

# ्राधानसम्बद्धाः (अगोल्म) आ अधिलय, बन्हु एवं सेवा करत्री केन्द्रीन प्रहास्य स्थानः UH PALIK TIBIK ÇERAL COMMINSION KRIÇA PILIKI KURKUR AÇENTRALÎ EXÇIŞE

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# <u>। जिस्तर्भ साक्ष ए.टी.हाराः</u>

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कुमार सीमार, प्रथम अञ्चल (या किए), स्थानीट हारा पारिकार

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লা এই একটিও ই অধিস্থানের মূলি স্থানিটার স্থানার কৃষ্ণে নিয়েছার ১ আধিক্ষেত্র ই লাগু লাক সাক্ষর হয় একরা টুঞ্ একে parks না বহুত্র কৈ উঠিছিল এক উপস্থান এক public আৰু এটি ভ্রম আচুতর কি বাল বহুত্ব চুক্তার ব্যৱস্থানের আত্রাক অসম

र्मम् अक्षाद्वित्रीय स्टब्स्ट क्षार्थ के क्षेत्रक क्ष्मित्र क्ष्मित्र क्ष्मित्र के ति । अस्ति स्वार्थ के विभाग स्टब्स्ट के विभाग स्टब्स्ट के ति । अस्ति स्वार्थ के विभाग स्टब्स्ट के ति । अस्ति के ति ш

र्माप्यक कुरावा में इस्तरिक संदेशमा, संदेश हुन्द केरोंने संश्रम कुम कुमें विकास प्रमानि महसारकार की विकास कर कार कार की थे. असरक हुआ कर रक्त कि कि बच्च संदेश हैं Ţ

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Appropriate Service Control of the Service Co UŢ. बोर्स बाहुत, (\*) நாலகால் நடிப்பட்டி (க. மாள்க Their State range) மேற்க கொண்டது. இப்பிற நகைப்படுகள் இலியில் இரி நாலகால் " france, Dungers கூல நடிப்படுகள் இல்லை அது மடிப்படுகள் பிறிக்க என்ற இருக்கிறின் 10000 டாத்த திருப்பு அந்திருந்த கொளிய என்றைகள் மாள் மிரிக்கிற்குள் இருக்கும் இன்றைக்கு இணையை இன்றைக்கு நடிப்பட நக்கிய பிறியில் கார்கள் இரியில்

होते काम के किहा कर मान के पाएकों के एक काम किये कार की दिये का कार्य के मान कार की कार कार्य की किया का जाने कार्य हैं। [24] अप को पाए कार के पाए की पाए कि कार्य का किया किया की अप का 1000 का कार की की कार की का का का की की की की In another than the second when the second second begand being a factor to a substance of to condite. Note to on the many specification, a manager second because of the second of the problem of the second second second second condition in a many or the second second second of the second of the second of the second a.

പ്രവര് പുതു പ്രവര്യ അത് ഉള്ള ഇന്റെ വരുന്ന് ഉള്ള ആ ആ ആ ആ ആ ആര് ആദ്യ ആശ് എന്ന് ഉപര്ക്കും വിദ്യാവ വരുന്നു. പ്രവര്ഷ്ട സംപ്രസ്ത്രം പ്രവര്ത്തിൽ വരുന്നു. ഇത് അത്താന് വരുന്നു വരുന്നു വരുന്നു വരുന്നു വരുന്നു വരുന്നു വരുന്നു ഇത് അതി അവരുന്നു വരുന്നു ഇത് അത്താന് അത്തോട്ട് അത്താന് വരുന്നു വരുന്നു വരുന്നു വരുന്നു വരുന്നു വരുന്നു വരുന്നു · E.

sforeirs was a general for Section in the control of the special form of the first of the control of the period of

्रिपेशिक एका कृति हात्रात्त अस्त का का का का का का किस्तात का परितिष्ठिया हुआ एक जान आकारों के देवत पाक की की क ते पुरुष (ASCA) का शिर्ण की किस (ASCA) किसी सोचा (CC के बाद किस का तक बादिक अस्त प्रकार की की का जाता के बाद से हैं |  $10^{2}$ ong i Coloin of any dury allowed no equit rest instants norment of cross every on that produces under the provisione of the Autient provisions and grown instants on course, is present by the Communication Appendix on to talk i, the Torsion parties the Color of the Section (1987) and 1989.

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हम्मुक्त प्रवेद्य क्षात्र भौमापुर्विक मुक्तिक अपनाम क्षाप्त की नाम २० है. १९९७ में १९९९ - इस रहे कुल को रहे में के कार विकेद कर कुल के लिए कार और प्रवेच का 100 प्रवेद का कराया प्रवेद प् ிதி பெருந்த தெரியுள்ளது. அப்புக்கு பிறிய விறியிருக்கு ஆடிய பிறிய படிக்கு கொள்ளது. அவர்களை இன்று இருந்து இருக்க 1900-ல் படிகள் பிறிய விறிய இருக்கு இருக 1.2 பரியும் படித்த 1950 இன்று அன்று பெருக்கு பருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இ

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onegijka വരു വരു പ്രിപ്രേട്ടിയുള്ള ആണ് നിരുത്തെ ഇത് അവരെ അത് നിന്ന് അതിന്റെ ഉദ്വേശ്യ പ്രവാദം ആ ഇടപ്പോട്ടാം നിരുത്തി കോട്ടോട്ടാം വരുത്തിലുള്ള വര്യ വരുത്തിലുള്ള അത് നിന്ന് വരുത്തിലുള്ള ഇത് ആവരുത്തിലുള്ള ഉദ്വേശ്യ അച്ചി ഉട്ടോട്ട 6000 നിന്ന് വരുത്തിലുള്ള വരുത്തിലുള്ള ലാധില് ഉത്തിലുള്ള ഇത്തിന്റെ നിന്ന് 1996 നും വരുത്തിലുള്ള വരുത്തിലുള്ള വ

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र है अभिनेत्र मानिकारी को उन्होंने परिकार करने में नेतीस्त जानक किन्। और करिकार करने कि किन् कर्मनाकी क्रियामिक द्वारा हुए। भारत 2001 (1909) के देख नेता है। क ansonastruoren irania. Puolita kuustuud yläsuudi juulus sar tentaskit siedannann Plapindingije hitalika ili järjajajatuse suudengatho appallanninastesta taleite kuulusen järjaja sarakallanga tuu.



# :: ORDER IN APPEAL ::

M/s. Goki. Agric Responses Limited, Plot No. 76/1, 80 & 89, Near Sharmal Response Galpadar Road, Misage: Megripsin Bortchi, Taluxa: Anjar, District: Kutch, Pin 13/3, 201 (herainerter referred to as The appellant) has Five the prosent appeal against the Order-Sr-Original No. 25/Refund/2017 18 dated 22/32/2018 (burkinafter referred to as "the Impughed order") basked by the Deputy Commissioner, Central GST, Division - Anjor-Brachou (Kutch) (hereinafter referred to as 1 he kwonucijudicating authorgy").

- 2. he brief facts of the case are that the appellant, satisfied an application for retund of Rs. 8,55,547/- under Notification No. 41/2012 S7 cases 29.05.0012, as amended, for refund of service tex paid on various taxable services used in relation to expect of Caster Seed Extraction De piled Cakes during Msy. 2017. The lower adjudicating authority sanctioned refund datm of Rs. 6,09,915/- but rejected refund datm of Rs. 2.02,060/- [towards service tex of 1,88,596/-; Kristni Kalyan Cass (hereinafter referred to as 'KKC') of Rs. 6,735/- and Swach's Bharat Cess (hereinafter referred to as 'KKC') of Rs. 6,735/-3 on the ground that the appellant had not submitted original Idvoice No. SYM/KDL/45/ dated 21.06,2017 and also rejected refund datm or Rs. 21,781/- illowards KKC and Rs. 21.781/- towards SEC on the ground that these is no clarification regarding refund of KKC and SRC in Notification No. 41/2012-ST.
- 3. Being aggreeos with the impugned order, the appealant preferred the present appeal whenen, invariation the grounds as under-
- (i) he lower adjustanting authority had nowhere disputes the fact that the appellant had calmed refund in respect or service tax paid for input services (1976) for export of goods; the leviner there is no dispute on export of goods and use of input services for the said export, then injection of refund was not just field only due to non-submission of original invokes.
- (iii) Thoy have followed the procedure as presonded in Para 3 of Notification No. 41/2017 ST dans: 29.36.2017 and submitted all relevant documents instuding photocopy of Invoice No. SYM/KDL/457 dated 21.05.2017 only as original copy of the same has been misclaced by them.
- (II) The lower adjudicating suthority (ii) not consider other relevant documents including bank statement, which gives payment made to the 50 Movieroviae. Mys. Interocean Shipping (India) Pvt. Ltd.
  - the impugned order rejecting refund has been passed without retains.

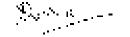
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setect memb, without tasetag of any Show Cause Notice and without granding. Journ persons, heading to violables of the officialist of natural justice.

- (v) The appellant submitted that there is no dispute regarding available of garyings for experi of garvic and bence, substantial benefit cannot be denied at teannial ground ray to upos the following two laws:
- Mangalore Chemicas and Terubasis Linkwiller (SQL (FB) EFT 437 (SQL))
- Opk 24 ite.) 120 3 (0) 7/80 006.
- Wipro unsted = 2014 (307) EU (306 (34.7)).
- (vi) The argeliant spontithed chacting larviolitik(Clark) SDC are on remide (a), therefore, when service tax tise! Is considered for relate, then relate of KKC and SBC (paid on service (cx) need to be allowed as per judgement of the Hanfale Supreme Count in CV. Associative, 279:1-2750 of 20x0 in case of SBC Nutrients Private Limited.
- 4. Personal regiring was graphed to the appearant and department on 18.12.2018. 10.01.2019, 21.00.2018 and 19.02.2019 vide PR Notices, however, neither any response/reply received them them not any one appeared on any of the given dates, on pensit of the appearant and hence, a proceed to decide this appearance to the basis of available exercise.

## Findings:

- 5. If have carefully gone through the facts of the bare, the impograx order, the appeal memorandum. The issues to be decided in the present appeal are as to
- (i) whether the impugned coder rejecting refund of service tax (fue to numbulation of uniginal lovation suproper or oil available.)
- (1) whether the imprigned proces rejecting estund of KKC and SBC paid on the services word for expert of goods under Notification No. 41/2012-57 detection 29.06.2012 is correct or not.
- 6. If find that the lower adjust/cating submirity rejected refund of service texton Rs. 2/02.079/Hurr ground of non-submission of original involce of the service provider. It would like to reproduce the condition enumerates in para 3(n) of Notification No.41/2012-SF dated 29.06.2012, which is as under:
  - "(F) —— where the total amount of relative sought under a claim is uple 6.50% of the first ROS value of Argent goods and the exposite to require at the Exposit Rose to Exposite Exposite Exposition (in the Exposite Exposite Exposite Exposite Exposite Exposition) is a first or the Exposite Ex
  - (A) If the equation is a congressioning consum to partnership they the dynamics enciosed with the class statistic self-vertiled by the exponer and if the exporter is a finited company, the eccuments enciosed with the dates shell be certified by the person-paper the found of Character.



Paga No. 4 r86.

(3) the documents enclosed with the plant shell who contain a vertificity from that capacitar or the parton notificated by the Board of Checases, to the effect that specified service to which the document pertains has been accepted. The assume the psychia transport has been paid and the specified service has been used for export of the said goods under the shipping tell number."

(Emphasis supplied).

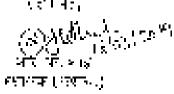
- 6.1 If first that para 3(h) of Nethication No.41/2012-ST dated 29.06.2012 stipulates submission of codements (c. "*involoty obolico, or any* other documents for each specified service, in original, issued in the name of the exportant cyldending payment for the appellant for exportant and the service are paid thereon? Thus, the lower adjusticating authority has rightly rejected the refund claim for amount where the appellant had not submitted original involves in terms of para 3(h) of the Notification No. 41/2012-57 dated 29.06.2012.
- 6.2 However, the appellant has benemently minimented that hefore rejecting the refund claim they were nother issued defect means / show ratios have been personal hearing notice and therefore, the principles of natural justice have been violated.
- and It is evident from the impugned order that relither show cause notice has been issued over opportunity of personal byshing gramps to the appoilant to explain their case infore rejecting the refund claim. I fine that issuance of show cause notice and granting of personal hearing are obligatory on part of him department / adjudicating authority before passing puzzicudical order. Thus, the rejection of refund claim has to be considered as violation of the principles of neoural justice. It is self-ed position of law high the refund claim should be rejected after lessance of some cause hopics demonstrating reasons for denial/metriction of refund claim or giving refund claimant reasonsolic opportunities to explain their case.
- Notification No. 41/2012-Sit is dearly stating refund of service lax paid on the service used for export of goods and sub-section (2) of Section 1.3 of the Finance Act, 2015 and sub-section (2) of Section 151 of the Finance Act, 2015 deanly stipulate SEC and KICC as service tax respectively. Sub-pention (5) of Section 119 of the Finance Act, 2015 and Section 161 of the Anance Act, 2015 also stipulate that all provisions relating to refund or service tax under Phance Act, 1994 shall be applicable to refund of SDC & KKC. It is not coming out from the impugned order whether these provisions were considered by this expellate subtleftly in many expease and further upned by the Actilities Secretory (Review). Application, Mumbal side his Order No. 114-129/2018-

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ST(WZ)///SRA/Millingal dated 95.04.2918 (which have size been accepted by the Quinnissioner, Control Text General/Shark 16.1. h).

- 8. In view of above feet i, the indepress order needs to be set aside and the election reads to be remarked bank to the lower adjudicaling authority to pass speaking and reasoned orders giving can end reasonable opportunities to the appollant.
- Since Third the Communicationer (Appeals) has cower to remaind appeals as decided by the Borchic CESTAT in the case of CCE, Meetuh Vs. Singh Alloys (P) Ltd. reported as 2012(254) Silv. 67 (Rri Doi). Clarko rely upon problem of the Honible CESTAT in the case of CCE, Meetuhit Vs. Honor Ser Power Products Ltd. reported as 2013 (287) E.F. 353 (Th-Doi) wherein it has been near that Commissioner (Appeals) has Inherent dower to remaind a case. The Honible Gujaral High Court in Tax Aggical No. 275 of 2014 it respect of Associated Hotels Hot has also held has even when the appearancement exect. 11.05.2011 in Section 35A (3) of the Commal Excise Act. 1944, the Commissioner (Appeals) would retain the cower to remaind a case.
- 9. It view of above, I set as do the immugned order and allow this appeal by way of remaind with direction to the lower adjudicating authority to decide the case within 3 months from the case of reneigh of this order and with checips to the appellant to submit they defends restricted within one month from the receipt of this order treating the ellegations contained in Para 2 to 3 of the limpinghed order as show shape revide.
- ९७९ अमेरिक्कती द्वारा ठळ की गई अथेल के भित्राचार अधेरेक्ट तमेके से किया आहा है।
- 9.1 . The appeal filed by the appellent stands disposed off in a time terms.



(कुमीर संतीष) भागी स्थान आयुक्ता (अभीवक) ।

## By Read, Post AD

To.

. P/-- Gokol Agro Kescurces Limited.

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ंके पशुराज्यों दिवक<mark>ित</mark> लो.,

्यात का पर्देश राष्ट्र पर्दे हुए। शर्मी दिलीय के पास्

रहारण होते सीति सेवध्य वरित्री, ताचुना;

अकार, क्षिक्तिश सीक्का -

नियः ३७० २००

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- 3) The Assistant Commissions, Child Scientific Cross, Cympion Argan-Shachan, Georgia (Indian Confidence) essential disc.



