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- मारक के सहय सेना राष्ट्र का तो निर्धा का संगान के सिंगिकों के सहय होता के कहता है से कर की साथित के साथ के उठा कि राजकित. तो करने के साथ निर्मालक में प्रायंत्र की स्वार्थ के स्वार्थ के स्वार्थ के स्वार्थ के साथ के साथ के उठा कि राजकित कि साथ की राजक कर से कि साथ के स्वार्थ के स्वार्थ के स्वार्थ के स्वार्थ के साथ के साथ के साथ के साथ के साथ के स साथ स्वार्थ के साथ के साथ के साथ के साथ के स्वार्थ के स्वार्थ के स्वार्थ के साथ के साथ के साथ के साथ के साथ के स 111
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- रकार वैदिय में पुरावत अन्त्र स्वतंत्र के साथ प्राप्त के देव प्राप्त पुत्र करेत एवं साथ करेता के प्राप्त के सिहायत आहा. आगे पा स्वतंत्र प्राप्त सिंह का स्वतंत्र से लिए Grand Managers and Ale and Ale and Ale and the star to a second of the star forming splitches on the second Ale and the sharp of the Star and star and the star to a second of the star forming splitches on the star and the Ale and the sharp of the Star and star and the star to a second of the star formation of the star and the star a 100
- तीमा हरत, सम्बद्ध कर अन्य को देव उन भन्देषु व स्वयाधिक त्युपको सिंहत को भाषाना । 1922 जा प्रतित प्राहल भन्द देव समय है क तीमा हरत समय कार्य के तेन दिखानक के दिल्लामा समय स्वयं ने के तीमा के प्रति के स्वयं के प्रति के लाग गांदा अवस्य द्वारा कि स्वयं के दिल्ला भाषांक कार्यात करती के तीम संवयं क स्वयं के राज विद्युत्व कि के जान गांदा अवस्य द्वारा कि स्वयं के दिल्ला भाषांक करती का स्वयं करती के तीम स्वयं क स्वयं के राज विद्युत्व कि के के स्वयं के स्वयं के स्वयं के स्वयं के साम कार्यात करती के स्वयं के साम स्वयं के ,-1
- ag μ [ν δι χήταστη στατική καθλα του "Αυτό ής πτοπη τήσχη όλη αθαι κατά 41 μ μπτ. Αγτοποί δατού ο δακιου απο τόν η χαι (τ δι τα τρό η β. Απο τόν τόν μετατική του τη του τη του ματαίμαται τολού χριο δι του σύρχηται το τόν μεχατι αρχοθιστις τολο δια τόν αναμμάτιση του του του Του Ευροποιατίου κοίται στον Του από το 1::1

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<u>· ORDER IN APPEAL ::</u>

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The Decity Commissioner: Central GS: Urban Unvision, Ganamanam, as per siteations and authorization of the Commissioner: Central GST. Ganabidham (Ketch) (reference in referred to as "the Department") filed present appeal against Orber-In-Urginal No. 53/Urban Re92017 16 cated 3.11 2018 (homeinafter referred to as The inbugged order): passed by the Aseletani Commissioner. Central CST. (Urban) Division, Gandhikham (homeinafter referred to as The lower edjudicating authority) in the case of M/s. Coowgule Brothers Poil Uzil, Office No. 211, 2rd Fuor. Gold Coin Cooplex, Plo. No. 321, Ware 125, Gandhidham (noncinafter referred to as The respondent).

The brief faces of the case are that the respondent filed rati-nd application on 5.7 2017 for refund of service tax of Ss. 40,61 8924 paid by them on value of service of transportation of goods in a vessel whose Buls of Lading were issued on 16.1 2017. The respondent submitted refund claim on the ground that the point of laxation in respect of this service has been specified as the date of Bill of Labing of goods as per Netfloation No. 14/2017 ST dated 10.4.2017 made effective from 22.1.2017 read with CBEG Circular No. 206/4/901/-Service Tax dated 13.4.2017 the lower adjoring for the service application of 20.1.2017 The lower adjoring sutherby vide application order sanchened refered claim of Rs. 40,51,6824.

3 Roing aggrioved with the unpugned order. The department preferred present. sopeal, *Interella*, on the following grounds: -

It is evident that the respondent has collected service tax of its. 40,55,582/ from M/s. Cautam Hreight Put. Ltd., pure agent of invoign obartereploperator of the vessel M/s. Thorson Shipping Singapore Pte. Ltd. (here nather referred to as M/s Thorson); that M/s. Gautan: Freight Put. Htd. has noviously collected service tax from: M/s. Thorsen and no evidence to contradict such presumption has been provided by the respondent at the trop of fling of refund claim; that the impugned order add not been itself M/s. Gautan: Freight Put. Ltd. had refunded the service tax of Rs 40.51,882/ to M/s. Thorsen, Hence, it is not evident the person who had actually berne the inskience of service tax had received back service tax amount.

(i) Once the ourden of tax has been passed on by the respondent to their customer any subsequent event of returning back of such service tax to their customers does not make the respondent eligible to dialminifund of service tex and honce, the return quain filed by the respondent was hit by bar of unjust encompose on the date of filing of refune claim and this position was not affered any positive respondent to their distorter. The said aspect

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has been clarified vide Circular No. 312/33/97 CM, particl (8.5.1997 which has been ignored by the lower adjudicating authority.

The respondent has paid service low under reverse charge mechanism. Ones, (iii) the incidence of service tax and aney presend on and it has been put into the commercial their of business transactions in Historical impossible to derive with (u) proof evidence where such chairs of versection is broken and who is actually going. to bothe the incidence of service law, as in respect of transaction under ann's renginthere remains no control over serves tax based on. The impounds other oil not follow the facts as to in which capacity Mist Gastrian Emight Put. Ltd. has been othsidered to get service for brick particularly, when no evidence of service tax. amount received by the respendent from M/s. Gautam Freight PvI. Lin, are made available for solutiny. The parisaction made through adhit note and credit note are -tot oundusive evidence locking to vast gap between the dates of bebainste and data. of credit next liceving aside the transaction of returning of service fax subsequent to from of reland organ. Hence, it is evident that the respondent had originally payord. on indicente of service tex to M/s. Cautaminireight (Mr. Ltd. or some other person of the filme of crowding service and M&. Gauthor Erzight Patris to, or such other server. in turn had bassed on the incidence of service tax to M/a. Thorsen (principal) or any other person. Therefore, refued of service tax senctioned vice impugned order is inadmissible to the respondent and the refunded amount at the must could have both created to the consumer wefare fund even if the same wea round. sanctionable.

(iv) The rescondent has not submitted oppras of Balance Sheed-Yoft & Loss amount for the relevant period somwing treatment of amount of service tax paid by them in their books of account to reflect whether the service tax was some by themaetives of otherwise and no care has been taken by the ower adjudicating anthomy in call for the profiles of Potiance Sheep and Profil & Loss account of V/s. Cautam Pregits PvI, Ctd. for the relevant period showing treatment given in their another tax was passed on by them to their priod and no evidence theorem that service tax was passed on by them to their priod (M/s. Tableen) or any other period.

(v) The respondent has not submitted copies of invoices tailed by fixed to Wis. Castam Height Pet. Ltd. Bank remittance certificates contamination from their overseas client computation of service fox etc. or frient me of filing of refund claim of at eucsequent stage or proceedings. The respondent submitted Certificate dated 20.10 2017 of the Chartebed Accountant based on records of the respondent out sol on the basis of records of M/s. Gantam Freight Pet. Ltd. lead to an inference that M/s. Gautam Freight Pet. Etd. have not based on each bas to toels clients and had been Lonie by them. Thus, there is no Secure/Net and each or bettermine the eligibility for

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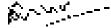
Page No. 5, 111

claiming refund by none other then the respondent and that the indicated of service tax was not bassed on and was boone by M/s. Gattary Freight Pvt. Ltd. or the respondent or any other person. In absence of conclusive evidence, the respondent is not ellipble for referring a service tax. If is not the case of the respondent that service tax has been paid under protect on on praction of the authority out the respondent has paid service tax at his own.

201 51-3 return files by the respondent to: the beside ended Wardh, 2017 did not show service tax paid by them on 2/3/2017 under reverse charge int was the claim of the respondent that may paid service tax in pursuant to Notification No. 2/2017. Service List and Notification No. 3/2017-ST Loth dated 12.1 2017 made applicable. from 22.1.2017, denote as the type of payment of service tax, there was no reason for the respondent to consider it as excessionaid service tax and accordingly, it must have teen reflected in their booke of accounts for FY 2016-17 which were closed. Prior to Notification: No.: 14/2017-ST, dated: 12:4-2017; and IGBEC, Circular No.206/4/2017; ST, cated 13.4.2017. It was beyond purview of the respondent to consider payment of service lax as an excess payment. Hence, even if the service tak was not leviable in respect of services provided by the principal of the respondent, the same has been fully consumed by the respondent as well as M/s. Gautam Freight Pvt. Ltd. or any other person augmenting the incidence of service tax and therefore, refund amount was required to be profitted to the Consumer Wolfard Fund presuring the printence. of service tax has been passed up to any other person-

(vii) The respondent files refund data of service tax referring to Notification No 14/2017 ST patent 10.4.2017 but nowhere in the sed. Notification it has been authorized that the responsent or any ober person can claim redund of service tax, if paid prior to reque of the sed. Notification, it is put a case of the respondent that the payment of service tax made by them on 2.5.2017 either under mistake or under computeror or under misuadectanding of statutory provision. Thus, any artitrary process due to failure of the respondent to underated the lega: provision does not make the respondent submaticacy entited for refund of service tax pad.

(vii) In any case, service tax has been collected by the respondent from any other person which was not required to be collected to any manner as representing service tax, the respondent should pay the amount so collected to the credit of Government under Section 73A(2) of the Finance Act, 1953. (Nereinaller referres to as "the Act"), EVAL if the Varsion of the respondent is accepted in can be construct that the (rayment of service tex was made by the respondent under Section 73A(2) of the Act and the credit of Government was required to be accepted against service tex easily the respondent was required to be accepted against of such amount may apply for rations under Section 75A(6) of the Act. Hence, refund



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Entitionment of refund is gorowed by unle of filing of claim. The impugned 126 arden is not categorically confirming the non-eat@sment of the respondent on the pate of filling of refund six misinger and pipeling in structed the amount received by them. is the name of service to the continuous exacts. As per submissions of the respondent they may assued creditingly in sayour of wild. Southin Freight Fyr. Lid up. 25.6.2017 and then related the process prough cheque databative 17.10.2007. Thus, the submission of the respondent merely on the case of creak note dated 28.8.2017. aces nút sustain. As per accounting a bholate, a debit rate or a cradit rate generally. requed as a consequence of eource involce. In the present case, the transaction relates to a peblic rate dates 0.10 3017 and a strand rate dated 28.8 2017, but there is no relationship attended to be expended with reference to a carticular involce. owng incression that the transactions whilout following involve pattern is not genuine. It is not following from the feats hereated by the respondent in their clerin. whether the transaction mitternis of credit note deted 25.5 2017 was a follow up of reduction in source invoice value of followed by reduction in invoine value with reference to providelant of a served 5 toize (assed in scopert that classify hole pated 26.6.2017. In the absence of authenticity of revised involves the existence of involves and crede initia tantamount double b-mefil graved as a mischief of account entries. and absurd accounting method, in fuel, the claim of the respondent is not on sound. feoting. The department relied on following case cover in support of their contentions.

- Highestar Fetroeum Conservation Limited /014-101-558-CESTAT-MUM.
- Addision & Ga. 1tb. (2016 (339) TUT 177 (SC))
- Sahakan Khand Bdyng Mendal 1 ul. (2025 (581) EET 323 (SC))
- Kirtsi Constructions = 2018 (\$3) STR 301 (Tri. Beng.)
- S.S. Memori & Gronowry 2012 (27) 577-41 (To. Animd.).

(x) The presentation onder Section 178 of the Contral Excise Act. 1944 is under ably mixed to state that the ordence of service tax is passed on to their principal was returned to the principal or any other passed on to their principal was returned to the principal or any other passed on to their principal was returned to the principal or any other passed who beine the incidence of service tax is been passed on the involtes raised are such that the incidence of service tax like been passed on the presentation stands un-rebuted. When the involtes raised are such that the incidence of service tax like been passed on the presentation up the presentation are the been passed on the presentation are the documents provided by the respondent are not sufficient to rebut the statutory presentation. The dops truth rough on the accletion in the case of J.R. Transformer $\frac{2}{2} - \frac{2}{2} - \frac{2}$

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Hyp. 2td. reported as 2014 (36) STR 1167 (1fr. – De 11

(xi) The annuurs mentioned at the charlens showing payment of service tax submitted by the respondent ware not matched with service tax inviable that: the respondent against value of ocean freight mentioned in respective involces for which refund has been claimed.

Personal heading in the matter was allended to by Shr. Adhistek Doshi, 4. Chartered Accountant on bohast of the respondent, who submitted PH submissions. saying that they have released tax/duly corrected from M/s. Gautam Preight Pvt. Ltd. an 20.6.2517 before filling refund chaim on 6.7.2017, that they are working on principal to principal basis with M/s. Osularin Freight PvI. Ltd. and hencel can't betreated as agent of 34%. Gaucam Freight Pyt - thi for refund of tax/duly purpose. that service tax was applicable iron, 22.1.2017 Lowever, then Bills of Lading was dated. 19.1 2017 and hence, serving tax was not psychic but they wrong v paid that it has been note by the Horible CESTAT, Anniedated in CAIL listic tid, reported as 2016. (46) STR 598 (T1. - Annid.) that recenting of iax obtected before is as good as not culleged, that fromble High Court of Kamataka [2009 (14) STR 001] upnekt the decision of Honibio CESRA). Bangalore in a case of Shiva Analytical (i) Ltd. reported. as 2007 (7) STR 55 (To --Bang) that once service lax collected has been returned. by way of cheque or creat note. There can't be question of unjust enrichment, that the Horble Apex Court has also hard in Vardhman industries. Id. reported as 2011. (257) FUT A25 (SC) that duty partials the time of pleasance of geodes and collected. here pustomers can be refunded if post-clearance transaction is made through preditnote that at these 3 case-faivs are applicable in this case in their layour, that acpeal should be allowed; on guery whether Mis. Gautam Freight PvI. Ltd. bas returned the tex to 14 ekgn shipping line or not, he replied that he is not sware of that fact and tomply this they may please be given sume time, which was agreed, that they have rolling to do with what Misli Gautern Freight Frei i Millhave owne prince done: that We, Geutam Preight Pyt. Ltd. have issued Certificate dated 28.5.2319 to this effect.

FINDINGS:

5. If have carefully gone through the facts of me case, the impugaed order the grounds of appeal files by the department and the submissions made by the respondent including those made during personal hearing. I find that this being the appeal related to reform. Ged by the department, provisions of Section 25F of the Contral Excise Act, are not applicable. The issue to be decided in the present appeal 6 as to whether refund claim of service tax to the respondent, paid on service of transportation of goods in a vessel, incidence of service tax initially passed on by the inspondent is he by the of protection of the tax of the tax initially passed on by the inspondent is he by the of orginal endered to not

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6. In find that this undisputed for the instant of the resounder meal in their depacity of 1 shipping agent paid service feator Rs 45.51,8524 on service of transportation of goods minimized vide Challen doled 2,3,20-4 in terms of Notification No. 2/2017 ST and Notification No. 0/2017-ST, but thered 10,4,2017 and to extend service tak from their principal M/s. Gautem Steight Fire / to 19 assequently. She Cremist Government result Notification No. 14/2017-St result 10,4,2017 (offerstreins) 22,1,2017) and relified date of Bill of Laving to be post of president Since Bills of Laving in the present case were issued on 10,1,2017, the response returned service tax ensure of Rs. 40,51 (RSV- by result) Challe No. 0003 (Hates 28,5,2017) in the cards of Ws. Caused Hater Fire Lidi and a clinic control of service Law. The refund date was subclinic vide the undogs 24 order in favour of the respondent date 40,51 (682/- bala to them. Hence the streationed bled appeel against the implicated around the favour of the streation of the respondent and Rs 40,51 (682/- bala to them. Hence the streationed bled appeel against the implicated around

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7. I also find that the department is not ensided to recein this service tex bald by fun respondent as no tax denible consider without runhority of lew, ellips this service tax was/s not cayable by the respondent to and department in view of Net figstion No. 11/2017 ST doubt 10.4.2017, medal effective from 22.1.2017 and clarification issued vide: CBEC Circular No. 206/2/2017 Service Toxic dated 10.4.2017, mender, the envolution Rs. 40.51,682(libes to the optimized by the department, as per law

8. The department has contended that the colord claim was hit by part of anjast chrichmont and that once die borden will be replaced on by the respondent to their costonner as y subsequence of the inducting back of such service tex to their customers does not make the respondent eligible to claim refund of service tex from the department that the impugned order has not described whether We. Caulant Freight Pvt. Its have refunded the sale service tex to Maximum We. Thersen

8.1 I find that Section 11B of the Central Excise Act 1944 has been mode sopheable to service tax matters by virtue of Sector 83 of the Act, which provides that service tax amount has determined by the Waststami Commissioner of Central Excise of Depuay Commissioner of Central Excise shall, instead of being predited to the appreant, 6 such amount is relatable to service tax cale by the period and 4 proved that the instagence of service tax has not been passed on to any other person in the propert rase, as it is evident from the records and Contificate of the Chartered Accountant that the respondent had initially passed on Incidence of service tax to M/s. Thorsen are consequent upon issuance of Notification Net 14/2017 (2) cated 1/2017 for Section and accountant protect and account to take the Record account of the Record account to the Record account per respondent had initially passed on Incidence of service tax to M/s. Thorsen are consequent upon issuance of Notification Net 14/2017 (2) cated 1/2017 for Section and account protection and account to take the Record account the Record account the Record account to take the Record account to the Record account the Record account to the Record

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Lieu their principal. However, the rescanded was hall submitted any conclusive evidence establishing that their procession. We Cautam Preight Pvt. Ind. have also returned Rs. 40,51.8827. To Mis. Threaco, who eximately bare toe incidence of service tax. In view of these tacts and encumatences, I sim of the consideron view that the responded, is not entitled for refund since they failed to establish by providing documentary evidences that Rs. 40,51,0824, returned by them to Mis. Cautam Freight Fvt. Lie, has also been passed on by them to Mis. Thosen at the time of filling of mfund daim or even at the appeal stage.

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8.2 My views are supported by the judgment of the Hon'txe Supreme Court in the case of Addision & Co. Ltd. reported as 2016 (106) FTTT 177 (SIG) wherein it has been held as under -

15. In the netant case, the Assessed has admitted that the incidence of duty was originally besaled on to the buyor. There is no material brought on redord to show that the buyer to winner the insidence of duty was passed on by the Assessed did not pass tion to any other person. There is a statutory presemption under Section 12B of the Act that the duty has been passed on to the uptrate consumer, it is clear from the facts of the insident case that fact buty which was prioritally paid by the Assessed was passed on the refund clarified by the Assessed is for an smount which is part of the material duty paid eacher and passed on. The Assessed who did but best the particle of the duty through entitled to claim deduction, is not epitted for a refund as no would be unjustly entitled.

If will be aseal to refer to the relevant part of *Metallal Industries* v. Units of India (supra) in this connection

109 (19) A data for reland, whether made under the provisions of the Aptilias conternolated in Proposition (i); above of in a suit or writiantifing in the steations contemplated by Proposition (ii) above, can succeed only if the perinknow/viaint/F alogas and established that he has not bassed on the builden of duly to prother <u>oppontation</u> persone. His refund claim shall be allowed/decreed only when he establishes that he has not passed on the curden u<u>f the duty</u> or to the extent he nee not so passed on, as the case may be. Whether the claim for restruction is trooped as a constitutional importative or as a statutory requirement, it ie Pelliter an abadule right unit an unendérinaer obligation but is subject to the above requirement, as explained in the body of the judgment. <u>Where the burden of the duty has</u> <u>brot passed on, the distribut variety say that he has</u> suffered, any mai loss or projudica. The real loss or projudice is suffered in such a case by the person who has ultimately borne the aurder and it is only that person who can legitim<u>ately claim iis refund.</u> Dur whore such person, does not come forward of where it is not pessible to referct the smellar to him for one or the other reason, it is used and appropriate that that amount is received by the State life. by the people. There is no manaritity of impropriaty involved in such a proposition.

The dockine of unjust enrothment is in just and saturary doct free No person can spek to epilect the outy from both enus. In other words, he cannot obtaind the doty from his purchaser at one and and also collect the same duty from

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the Store on Restrict on 2011, using the term nim opatraty to low. Use a view of " and had be written? to poexercised for second in whise in taken. The Justice of UR Set equation and show when simplicity to the State Shim reproducts Sky whyse on the country. No one can speak of the occur of this pairs of the off

17 Section 316(3) of respectivity is supported 3 at the amount of refund. determined by the Authoritic site Sinch has tool to tool to the Provise to Section 1.12(2) periods for the indicate set is identify the case instead. of bring tradition to the total of the socioust is relatable to the manufecturer, the beyon on any other when place of applicants as notified by the Central Could ment-

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That a nonsumer cap review ap amiliavion for refund is clear from. peras 96 and 98 of the guigare and this Court in Maladat industrian (supra). We are issued by this said financial of a Lerger Genetiof this. Count. The word 'bayer' or UV see (e) to provise to Section 110(2) of the Act cannot be restricted to the first sever from the manufacturer. An<u>other submostion which remains to be considered is the requirement</u>. of <u>verticence to be seque</u> to the purpose of finding out who utilizerary <u>bore the ourder of excise pass</u> is ringly be difficult to identify who had actually bottle the burden with approximation would ethnic y assist he Revenue in finding as inviteded the manufacturer or buyer who makes an application for refund are paing inquetly engaged. It is not possible to joentify the perconstrained who have borne the duty, the amount of excise duty celler colling excess will semain in the fund which will be utilized for the General of the consumers as provided in Bectury 12D.

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ê ĝ. In wey of the facts of this prevsed has to ratif he along judgment eronnumed. sy the Henfeld Supreme Coort, it is clear that if is not sufficient to prove that the respondent is not getting largust continuent and alto that his principal is not being emisted in onjust concertant line). Way Therees, which has utimately being the radence of aery celter has been bed head. Therefore, the respondent was required. to establish that service tax of Rs. 40.53,582+ returned by them to M/s. Gautami Eptipht Port 1 this actually been electred to M/s. Thersen, who is the ultimate person, who has borns the indicated of service two of Rs. 40 \$1,892/1. Sones, I am of the considered view thes the respondent is not entitled for returnd of service tax of Rs. 40.51,0824 since they failed to establish that reliber they not their principal ite. M/s. Gaulary Freight PvI. Ltd. was getting unjust enrichment. Rende, the impligated order i sonolioning refund of service tax of Re. 10.51,5524 in favour of the respondent is not correcting all and ender and is required to be set aside and Rs. 40,51,662/- paid to the respondent is required to be recovered from them to predit Consumer Wettere. Aver 2 ----Furxl.

9. In view of above, I are asked the impagrice order and allow the approxibility the department with discretion on the technol specification publication to the refunced amount of 5%, 40.55,6850, here the spectrudest end credit consumer we fare function to the.

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९.३ — डिपार्टमेंट हार' दर्ज की गई अपील का निपतारा उपरोगत तरीके से किया जाता है।

9.1 The appeal filed by the decartment is discussed off as above.

क्षीज्य हैं तर कि में कि मे राजुम्मार सिंही भी ^{25,00} में कि म प्रसान आयुवन (आपोल्स)

By Speed Post

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(i) The Commissioner,	ा अप्यत.
Central GST,	्र केन्द्रीय दक्षा व सेव कर्म
Sandhidham (Kusch)	म्बर्ग्याः २०१६ म् २०१५ पश्चिम् अन्तरः
(ii) M's Chowgue grothers I'vi. Lio,	ेन्द्र में, चेन्त्वे बेन्हर्य प्रा. लिमिटेड
Office No. 211, 29 floor,	ऑकिस्टि २९६ द्रसरी मंखिल,
Gold Cavi Complex, Pka No. 221, Waad	गोल्ट की ईस कॉन्स्ट्रेसिस, क्लॉट में, 202
i28 Gandhisham	व देश्वत्वी, गांधीक्षम

प्रतिः

(1) प्रधान मुख्य आपुरुङ, केर्न्द्र भ वस्तू ४ रोधा कर, अध्यन्द्राखाद क्षेत्र, अप्तमदालाद को जानकारी हेत्.

२२ राजपक आयुवश, केन्द्रीय करत् द सेक कर, अर्डन मण्डल, शश्र्ण्याम, को आवरणक कार्यवाई, हेंद्र ।

(३) गईफ़ाइत .