

:अञ्चनकापुर्तः (अभीन्य) का कार्यानवस्तरम् (अधिकः को ओलीवर्धिक समाद रूपकः । ०२२ सिम्म सम्मद्भागतान्त्रः १९११ वर्षामध्यापुरस्कारम् १८५ । १८५ । अस्तरम् १९७३-१

दिसीय सम्बद्धाः समादी समाप्त / 2^{14} Flace, GST Shavan रेन कीमें ऐसे रोहे / Rade Corea Ring Road

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<u>KCH-EXCLS-69</u>0-APP-044-2019

योग्य का जिल्हा

Видейский

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त के अपने **की** जातीत र Date of Leader

31.53.2010

की पुरान नेगोक अधिक क्षान (भाषीका), गाउनोठ हुन्। कहाँ 🕝

Proved by Sort (Catala Santash, territory) is consider to $(h\mathbf{p}_1,...h_p) \mathbb{E}_{\mathbf{p}_p}[\mathbf{p}_p]$

त्री १९ अत्र विश्व विश्व तर्मा के अस्तर कार सहस्रक अस्ति हा विश्व के अस्ति है । अस्ति विश्वविद्य स्ति सम्बद्धकार

हर नार हे नामार है। बीट के उन्हें के किया है की हम क्षेत्र के <mark>स्ट्री</mark>क है। क

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M/a Transports Terminals Put. Ith., Short CFS, Zone 4, MPSES Mugden, Dejerat.

টি মিশ্বিকি আৰু কৰে। এই প্ৰক্ৰিকি বিশ্ববিদ্ধান কৰা সুমূচ আৰু স্থান স্থান কৰে। স্থান স্থান কৰে এই আৰু প্ৰতিষ্ঠা ইয়াই সংক্ৰমে স্থাপুসালক বিশ্ব বিশ্ববিদ্ধান কৰি আৰু এই আৰু এই আৰু সংক্ৰমে কৰি সংক্ৰমণ কৰি কৰি বিশ্ববিদ্ধান কৰি এই:

বীনা সক্ষা ক্ষুত্ৰ কোৰ প্ৰকাৰে কেন্দ্ৰ ই ইন্দ্ৰত হৈছে। আনে টোলো আনি ভালটোৰ জনা আৰু আৰু বিশ্ব নিৰ্ভাৱ কিছে স্থান কৰিছ কোন্তৰী সামি বিশ্ব 1984 বিভাৱ বিভাৱ কিছে বিভাৱ কৰু চিত্ৰাৰ হয়, বিভাৱ কৰিছিল। ٧.

Capenado U. Mona Esperad de Servico dan Copo hio. Informa innéer Sem en 300 of 500, 1914 y 10 de 1960 no 1861 Ministrato e Pou 1,601 no capendada e

नमी का कुला के हैं कर देवा की 1 कि हो। अपने कन्द्रीय प्रमानक हुन्य गय देखाला प्रतिस्था कावमान्यका की विश्वा कर, तरह बाहर में 2, कार के दूरत, की कनी, मा मा कार्य बाहिए।⊘ Ξ

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इन्हरीत्र पुरुष्टि हो। अस्ति जान पर वर्ष सिर्व पर वार्षे असी वर्ष से सोधा पुरुष्टि कार प्रमुख पर के किया कार किया है। इस्ति असे साम कार दिख्य कर कि इस्ति कार प्रमुख प्रमुख कार का अस्ति के असाथ है है है।

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्र किर्मात कार मिक्क्स के तृत्या द्वान जिल्ला महित्या १, ११ की मानवार १ के अभित के शाक के अपने हैं। के शिक्ष क 164

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पान नकत् वाक्रमेतन प्रवेशन । (1) क्ष्मित । (1) क्ष्मित वाक्रमें के क्ष्मित के क्ष्मित । (2) के क्ष्मित । (3) के क्षमित । (3) ιCς:

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ार एक के प्रकार के महास्था के लिए के स्वारंत के अपने के महार की साम में स्थान में प्रकार के किया है। असे का स्थान की की स्थान की स्था की स्थान μį

पूर्णाले के प्रतान के मानावर एक के पानल के किए जा कर्ष किया जो कार्यके के किए एक पूर्ण के इसके की उसके कार्यक क जो पहला (प्रतान) के आएक प्रतान के 100 की किया में के कार्यक के मानावर के अपने के 100 की जा है, है और अपने 100 कि 100 कि 10 me district formation of the contract of the contract of the district of the province of the province of the Contract of the Contr 141

कर कर कर कर कर कर कर कर का कर का का सामान 1955 के 1950 के 1955. इ.स. १ कोटर है के कीटर कर कर कि दिने को कि किस्तेय के 1950 के 1950 के 1950 के 2001, अल्डाबर के उन्ने कि कि का क इ.स. १ कोटर १९ जात अबराइ के करी को कि कि कि कि को के उन्ने के उन्ने के 1950 के 1950 के 1950 के 1950 के 1950 क है। कुमार कर अल्डाबर के 1954 की 1954 के 1950 क 1950 के 1950 के 1950 के 1954 की 1950 के 1950 क in (ALC). Too sales outplotthon and into made in displace in Forth Mo. F.A. Survices (14) and a Agily, 5 of too big source Polyector Francis (6), with the new control of the data for weight on Palan senath in Agily, 6 of too big source of the negative of ACA (44 and 16) and the control of t

ार्थित । को उन्हें कर किरियोधिय कियोधिय के ये प्राप्त का काई का कहा। विभिन्न का का प्राप्त कर का का उन्हें का काम 2007 का भूमिता के प्राप्त के किया का का प्रथम का अपने का का प्राप्त 2008 का काम किया गए। चिक्र का अपने का किया की का किया का प्रथम का का का अपने का अपने का का का का का का का अपने का अपने का अपने का क Low का अपने की किया की का किया का का अपने का अपने आप का अपने का का किया की का का अपने का अपने का अपने का अपने 1.1

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ள் சிதிய சட்டு நடித்தின் புதல், கொளுக்கு கவுகான கொழுக்கு சடித்தில் பிதிய கொழிய சது சுரு உணுக்கு வது நடிகளை நடித்துள்ளுள் செரு நடிகளுள்ளுள்ளுள்ளுள்ளுள்ளுள்ளும் மது நடித்து புதல் சார் நார் சிதிய சிதிய செரும் செரும் நடித்து நடித்து நட சூர்க்கு சிதிய சிதிய சிதிய சிதிய சிதிய சிதிய சிதிய சிதிய சிதிய செரிய செரிய செரிய சிதிய சிதிய சிதிய சிதிய சிதிய 96

पीता शक्त हुएका प्रकार श्रे के 25 के 25 के 25 कि 25 कि 25 कि 25 कि 25 कि 25 के 25 के 25 के 25 के 25 के 25 के 2 विभिन्न कर के 25 के 25 के 1 10 में 25 के 25 Alloghest white milet is the laterate stage date gift a 25 states management that it the internal at 35 and 25 and so see department in the stage of the internal at 25 and 18 and 25 and ٠٩.

்று செய்ய படுபட்டிய சிற இசையாக சார் பார்த்த ரூரம் பிரது சிற சிற செய்ய படிபட்டிய சாரம் பெற சார்க்கு சிற சிறிய சிறைத் தேச்சு இசையில் படுப்புகள்ளே சிற ப Landja சிறியோத் செயிசெய்ய சிற சிற சிறிய முற்ற முற்ற படிப்புகள்ளாக சிறிய முறியில் சிறிய சிறிய சிறிய சிறிய சிறிய பாரியேட்டிய பெறுப்பில் முறிய சிறிய 'nι

.: ORDER IN APPEAL :

Mis. Transport Leminals Private Locited Bastat CES, Zone-1, MPSEZ, Mundra (harelnake, referred to as tappetanti) filed present appeal against Ordesin-Criginal No. 200/2013-18 dated 50.5.2018 (hereinafter referred to as impugned.) order") passitati by the Joint Commesionel. Certical GST. Gardhidham (Kutch). (nereinsile) referred to as Ahaladi; dicating authority () -

- The brief facts of the case are that Show Cause Notice No. VIST/STR-MondmiST Dividit Commo/292016417 dated 15 3 2017 was tabled to the appellant. demanding reversal of central cross of Sail 1,59 47,3784 under Rula 6 of Canyati Gradit Bules, 2004 there natter referred to as 100 Ki 2004 tim respect aftexempled. services provided by them ouring FY 2001-12 to FY 2019-14 and also the appallant. has not declared correctivatue of exempled services in the 1ST 3 returns for FY. 2014-15 which resulted into demand of short reversed cenyas cresit of Re. 9.33 2014. under Section 73(n) of the Finance Act, 1984 (Leremaßer referred to as ittle Act). along with interest under Section 75 of the Acc and for imposition of penalty under Specian 73 of the Art and Rule 15 of CCR (2004, The lower adjudicating sutnority) side impugned order confirmed the persand of renovery of nerver credit aggrege agto Rs. 1.71.80 519/Latung with inverest and imposed behalfy at Rs. 1.71,80 519/L under Section 75 of the Act and essemblosed pensity of Rs. 5.74,80,619% under Rule 15 of CCR, 2024.
- Bong aggressed with the injugied order appellant preferred the preson: appear limer axis, on the following protunds:
- For the period yete 10 6 2012, sgrvide tax was required to be levied on taxable. íi) service perhed under Section 65(105) of the Act that Section (1934) of the Act. definee (Usingo Handing Service) and excont asign handling service is/was not of the definition of 'Cargo I and my Service': that excur, cargo handing service is not exempted but a $oldsymbol{n}$ at service at all as per Section $\mathfrak{GS}(25)$ of the Apt. Thus the definition does not not siderahe some to be a service, they it begond be considered. as exemptive sine, therefore, reversal of predictinger Rule 0(3) of CCR, 2004 is not at all required, that the appellant relied on CRFC Circular F, No. B.117/2002 TRU. ਗੁਰੂਜ਼ਰ 1 8.2002, Jadon ent of the Kanrataka High Court in the case of Konkan Metino. Agendes reported as 2009 (13) S. R. 7 (Aasi) and decision of CESTAT, Hyderabad in ghg case of Rombol Trisofi Pvt. Ltd. (egoned as 2017-147) STR 61 (Tri-Hydl) in support of their pontention and submitted the Expert Cargo Handling income tests. 20.6.2012 was Rs. 28,20,10 195y- and the reversal of certival credit @ 5% for FY. 20 [1-12 and @6% for PY 2012-13 romes to Rs. 1.48,90 in law which posses to be set aside on this ground slond.
 - The apperant is ongaged in providing GTA secret 101 (ransport of other).

sargo corda ters from politica CFS and vice-crise and charges freight from the customers on which reverse the paris socificable under Service Tax Ruses, 1994, that the appellant referred and relied on Hatayattical of Sarvice Tax Rules, 1994, Socton 08(2) of the Ast and Notifination No. 33,2504-56 detail 31,12,2004 (upln 30,6.2012). and Netification No. 33/2012-ST Petro 2016/2012 (week, 1.7.2012) In say that responsibility to day freight is either earline implicar or on the exporter, seithe case. may be, thus the question of charging by service that from them does not enset that the invoices raised by the appellant with respect to temporal crice charges pertaining to empiy denianem specifically menant linsingle service text lability in respect of freight charges is to be disonergon by the corsiders on the consigned as the costmay be liber fisigm income dues, heliquality to be eventated decause the service is not exempt from service tax but the recisions is in pay service law on the freight. hence inareportation income cannot be currictered as exempt service for the purpose of Rule 6(8) of CCR, 2004 and no reverse of convet crydics required to be mario, than the approllant relied on devisions in the case of Curbacher Singh reported ae 2017-1; UL-1342-CES, A (-ALL), 7 SP 16f, stropped as 2009-TOL 2137 OFSTAT. BAXG Angiplast Private I rerest reported as 2012-110L 785-0ESTA -ARM in support of their contention, that the total keight income for no 2011-12 to FY 2013-14. comes to Rs. 2.28,34 / 189- and the revolution 30.5% (for PY 2011-19) and @ 6% for FY 2017-16 and FY 2013-14 comes in Rs. (2.58.755), which needs to be set askeun lhe above a uchú.

For rendering the service of Maintenance and repairs, the appellant obtained (II.; services of Mts. Kamat Tirterarises, who alterged separately for lacour value of which service tax was charged and material component value on which VAT was charged, that the appellant on let raising true cas or their customers had followed the same principle and disclosed the majorial coreponent value including profit margin. separatem and iscour charges deparately and MAT and service tax dat been charged and coiles of on the responsive variables by the appellant; that while calculating the value of exempt services, the expellent had considered the safe of material as trading activity and estreatly values exampled service involved by reducing the purchase μ oe from the sale price in view of Explanation-I to Rule $B(3^n)$. of CCR, 2004; that the demand configures on account or undervariation of the material cost for reversal of amount under Rule 8(9) of CCR, 2004 is required to be set aside: that the appearant has collected service text and VAT reconstally and has also paid the earner to the respective that collecting authority. That it was is not a cost 61 .: ading but it is a case of composito service and therefore, there should not be any requirement of reversal of convex credit and croot for aversal of Fai 9,33,2814. names to be set ask \leftarrow

(M) — The SCN was issuad on 15 3.2017 for the period from April, 2011 m colored March,

 $\frac{1}{2}\frac{dx}{dx} = \frac{1}{2}\left(\frac{1}{2}\left(x^{2}+x^{2}\right)\right)$

Face No. 177, 1

2010; that the SCN was required to he issued within 5 years from the relevant cate' is date of filling of 3 -2 return, even is the case of frend, collusion, suppression of facts, etc.; that the STAD return for the period from April, 2011 to September, 2011 was fixed up. 17.12.2011 and honor, the last date to issue SCN for the said period expired on 16.12.2018, therefore, SCN issued on 16.3.2017 is divided and in violation of the law; that the appoils it produced copy of STIS return for the period from April 10.5 September, 2011 along with Appeal Memo and audmitted that the issuer edge cating sufficiently das provided incorpor fromgs at Pera 25 of the impugged cader that STIS return was alled on 22 6 2012. This, reversal of period period of the second to September, 2011 also needs to see a side on the ground of the second of time.

The department has issued multiple SCNs for the same period for the purpose. of certainding service textreversal or central credit under Rule 6 of Consol Careh Risks, 2004 (horomafter referred to sell CCR, 2004°) on freight and bargs handing income earned. II ı≞ appellent SCN Na. VIST/STR Mondra/ST-Div.Mt.Commr./29/2010-47 bates 15.3.2017 alleged that the apperant has not reverses armount of convat credit attributable to exempted services under Rule 9 of CCR, 2004 for the financial years 2011-12 to 2013-14, considering transportation: income is exampted from peryment of service tax whereas ISCN No. 1915-119/81/ADC/2015 dated 15 3 2017 demanded service lax on transpolation income. for the financial years 2011-12 to 2014-15 and the impugned 8 now Gauss Notice No. DGCEI/RRU/35/23/2017/18 dated 31.3.2017 declarated Service Tax of Rs. 18 imes 7,0798 for the period from 1.7.2012 to 31.3.2049. Thus, the department has taken different legal ogsiffens where two SCNs have demanded service cax untranscortation income considering the same service as ω cable service whereas $3^{\rm st}$ SCN cated 15.3.2017 issued by the ucini Commissioner has demanded reversal of convationed have less on common input services considering transportation service as: exempled service. The depositrient cannot blow not and gold at the same firms and for the same period since it is upor travesay of justice that G SGNs are issued to the same assessed for the state period for the state income. The appellant relied on decisions in the case of Standard N war Mir reported, as 2013 (208) Γ Γ 184 (Ar Γ Sun Howard Industries Littlemonated as 2009 (258) CLT 580 (True - Ahmid.). Avery ndia Lisi, reportes as 2011 (288) EL! 61 (Call: \$1d Simplex of rastructure list). reported as 2010 (48) STR 634 (Call). Three SCNs have been adjustcated by the same authority for the same genod and holding different legal positions in different. groups, shareby assuring maskery of the acjudication process and therefore the impugned order is una isteinable in law and needs to be set aside on this ground

(v) — the invest adjunctaring a library cas given incorrect findings with regard to adjunction on the problem on the fraction or the problem.

Page No Bind 4

 $\int_{-\infty}^{\infty} (-1)^{n} \int_{\mathbb{R}^{n}} (-1)^{n} dx = 0$

SGNs and hold different legal positions for the partie recome of the appellant and guared submission of the appellant derivation in score already conducted for the extraorties personant SGNs attlibutions extend of condition odd ignored submissions that other penalty has been imposed asset becase 20 of the Act, penalty cannot be imposed under Rule 15 of SGR, 2004 and that subset tergo handing sinct a service as it is excluded from the space of cargo handing subvice under Section 85(20) of the Act and thus the impose are present without application of white. The specified on decisions in the code of KCO/ appliances Pvt, 11st, reported as 2019 (10) GSTL 17b (Kert), zain Railettak Pvt, 15t, recorded as 2018 (6) GSTL 376 (Kert) and Sema Henry Security Carriers Pvt, 15t, recorded as 2018 (8) GSTL 209 (Total) to pay that any other passed remote application of mino is deale to be question.

(viii) Audit of recents of the appellant has been renducted every year and all the information has been down to the decisioners out to observe, on has been raised by the audit officers from the period from 2009-06 to 2013-14. In such a case, the decardatent careful alogo suppression of factor with intentitio evado payment of service tax on the part of the appellant when all the facts and all the details were always available with the department. The appellant relied upon the obsistors in the case of Nizam Sugar Factory legariaties 2009-1009-98-80-000. Chancote Traves recorded as 2010 (32) STR 453 (Tri. 1006). Precisi pression (1) (F) Liu, reported as 2011 (21) STR 462 (tri. 1006) and Disclored Power Infrastructure Limited reported as 2016 (40) STR 825 (tri. 1006) and Disclored Power Infrastructure Limited reported as 2016 (40) STR 825 (tri. 1006) and Disclored Power Infrastructure Limited reported as 2016 (40) STR 825 (tri. 1006). Page 37 the them is no suppression of facts by from with intentity opacies or approach baseofted tax and the elicies the extended period cannot be invoked and pensor bases (5006). To of the Act cannot be imposed.

(vii) The impugned order has relied upon pedalor in the case of South Eastern Chall Folds, thi reported as 2016 (41) STR (68 (76)—Colh) wherein it was held that since the consignment note is not skeep, the service edipent is not flacter to pay service tax under reverse charge. The decision of the CESTAT has open challenged to the Tunible Supreme Court by the department and the appeal has been about testerted as 2017-TIOL-280-SC-ST. The appeal has been filled by the department of that even if there is no consignment hote, the service received by South Cestern Coal Fields Lid. Is that of GTA and therefore they are liable to day service because the passion based on resp and feature matrix of each case. In the present case, the service relicients have paid service tax under reverse this ge and hence, this is a clear district fact which invalidates the case taked contribution in the mptigned order.

Promise Service



- (ix) If somios tax is not payable, interest under Section 75 of the Act named be recovered and penalty cannot be imposed under Section 75 of the Act. The appellant rollogion on dockrons in the case of Jain Kalar Sama, reported as 2015 (30) STR (46) (Tri. Muchasi) and Sumiaram Textues Ltd. reported as 2014 (36) STR 30 (Mag.) in this regard.
- (a) Penalty under Section 75 of the Action loss possity under Rigs 15 of CCR 2004 cannot be imposed. It is tritle in law to impose penalty on the same amount for the same reason under two different clauses, that Ruja 16 of CCR, 2004 rates to Section 75 of the Action imposition of penalty. Hence, penalty imposed under Rule 15 of CCR, 2004 is required to be set aside on account of couble imposition of penalty for the same alleged amount.
- Personal reading in the moder was alterned by S/Smi Darshan Ranavat. 4. Chartertai Accountant and Umesh Handval Manager (Hinance), and they reflerated i the grounds of access and submitted that they have undertaken activity of handling of export cargo and not paid service tax because Section U6(23) defines these ad vitles/darge handling of export cargo as no service by excluding it, that DBCC Circular No. B-11/1/2002-TRU dated 1.8.2002 Para 2 & Para 3.1 of Annexure-T durifies as above; that teey only on CESTAT croor dated 32.5 2016 in the case of Ramotil Inseft #vt. Ltd. reported as 2017 (47) STR 61 (1n.-Hyd.); that they provide GTA service and service tax on GTA is not exempted out payable by the service. receiver, the demand is logary not sustainable, that they have submitted sumple: involces indicating mention of service tax on GTA by cores greateensignee and NSI by: service provider; that service tax has been paid by them on service portion of repairs. & maintenance service provided as they have paid ${\sf VA}^*$ on goods which have been used for repairs & maintenance, that exclanation to Rule 5(3) and Rule 5(3A) of COR (2004) that domaind for the period from April (2014) to Soptember, 2011 is time. barred being beyond 5 years because SCN was issued on 15 3 2017 and service tax. sature for the pariod filled on 17-12-2011; that they have been publics every year of dispute and automic reducts also absolved with appeal metro and hence leuppression of tests can't be alleged as celd in the base of Pharat. To o-vent iros I at rod recoiled as 2014 (35) STR 85 (Tri. – Mumberi (Pars. 5.10), that benefty under Section 78 of the $A_{\rm CC}$ is not applicable in this case sharpenally under Rule 15 of CCH, 2004 has also ceed madeet

FINDINGS:

5. If have corefully guite through the facts of the case, impugned order grounds of appeal and the submissions made curing persons meaning. This that the appointment has deposited Hs. 12,85 \$500 againstant to 7,5% of service tax confirmed vide impugned order and thus has complex with the requirement of Section \$6F(i) of the

 $\tilde{Q}_{N_{0}}^{(0)}: N_{C} \tilde{Q}_{N_{0}}^{(0)}: = 1 - \frac{1}{2} \log N_{0} \cdot 1 \ln n$

Germal Diagne Act, 1944, as made spiticable of assists tax matters vice Section 90 of the Act. Therefore, I proceed to Assists in it is exact. The issue to be decided in the present case is as its whether contains to proceed of reversal of central profile velue of the exempted sorvices in tion 20 of 3(3) of 3/28, 2004 is coned of not.

- Hind that the appellant has appliant for the Split SCN's have been sauce. 3. one derivinging service text on it saked/fallors recome earned by the scope land. shother for reverse, of central credit code. But 8(3) of CCR, 2004, considering transposiation, recorde une billier, recorde as yell, a of exempted services. It also find that SCN dated 15.3.2017, sauge by the Assistant Commissioner for the period from 2011-12 to 2014-15 demanding between law 15 flateborston income whereas that impugned SCN has been issued to the appealsation serie data i.e. $16.0\,20\,\%$ by the Joint Commissioner demandance represent of control prodit availed on constant interfaservices considering transportation income, except dargo handling income and l indome of materials good in providing mostlis and providensine service as exempled. services and also the SCN pater, 31.3 z 1.11 payed by the FIGOFI for the period from 1.7~2012 to 51.3.2025 again comanded service as an baneoutly320 income of the 3apperant. Hence, It find that the stand of the department is/was not blear whother to consider the income particularly and appollant valuates reindering of exquit dargohending and towards transportation of empty containers are considered to bot exempled solvides or one fable to service tax and Sende, I find that this argument of the sopeliant is correct.
- 7. If find that the impugned SCN demanded recovery of servat credit not reversed under Rule $\theta(3)$ of CCR (2004) or allegadly asymptotic services such as cargo handling service, storage and wagehousing service, exampled service to the execution value/nost of the motorway supplied white crowding repairs and assintenance service and confirmed vide the impugates order. I find that Rule 2(6) of CCR, 2004 defines 'exempted service' as under -
 - (a) fexempted service impans a -
 - (1) Laxable service which is exempt from the whole of the service taxleviable receipt; or
 - $(2) = \mathsf{sorming}$ on which no service tax is levisble under section 66B of the Finance Ada, or
 - (3) taxable struce whose part of value is exempted on the condition that no providing supplies and liquid services, used for providing such texable service, shall be taken

bull small not income a service -

(a) which is exported in terms of rate 65 of the Service has Rules, 1994; or

 $\frac{2\pi^2}{2\pi^2} \frac{1}{2\pi^2} \frac{1}{2$

Nejecho z słata



(b) by way of transpursation of goods by a vessel from ouslains, station of clearance in India to a clede outside India.

(Emphasis supplied)

- 7.1 Thus, the tokable service which is exempt from service lax or service on which no service tax is eviable under Section 658 of the Action taxable service whose can of value is exempted on the condition that no convat cradit of inputs and input services used for providing such texsible service is taken are considered to be texempted service. The appealant contended that crief to 1,7,2019, income particular against activity of handing of expert pargo was not a service as this had been excluded from the definition of 'Cargo Handing Service' under Section 59(23) of the Am., would like re-represented deficition of 'Cargo I arising Service' as provided under Section 55(23) of the Activitial, responses under.
 - (26) "cargo handling solving" means loading unloading packing of appacking of range and includes ± 1
 - (a) cargo handing services provided for freight in seedial containers or teninon-centainerland freight services provided by a costs/per freight terming! or any other freight terminal, for all modes of transport, and cargo handing service incidental to freight, and
 - (c) service of pseking together with transportation of daign or gonds, with or without one or more of other services like lastling, unloading, expecking.

but sees not include thanking of <u>axion</u> cargo or bassenger baggage or mem transportation of goods.

(Entphasis supplied)

It could be seen from the definition of Careo Handing Service, as provided. under Section 85/200 of the Acathat handling of events carbo is excluded from the definition of Cargo Handling Service witidn makes it clear that the legislation has kept handling of export cargo out of purview of service text net and thus, the scrivity is of handling of export cargo is non-taxable service prior to 1.7.2012 and not exempted. service. I find that Ruit $S(3) \in CCB$, 2004 will come late play in the case where the service provider takes conveticred ; or common apply and common input services. used for taxable output service and for exemples service also. Since, activity of handling of expert cargo has been keptique of service tax not liticannet be considered. as lexempleă service, and therefore in my conside ed view, no reversal ul cenvati credit upper Rule B(0) of CCP, 2004 is required. Faiso find that $\phi \in \mathbb{N}$ 1.7.2012, the describetion of the services has been done away with and a lithe services except. truse specified in negative this of services are nable to service tax in terms of Section. 688 of the Act inserted when, fig. $420^{\circ}2$ and therefore, service tax is payable on dargohandling solving in coloiion to export range also wie.0, 1.7.2012 and iterators. The same dannot de considered as exampted service w.c $t \simeq 2010$ as well. Hence, no i revolved of census amost under Rule 6/3; bl CCR, 2004 is required either profito-1 / 2012 or after Harrot I sarrasing companior reversal of central credit of Value of tjandting et export dargo under Ruid 8(2) bl. CCR, 2004 helding that it has been i igographly confirmed in the impligned order.

Augusteo (Col. 14)

It also find that SCN has contentied a leveled of ceres, useful or value of usuappulation service provided by the decellant to provide the experient that respect to port and vice service. The linguage advices tiels that the appearant had not issued consignment notes and therefore service of transport of emoty containers cannot he mass decod as GTA services whereast the appears that has decited that they provided OTA service to fee state the appears that they decommend on the CHS and vice-versal and charges (relight from the destormers on which reverse charge is applicable under Service Tax Roles, 1924 and that the invoices raised by the appearant with respect to transportation operating to empty containors specifically mornion that the service lies habitly it respect to height charges is to be discharged by the consignor on the consignee. As the case may be, I would like to examine definition of 'Coots' transport' Agency' as provided used Section 85(50h) of the Achard Rule 4B of Service Tax Roles, 1931, which reads as under:

.:

(50b) "goods trensport agency" means any paraon who omitidas portune in mixting to immigrat, of years by 1940 and issues portugament note by whatever temporaries."

RULE 48. Issue of consignment orde. Any goods transport agency which provides service in reletion to transport of goods by mod in a goods partiage shall issue a ponsignment size to the regionest of Spreice:

Provided that where any taxable service is teletion to transcon of genes by road in a goods cattage, a wholly exempted under section 93 or the Act, the genes transpost agency at \$5,000 be required to issue the consignment hale.

Explanation. To the outdoes of this risk and the second provise to (2 e. 1A. "consignment note" means a document, leaved by a goods transport agency against the reactipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and configure the names of the consignor and consigner, registration stumber of the goods carriage in which the goods are transported, details of the goods transported, details of the goods transported, details of the place of origin and destination, person liable for paying service for whether consignor, consignes of the goods transport agency

(Emplisses supplied):

. .

Bit I find the any person who provides service in relation to transport of goods by read and issues accessment note, by whaters induce palled, is Goods i ransport. Agency and the consignment note is a decumery asset by Goods it ransport Agency.

Provide 10 of 11

which is settally numbered and contains name of the consignor and consignee, registration number of the goods partiage, data is of goods transported, data is of page of origin and pestination and details of person liable for daying service (4x). In the preson case, I find that the appollant has transported shapty containers and issued involves as per Explanation to Rule 4B of Service Tax Rules, 1994 containing at these details and therefore, the services of horispositation of empty containers is national but a CHA service. I further find that Rule 2(f)(d) of Service (5x) Rules, 1994 provides that in reliation to service provided by CHA person liable to pay freight is a person liable for payment of service asymptotic reads as under

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0,	··
(Δ)	

- (D) in relation to service province or agreed to be provided by a goods transport agency in respect of frenzoottation of goods by read, where the person liable to pay freight is.—
- (f) eny feolony rogistorest andra or governoù by the Eschotics Aut. 1949 (53 or 1916).
- (fi) any isociary implistered under the Sociaties Registration Act, 1869 (21 of 1869) or under any other law for the time being in facto in any part of traffe.
- $\langle hl
 angle = any co-operative society established by or under any layer$
- (iV) $en_{\rm C}$ design or expiseble goods, who is registered under the Central Expise Ant. 1844 (f of 1844) on the rules make thereunder.
- $(V)=\sin t$ today corporate established. Ly x_i and x_i are take on
- (VI) anv partnersiup firm whether registered or not under any law including association of personal

erry person who pays or is value to day freight either himself or through his agent for the transportation of such goods by foed in a goods carriage:

Provided that when saids person is boosted in a non-taxable fertiers, the provider of such service aliance hable to pay service tax.

/Emphasis supplied)

9.2 If also find that the appellant has contended that the service receivers have pair, service tax on transcentation of emply containers under reverse charge mechanism as payaded under Rule 2(1)(d) of Service Tax Rules, 1994 and Northeat an No. 30/2012 ST dated 20.3,2032 and the department has not contested.

this not given any documentary exicutious space. This desire I also find that liability of payment of service tax in respect 1). 3. Also late was on respect, of the service even prior to 1.7.2012 and from n.0 2012 only area, therefore, I hold that CTA advice provided by the appoiltant parties on operationed as exempted service and nerves denoted by the appoiltant parties on operationed as exempted service and nerves denoted by the appoiltant parties on operationed as exempted service and nerves denoted by the appoiltant parties on operations. Rate 6(3) of CCR, 2004 or the value of GTA service is not consect, oper 8 product. Hence, (set as deletered of Rs. 12.98, 7394 for reversal of operations); on value of GTA service under Build 8(9) of CCR, 2004.

:7

- also find that SCM has depended to local of convertional on value of 9. materials used in proviong recalls and maintenance service. The undisputed tacts of the case are that the appallent had taked service of Mis. Kamal Entarprise for providing reports and main enance service to their by Johners. Mist Karnal Enterprise. have charges separately for lace it value (on which service tax is charges), and material component value for which WAIT's one pedit and smilisty line appellant has also charged the value of service and the value of araterials securetary from their customers and paid service tax on the value of service and paid VAT on the value of materials. I find that not settled legal obsition (not in case of composite contracts) where service is provided along with sale of goods, sociological is leviable on service. comparient. The appellant in the present case has baid service tex on service compensation the repairs and instructioned solving growded. It is on record that the appellant has consumed the goods it growding the aatd service on which they beid VAI to the Covernment of Guigrat Thoroford I count fire considered view that the value of material connot be incredesed as exempted service and no reversal of pervationed to Hs. under Rule 900 of CCR 19904 combined deniances on the said income. Honce, i seriusice the in sugned order contribing reversal of canvat crodit of Rs. 6.3 (2014) on value of malestals used in prodoing recars and maimenance service.
- 9.1 If find that the Homble CESUA! , Chandigath in the race of Xesox India JimSed. reported as 2019 (20) (ASTITION (Trial Chan) has held as under H
 - 9. (a) Whether the unliking undertexen by this. Xerox for various contracts for Maintenance and Repairs do outlify as Maintenance or (tepair Service, or not? It is a fact that apportent is engaged in the sobidly of Maintenance and Repair of educations the parts and accessories of the limit of equal to replace the parts and accessories of the limit of equal or maintenance and the Hor five Aport Court has examined the contract of M/s Xerox and rold that these contracts to examine the education are invertexed posterior of the acid contract, as per various State VATANI. Therefore, as trips have bold by the Hardalla Apex Court these are not Works Contracts and Miss Xerox is reliable to particular of materials supplied, therefore in the hard of the decision or the page of Whether Systems under the hard of the decision or the page of Whether GE Majoral Systems under the hard of the decision or the

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<u>Sav service (ax only on Lehour Poolos)</u> In the sold case, it Tribonal coserved as order.

 On a very ceretal consideration of the reat, we thin that there is no dispute with regard to the levisbury or service rax on the maintenance and receir services. The main point of display is with regard to the velocition. However, Section 87 of The Finance full clearly provides for the aboleinant of the value. of the goods and in the course of the sarrying but of the service. The down is whether the grouds are actuary solo. According to the department, the contract is only for the posiblenance and repoir. Therefore, ill control be said that the spare parts were sold. This New Is not correct. The chartered accountant has equally given a conficate with regard to his consumption of majorials. It is also not denied that in the rowise of the maintenance so majorial year used, in several decizions il tras telen held that service tox cannol be levied on hist portion of the value on which sales fax has been charged. This costion has been eleborately dear, with in the decision of the Shilps Colore Lan case deciried by this Bosch and signisupre. Tors view has been efficiend in many ekcisions. Often, bre sales tex has been gard on the materials, then on the samo sonvico tex elso dennot de obergeoi, in fest, me appellants had miled on the decision of the Hankle Karnataka. tingh Cearl which has more appearing the Ucarble Supreme. Court, to the Mood Korox case a fruit been electly held that in the Annual Meinlanenca Contract. The replacement of spares otal would be considered as see, Even to the present case, on 72% of the value vales for has been pold and this has been sessepted by the Germanical of Karothika. This fact also cennotrée (proved, Mareover, Malificetion No. 12/2003, da<u>l</u>ed. <u>20-6-2003 oldsriy bisyines for exempting meliyaliya of the</u> mularials and theirs the provision of the serves. Wecauses. *မကျနောက်မှု၏ ညာဝှက်မှုင*်<u>ကြ</u>စ် <u>(file con sello) ပြုမှ ညာဝက်နှုံသည် ပြုမှ</u> service certain im<u>arenais</u> age ju<u>se</u>d (byey light (denighaly (be <u>considerant as sele. This is blearly obvoined by the Constitutional Article 368(29)(9) bled by the kinnered</u> Advocáre. We do not agree with the Leanned Commissioner. that the seed Constitutional ordinator has no application hors. The Majaganause and Repair Contrast coffend by the appellant with their metomets from book manipilized as Worlds Contract by the Government of Kamalaka and the registration has been obtained for payment of selecitar. When that is the case in cannot be sett that the spare parts received by the chents of the appearant here not been sold to them. We hold that in env Annuel Maintenance Contract the <u>spare parts atc.</u> <u>schich tavo bach yead is the govern of the estimatement</u> <u>wereice are definitely to be considered as able and when asias.</u> tax nas been paid on the value of such q<u>o</u>nd<u>s, signifiancousir</u>. are completely them to the service his to view of these rdest legal provisions, there is absolutely no justiceation for levy of service tax beyond 30% of the value of the light ecopywir. Wit comild like to armorited his data provided by the appetlant shows that the apoption of 30% or the verte of the contract towards value of services randored appears to be reasonable in two light of the payment of sales tex on the YOM. value which has also been accepted inflammed this valuation. connection said to be arbibary, in these straighteness, we do pat (Ingrishy ment in mo immigracii ardinis. Binde Tihe derbandi of pulyos, not sustainable the demand of interest, possibly our.

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alian are not praiding. Morare, which is the equipality with consequentia: retail :

The said entire year afficient by the Harrier Artex Could reputied as 2012 (28) S.T.S., 144 (2.00)

- In view of above, i find that his demand of layeres, of convex credit under Rule. 9(8) of CCB 3004 on the value of depot raign banding, value of GTA service and value of material used in providing localis is indictensable service is not tensale. since consideration received by the secolary revertes these servicies control occonsidered as lexempted service. Wildow the demand of reversal or convet credit is not tanacle, recovery of interest under Scotlag PS of the Act and imposing sometry. under Seption 78 of the Act as well at under Curk 35 of CCR (2004 is also not renable and legally not sustainable
- 11 n view of stores it set asist the reputation independent allow the appropri
- अनीलक्सो ठकर रही की भ≦ अभार का विभागत उमरोक्तर तर्रके से लिया जाता है। ₹₹.
- 12. the appeal field by the appearance diagrased off in above terms.



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- (1) प्रधान मुख्य अप्युक्त, कन्तीय धरत व रोवा कर एवं केन्द्रीय उत्पास शहक, अनुमदाक्त क्षेत्र, अहमदाबाद की जानकारी हैता !
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