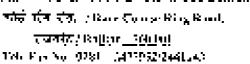


्ध भूकत (अर्थात्रवर) का कार्याज्ञण, बाह्मीय बसूत एवं सेवा पन और तत्याद शुरूक обырак симмичения портигова святи, и суть учеруе,

रिनितीन्य संतर्भ की एक भी भावन र 2 ⁴ आकर Cou Sanzani इंक कोई परिवादक, ∤Barr Compribing Road,





<u>रजिल्ह्य जन्म ए. डी. इनाम 🦠</u>

± 201 € 9452 × 850 € Аррах и Мейна. ENGINEE SAMPRAGE

्र आद्या सं / $(0,1,0) \in \mathbf{N}_{2}$

Karada ezerpere engkaly(gmillesem

06/3/2/8444/064/2016-151

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अर्थात आदेश संख्या (Order on Appeto South

BMV-EXCUS-008-APP-086-2018-19

सर्वेश का 'र∓ वा ∴ Date of Dridge.

04.00.2038

ारी पार्की का नारोद है। Date of force.

14,85,2015

(v-s::| l.: Shri P. A. Vasere, Commissioner, 18:31 & Central Escise, HatelqOudthid):|00|

जाविक्षाहरूमा क्षारामा क्षारेष्ट्रकान्ने एक _{विका}र्य । कि कि एक एक क्षार्य के कार पहें जो है का पिया आदिए का कादक्कान रही है कि १६,१९ रूपक का पुनरण में है। ये, ... वस्ती ,शायुक्त केंद्रीया एतु एवं पैय. यह एव ক্ষমন্ত্রীয়ে আমানু মানুমা, জনক (নিশিশান) নল নিয়ন বাটিলিকিক জনকা নী পালবার কীনীক ওঞ্জার প্রকার रिक्रिकेट १९५५ की १९८८ के के लेक्ट्री इंडी की ज़रू उच्चेत्रों के उन्दर्श में अदेश महित करने में **४६४म से** ुर्वात प्राधिकामें के भग में जिल्हा कि से माह है।

In greaty to Lorentz Cohmosomo No. $25/2\,\mathrm{Hz}$ as (5.1 date = 5.000.7 and with Franks Cohen on the 24/27 matrix is 11.2117, while 7.5 Vigure, 22... 24.824. Total Participated Techsel Tems Folians, hillings, him high regulationed an Appellate Protocomputer the purpose of activity with a transport of appeals filed under Settlem 95 or Committee Commit $\hbar s t_{\rm B} \approx 0.17$ and $5 s t_{\rm B} t_{\rm B} \approx 0.5$. The Figures with $1 {\rm MeV}_{\rm B}$

- ৯৩৩ স্তাৰ্থকাৰ এক স্থান্থকাৰ উপ্তৰণ সিম্পান সাহ্বাৰ, বৰাইৰ ক্ৰেন্ত পুৰুষ্ঠ কথাকেই বাৰ্থকাৰ আগতিৰ আগতিৰ কিন্তু এন্ট্ৰিমিটি সম্ভাৱন প্ৰায় ক্ৰেন্তিকিক কৰি কৰু প্ৰস্তুত হৈ প্ৰিয়া দু Artyling with at a serve recommend Cybe research fig. 1800 incontaining Descriptions . Сертительность Силина (Сутина), Service Max, Raikou / Jamhabar и Garchichesse "Петиподог и अर्जालुक्यम् स्थान<mark>ारकाम् का राज्ञा पश्चम अ</mark>र्जानकास शतीनारकान् । एव **स्वावनीयस्था** कि सिन्ध्ववर्णकार्यः (१
 - 1. M/s: Son Adventure, Travice Shri Jalminhhai Dhirnbhai (baw, 304, striodocy Сэтріня Ahron Юлбі Капіі, Сірі: Ceneral Balt, Waghawadi Road, Bhaybagar,
 - हातु आरोपालपोर्ट हैं क्षित करें क्यारेल जिल्लामिटी सर्वारे के उपलब मारिकामें हैं स्पीनका के उन्ह अमेर एक्ट पर स्वरूप है।
 - Revergement approximation to a Compositive state, must be unconsect to the symmetric at the fifty. The following one :
- मीना करता है...कोट क्यान् शहर है। देशकर हुदीकी साम प्रिक्त के जिल्ला के कहीर 1943 कहा । अभिनेता के प्रदेश की कि दिश्क के अनुर्वत हैंगे दिला (मार्केटक) 1994 की कि कि अंगे के अंगे अंगे के अंगे की मिला कि अभिनेता अपने की मिलाक्क अध्यक्त के लिए कि प्रदेश करता (1954) की मिलाक्क (1964) के अंगे कि कि अंगे कि अंगे क है Under Recipion 80 of the Contract Section 1984 an appearance sec 351
- न्तीहरण अनुबंदन में मुस्तिबंदर हमें तमाओं श्रीभा शाना नाशीय उत्तरम्य पूर्ण एवं ह्यापि आर्तिश त्याप्तिकार्ण के विशेष में 8, 1988 की ने 2, जात कर्यों का 27 दिस्ती का की दोती आहिए 19 पुरुष श्रीकार कि प्रतिक्रिया प्रकार किया है कि स्वरूप किया श्रीकार श्रीकार अर्थ कर स्वीक्सिक किया किया कि स्था श्रीकार प्रकार के अर्थ कि का का भी कामी प्रश्निक की किया के अञ्चलिक कर स्वीक्सिक की IiI
- हमारोपन नार्वसंद्र प्रकार ने 100 प्राप्त का देश के जलाक एक मुझा हमील गोला कुला के हैं। उत्पाद प्राप्त एवं के मुक्त हो जीता कराव विकास किसारा भी परिचल होती। अखिल, प्राप्त में महा मुझाल भटन प्राप्त में अभ्यासक १८००: को विकास माहित है
 - To the Westermannel Function of z > 0, u_1 Packs 3. For algebraic Arrests of the media (FSSTAT) at 2π Figure 1050, and 1050 with Area with the colorest 2000 to 200 at 200 at appeals other share as an attentions in the colorest object.

्र अपने के साम के स्थान के स्थान के स्थान के स्थान के साम के साम के स के सिन्द के से अपने के सिन्द के सिन्द के सिन्द के सिन्द कर को सिन्द के सिन्द क (क्या वॉक्क्ट) के किया पर्यट करका ने साने 6000 के एक 'नेविधित हरूमा राज्या प्रकार केंग्रा के

(환경 1984) 참 181 (1984) 전 1 (1994) 전 1 (1994) 전 184 (199

The core is able to a section (this Section (Collaboration is an interpretable to the Appelling Bulletian Part I all to the first the section of the Part I all to the first the Section of the Part I all to the first the first the section of the product of the concernance of appears the of Section 12 (Collaboration of the first the fir

िस्त अभिनित्तन, 100 कि भार 30 की अधिकास (१) एवं 125 के संग्रहन दुर्व की पर्व प्राथम शुक्रमूम भिवास स्रोत प्रश्न, के विवास १८३) के शहरता के अहम निकीरित प्रकार अस्तर में की जा सके पारत प्राप्त कार प्रायुक्त केरहार करात. शुना प्रथम शुन्ना (अर्थान), सन्दर्भ उत्तरः श्रुप्त १५६८ (४२- अर्थप के। ५/२४) १९४१ वर्ष (४१) से १५ १४ १४) स्थापित आस २(३४) अनु प्रायुक्त उद्यूत कालाव प्रयुक्ता उद्यूत उपायुक्त, केन्द्रीय कर ए पुरुष नेवानद, जा जर्मकीय का गांग करण को अनेद्रीय दक्षे करना का विदेश है है बाहे उनहेंग्री की

which as a figure of eq. (a. 2000 a removement of the second of the control of the figure of the field of the control of the

क्षीत पुरुष क्षित्रिय अन्तर्भ कृष्य का नेपालर क्षणिका स्वीतिक के (विश्वेत) के की अपनी के सकत से कार्याय इसका श्रुष्टक प्रतिक्रियम (क्षणि कि विकास स्वति के अत्रर्थन, जो जो जिल्लीर अन्ति के अपनी के उपने के उस्ति के ज मो एक वैकार को भा अस् की वर्ष है । इस पार्टण के नीई अपोलय आदिक्य है । अविव अरहे साम १००५ रुक्कार । कर गण के कि परिधा । १९%, जन । या का क्रमीतर क्लाईड़ा 🐧 वा कुर्मान, १४ देव र कुर्मन्त कीर्वाहरू है, का मुक्तक विकास आएँ कार्ट कि हुए कि जा कि अंतिकार करता कि आहे नहीं तार्ट की हुए सामी हुँचे। कोड़ क्या के अधिकार हो,

केन्द्रीय देखार एक के एक केमानद के तके। के कोंग किया गया पुरस्ता के प्राच्या प्राप्ताहर है। जन्म ११ हो के वेगावीट काव्य

- सन्देव कमा को हो। है। यह उन्हे liit
- संग्रहेत जभा मिश्रालयों के निया है के लेलील दर पर

- दश्की १९ कि एवं अस्त के सम्मान पहलान (स. ८) अधिनेत्र २०१४ के आया है हुए किया जाओर्सन प्रविभागों के सारक विभागांगी। जाएका होने एक जात की उन्हें उन्हें उन्हें

In the state of the term of the content of the content of the state of the state of the state of the content of the state of the content of the state of the stat Charasa

Union Commat Commonant Statemen Low, Chary Diem. 20cd* sladt a claim.

(i) common a document to the Cement Common Common

- প্রতি আন্তর্গ করি নুমাধ্যের প্রাইছের প্রতিষ্ঠান করিছের প্রতিষ্ঠানিক করিছের করিছের
- एमं आक्षा के अपन शिवन शहर था तेन को देखीन वस एहं सान के बितासीन से चयुक्त करने साल पह सही नहें सक्तीय उत्पाद पुत्रक के कुट दिवटा के नामते हैं, जो आका ना कहा किया शहर ने की की की लिया से नामी हैं कि स्वरूप का reporte of a magnet expose out posted a posted to only complete on telling of state and in of our analysis ambinities end in the many of the persons of our major support of in sevter of postero engine for the fields.
 - ार देश सम्बद्ध राज्यकार आहार का किए किया होता. के बाहुर जान आगा बाहुर को दान विभाग जिला है है। है। That cope of दूर और coperfed outside Endis expect to Napal or Mauricia, मंदिर उस जाता है। उस उस की देवीहर
- (2) His feet to the first of the point of the property of the
- 94 प्राचीक्षण आहेत्वा है। साथ होता किस्तुत विद्योगित श्राल की अपूर्णि की उत्तर व्यक्ति । विद्रुप्त शिक्षण के प्राचीक अपने हैं के स्वार्त की किस्तुत्र की उपने का दुवान किया जात और नांद्र शिक्षण स्वस्त स्वयंत्र है अपने राजधार हो जा उन्हें 1800 के वह शिक्षण विद्या की 184 क्ष्यप्रकार applications shall be accompanied by a locate for 2007 when the smooth transport for the second for the control of 1800 and 18
- 101 मंद्रिक्त आरोफ है कर पुत्र कादरों का राजित है तो उत्पाद पत्र आदित के लिए दुस्त का शृहातान् उनकी है। इस सामग्री ताल पत्रियों हम तुरस्य के इस्ते इस सी की हिम्म पीति उनसे हैं अपने के विभाश पति है। अपने सिका कर विभाश के प्रिया के प्रियों के कि अपने अपने अपने अपने के प्रियों के प्रियं के प्रियों के प्रियों के प्रियों के प्रियं के प्रियों के प्रियं के प
- ©। হয়াত্রগ্রীতার স্থান্তান্ত্র ধানত প্রতিষ্ঠিত হৈ ১৯৮৬, কি সুজতুর্বা কি সাম্বাদ্য সমুখ এই এই এই এই এই এই এই এই এই ২০ টিবটো 6.50 sert et ettelle i size কিনিটোলি চুলা স্টিড ; টি এ dept of accidention at 6.5 d. এই এক enga page be, one the year of the seriodical size of the seriodical accidence of the seriodical size of
- (b) বিষয়ে বিষয়ে কার্যার স্থান স্থান বিষয়ে এই জার এই ছাঁত করা প্রাক্তির বিষয়ে বিষয়ে করা, প্রাক্তি না আছি কার্যার করিলে বাল লা আই প্রাক্তি ইবা করে পার্লি ইবাসে প্রায়ে না প্রায়ে না করা প্রায়েইছা করে করে ছাঁত ব ইয়াক Long Also uputed to the rules covering there and construct a constitution of since in the Park of the Radian and Service about Long Tables (Procedure) Pariety 1997
- (0) पुरा भौतिक विधानम् का एकेन द्यक्ति गरमे मा यहरीता रूप्तक विस्तात और जीवन प्राप्तनी के मिल एक्ट्रियोटी कि मिल प्रयुक्ति कर्का का opposite की दक्त करते हैं । वे 160 The elemente, the legis 1...2 today previously to the period appeal to the region appeals and receive the experience may now be not a partitional violatio <u>website website</u>; 2.2.10.

:: ORDER 4N APPEAL::

1.0. BRIEF FACTS AND GROUNDS OF APPEAL:

- 1.1. The subject appeal has been preterred by Ma. Sun Adventure, 3.4. Ratination Complex, Above CICL sank, Wagneward Road, Blavnagar (1940) thateinaler referred to as the appellant'h against the Creenth-Opginal No. 38/AC/STAX/DIV/2016-17, did.10.03.2017 (permattor referred to as "the implighed order") passoc by the Assistant Commissioner (AE), Service Tex Division, Bhavliagan (permatter elemed to as the Adjudicating authority"). The Appellant are displayed in providing taxable services of referent matter was infinited, and they are not registered with person fax when the present matter was infinited, but frow they are registered with person Barvice. Tax vice Registration No. NACAAAANJOSE001.
- In all parker gathered revealed that the Appelant are providing services as Tour Operator, which are assisted service in terms of distance (and on Objf for ISS) (105) (
- lf the coarse of hivestigation, statement of Shalloimm Chagliaj Dava . Trustee of the Appollant was recorded on 12,12,2016, wherein he stated that Appellant is a Truet and facilitating leadning and learning activities to the students. Chough the claustic and acting tour programmes throughout country w(i() , $n_{\Theta}n_{\Theta}$ (a) Nature and its colonigings; that through \mathfrak{spol} (in (ii) they equality the slit dents about Nation; for Appellants organizing camps in two ways. One type of camps are: Organized solely by the Appeliants, where they decree the venue of the early's and i expanditure to be excurred and than sond if $oldsymbol{k}$ (Fragality) publishing sociates $oldsymbol{k}$, $oldsymbol{k}$ the name of the Appellant that after consulting and cotaled inquiry if the parents/students agree with the gragram and ready to pay the gragness, then \$10y. soply, this, on reteict of cellan numbers of applications, the Appellant. opposize/conduct the camp at the decided variety and if some amount or money do: rest they keep the same with Branchist other equired numbers or applications are: not received thre camp is competed and accordingly the ambiorite are returned to the respective parents/students, that second lanes of campe are organize thay the Appellant as per the camp schodule deduced and provided by Mrs. ANALA. Outcodes. Atmessaget ; Here netted rate to as $M(s,\Delta N \delta) \Delta (s)$ that the δ ppel antisand the tour/camp program received from Mts. ANALA to press for pricishing that details in the name of the Appellant; that on consulting and detailed injuly. It parametrisheds agree with the ho ogns m m and ready to pay the exponsion from view $_{
 m SPOR}$. If at star record in confidentions with the animum of $_{
 m SPOR}$ $_{
 m SPOR}$ $_{
 m SPOR}$. Fig. sand the potails of the singerts to it/is. ANALA thereby and the amount of touries upon a genthrough Angadias ofter depositing their point mission; that their attanthe compliis organized at the decided ventue; fact hat siona of the seven business that after penisal of the documents. He contained the particulars of naving received the took (or various pages) sign rized during 2006-10 to 2015-19; that their fees are inclusive. of accommodation, travelling from Anaredabad, fond, sarvice charges and an obatax and that they and collected service tex for the pampa organised by them such $\gamma_{19}(\gamma_{19})$ had nonher obtained septine rax regionalize, and slee not that any services ong telumi of Ingang paid any appoint of service tax. But after examining the documents, calculation ander icrulie clips's amount or service tax was proposed, which indicated as fellows

Page And S

Tina ida Yesi	Se viçe value	Service fax liability
2011-12	20953	2733
2017-10	257496	j 3 [.] 827
2010-14	7,3%6745	178104
2014-15	1.3416747	146204
2015-1 <mark>3 (upla Navoni</mark>	iber, 508831	85159
2015)		
Grana Total		116/137

- In page regard, the SCN dtd.15.8E 2018 was ested to the Appellant as (hydriam to show causo as follony the service tax of Bis.3.02, 1074 should not ac demanded and recovered from the Appellant under Section 73(1) of the Act with morest at applicable rate thereon in terms of Suction 75 of the Act. The Appellant were further asked to planity why penalties under Section 77(1)(9), 772(2) and 78(1) of the Act should not be imposed on them.
- 1.5. In repty to the notice div.15.09.2018, the Appellant submitted a Shatsh for As 3.3. 0393-paid by them towards their isolity of service tax, interest or dipendity. It was requested to drop the demand of Kristri Kalvar. Cess made in the notice, as the said cass become 'evidate with effect from \$1.00.2016. They also requested to take forced wow since may have made physical of the does as use the existing rules.
- After having considered the submission from the Appellant, the sejecticaling authority passes. GiO No. 95/AC/S (AWD'W/2016-17, did.: 0.03.2017, confirming the demand of Re. 1.91.8517 under Section 70(1) of the Act with interest of Halos (B. 0.004) at the applicable rate levich eithered in terms of Begflen 75 of the Act and also imposed behalflas of Re. 1.91.65174 thate. Section 73(1) of the Act with benefits of reduced penalty @25% of service tax demand confirmed: or Hal47,0147-, Rs. 10,0007 and der Section 77(1)(a) of the Act and Rs. 10,0007 under Section 77(2) of the Act. The demand of Bright Kalyan Goss of Rs.4064 to sect to the #Gib was ordered for propring with Inforest and penalties thereon. Street the Appellant had sheapy made payment of the alonesaid vide Challandtif.23.03.2017. She same was ordered for appropriation against the amount of sorvice tax, interest and penalties payable tip the Appellant in terms of the above.

1.7. he Appellant fired appeal mainly on the to lowing grounds:

(a) The Appellant is pregistered of unitable trust under the Public Charitable Trust Act, 1950 and activity of the Appellant is directly commoned with the general outrition and animals. They worth organizing various camps at various togethose, for which they nead to take assistance of the "transporters". They are not engaged in any kind of commercial solivity and as per the Trust deed rahatevenths fund is recorded, the same is to be used for the afforested purchase only. They are thus not engaged in any kind of commercial business. The department initiated the initiaty and issued SCN dtd.15.08.2010 with demand tensory or tax, interest use behalfest. The Appellant and the Trustee of the Appellant open not aware about the provisions of the service tax faw thereoe the compliance remainingful remained out of their knowledge. They never received the letter about the tixing of personal heading, but the Trustee of the wapellant had at his convisited the Central Excise office and in good faith agreed to make phymona of the access and accordingly made vide Challan Na. 50044, etd.22.02.0017.

J.

- The Beng aggreeon by the OIG stole 0.83.2217, the Appellant find appeal before the Commissionar of C. Ex (Appeals), Rajket an 12,05.2017, as they had medical copy of the OIO on 14,03.2017.
- 1.9 Doing aggrowed by the OIO dxl.10.00.20% to the Appollant has Red the present appeal, mainly containing the following grounds.
- (i) The adjudicating authority has bassed the OIC without giving any opportunity of boaring to the Appellant and honor the Ordenhas been passed in grass violation of principles of causal justice.
- (ii) The Appellant being Registered Chelifath a Trust conducting activities nation that Connectical curpose.
- (ii) It was admitted to the statement that the Appellant had managed tour on the hase of rectifiement of MA. ANALA and after documing metrodynamics on, the fees receivered by the Appellant from the participants were sent to Mis. ANALA immught Angacias. Therefore, the local amount shown in the Table given in the SON c.d. 15.09.2013 is not true and correct.
- (v) In terms of Explanation appropried Lebw the definition of Tour Operator's provided vide Seption 65(115) of the Apt. it does not include a journey organized or an appropriate policy offier than a committee at the many proposition of the skill or knowledge or lesions on any subject or field
- (v) the Apparent (III) not possess any velicle for arganising such tour as contemplated in the section one. In terms or definition on Tour December the department has to prove that whether the said disputed (aut, filliarly, IIII) been organized through a 'Tour'st vehicle' in lenns of Section 2(40) of the Motor Vehicle Act. 1986 red with Rule 126 of the Control Motor Vehicle British, 1980. As held by the Commission of Cilia (Appeals), Indoors in the case of (AS) Cayat Enterprise [2017, 3), STR, 283 (Commission et Appeals), has the amendment made in the definition of 'Tour Coerato' in the budget of 2014 was with reference to excert right should be package four necessors and not with reference to the normal four operators, where the conditions of use of burish vehicle would continue to be operative. In other words, except for four operators change package tours, in respect of other four operators, the levy would be operative from 01.04,2000 provided the vehicle cannot be a few or business that a constitution of the standard and in case the vehicle used a not a consist vehicle and in the service rendered by using such not Education (4th des).
- Thus, the requirement of use of the fourst valids, if any, has not at all been established by the adjudicating suffortly. Therefore, the DRI is not at all proper and legal.
- (vi) They already stated that the "Tour" was operated by Ma. ANALA and too Appel antiwere participating by sending the participants, but no such it vest gather has been extended upto Mrs. ANALA. Therefore, the order passed is it violation of standary provisions of Section 69,110) of the Aot.
- (vii) The Appellant were ast at all required to make payment of service tax. It all to tenderance of law, they have the service tax. Since the Appellant has proved that they have made payment of service tax and there was no such recurrement of levy attachine tax on the actions aring conducted by the Appellant, hence the payment of service tax with interest and parables are is be heated as illustrative offernation.

- 1.10. The Central Beach of Espaie and Customs had size Notification to 28/2017-CEX (NT), state / 4/0.2017 reported in Board's Order No. 05/2017 ST. att. 12.217 has appointed the undersigned as appellate actnotity under Section 35 of the Central Excise Act, 1344 for the purpose of passing orders in the present appeal.
- 1.11. Accordingly the Appellant were granted appellinity of heading on party with 10.02.2013 and 22.03.2016, here of the same were alterded by anybody than the Appellant and they distribute to provide Krait reely in response to the indirection of PH. Honde, in terms of the provide to Bertton 20 (TA) at the Control Excise Acc. 1944 (e44) with Section 95(5) of the Apl. Fow I have no other collection but to proceed about in the matter of the basis of the monta of the case and distance pages (pages) black person mo.
- 1.12 Copy or the appear mestic was provided to 11.6 Assistant Commissioner, Service Tex Division Bassanger vide latter to 28.05.2017 and they was also into the account the maximus dividual but not that has been received from them.

2.0. <u>FINDINGS</u>:

- 2.1, I have carefully gene through the appeal papers placed before me. If find that the Appellant that already made payment of service bax, interest and penaltics during the time of adjudication and the said amount stands appropriate in the O.D. did.10.00.2.177. Thus, I find that there is prover constitute to the party report of prestopose as are vide. Vide Section 35H of the Central Excise Act. 1944 read with Section 83 of the Act. Accordingly Tip resect to deuklantile access.
- Poma facia, il notica that che Appoliant had not mode any submission. before the adjudicating authority and at the time of personal hearing have provided all specifich Challen dtd 22 42 2017 avidancing the payment of service text interest. and penalties by them, which has been appropriated in the OIC passed by the adjudicating authority. The Appellant had requested to drap the semane of Kitarii. Kalyan Dess, and laise requested to take tenent view. Take, there were no ever ments of arguments in ade by the Appellant before the adjudicating authority to onalienge the validity of pernand itself in the context of non applicability of dominant. of town 17 out Decretorillas provides in terms of Section $99 \chi 116 \chi$ shifth A pprox 16 pprcase. The sale ground is apparently being raised by the Appellant Lefete me for the first time, writer to mentited to be rest, ideal by the initeriors of the provisions of Fuld. 5(3) of the Certifal Escise (Appeals) Rules, 2001, Frayword, I from on that the Appelant was prevented from making propor representation and $p_{G}\left(\mathbf{e}_{i,\mathbf{e}_{i}}
 ight)$ for hearing on 22, 02,2017 was issued to there, and ϵ grappingly the Appellanta were: not at all heard although there appears moulton about the presence of the Appellant. curring notating on $22.22\,20\,17$ in Para 5 of the impugned ORO. This itself to $_{
 m COURT}$ is to make out a case of finding exception ha provided to Rule 5(1) of the Control Excise (Appeals) Builds, 2001 and to allow the Appellant to prosent the mass grap aperments at this stage and in tentes of Rule 5(2) Bid; I allow the Appellants to produce their subinfisher in this respect with a view to extend them the benefits of resultal justice, from which may were otherwise prevented ϵ imagine a applies $\epsilon_{
 m color}$ on proceedings.
- 2.5 Primefacta, fünd that paints for determination in the process appeal informs of Section 38A (4) of the Control Excise Act, 1844 med with Sergion 92 of the Act lens (he following:



- (a) Whether the services provided by Appellant will be operapriately classifiable as 'Tour operator' in terms of Section P5(110) of the Act or propries?
- (b) What should be the subscall of service tax demand to be confirmable. Under which provisions of the Act such demandingly be only predigits there any base for levy of interes, under Section 75 of the Act on such sometimes demand? Is there any case for imposing somethy on the Appellant under Section 77(3)(a), 77(2) and 78 of the Act and what should be the quantum of such penalties?
- (c) What should be the order which is just and proper, in the context of the grounds of appeal and ments of the case amere max.
- 2.4. As regards the point (a), I find it an undispince fact that at the relevant time, the Appellant word regards in providing service. It is a case of the department that the service of ordined by the Appellant were toxable service of the category of "Four Operator service" as defined seen -500tox 95(1.15) of the Apt. Leoking to the provisions of Section 95(1.15) of the Apt, as they were made after 160to 2008, which are as follow:

Thour Operator's moans any person arryaged by the pusiness of planning, scheduling, organizing or arranging fours (which may should arrangements for second modes on, sightscoing, or other similar services; by any grode of transport, and includes any person engaged in the business of operating fours in a couris, vehicle or a contract carriage by whatever have cafed, covered by a permit, other than a stage carriage permit, granted under the Moor Voti class Act. 1988 or the information mode therety star.

Explaination. For the surpose of this clause, the expression term cods not include a journaly organized or arranged for use by an educational cody, office than a complexical hairing or coaching contex, impairing skill or knowledge on expossion any subject collect."

Apparently the definition of "Four Operator"; equires involvement of a touristive hide. with a permit granted under the MV exc, 1998. In the entire case, it is evident from the negroup made by the Armallant and eachly the adjusticating authority in that impagned OIO (ins. the Appellant never down any vehicle, leave appril the issue of all vehicle with the permit granted under the MV Act. In this Imibee context this submission made by the Appellant is getting sulfideric groups. It is voly colliexplained by the Appellant about the involvement of Mist ANALA, but no attempt. was made to check whether Mts. ANALA had each permit or otherwise. In the absence of such basis ingratiom the attenual mass in the SCN and the Ω 10 to get. the services provided by the Appellant a colour of itaxable service" in the context of Section 56(115) or the Act talls if find support of my view from the case law. pronounced in the form of OIA passed by the Commissioner of G Hx (Apocals) : "ytiong in tale case of M/s. Gayatri Enterprises (2007(2) STR 280 (Commit. Abbl.)]. I which ClAthes been ferther upheld by the CESTAT, Principal Banch, New Dalid. side C.Ser (1<u>.02</u>.1),(2008 [200] 10) STR 600 (Tri. Do.)). And for that reason. Travel to nee do the paint (a) in our eiden al.

2.5. When the service provide by the Appelant is not place (and inner Section (8.415) of the Apt. the end eigenful at some fax under Section 78(1) of the Apt papernes not supposed and the OIC passed by the adjudicating puthor of deserves to be set early and accordingly 1 policy. When there is no domain for some or fax, consequently ne case remains to some and of interest under Section 77(1)(3).



27(2) e vi 78(1) or the Arc. Thus, the C \odot facilities set exide with consequential. benefits in favour of the Appel and by easy of answering to the poor (a) accordingly.

- 26 In the colifiest of the above, while dealing with boint (a). I find that the ends of justice may be met with upon possing order for seiling oxide the impagned. OIO d.d.10.03.2017 with consequential benefits in favour or the Appoint and Lon-9€
- 27 In above terms in dispose the appear by way of allowing the appear filed by the Appellant and setting oxide and impagned Oxfor with constant on rates in favour of the Appellant.

(P. A. Vasave) Commissioner (Appeals)/. Gornniks.oner CGST & Camrat Excent Yukki (Cardhillian).

Oate: 04 05.2098.

F. No. 92/141/D9TJ2017

<u> Py R.ሮ.ፋ.ፓ.</u>

Τσ, M/s. San Advantures,

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Capy to:-

- The Chief Commissioner, CCS 1 & C. Ext. Ahmedabad Zone, Ahmedabad.
- 2. The Sommissioner, 2GST & C. Ext. Birest ages.
- 3. The Molliunal Consults oner, ${
 m COST}$ A ${
 m G}$ Ex (System), Bhavnagan,
- 4. John Commissioner CGST & C. Ex., Chayretpar.
- த் Cyambia