

#### ∵ प्रकार स्वतृत्त (अपरित्य) का कर्यालय, यातु एक प्रेमा कर और केर्याक शताब शुरुक : ดภาคิยา ายให้ดีให้เปลด้อยเปรียบจาก ดี เมษา ระชุม ระท พ.ศ. พ.ศ. ข. ... จากเรา

ਫ਼ਿਰੀਆ ਰਵਪਾਰੀ ਪ੍ਰਮਾਨੀ ਘਰਤਾ ਹ**ੂ**ਾਂ (Bros. 680 Bussian  $24^{\circ} \times 34^{\circ} \times 12^{\circ} \times 1$ 



<u>=74 fis 2,6 mk</u> c<sub>e</sub> − 360 fi0 t

In 6 Fro No. 10-3 1, 247-95 (204) 32, march compress a kingging and

### श्वेस्टर्वेड कर वी दूर् ५

printer and property A secretarion

 $0.2475244 \pm 0.03421117$ 

7 Y 3 7 /

01/A/C/Michidise20,7418

100

10-11-2510

afilet (154 ± 51 (Oalo -In-Apo √ Ng.

# NCH-ENCUS-000-APP-034-2019

ञ्च सुपातक कि किए।

Date of Choor

27.02.2019

नार्वे अपने की करो⊈ ...

Date of issue:

28.00.2019

हुमार प्रतीय प्रिधान अनुरूप (अर्थक्ष), यास्त्रीय द्वारा पार्टम् (

Passed by Shri Zumar Santoshi Princips of some responsing Controller Barbar.

প্রথম আধুকারি মধুক্ত সম্পুর্বার সময়ের সামাজক সময়ের। সম্পুর্বার সময়র প্রভার সময়ের সময়ের সময় মুঠ করে হয়,

 $\mathcal{H}(\mathcal{A}^{(1)}(x)) = \hat{\mathbf{u}}_{\mathcal{A}^{(1)}}(x) \hat{\mathbf{u}$ 

Aperon of all active members exposured by Andrew Maldebra (Delinian Novince Company of the Company of Andrew Same As 2021

Haliketa / Jacon segan / Mandére Harrier

সমাসকলা (, সাংকাটি আলফ প্রবিচনা স্থান্ত্রতা নাম্পর্কার ১৯৫৫), see চা চে চা Appellage  $\Delta$  Regionalize  $\mu$  .

M/s Shorther Containers Craight Station (NCPS) P. Left. Ref( $m_{\chi}$  Right, CSS)  $g_{\rm OH}/f_{\rm co}$ MPBEZ, Minudez, Dist. Butch.

ទីមានដែលរយាងប្រជាពលការ ការ ខែមេនា ម៉ាន់ទី១០ បុណ្យិក មានប្រជាពិការការប្រជាពលការបានប្រជាពលការបានប្រជាពលការប្រជ Appropriate ការស្នាស់សេចនៃ ប៉ុន្តែ និង Coldenie កិច្ចមួយ ពេល Blanch upodal Entire recognisce ការបានប្រជាពលការប Rational ការប្រជាពលការបានប្រជាពលការបានប្រជាពលការបានប្រជាពលការបានប្រជាពលការបានប្រជាពលការបានប្រជាពលការបានប្រជាពល

tour specified and the first of angle withing and the only the Section of the control of the control of the first of the specified by the spe μŪ

त्तरी तत्त कृत्य हा भे राज्यों पर भवा सम्भाव अवस्थित । एक स्वता कर्षा कर्ष कर मेन्द्र कर है जो का का केरक कर विकेश हैं के एक क्षेत्रिक के क्षेत्र के एक्स्पुर विकेश के का के बीलाई कार्

The substationed inflictances is zero a Service tax Appellance to the following the Report Turk to New Youth that the role rate rate of the control of the service of

vi

Later of the state of the property of the prop 11:

The upper of the approach of the of their leaffel in Year of financial to a first place of the upper of the approach of the second of the seco

The space under out we can be seen of the survival maner two local to the space of the property of the space of the space

जिस स्थितिया के अस्ति के अहं से अस्ति के प्रति हैं के अस्ति स्थान के दिन हैं कर विस्तानों, 19.4 के विस्तृत के अहं हैं के अस्ति के अस्ति

The tipe of the form with the sequence of the

:i:

বলি কোনে এক বা প্ৰদুষ্ট জিন্ত কৰে। আৰু হা জানে, বা কা প্ৰক্ৰেছা কৰা বিক্ৰা জিন্ত (১৫৫ টুন্ত) তা কাপ নাম কোনে স্থাপন্ত কোনে সামৰ কোনে বা তাৰ্থিক কোনে উপৰ বিক্ৰা সংগ্ৰহণ কৰিছে ।

even en la la 17 maio de la 27 maio de la 27 maio de la 28 maio de la 18 maio elle 18 maio elle 18 maio de la 2 Temperatura de la 18 maio de 15. :

पर्योशक भारता नाम्य र विम्नियंत्र है क्ष्मित शहर के अन्याद का माने करिए। १४ | १९४१ फेट १९४१ फेट १९४१ फेट १९६० के के उपने 1000 का कृष्य के किया जाते भी प्रति करण किया कर पत्र वर्ष के के १४४ में १९४६ के १९४१ के १९४४ के १९४४ के अपने १९४१ के १९४४ के १९४४ के १९४४ के अपने १९४४ के अपने १९४४ के १९४४ 1-1

Alternative services and the service of the service ILH

as position as a proper contribution of the specific is also specified as the contribution of the first contribution of the c

ित्र क्षेत्र के किन्तु के प्रश्निक के किन्तु के किन्तु के किन्तु के किन्तु के किन्तु के स्थित किन्तु के किन्तु किन्तु के An appear of miles and being the second of the second of the second manages consisted in the Caracter of second data in compact with the second Picture of the 1980

ு நிறிய பிருக்கிய இருக்கு இருக பேர்க்கிய இருக்கு அருக்கு இருக்கு இருக இருக்கு அருக்கு இருக்கு இருக்க 100

# : ORDEA IN APPEAL ::

M/s Mancra Container Freight Station Private Limited Bharst CAS, Zone-1 MPSEZ. Municip (horeinafter deferred to as lappe ent') filled present appear against Order-in-Origina No DNAG/Vipidre/2017-18 dated 10.11.2017 (hereinafter referred to as impagned order) praced by the Against Commissioner. CGST Division Mancra (hereinafter referred to as "the adjuncating authorsy") -

2. The prief facts of the case are that the appellant had paid service tax on lift on it. off charges of the scripty 5.1d leaded containers from the shaping Sacs and transportation of loadied confuinces from CES to conflictly and vice verse, however, no service tax was paid by the appellant on transportation of empty comeiners from there to GFS and vice versa by elemning bonds of exemption under Notalogian No. 25/2012-ST. dated 20.5.2012. Statement of Shri Sujay Kumar Mahadatra, Mahager (Accounts) and Authorized signarary of the appellant was recarded on 19.3.2015 where  $\epsilon$  the deposod: that in base of imported goods, they charged service tax on the importer/CHA on composite service/bandled service (ght hoar transportation of lacked container till loading of imported goods to the hubbs arranged by improves under the head of loargo. handling sorvice" that in asset of export of the goods, the exponent bring their goods for expect to appellants CES; that in most of the cases, as the appellant has enjoycontainers lying at CHS. The appellant after unleading the goods from exportors, volvious, stuffithem in to the empty containers, this milosofed containers and transport of luades) containers to the port for which trey biles the exporter export composite. charges and also charges weighnest charge from the exporter under the book of 'Export Cargo Handling charges' and discharged service tax; that regarding activities of meyemant of comply containers from sort to CFS and vice-versa and from one CFS to another, they provided service of transportation of empty confamers and raised involces. and shown amount of art could off charges and amount of transportation of empty. containers separately and discharged/paid service tax on amount of life ordiff off. changes but old not pay service lax on bansportation charges of empty containers ... Though composite invalces were issued and no consignment note/L.R issued and even  $\sim$ when they were not a Goods Transport Agency. Show Cause Notice No. [RGCFDRRD/35.24/2015 17] as ed. 31.5.2017, was resultd to the laboriant emposing receivery of Service Tax of Rs. 24.00 /864 for the porido from F.Y. 2012-12 to H.Y. 2010-17 (aptn 30.6.2016) under Section 73(1) of the runance Act, 1964 (heremadia) referred to as "the Act") eleng with interest unske Section 75 of the Act (made)for of penalty under Section 76  $\sigma$ finho  $\Delta z$ , and recovery of late resignator Section 70 of the  $\Delta z$ read with Rule 70 ത് ദണയാല Tex Rares. 1994 for failure to fee ST 2 setum for the pation 1.7.2012 to 35.5.2013. The impugned cross confirmed Service Lex of Rs. 24.00 785/. along with inverset, imposed centility of Rai 24 00,7957, under Section 78 million Access. anderes: la repoyer applicació late fee for facura to file ST 3 relació in timo

Negative States

- 3 Being aggricked with the impugned order, appellant preferred the present sapeal, inter sits on the following ordered
- The impugned treat is a non-sceaking order traemuch as the impugned order has not dosit with specific prayer of the appellant that they are not ongaged in making of empty containers at pot and this fact warranted variation before adjudication; that the lower adjudicating sutnorty has also taked to deal with specific plea of appellant that the SCN is containy to CREC Circular Nn. 104/7/2006-ST dated 5,8,2008, which was set up on all revenue calcass as nell by the Humble Supreme Cauci in the case of Ranabey Micronithierts recorded as 1998 (87) FLT 19 (SC)
- (ii) The lower adjudicating authority of Fare 25 of the impugned order admitted that the appellant is providing service of transportation of empty containers from paints CFS and wheelverea. When it is an admitted position that the separate had provided transportation of empty containers and when there is no dispute ever the fact the transportation charges were hardwith aspectified unit under St. No. 21 of Norfderfor No. 25/2012 ST, then likely was no requirement to issue consignment note as provided in Fixs anation to Rule 18 of Service Tax Rules. 1994 and therefore, the lower as udicating action y could not have help that the appellant pannet be treated as GTA because they had not issued consignment note.
- Cerformed by the appealant as mentioned in Pava 27 of the impugned order, have been planified with GREC Circular No. 104/7/2008-57 dated 6.5.2008, as forming part of chird-ball service, namely manaportation of goods by modient the lower adjuticating authority at there 23 of the impugned order admitted that the appellant is providing service or transportation. Therefore, the appellant auch to that the impugned order is contrary to the aforesaid Circular and honce, the impugned midel is not console in the eyes of less.
- (iv) The relience claded by the lower aduldisating authority on the decision of the duniele CESTAT in the case of Bharathi Scap Works reported as 2008 (9) 5 : R 30 (14) = 9 and ) is misulated instruce as in that asset the transporter was not exempled from the requirement to issue consignment note in terms of Explanation to Rice 4B of Service (sx Rices 1894).
- (v) The salid involved is pertaining to interpretation of statute, trade practical followed by other CPS as bonafide belief of sopelfant flowing from CBEC Circular dates 5.6.2()))6 and freque, service tax critis nor have seen camendad by invoking extended period of tanketon.

ემე — Since pernand it somice (გამა ინ) (erable on medices well as limitation, ხოლ ნოგომამის ა მეკებებებები approbablished Sacre to day interest under Section 75 of the Act and no pensity is required to be imposed under Section 78 of the Act.

- (vii) The appallent has not collected aervice tex from the service recipients and hence, their total receipt for rendering the service should be weated as inclusive of service tax as held by the Homble CESTA1 in the case of Advantage Media Consultant reported as 2008 (10) STR 449 (Tri Kelkaix), which has been upheld by the Homble Supreme Court reported as 2009 (14) STR 449 (SC)
- Personal hearing in the discler was altended by Shi: Vikus Menta. Consultant Who receivable the grounds of appeal and submitted that the demand of service tax on fransportation charges of empty containers to legally not sustainable, that the impugned stready settled by CBEC Circular No. 104/7/2008-ST dattet 8 6-2009, that the impugned order teeds to be set aside.

### FINDINGS:

- I have carefully gone through the tasts of the case impugned order, grounds of spipeal and the submissions inside during personal hearing. I find that the appelludings a mady identified on amount equivalent to 7.5% of service tax confirmed wise impugned order and thus has complied with the requirement of Section 25H(f) of the Central Excess Acti 1944, as made applicable in service fax maties vide Section 33 of the Aut. Therefore, illiphosoid to decide this access. The leases to be decided in the present case is as to whether confirmation of comand of service toxic increment of empty containers from lody to CFS and vice versa provided by the appellant is correct or not.
- this hold souled that the appelant has undertaken the activity of bringing empty containers from the port to their CTS and vice-versal and has provided handling services like thich lift off and storing them in their empty container yard. It is also not disputed that the appelant has issued cities of the container lines in the matting them or worps the banaportation charges and handling charges but they have not discharges/paid service tax on transportation pharges on the ground that it is a GTA service and it is sellow the exemption limit. However, for handling charges, they have paid service for the find that the cef nition of Cargo Handling Service, provided under Section 85(22) of the Hinance Act, 1994, as it stood during the relevant time review as under:
  - (23) <u>Isanga Jienering **service**l means</u> cedi<u>ng italinading, p</u>acking <u>satunsasking</u> <u>effica</u>tgo and instadas.
  - (a) cargo handling eery cas provided for freight in species containers or for noncontainerized freight services provided by a cumainer freight constant or any other freight terrainer for all modes of transport and cargo handling service moderatation freight, and
  - (b) service হা parking together with transportation of cargo or goods, with or Rogeto Set

 $(x,y,y,z) = (x,y,z) + (x,z) + \sum_{i=1}^{n} a^i x_i, \qquad (x,y,z) = 0$ 

without one or more of other services like loading, unleading, unpacking, but does not include, handling of export cargo or passonger baggage of more transconation of goods:

### (Emphasia supptied)

- 5.1 Thus, for classifying any activity/service as Cargo Handing Service the presence of cargo is a must if find that the transportation of emoty containers for without degree denote be considered as saugo handling service in view of the fact that these is no bargo and in view of Para 14 of Annoxoro + 6 to Roard's Gircular Not 61 1/1/2002-1 RU dated 01/08/2002, which reads as under:
  - 14. CERs also sometimes uncortake storng/veshing/repairing and nanding of empty containers for the shipping lines for which they charge the shipping lines. <u>Control containers cannot be treated as saying.</u> Therefore, the activities inentioned above on opt conte-will in the parties of cargo happing services.

(Entphesis supplied)

- 5.2 In view of shows. I sold that the transportation of empty containers from port to GhS and vice versa can't be called Cargo disadling Serving and no service tax is cayable on such transportation oranges under Cargo Handling Service as Irela in Order-A-Appeal No. KCH-EXCUS-692-AFP-183-T0-194-2017, 18 pared 5.3-2018 in the case of Siddhi Vinavek Logislice.
- 7. Also find that the lower adjac caring authority has hold that the appellant had not issued consignment notes, the store, the service cannot be considered as GTA, 660/de + find discline statute defines Goods Toarsport Agency, as under -

"goods transport agoney" means any paraon when provides service in relation to transport of guarantry map and assume consignment note, by whetever name called.

- 7.1 Thus, to chestly a person we GTA service provider first condition is that he should be providing serviced in relation to the separation of goods, it find that the first consignment note should have describe used and it is also undisputed that consignment notes have not been described and it is also undisputed that consignment notes have not been several Regarding issuance of consignment notes, the appellant contributed first there was no requirement to issue consignment notes, the appellant contributed first there was no requirement to issue consignment notes are crowided in Exchanation to Rule 49 of Service Yak Rules, 1894.
- 7.2 I find that ReigitS to Service that Sures, 1984, reduced under

Tapy gottes transport agency when stantage worder in relation to transport of goods by rown is a greate contage what issue a consignment does to magnest of some are

Provided re<u>ar where, as a largery</u>a servid<u>e to relation to transport</u> of guidda by r<u>esti</u> in a constituentiage to vividity spontant and a largery 33 of the Act, the moods if anyone agency strait art we have indicated to save the <u>positionment saint</u>.

Explaine@ent. Heighth a more or of this rule end, revised out provide to rule 4A, representations of necessary depends on the second by a queue BBASCOT STORY.

 $\sum_{i \in \mathcal{I}} \sum_{j \in \mathcal{I}} \frac{C_{i,j,j}}{C_{i,j,j}} \, , \qquad \qquad \text{Page No. Size } \, .$ 

against the receipt of goods for the purpose of harsport of goods by road in a goods parage, which is socially numbered, and contains the consignor and constitues, agastranon number of the goods camage in which the goods are immagered, details of the goods transported, details of the place of utigin and destination, person liable for paying service for unstitle goods are goods transported.

(Παφάνεκές συρφάνει):

- final that Not/Daties No. 34/2004 Service Tax dated 03 12:2004, as arisinged and Notification Nor 12/2012-Service Tax dated 20:06:2012 granted exemption to GTA service if the amoust charges for GTA service did not exceed Hs. 3:300/- (find that in this case there is not a legation in SCN that the amount charges is more than Rs. 1;000/- whereas the appellant has submitted that amount is tess than Rs. 1500/- in each and every cost. Thus I had that since the Notification exampted payment of Service Tax, the appellant providing services of Goods Transport Agency was not required to pay Service Tax on the transportation charges of empty contenters, which were below exemption limit of Rs. 1,500/-
- 8. In view of above, I set aside the impagned order and allow the appeal first by the appealant.
- अपोजकर्ता दृष्टर दर्ज की गई अपोज का निम्हार उमरोक्त तरिके से किया जाता है
- 9 The appeal filed by the appellant is disposed off in scove teams.

्र अस्य मान्यक्ष्य संदर्भः अधान आयुक्तः (अपीरस)

#### By Speed Post

\_,,

Mis. Mundra Container Freight Station Private. Linveed.

Bharat CFS, Zone-1.

MPSEZ, Murdra

लेशर्स मुँद्रस बहेगर क्रेस्ट स्टेस्स पाइवेट लिमिटेड कारत सी,एफ,एस जोत्त-१

भारत सी.एफ.एस । होत-१ एमपीएसईज़ेंड, गुँदरा

# 亞

- (१) प्रधान जुरुष आचुक्त, केन्द्रीय विस्तु व सेवा कर एवं कन्द्रीय २०५८ १,-क, अहराराघाट क्षेत्र. अहस्त्राचार को जानंदर्भे हेस् ।
- (2) आणुम्ल, केन्द्रीय तहतु = २२ कर एवं नेक्द्रीय हत्याद गुरुवः, अधिधाम को आवश्यक कार्यवाही हेता।
- (3) सहराक आयुक्त, केन्टीय वस्तु व रावा कर एवं वेगदीय उत्पन्न शुलक संपन्नत, तुंदरा की अवस्थक कार्नशाही हेतु ।

्राह्य स्ट्राह्म) साहे फाइल

