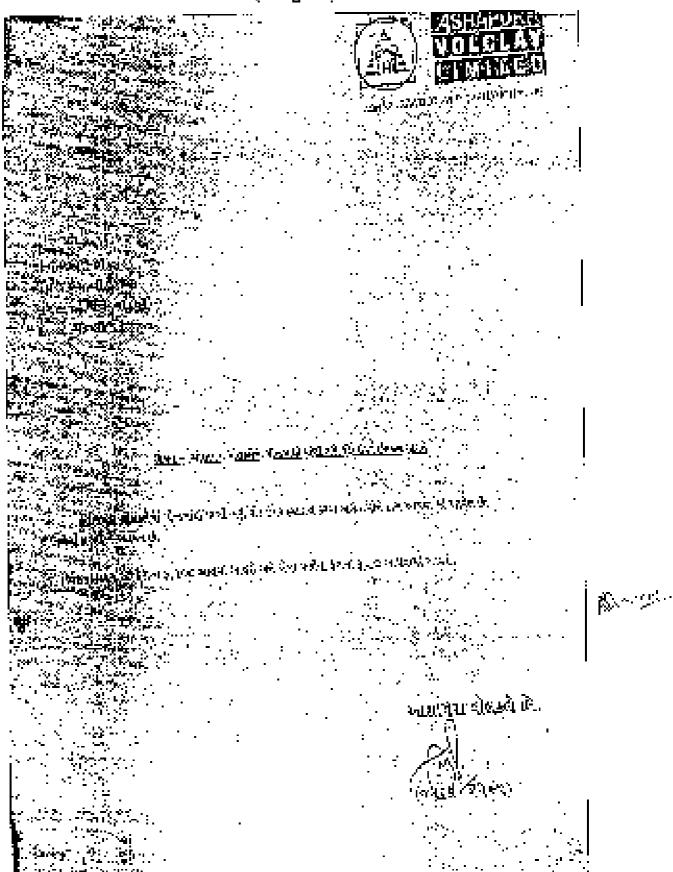
Residitirient un Supply Agancy Service\* and "Supply of Tangible (Stock Service\* or agt

If no both the Appellant has extred but the work of () loading/uniqueling of Gypster and Benton terusing their brades/JCRs (i) transfer of waste from one place to another (iii) scoptying waste water by using trickers (v) shifting of 192G loase. Valerial\* (v) specying water on roads sho emptying the Pond using the Tackers. Copy of sample contract (Image-I and Image-II) and invence (Image-II) to image-V) are as under.

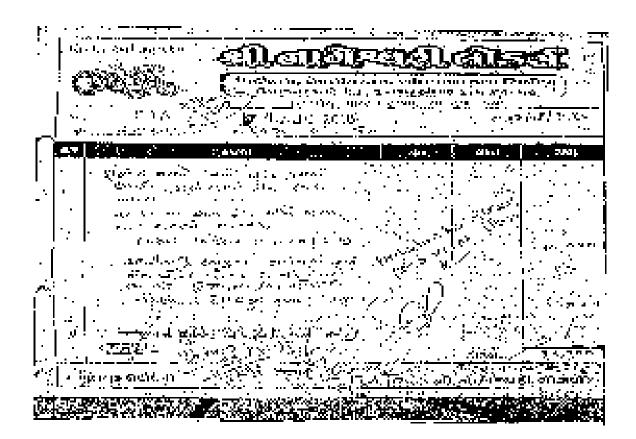
(image-l). nga dent og fragult. Dit af vilgisker frauktørt frætt hodies fra voer ott a so completer will fix office, allowed days Lorenia in di Asid Wassey Granicaloni

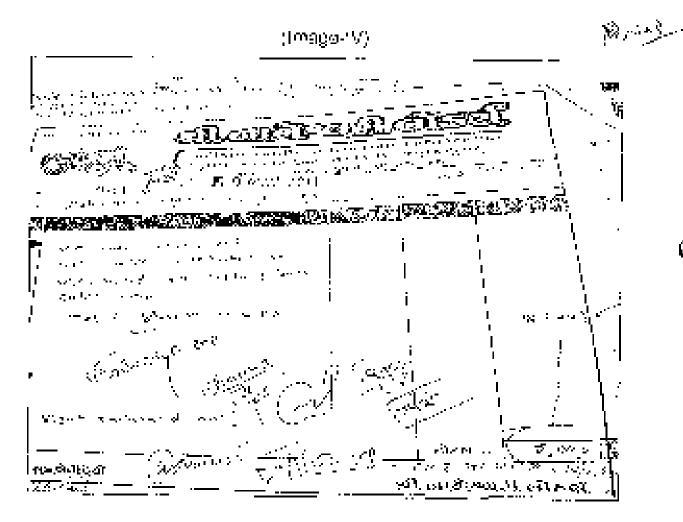
Free 8 of 15.

(Image-II).

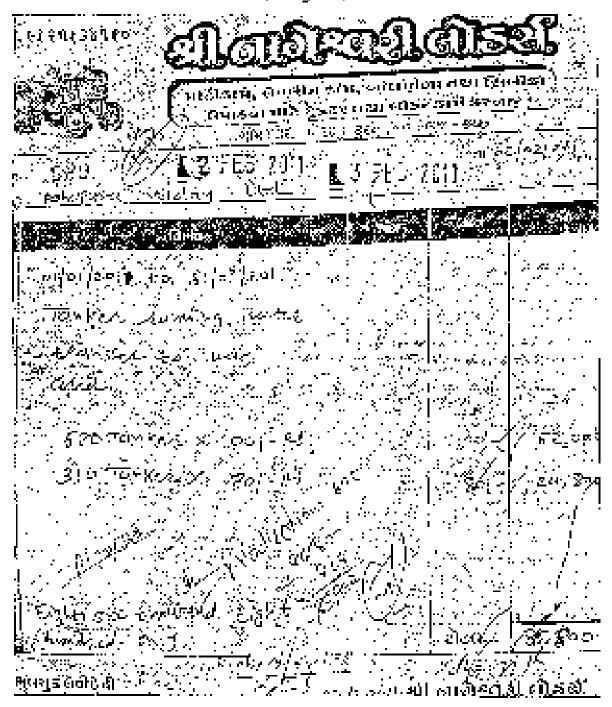


## (Image-III).





(linage-V).



The Appellant cool their vehicles and eculprients at the work site of service mappent along with required tradpower. The payments were received at one fixed collector the work ideas on per houseanday' basis when vehicles/equipments used for carrying out specific task like at hing of material/waste/waste waterieto. On going through the impugned order, I find that the lower adjudinating authority has continued Service (exception and under two category of taskable services i.e. "Manpower Recruitment of Supply Agency Service" and "Supply of Tangible Goods" without discussing the activities undertaken by the appellant. It is Appellant's contention that they nover supplied any manpower to M/s. Ashabling of Myssum & Bendon te appaying of water civil patch work, repaining at water barriers do and hence, to me, none of the work relates to

Supply of manorwer' or 'Supply of longible good' as such, it is appellant's content on that the works were carried out by using equipments of the Appellant and using their staff.

6.2 I would like to reproduced the definition of Wangewer Restutment of Supply Apagey": were invited Section 85(88) of the Act, which reads as under #

\* Their power recrumment or supply agency intering any person of (agency) of the say access of the property of addressly, or any access in 1907-050-050 of the person of the control of the other arise, in any other persons.

6,3 The term taxable service has been defined under Section 65(105)(K). stid, as under:

they service provided on to be provided to any parson, by a marquiner recruitment or souply agency in calabox to the recruitment or supply of manpower, responsible or otherwise to early (1910)60.

- 6.4 The form 'supply of manpower' bas been betned under Rule 2(1)(g) of the Service 15x Rules 1994 as under
  - supply of maneuwer creams supply of manpower, temporarily or otherwise, to another person to work under his superintendence of April 00.
- From plain reading of above reoreduced delimitate. I this that there has 55. E to be (i) superly of maneuver and (ii) maneower so supplied has to work undersuperintendence or portrol of the afford for service tax payment under the texable. category of Manpower Reductment or Supply Agency Scivicol I find that the apperlant has executed appoints work with mulcouver to the lid lent at pre-tited rate. as reflected in their contracted avoides and received consideration based upon their യമണ്ണാ of work executed by thom it find that the lower adjudicating authority has som sacuely conduided that managoral was supplied by the Appellant without discussing any specific contract/ invoice justifying such a condition. I find that the eyidopass available is the case have not restablished that the Appears had supplies in angover to 8Vs Ashapura Volday Ind; that the manpower mainting. egypygytta, vehicles etc. were under superintendence of control of the service. recipient in any manner. It is on record that the Appeliant had used equipments, vehicles for leading and unicoding of materials as per the recuirement of the appellant under their control and not sugglish to the service recipiers. Thus, vitalingredients required to cover activity under the dategory of 'Manpower Recruitment'. or Supply Agency are missing in the present case. Therefore, the services i remissed by the appellant cannot be classified under the covable category of Managiver Recruitment of Supply Agency's
- 3.5 In this regard, instead on an order passed by the Henble CESTAT in the base of Garcein Bult reported as 2017(4) GST | 325 (Trill field), wherein it has

been noted that bemand of Service has under "Manpower Reprosiment or Supply Agency Service" is not sustainable in assence at evidence of supply of manpower with details of cumber and nature of manpower, coretion and other conditionallies for such supply. I also roly on an order passed by the Louisie CESTA. In the case of K. Damindareneotly reported as 2010 (19) STR 583 (Tri-Bang), wherein it has begin held obtained.

\*6. We have heard both sides. We find that the appellant had cart of our the solid lies of washing of coment page gift wagers, so flage clearing, stepp jind weger decreased both sides and the national penns, We find that the appellants were control stated for the various name of work at separate rates prescribed under the contract The appellants did not supply has browe; cost tips for the labour powered on manday basis on mandation bases. The appellants carded our the work as a contract control to the power penns of assertable as management regularizing supply agency."

(Emphases supplied)

6.7 Thather rely on an order passed by the Horriste GSSFAT in the asserting Drives Enterprises reported as 2010(19;  $3 \times 3 \times 3 \times 10^{11} \, \mathrm{Hz}$  wherein it has been held as under.

"9. On a paretti consideration of the above reproduced each and functions from the protections case capers, we find that the contract which has been given to the appelance jet for, the execution of the work of traction, uncerting template stacking obtains the half was appelled who the mathematics is no whosper of supply mandower to the said Ms. Aspin Wall a Go, or any other recipion of the services in both these appeals. As can be seen from the reproduced contract was an execution of work as understood by the appellant ract the entire essence of the contract was an execution of work as understood by the appellant are the entire essence of the contract was an execution of work as understood by the appellant and the recipient of services. We find that the Heribia Strongma Coordinates and the responsibility of the last down the reproduction as a understood by the said down the reproduction as a understood of the last down the reproduction as a understood of the last down the reproduction as a understood of the last down the reproduction as a understood of the last down the reproduction as a understood of the last down the reproduction as a understood of the last down.

There cannot so day accel whatsoever that a accument has to be read as a whole. The proport and object with which the parties thereto entered into a contract cought to be ascertained only from the terms and conditions thereof Neither the inchendance of the document not any carticular activity order, sket by the parties to the contract would be decisive in

An identical view was taken by Honbie Supreme Court in the base of *State of AP v. Kine Elevators (India) Etal.* (suprairable 2001). *Mahindra and Mahindra* (social) in a similar lesse. The ratio of all the meaning of consoling to the English Etal the meaning of the participation and interpreted on the basis that the said agreement stricted the rate and understanding of the parties. The said ratio applies to the current case in hand. We find that the ontire tener of the agreement and the participations of a large-suprement repreted in the expension of a large-suprement of a participation of a large-suprement of a participation of a large-suprement of a participation of management temporary or management of components of management and components of management of a participation of components of the other discollections of source of support of management temporary or management of components of the other discollections at a participation.

(Emphasis supplied)

8.6 I also sely on the clarification respect by the Board vice Circular No. 1969(2015 S.T., pated in 5.12.2015 issued from F. No. 554/153/2014-TRU,

wherein it is clarified as undan-

The mater has been examined. Including of management upply service is a transportation in the service are that the supplier provides management which is at the places of an included by the service provides management which is at desired and the personal under after so certail of the service raction of dering the personal portrate. Service provides apparatually is only to the contrate of management and equally of management, Copleyine their management complation by management control of the rate in other words, inclination management control of the service in other words, inclination will charge for supply of management even in management enterts die

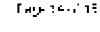
(Emphasis supplied):

 $\sum_{i=1}^{N} a_i^{i} a_i b_i b_i^{i} b_i \cdots b_i^{i}$ 

- 6.9 By respectfully following the laceve base laws and Board's Circular II hold that the services rendered by the Appellant to Mrs Ashapura Volctay Ltd sreince covered under the estegosy of "Manpower Recruitment or Supply Agency"
- 7. If go that the service under the nategory of 'Supply of Tangible Goods' Service' is defined under Section 85(105)(1222) (bid) as undert-

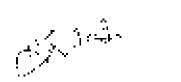
any pervice provided or to be provided to any person, by any other person in relation to supply of tangible goods including metal-less economist translating logist of presentation and affective booling of such mechanicy equipment and appliances.

- 7.1 I the that any service is covered under the definition of supply of and ble goods if occess are suppred to service recipient and not when the tang-ble goods are used by the sorving provides while convinging, specific work assigned. by the service recigient. I find no extremos acquired sincror dispussed in the impugned order to hold that the rangible goods were supplied by the appellant for use of the 35 vice recipient. On the contrary as discussed in foregoing Haraa, appellant has used the lancible goods owned by then, for carrying out the workindertaken by them and hence confirmation of demand holding that appallant supplied l'angidie goods is also not l'astified just because Tangidle couds like. tanker, tractor are manifored in the acquirests and also because sayment. modalities are pased on commercial terms for computation of work done topayment. The lwork sade-taken by the upperaid eight and of gypsum form one place to another by using the losder of the expolent or spraying waste water from Pond parit justify to be treated as supply of tangible goods. I find more jeappolishes contantion that norther SCN nor the impligned order a soussed earth. how the activities performed by them are class liable under isopoly of tangible. gnods searce". It therefore, hold that the Appellant is not lable to pay Service Tax. under the dategory of Supply of Tangibla Goods Sawindi.
- In view of acove, a road that the impropried order confirming demand by:



classifying the services undertaken by the appellant under "Mangower Rosmilmont of Supply Agency' and/or 'Supply of Tangible Goods Service' 's null conect liegal and proper. Since, the demand of service text rae not sustained, demand of interest and impostion of penalty wide the impligated order council. survivo and are required to be set using

- 9. ., therefore, set as de the impughed profession allow the appeal-
- े पीलन्त्री द्वारा दर्श की गई अमील का जिन्हार उनरोक्त तरीके से किया जाता है 🕡 ₹. \$
- 9.1The approal filed by the Approlancis disposed off as above.



आयुक्त (अपील्स)

By Read, Post AD.

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MW Shiri Yagoshiyas Toacors	was Temecro (学表表)	
i (Proprietor — Dtalue) - Rathodii	ra Machuche (9) 2150	ी माणेश्वरी आहर्स १ - ऑ.कीरआई नर्षुक्ष साधेत्र)
vi a <u>ņ</u> e- ∟or	स <u>ाल</u> - ह	ार – कुमरा
Kilkma Bhu;	্যুন মূন	

### <u>Capy ter</u>

- The Other Commissioner CGST & Compil Excise, Armogabad Zogo, Ahmedacad for his kind information.
- 2) The Currentssioner, CGST & Central Excise, Kirtch Commissions ale. Candhidham for recessory action phoses:
- The Assistant Commissioner, COST & Central Excise Division. Physical 2: further necessary action.
- Guard File.