হজাবুমনা (রাখীনেয়) আজাসংখ্যানন্ত্র প্রশিক্ষ আর্থনিয়ানন্ত্রীয় রন্মার ধুনক:: ০০০ মান চেমেরেরেরেরেরেরের (এরস্টেরেরের), এরা এবেরেরের জন্যারার

दक्तिीय तस,जी वस दी भवन रे 2ª Moon GST Bostan

रेस कोस सिंग भोड / Raze Course Ring Road



राजकोट : Rajko<u>t - 360 001</u>

<u> Tele Tox No. 108. - 2177952/04-1142/mail\_ceraspediero/konig.com</u> -

## <u>रविस्टर्ड हाक ए</u>.डी.व्यारा :-

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## Y2/3/EA2/GDM/2019

न्दुरा ,तटहेन स् ∙ि.) O. No. ₩9 Io 1-19ktin 4. avarat.(2018) ज्यास्त्री प्रेवट अगर-२१२४

गणः — अमेरन स्वतृत्र सन्दर्भाष्ट्रीयकान्द्रीय-स्वतृत्वती भरत

# KCH-EXCUS-INNEAPP-098-2019

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15.11.2049

र्वाचोर्मे बाच, आयुष्टा अमालम्), राजयंत त्यारा गाम् तु 🦉

Learned by Mril Gogi Neel, Commissional (encants) (type);

- ে গ্রান্থ এবস্থান সিদ্ধান কর্তৃস্থা সে বৃষ্ঠান চেলাস আয়ুলে পার্চার রেমার মুক্তা উপস্থানে ম্যুণ এই প্রায়ন, কেন্দ্রান এই ব্যাহার দেশ প্রায় সেনাইইইয়ার চেরাইইইয়ার চেরাই মুহ এইই জান ব্যাহার করে ব্যাহার মাজন, কেন্দ্রার এই আ কর্তৃস্থার প্রায় ইয়ালো মেটা হিচাবের চিয়া বিয়েছে এই চেলাই হিচাবের মেটা মেটা সেরা কের্দ্রার হে শ্রান্তার মেটা আ কর্তৃস্থার প্রায় ইয়ালো মেটা হিচাবের চিয়া বিয়েছে এই চেলাই হিচাবের মেটা মেটা মেটা মেটা হে মেট মেটা মেটা আ কর্তৃস্থা সেটা মেটা হিচাবের চিয়া বিয়েছে এই চেলাই হিচাবের মেটা মেটা মেটা মেটা মেটা হে মেটা হার্ট মেটা মেটা মেটা মেটা
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Saught (administration of the Colonians Unit), Banghiption, , Lasannahoras, 1996.2

ারা মহারা এখানা নামের্গের হার্টেনের্মির ইমন্টেইটার মিটি ও ওজনের এবলৈ ও এইবল ও ও রাজনার্ভারে বর্তা হেন্সা (৫০ এইবল মন্দ্রার এইবলেরে উপরোগের সৈয়ে মিটি সোনানার উদ্ধার্থনা এবল উদ্ধারত ওর্তেটা এবল হয় মেন্টার আন সেইবে আধির উধি প্রার

াওঁ — দিনা হলক এন্দ্রীয় এলার স্বেক হল ইপালা জ্যেরীয় ব্যবহারের উপেটি এবলৈ, ২০ ইফাপেরে প্রথম এইটাইবের । ২০০ জি বর ৫৫৪ বর্ত জ্যের উন্নায় মেটাইবিল, ২৯০ গাঁও দ্বাপা ও ব্যক্তির উন্নার্থিতিরে এবং কালে কেনে। -

upper el C. Cosserve, eòsocar & Seculor Teo Acquidens Tertainet preter Rombre / Reve / Teo / Reve / Teo / Al / O Dio Provinse C. – 1994) en acquisit figs fro-

। দিন প্রাক্ষেদ ব্যবহার বা ব্যবহারিত মধ্য ভারস উদ্ধা জুলা, মান্টের জনারে খুল্প বার উঠার ৮০° মিলে, ১০ টিলালা জীলিকা বারে উঠা এব জার 2. প্রান্টেন জুলা বহু বিপন্ন জীলিকার বাছিলে ?

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ŵС न हो।

- ১৯৯০ এন। ১৯ মূলত তেই পিয়ালয় সমায় সময়ে নিয়া কাৰ্য বুলকা কৰিবলা হাৰ্যনিক ? ।
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े कहती पुरु कि प्रभु कमा के Galar जिले थे (सं. भू) और फिल्म 2014 के आरज से पूर्व किया अपनिय प्रतिकारी के समय 1 धिवस्त्रधेल समाज अजी प्रमाणको ४२ जुम्दि होहे।

Statytin Previous for some af 2009(4)/2011 and Antiper 0.50 of the Cantor Received and 2004 which is used in the first homeon the Cost (2011) and Antiper 0.50 of the Cantor Received and the second shall be used for the Principal Antiper Second and Sec

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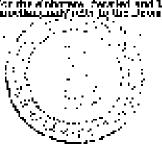
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- মধন ও এছে, বিজ্ঞা বন্দু বা উল্লেখ পিছলৈ লগা হাজাৰ দৈ মিজিৰলৈ ওঁ পদুংশ কৰে। মানি বন্ধ নিৰ্বাজ কৰেৰ ধুকে বিস্তৃত উলিছে জ কামৰ গ', জ' লাজে ক ৰাখে জিন্দী হ'ল, ৰা ইয়ে মি কিছিল মি মৰী ইয়ে। কি কেন্দ্ৰ হা কোছোৱা বা বিষয়ে এই একেন্দ্ৰ হয়, পুৰুষ কৰি বন কাল কোৱালোক লোৱা কোনোৰে বৰুৱাৰ বিজ্ঞান বা বৰু আৰুই এই মেজি বিষয়ে উলিছিল কোনোৰে কি পুৰুষাৰ কাৰে কোনো কাৰ কোৱা কৰা কোৱা কোনো কোনো কোনো কোনো কোনো কৰে আৰু কোনো কৈ জেন ٦Гь
- यथि उत्पाद में स्वर प्रत हिन्द किंदा हिन्दा हमता के बहुए, जेवान का एक्टर को बान जिस्तेश किंवा क्रम है। " 10 year of \$000 a fairmed movementation of an In Naple, 'n Stanlag, without opposite of direct 36
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- দুৰ্গন্ধল হাৰ্পকল উপন্থাৰ শিশপৰিস্থিত বিশ্বীয় মুন্দ প্ৰাৰ্থ কৰা কী দাৰী অভিয়া। এই উপন্থানৰ প্ৰান্ধ কৰা কৰে বা ভাটো পৰা উঠি কৰা 2007 কৰা বুৰজাৰ কিয়া আৰু এই মহি মাজাৰ কেনা হয় কৰা হা কৰো 'ই প্ৰাৰ্থকা 1900 আৰু মাজাৰ জিলা প্ৰাণ সিংগ প্ৰথম কৰা হৈছে 1901 আনহাৰ বিশ্ব সময় মাজাৰ কো হয় হৈছে এইছে আৰু এই মহি মাজাৰ কো হোৱা কৰা হা কোৱা 'ই কিং প্ৰাণ্ধকৰা আৰু ইউন 1901 আনহাৰ বিশ্ব সময় মাজাৰ কো হয় হৈছে এইছে আৰু এই মহি মাজাৰ কো হোৱা কৰা হৈছে 'ই কো কিং প্ৰাণ্ধকৰা কৰা হৈছে 1901 আনহাৰ বিশ্ব সময় মাজাৰ কো বিশ্ব কৰা হৈছে কোনো হৈছে কৈ বিশ্ব কৰা হোৱা কৰা হৈছে 'ই 24
- 1:11
- क्षेत्र स्वीतिज्ञ स्वस्तरस्य भूम्भ्य प्रसिद्धित्यः । भारत् ये अञ्चमुद्धेनः ए अन्त्रस्य स्वयंत्र प्रतिभयोत्विति मान्त्रियोत् २.50 त्यत्र स् त्यावरम्य कृत्य दिविद्यालय स्वान्त्रीति । ? इत्यात विद्यालय स्वयंत्रीय स्वान्त्र्य के स्वयंत्राय स्वान्त्र्य के स्वयंत्र स्वान्त्र स्वान्त्र्य स्वान्त्र्यस्य इत्यात विद्यालय संवर्धने स्वान्त्र्य के स्वान्त्र्यात्रेल्य भयत्वात्रस्य के स्वान्त्र स्वान्त्र्यस्य स्वान्त्र्य Щ.

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- इच्च अयेहीय आपेकही की असंब ह्यांडेंज जनन से भगापेर च्यायल "देस्ट्रन और नर्गलवन प्रज्यामां कोलेश, अपीनकी विभिन्न च्यापद, ×н

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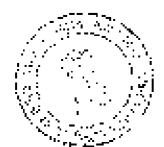
he Asst. Commissioner. CGST Division. Bhaj filed appeal No. V2/3/EA2/GDM/2019 on behalf of the Commissioner, Control GST & Centrol Excise, Candhidham (horotrafter referred to as "Appellant Department"), in pursuance of Review Order No. 5/OK1/2018 19 dated 23.2.2019 issued under Section 35E of the Central Excise Act, 1944 (horethafter referred to as "Act") against Order-in-Original No. 9 to 14/Asst. Lorans./2018 dated 26.11.2018 (hereinafter referred to as "Impogned order") passed by the Asst. Commissioner. CGST Division, Bhai (hereinafter referred to as "Impogned order") passed by the Asst. Commissioner. CGST Division, Bhai (hereinafter referred to as "apjudicating authority") in the case of M/s Sangk: Industries Etd (Grinolog unit), Kutch thereinafter referred to as 'Respondent').

2. The brief facts of the case are that the Respondent was engaged in manufacture of Cament and was registered with Central Excise. On the bas's of information called from the Appeliant, 'I was observed that the Respondent had availed Convat media of Service Tax paid on outward GTA service used for transportation of their finished goods from their factory to clustomer's premises 1.7 beyond place of removal, during the period from October, 2015 to September, 2016, which is alleged to be not proper in view of definition of 'input service' as given at Rute Ptc) of the Cenvat Credit Rules, 2004 (homination referred to as fCCR,2004\*). It appeared that any service availed alter cleanal de of finished goods beyond the place of removal, Sinut an 'input service' and therefore, the Respondent was not eligible to avail Cenvat predit of service tax paid on nutware GTA service.

2.1 Show Cause Notices were issued to the Respondent covering the period from Ontobre, 2015 to September, 2016 for recovery of wrangly availed Cervations's totally amounting to Rs. 2,67,43.5137-, along with interest, order Rule 14 of the CCR, 2004 and proposing imposition of penalty under Rule 15 *ibid*.

2.2 The above show Cause Notices were adjudicated by the adjudication authority vide the impligned order who dropped the proceedings by holding that the customers' promises were "place of removal" and hence, the Respondent was singible to avail Convet credit of service tax paid on o itward GLA service.

the impogned order was invicosed by the Appellant Department and appeal has been filed on various grounds, *later alla*, as byleve:
 (i) The adjudicating authority errod in considering sustamers' premises as place of removal; that the Hon'ele Supreme Court is the case of M/s Ultratech.



Page 1 of 12

Cement Ltd imported in 2018 (v. a) (1.600) ites settled the assue bothing that injust service used by the model character is resultinged up to place of removal u.e. factory, deposition waveloase (v. ).

(ii) That the Honible Sources Court is the case of Ispat. Industries Ltd 2015(324) RU1 670 (SC) has been that ippace of removal includes glaces which are related to manufactures only the lipitation, where the excisable goods are to be sold after their clearance from the diction and that place of removal can only be a manufacturer's premises and it yours precises can never be a place of removal. Thus, it is clear that Convolt another service tax paid on allowed transportation of guade up to bays in another place is not available.

(iii) The adjudicating authority erred in relying upon turculars issued in 2007 and 2014 for determination of the term place of remove, in post-amendment ora; as the Honible Supreme Coort is the case of M/s Climatech Cement Ed supra has specifically held that said Cimulars are not applicable in systamendment era.

4. In neuring, Shri Ambarish Poivdey, Advocate appeared on behalf of the Respondent and submitted written submission along with complication of statutory provisions and case lows for consideration. No one aspeared for licening on behalf of the Appellant Copartment

4.1. In written summission, the Respondent, *inter ails*, contended that,

(i) The issue is settled in their favour in their own case vide order passed by the CESTAT, Ahmedabad as reported in 2019(2) TWI 1488. The issue involved in the present case is also identifical on the one decided by the Honible Tribunal supra.

(ii) They were cleaning the goods on which duty was paid on MRP under Section 4A of the Arr and such MRP was focusive of transportation cost from the factory to place of delivery. Thus, they have already paid Central Excise duty on transportation charges. Purther, payment of service tax on outward GTA service by them is not disputed and hence. They are eligible to avail Central credit of such service tax.

(fill) Their case is covered by Para 4 of the Spend's Circular dated 8.6.2018 since in the present case, ownership, risk in transit remained with them bit goods are accepted by buyer; that buyer's premises was place of removal and



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therefore Cenvat credit is acmissible to them; that Circular issued by the Board is binding to the Department as has been held to various judgments.

(iv) That the Howble Supreme Court in the case of Roofit Incustries Ltd -2015(319) ELT 221 has held that since the property in goods passed at buyer's premises, place of removal will be buyer's promises and the amount of freight, insurance and unloading thanges would be includible in the value of goods for the purpose of payment of Central Excise duty. In their case also, they established that sale was on FOR basis and sale took plane at huyer's promises and therefore, they had correctly availed Central credit of service tax and present appeal needs to be dismissed.

5. I have carefully gone through the facts of the case, the impughed order, grounds of appeal of the appeal memorandum filed by the Appellant Dopartment and oral as well as written submissions made by the Respondent. The issue to be decided in the present case is whether the Respondent has correctly availed Cenvat credit of service tax paid on conward GTA service or not.

6. I find that the Respondent had available Convet credit of service tox pain on optiward GTA service during the period fram October, 2015 to September, 2016. I find that definition of "input service" as provided under Rule 2(1) 01 Central Credit Rules, 2004 reads as under:-

"(1) " topot service," means any services.

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. .

- used by a provider of module service for providing an output service;
  is
- (iii) used by the manufacturer, whether directly or indepectly, in or or relation to the mormfacture of final products and elearance of final products upto the place of removal.

and racialdes services used in relation to setting up, modernization, renovation, or copies of a factory premises of provider of output service of an office relating to such factory or premises, advertisement or sales promution, marked research, storage 0,900 (as place officemovel, procurement of homes, recent og, assilting, theoretic, recomment and quality control, coaching and baimes, computer metworking, credit merg, share registry, and security, inwind up approximation of inputs or copied goods and control measportation upon the plagent termode?

(Emphasis supplied)

7. From Shove, it is observed that "input service" means any service used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products optic the place of removal, with the inclusion of outware transportation up to the place of removal. It is, therefore, evident that as per main clause - the service should be used by



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the manufacturer which has direct or indirect relation with the manufacture of final products and clearance of final products up to the place of removal and the inclusive place restricts the out wild transfortation up to the place of removal. The place of removal has isome tetured under Section 4 of the Act. As part Section 4(3)(1) of the Act, "place of removal" means a factory or any other place of premises of production or manufacture of exclosible goods have been normitted to be stored without payment of duty or a depat, premises of a consignment agent of any other place of premises from where the exclosible goods are to prisolate of premises of premises from where the exclosible goods are to prisolate of premises of premises from where the exclosible goods are to prisolate.

8. I find that the issue is no more *res integra* and stands decided by the ison'ble Supreme Court vide (adgment dated \$1.60.23118 passed in the case of Utratech Cement Ltd /epoiled es 2018 (9) G.S.T.U. 337 (S.C.I. wherein it has been held that,

"4 As revolutional shows, the assessed is involved in packing and electric of context. It is supposed to pay the service tax of the oforesard services. At the same time, it is entitied to evolute benchmon functional transformers in a compact of any input service to service the point of the potential energy input service the was also paid on the octward transportation of this gouds from factory to the concerns's prantices of which the assessed eloimed the credit. The question is as to whether it evaluate transport service'

 Margan service is defined in Rule 2(i) of the Rules, 2004 which wools (s) index;

"2th "toput service" means any sorvitane.

(b) (logg) by a most doubt example service for providing an empty survives: at

(ii) Used by the manufacturer, whether duringly or indirectly, its or in relation to the remaindenties of final products and clowence of final products upto the phone of removal and includes services used in robotion to self (§ 19), multimization, rank-valuer or remains of a factory, premises of provide: of output versice or an efficie relating to soch factory or premises, idvertisement, or other promotion, sharket research, storage opto the phone of removal, producement, of optic, ornetics relating to business, such as accounting, multiting, frameting relationship and the other control, conching and training, optiquity relationship, credit rating, share registry, and sectory, inward transformation of optic to or explicit goods and outward renepotation on the phase of removal."

6. It is an estimitized possible that the instant case does not 2 fb or solvedness (), and the essay is to be deviced on the opplication of sub-obust (i.t. Reading of the offer said provision makes it often that these anytices are included which are used by the monoflattices, whether directly or indepetity, in or in relation to the manufacture of that products and elegrance of final products "opto the place of removal".

7. It analy be relevand to point out here that the original definition of "inteservice contained in Rule 2(1) of the Robes, 2004 used the expression "in cu-



Fage 4 mill?

the place of removal". As per the said definition, service used by the manufactures of clearance of final protocol faces the place of conceal to the we around or customer's place set, was weights for Convat Crodit. This stands finally decided in Civil Appeal No. 11710 of 2016 (Commissioner of Control Excise Bergaum v. Mrs. Vasavatietta Lements (Ltd.) vide redgments dated Subsary 17, 2018. However, vide a negative context out in the of94.394 d Roles in the year 2005, which became effective from March 1, 2008, the word "from' is reparent by the word tops?", it has, it is only tops after place. of on ova? that activity is treated as input astroice. This amendment has changed the entire scenario. The benefit with the was solar solution toward, the place of removal new gets remainded at the place of item real and covers so the central moduli of light fair past gas closed so that blace. This credit cannot to set titla of our differences alear from the bare reading of this amended Rule, which applies to the period in question that the Goods Transport Agency. service used for the purpose of desword proceparation of goads. I.e. Prem Biel factory to contenter's premises, is not covered within the stabil of Refs 2(2)(i) . ul Rules, 2004. Whereas the word i from its the redicator of starting pairs, the entropy option agains he terminating point, putting an end to the transport journey. We therefore, find dust the Adroditating Authority was right in interpreting Rule 2() in the following manner:

". . The input service has been defined to mean any service used by the nomitzebiter whether ducedly or inducedly should a relates, originity, sources used as relation to inward transmetation of inputs or export goods and outward transportation upto the place of removal. The two plateas in the definition of hoped very destificate the encourse the logaricredit by stating that service used in relation to the chrematice from the place of removal and service used for nutward transportation upto the place of removal and to be merching copil subvide. The first clouse uses, not mention transport service in particular. This second classes restricts transpart service credit up to the outpet of removal. When these two clauses, the read together, the lower the clear that temperal services credit earlier grit beyond transport upto the place of removal. The over classes, the ever dealing with general provision and cuter dealing with a specific tiers, are not to be read disjonctively so as to bring about conflict to defensible RAS' scheme. The propose of therpretation is to find hypothy and reconvibution among the various provisions.

15. I reard availability is more and to 'impute' he credit enveloped by paid. <u>en input muerials as well as tax paid on surviges, ysyd in or in tolature to </u> the munufacture of the "final product". The final products, manufactured by the reseased in their leavery premises and once the ridal proctaces are fully manufactured and cleared from the tap<u>tory promises, the possion of </u> unligation of service data unterize ta such services carge) be considered. as seal or total on the manufacture of the final product. Therefore, extending the credit becape the point of removal of the lined post of our payment of done would be contrary to the scheme of Carvot Crudi. Robert the main element to definitive states that the service in regard to which, earth a lites is early by should be used in early tyles on to elements of the final products from the place of removal. The definition of more environstroublike read as a whole and should not be fragmented in order to avail. halighte eradit. Once the electrices have facen place, the question of granting input service stags crafti dous not prize. <u>Than-pretoriou is an</u> entitely different activity from manufacture and this position tension semion by the independ of Houerable Surreme Court in the cases of a Boonbay, Tyre, Informations', 1981, (14), TLT = 3002-T101-374-SC-CX-LB, Indian Devger 1.66, 1988 (36) 161 (1725 SC + 2002 TICL-SS-SC-CX Ltd Baredo Elfebre Maters (920-194) 807-13 SC = 2002 TIOL/96--CX-1B. The post removal transport of manufactured geo<u>cis is not an</u>.



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input for the manufactured Structury, in the case of M/s Unitated Centeries 1 of  $\infty$ , CCB, Electronyar 2007 (6) STR 364 (Tri) = 2007 TIOL 479-CRSTAT-ALDC, () was ind;" that after the final products are created from the place of removal there will be no scope of subsequent use of service to be treated as rapid. The allowe observations and views explain the scope of relaxation visions clearly, correctly and in accordance with the legic provisions."

8. The aforesaid order of the Adjudicating Authority was argued by the Commissioner (Append) principally on the ground that the Beam in the Circular dated August 23, 1990, and clarated the definition of place of canoval and the three conditions contained horder stood satisfied modify as the trace of the respondent is concerned, i.e. (i) regarding ownership of the goods till one definery of the goods at the goods down, tany, (ii) select belowing the list of the less of the respondent is goods at the goods down, tany, (ii) select belowing the list of the less of the respondent of the goods down, the goods down, the price of the goods This approach of the Contessant, (Append) as boar approved by the CESTAT as well as by the High Correl This was the main premium advanced by the lemmas convert for the respondent supporting the judgment of the High (0.00).

 We are affaid that the abtressiti granesco of the first telese is clearly: uncouble for the following reasons:

10. In the first instance, of nearly to the cept in read that Bazel's Circular chief August 23, 2007 was beseed in clarific paper of the cofinition of fingura as weef as existed on that date i.e. it related to that materials by indicat. Relevant partian of the sate each is as under:

"ISBUE: The to what stage a contributive provingion that take coefficient the service for the growth compared by rough

(CIMMEN 1%: This issue has been exercited to good denis by the CESTAT in the case of MAS (Figure A school Leatense 261 vs CCL, Lochings (2007 (6) STR 249 Tri-FC = 2007-TEOL-SPECTENCA (-A RM, In this case, CESTAT bay make the following observations:

"the post sale transport of meanifestured goads is not an equilation are manufactures/yous give. The two clauses in the definition of imput surveys (also care to chemisserilie togar tredit by six ing that service used at relation to the closure was hard flie place of removel and version used for outward transportation traca the plane of the round are to be created as most service. The Fast clause does not metrical transport service of particular. The second clause, restricts transport services are fit up to the tilture of non-over. When these two charses are read together, it is above elser that transport services to blick and potheyold tansport up to the class, of removel. The two clauses, the condealing with general prove we and other dealing with a spee fighters, are not to be read distanctively so which is is about candidate detaut the laws' scheme. The purpose of interpretation is to find harmony and recomb limbour among the various provision.", Similarly, in the case of M's Floratech. Cements L.d vs CCS Recorder - 2007.TOIL-425-CESTAT-ARM, it was heir that after the Engligencies we desired form the place of removal, there will be no scope of subsequent and of service to be treated or input. The abavaobservations and volves occurs in the scope of the relevant provider model  $y_{\pi}$ extreetly and in accordance with the legisly providians. In conclusion, o manufactory is consigned one take costs, on the service for paid on  $oldsymbol{eta}$  , wash transport of goods to to the price of comoval and not beyond that,

8.2 In this connection. The Sizes, "place of removel" nacts determination raking who account the three of an Architek case and the applicable.



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provisions. The phrass 'place of removal' has not been doEnal in CENVAT Credit Rules. In terms of all-state (3) of rule 3 of the said rules, if any words or expressions are used on the CENVAT Credit Rules. 2004 and are not defined therein but are defined in the Central Eacies Act. 1944 or the Felance Act. 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to there in these Acts. The phrase "place of tensors" is defined tradementation 4 of the Central Toxics Acts. 1944. It states that,

്ച്പടം of tennival" means പ

 (i) a factory or any other place or premises of product (c) or manufactory of the ordination provides

riir a warehouse or ony other place or premises whereic the excisable goods. how hom plant that to be stored without payment of duty ,

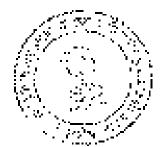
(iii) a depote premises of a consignment agent or any other place or promises from where the exclusible goods the table sold after their elemence from the factory;

## from where such goasts are concoust?"

this, therefore, sign that for a more between severe prior, the edg bility to aveil orbit of how-avies far product the transpectation during removal of excerded pouds would depend upon the place of removality per the definition. In case of a factory gate sale, sale from a non-truy had watchouse, at from a duty, paid depet (from where the exceptible goods are sold, after their elementefrom the futtory), the determination of the "pisce of removal does not pose o och problem. <u>Ho</u>we<u>s</u>en Gera mav baljanatjana vyhare <u>eja manulaetuva j</u> Approximation may plaim that the sole has taken place of the destination point. <u>because in means of the sety contract (agreenant fit the Geometria of goods </u> and the property in the goads remained with the seller of the goads bill the delivery of flue goods or acceptable sends ion to the purchaser at his door store. (ii) the soller bard the risk of loss of undamage (a the goods during transit to i the destination: and this) the fragmentations were on measurement of the price. <u>of poorls.</u> Used cases, the credic of the stavios tax paid on the transportation ( up to such place of sale would be comissible of it can be e-tablished by the alternam of anon-erode, that the sale and the transfer of property in courds tenturns of the definition in moder section 2 of the Central Fourise Art, 1944 as a so in to us of the provisions of each the Sale of Geods Act, 1970) occurred at the wid place."

11 As zon ha sees from the reacing of the affectated perturn of the orientar, the issue was examined after begying in mine judgments of COSTAT or longaret. Amongo Comour in a coll 2022. (Restork, Conjour U)d. These independs, obvicusly, desir with unamended Rule 201) of Refeet 2003. The three preditions which were mentioned explaining the phase of removal as defined router Scories 4 of the Ast, three is not general reproduct the flowever. The important aspect of the matter is that Conver Credit is permissible in respect of lingate as view and the Checkler relates to the astronomy of lingate service which brought about a total change. Now, the definition of place of termore, and the conditions which are to be in the converter of the object of removal astronomy of the service which brought about a total change. Now, the definition of place of termore, and the conditions which are to be service which has pade the entire difference. The approximation for the said Rot difference of a conduct of the place of removal of the said Rot difference of the object of removal of the approximate the same to be in the convert of the blace of removal of the place of removal of the place of removal of the place of removal of the blace of removal of the place of removal of the blace of removal of the place of removal of the blace of removal of the

13. See molly life s<u>ade a privatent is mode applicable even in prope</u>st <u>of p</u>ost\_ amendateor costs, it was allocable to call Rade 2(1) of Bales, 2004 and such a <u>sitestical gament by particip</u>tanged.



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15 The upthot of the above is also assign would be to how that Convat Credit on rands transport against service availed for transport of goods from place of gunaval to have's promises was not admissible to the testordent. Accordingly, this appeal is allowed, judgment of the High Court is set wide soil the Order in Original corest. August 17, 2011 of the Assessing Office is respond."

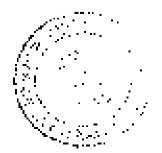
## (En:phasis supplied)

 I also take note of the Spano's Circula, No. 10657472018-Cit, dated 8-6-2018, wherein it has been clariffed that,

"5. CENVAT Credit on GTA Services etc. 5. The other oscial choids? by Hoable Supreme Countile releases to place of storage has in vaso of GGS & ST 7. Const Table Connect Code, steel 1-7-2918 in Covil Appeal No. 11261 of 2016 on the issue of GENVAT Credit on Goods Transport Agency Service availed for bransport of gends from the "place of removal" to the Loyer's non-loss. The Appen Court has allowed the appeal filled by the Revenue and held that CENVAT Credit on Goods Transport Agency service availed for transport of gends from the object of temport Agency service availed for transport of gends from the object of temport Agency service availed for transport of gends from the object of temport agency service availed for transport of gends from the object of temport by how the CONVAT Credit Rules, 2004, objective from 1-3-2008, for solvice therefor as regulations of y inplic the object of company."

8.2 In view of above law settion by the Gonfible Supreme Court, Convat Credit on GTA service, availed by the Recoorderst for outward transportation of goods from place of comoval to buyer's precises is not acrussible wielf 01.04.2008. The period myplyoid in this case is from October, 2015 to September, 2016 and hence, Cenvat credit of Service Tex pois on GTA for outward transportation of guods cannot be allowed. I, Therefore, noted that the Respondent has wrongly availed Cenvat credit of service tax paid on outward GTA service and company of 9x, 2,67,40,5107- is required to be confirmed, along with interest, under Rule 14 of CCR, 7834 and Life to.

9. Regarding content/or of the Paspondent that transportation from factory to augon's premises aught to have been allowed in view of the Honble Supramo Court's judgement in the case of W/s. Roofft incustries Ltd, i find that in Said case law, issue involved was inclusion of Greight in assessable value for the purpose of charging Central Excise duty. The Honble Apes Court hold that in the case of FOR destination sale where the ownership, risk in transit, remained with the seller till goods are accepted by other on delivery and thit such time of delivery, seller atome remained the owner of goods retaining right of disaosal, freight is required to be included in assessable value. Whereas, in the present case issue involved is whether ontward GTA service availed by the Respondent case be considered as 'input service' to terms of Ruce 2(!) of CCR, 2004 and whether the Respondent had rightly availed Convat credit of service tax baild on



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outward transportation charges. Hence, issue involved in the present case is entirely different and stand periden by the clumble Supreme Court in the case of Eltratech Cement Eld Supre. Further, it is worthwhild to mention that the Hon'ble Supreme Court in the case of lapat industries Etd reported as 2015(324) ELT 675 has categorically held that 'place of removal' can only be a insulfacturer's premises and buyer's premises can never be considered as 'place of removal'. Hence, I held that case law of Rouff Industries Etd refield upon by the Respondent is not applicable to the facts of the present case.

50. I have also examined CESTAT, Algoredabac's order passed in the cost of Sanghi industries Ut4, which has been relied upon by the Appellant. I find that the said case law has to be held per incortan. In the light of judgment of the hanible Apex Court in the case of *Mrs.* Distalect: Cement Ut4, supra since judgment of the Apex Court proves over any decision/arcers passed by the subordinare courts/hinbunals.

11. Regarding penalty under Rule 15 of CCR,2004, 1 find that the Xespondent wrongly availed and utilized Cenval credit of service tax paid on outward GTA service used for transportation of their finished goods from their factory to buyer's prenises, which is not admissible as discessed supro. The Respondent, thus, contravened the provisions of Cenval Credit Judes, 2004 and therefore, the penalty of Ra. 2,67.40,6137- is required to be imposed upon the Respondent under Rike 15 of CCR, 2004 and I so so.

12. In view of above, Uplyaw the appeal flied by the Appellant Department, and art asvin the impligated order.

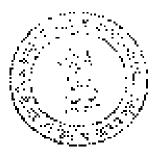
13. अमीलकती स्वरंध 8 लें की गई अभीक्ष का फीमदास उमरोबल तरीको से किया जाता है।

be appeal filed by the Appeliant is disposed off as above.

Commissionentóppeals)

<u>Attested</u>

N.T.5HAHI Superintendent(Approals)



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<u>By 7.P.A.D.</u>

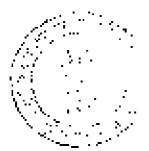
: To, - M/s Sarghi Industrias ited : (Grinding Unit), : Sanghrouram: Tatulsa Abdiara, : Destrict Kutch.	ಾಜಗಳು ನಂದು ಎಂದು ಇವರಿ ಕಾರ್ಣಿಕ್ಷ (ಎಕೆಟಿಎ ವುದಿನ), ಆಗುಗಿಗಳು,
	19.085 (1985-88),
	fahan, insta

<u>प्रतिः</u>-

- प्रधान मुख्य उत्पुल्ल, यरहा एवं रोग जन यर्न येन्न्द्रीय उत्थाद शुरुष, गुरुरास क्षेत्र सहग्रदायाद को जालकारी हेन्द्र
- 2) आयुकाः, वस्तु एव सेन्स् करे विदे केस्कीःः तत्कत् शुक्क, गांधीधाःम ३३युक्सास्य, न्यंधीधान को आवश्यक कार्यक्षत्रो उठु
- 3) भयुंकत आयुक्त, यहतु धर्म त्रेश, २०, ४०, ४०, ३७,३७माय शुल्क, गांभाभाम आयुक्ताभय, जांधीयान, को अवश्वक स्पर्भियाले लिए।

⊬)ंगाउं फ़ाइल '

<u>ر</u>



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