ſ	ár dia	1 1 1 1 A 1	оула в алмы ме	аналасын алар алар алар айсал Алар Алар Алар Алар Алар Алар Алар Алар Алар Алар Алар Алар Алар Алар	чт	
	रेम वर्टने दिन होता ते Lace Course in E-road					
<u>PTTTTT / Kalko, ie60:00.</u> :ele actor 10941, 1477/3593-141112, immet recorperanta) tri∑immetarm						
	्राषः उद्य	<u>য়ে হা</u> ল প <u>্ৰই, সমূহ</u> া আন নাম সম			'L.s.'	
	47-	ezada Proste Antonio		dia si		
		1999) - 1999 - 1999 1999 - 1999 - 1999 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 19		ANDALI CIMMANDALI ALICE, JARAMO	:14.247	
•	4	संभव अदेश करूल ()	orde Une Aprica (M _{edi} a			
<u>BBV-EXCLIS-080, APP /21-2018-19</u>						
		এবাঁহা বন্ধ বিভাগন। বিভাগ কাইজের	QC.06.2018	त ि करने की तनीक - bas of sole	19 06.2018	
	कुमार मनोग, आयुग्तः (अर्थाजन्त) स्वकोट कृतः (अश्वित) Pasaul by Shu Numer Semoch, Commissioner (Appeals), Rajas:					
۴	•	् २०१४ - अन्द्रां १९४४ - २४४ - १४४२-२४ - २४४२ - २४४४ - २४४४ - २४४४ - २४४४ - २४४४४ - २४४४४४ - २४४४ - २४४२ - २४४ २५ - अन्द्रेय २४४४४ - २				
	An an an Anna-Anna Mark DD start by 200 and an angle, when an Anna-Anna and Anna Anna Anna Anna Anna Anna A					
			Jements Limital	Duit: Ambujapagary, Ty		
		na (Pikanana) ara Ang Sinta ng palant n		е бласта страти насела бласеле за Приходни с из ворхой с раноту (Приходни с из ворхой с раноту)		
•		নিয়ে বুজ্ঞা বিষয়ি সময়। ১৯০০ - প্ৰায়ি মন্ত্ৰিয়াৰ	Manna (Ali Araba) (Kaayi k Karafa (Ali Karafa (Karafa Ali Sarafa (Ali Karafa (Karafa		.i Shiri san Aran Ita ƙ	
		Sagistik (Sµtana) en Raanstats (Karasan	d'4410 40 0.411 1.			
•	Y	7 16 (jk - 4 ())		 >ीर। सम्प्राह कुल्ल रह देवल्या स्टीनीय प्रतास 	-	
		anun an Stister Designer Stister		Перекарания нарысы на Аластик жене Перекарана	1967 - Angel Angel Gellin and	
	3 11	সৈতে সংগ্ৰহণ গণিতা, গাওঁ বিভাগ বিভাগ হৈ বেশা বিভাগৰ কৰি পাছি বিভাগৰ বিভাগ সময় হৈছে যে বিভাগ প্ৰতিষ্ঠান সময়েই পিছতো বিভাগিতা মাৰ্গি গোঁৱিয়া ব্ৰহিমিক পৰা মহুমাৰী মেহা মাৰ্গ প্ৰয়াহকে বিভাগিতা বিভাগিতা বিভাগিতা হৈছে। সময় বিভাগিতা বিভাগিতা মাৰ্গি গোঁৱিয়া ব্ৰহিমিক সম মহুমাৰী মেহা মাৰ্গ প্ৰয়াহকে বিভাগিতা বাবে বিভাগিতা বিভাগিতা				
				l Gelana (Inc.)Agel ann an anna aGelaite an Bhlana anna an gun (Chenna)	.1 > ⁴ - 0. Kies K.w.	
	; ,	्रास्त्र (१८२३ व्याप्ता) सीत्र संस्तृत्व प्रयास स्टब्स् इन्हें २०२४ व्याप्ता क्यांत्र राष्ट्रिय राष्ट्र क्यांत्र व्याप्ता	Antonio de la construcción de la c Construcción de la construcción de l Construcción de la construcción de	म के से पित्र के प्रमुख प्रकृत के कारण के साम के 2001. 2017 के से पित्र के साम के प्रकार की के साम के आयु उन्हें के राज के आगर के प्रकार के 2001 के साम के 2017 के राज के 100 के प्रकार के 2001 के 2003 के साम के विकास के 2000 के 2004 के 2007 के 2007 के साम के विकास के 2006 के 2004 कि 2007 के 2007 के 10 की 2007 के 2008	स्त के प्रतिहेत की सिंह कियान की जीवे तरह की गाउँक के राजधान के प्राप्त के इ.स. विजयस्त के प्राप्त के किया के सिंह के राजधान किया कि सामक कोडिया	
		Enconi (Appendi Falco) Transferazione in encon Transferazione in esperazione nector bank chima place	DC and real be accord GLA to an Corona a Arabitation and a corporation Laboration banch of any	a) In a general constant from 16.2 A set by gap series regents one of the releast tools of this constant for every non-polytonic and poly for the cost of the release band of the data of year theory sub-to-relation band of the cost. The relation of the Polyton for the 2000.	er accompanya olympicae er olifer na statut a 20. av 51. av 200 1. av 4. al ana ana ana ar 10. av 200	
•	·-I	काले विश्व स्वारण्येतराज्य स्वित् विश्वविद्य स्वारण्य स्वारण्य स्वार्थित स्वारण्य विद्यार्थना स्वार्थना स्वारण्य स्वारण्य स्वार्थना	स्ट्रांस अभिनेत भिन्न अभिनेतरस्य स्ट्रांस द्विप्रांस प्रेरं स्ट्रेश स्ट्रांस अभिनेत स्ट्रेश अभिनेत स्ट्रांस स्ट्रांस स्ट्रेश स्ट्रांस स्ट्रांस स्ट्रीस अपूर्ण स्ट्रांस स्ट्रेलिय स्ट्रांस	• स्वर्ण की स्वर्ण आहात के अवस्थित कर स्वर्ण के स्वर्ण का स्वरण कर के लिए अप्रेल का विद्यार अप्रेल की स्वर का स्वरण कर कि स्वरण के स्वरण के स्वरण के स्वर्ण के माल स्वरण का स्वरण के स्वरण के स्वरण के स्वरण कि स्वरण का स्वरण के स्वरण के स्वरण के स्वरण के स्वरण के स्वरण के स्वरण कि स्वरण के स्वरण के स्वरण के स्वरण के स्वरण के स्वरण कि स्वरण के स्वरण के स्वरण के स्वरण के स्वरण के स्वरण कि स्वरण के स्वरण के स्वरण के स्वरण स्वरण के स्वरण के स्वरण के स्वरण के स्वरण के स्वरण के स्वरण स्वरण के स्वरण के स्वरण के स्वरण के स्	े के राज्य की बाद के उसके मार के प्रकार के संस्थिति के समय करने के स्वतंत्र के 2005 करने 1.000 क के समय के स्वाय की स्वाय के	
		qualitative entropy for a second s	(1994), jak ja oli oli oli o Anto ugo en tara ke kan ali kasa iku Kanana ali kasa iku nga Gib Arasa iku Sabata iku Sab	In the definition of the field of the optimation of the second state of the South and the second of the second of the second state of the secon	na, Sin I., Aandah ni Ipili ni eenaaly yaa na sa ili ni eenaaly yaa sa sa ili ni eenaaly KY ni I. sala ni eenaaly KY ni I. sala	

.

. .

O

Line of Arystale (Arystale) in μ-κμη οf the submit of against of the lands of how experiments for the formula of the device of Dirac (Arystale) is a substance of Dirac (Arystale) is a substa

- 2. Let Control Control Mathematics of program and a state of the set of the set of the pair. Court Coupling the set of 'n,
- 3:

 - स्ति विशेष सम्प्रिय स्वाप्तित्वयां स्वतः १९८८ विशेषा करा भी भी को प्रत्य गाँध १९८८ वर्तने क्या दिखावरी के दिस्ताइ अर्थु है, कि दुस्त १९४४ इसे को स्वाप्त के स्वाप्त की स्वाप्त की द्वारा के स्वार्थ्य से प्रत्य के पूर्ण विशे की सिंह सक्तियों के साम्य विश्वय दव १९४४ इसे को स्वाप्त की स्वाप्त की स्वाप्त की से

For an appendix on the barrier of Construction of the test of the factor of the factor of the set of the set of a size maps appendix to Server factors and the set of the set of the test of the probability of the test of the set of the test of appendix of the set of the set of the set of the set of the test the set of the test the set of the test of the set of the test of test

- When the PCA in the second contract and second and second and second and second contract. Carly Contract and second and second contract and second and s
- ÷ 5
- E -
- د ۳

provide a Sachad and an and a large large and a provide a sympletic provide spectral perdiag bases represented a single a factor and a single sector (sec. 2, Au. 2, Au

13 a.

non som af gefans value Som and statistics is Covernment of local on a cover performed and benefit to the statistic grant of States in the states when to the table to (been pro-tified and the performance of the states of the states grant of States in the states of the Descention of the states o

- 2
- াৰে ভাৰমন্ত্ৰ উপৰি মন্ত্ৰ আৰম্ভ কৰি উপৰি কৰা বুৰু মন্ত্ৰ ভাৰিতি মন্ত্ৰ সময়ে আৰম্ভ মন্ত্ৰ মন্ত পিছে মন্ত্ৰী মন্ত্ৰ মন্ত্ৰমন্ত্ৰ মন্ত্ৰমন্ত্ৰ মন্ত্ৰ মন্ত্ৰ মন্ত্ৰ মন্ত্ৰ মন্ত্ৰমন্ত্ৰ মন্ত্ৰ মন্ত্ৰ মন্ত্ৰ মন্ত্ৰ মন্ত্ৰ মন্ত্ৰ মন্ত মন্ত্ৰমন্ত্ৰ মন্ত্ৰমন্ত্ৰ মন্ত্ৰ মন্ত্ৰমন্ত্ৰ মন্ত্ৰমন্ত্ৰ মন্ত্ৰমন্ত্ৰ মন্ত্ৰমন্ত্ৰ মন্ত্ৰমন্ত্ৰ মন্ত্ৰমন্ত্ৰ ম • *
- 111
- effetti alas este se general para a polar politici peffetts, a effettino va cara Sober ensura a espectra da cargo en Art Reserva este cuitar te generalita effettura (α.) το senti ter tre a year fra, affettino se senti a transmissi a confetti a la senti Confetti alas da da cuitar da cuitar senti confetti confetti a la cuitar da cuitar polar confetti a confetti a La cuitar da da Confetti alas da cuitar confetti a cuita Confetti alas da cuitar de cuitar da cuit Confetti alas da cuitar da cuita Confetti alas da cuitar Confetti alas da cuitar Confetti alas da cuitar da 131
- 2. A set of the state of the set of the s rs1
- yease a success from the end from Bacher constraint end of the back Bacher station for success and a success of a second state of a state of a success success success and the succe the LCCC state of a local state of a success of the success for the success success into a distribution of a success of the success of a success of the success of the Success of the success into a distribution of the success of the the success of the success of the success of the Success for the success of the success into a distribution of the success of the S ١ſ
- ·7
- en és processarias de la Carte, la Carte, la Agrilla de Agrilla de Agrilla de la Carte de La Carte de La Carte A Marcinges de la Carte de C Carte de La Cart La Carte de La C 320
- ны уналься намаля для та бала мёлён солбется (н.2.160) и мно, 152 на были дне елёне слава та обставания бала бала с на солбания солбется (н.2.160) и мно, 152 на были дне елёне слава та Академи в сво кома за спольших махама на солбоном и на собих посток 1.05 (устана Собилан Сонча асходна в сво кома за спольших махама на собили и на собих посток 1.05 (устана Собилан Сонча. асходна в сво кома с собил с бол :**-**1
- ene beselve after til en met solver som ander solver, som som som solvers ander for Severational Briener værer Severare på 1930 basen, gilt s 1.1 аланан туркан канандаган. Турка, жарамын канандаган така така жаларындаган бараттар уулган байларын карал Калан байлар. Катарар бараттар Женик канандаган канандаган жаларын канандаган.

:: QRDER IN APPEAL ()

The present hopeal has been filed by rais. Amonga Compres Ed., Ambujanagar, Taluka: Kodinar, Dist.: Janazadi. Gujarat (*herein after referred* to as "Appellant") against Briter in Criginal number 33 (JOIN1 COMMR.(M1)/9.70 M/CX/2016 dated 11.05.2017 (normaafter referred to as "the impligned order") passed by the JCAL Columnissioner, Large Tax Payer Unit, Wimbai (hereinafter referred to as "the lawer adjunctions parthematy").

7. The Infor facts of the case are that appellant, having registered office at Elesent Business Park, MDC, Criss Road, 181, C**, Andhord-Curtz, Road, And Jeri-(\bar{c}); MJMDBi - 400 655 was registered as a Large Taxpayers Unit having Membershin No. 1 (1)/WCM/22 Z. Was helding Central Earse Registration NC. AACGC569PXMODG for monufacture of "Coment" (OPC), (PPC) & Slinker falling uniter Sub-lieading no. 25232910, 25232910 & 25231000 respectively of the first schedule of the Control Porter Parifit Act, 1563. Diving the course of audia, it was noticed that the appeliant had ownilled and utilized thewat credit on services. such as "Repatcing of Motor Vehicle - Dumper C. Tipper' & "Supply-" mins of Note: Veinde - Nwa, Tippers H Sutters' and these services were alleged to be not reput services by addices per the definition of mout service in terms of Rule 2(1) of Convex Credit Rules, 2004 (normination referred to as 100 R) as it existed. during the Grandal year 2011-12. It was also alleged that it had no nexus with the manufacturing of seles of the excitable goods manufactured by appellant as definition of "taput service" excluded the services specified in sub-clause (d) general visurance austross, (c) contrainab, (70) repair, reconditioning. restoration of decoration of any motor vehicle and (zzrzj) scopty of tangible gates requeing machinery, equipment and appliances for use, or clause (02) left Section 63 of the Finance Act. 1994 (hereinafter referred to as (the Act'), in so $\frac{1}{2}$ fer as they related to materizations. The services of regain and mointenance of the comper and tipper appeared to fall order soli clause izor and that of supply (hising of bywa, typion and bulker (index sub-siause (azar)) of clause (1051) of Section 65 of the Act. Further the exception in sub-clause (P) & (C) of fund-2(i) provided that it the motor vehicle/domants or trapers were used for the provision of texable services for which the credition match which was available. as capital goods then such services would be treated as 'input service' provideumator vehicle/dumpers or dispersivere registered in the name of service. providencing introviding contails solving as specified in various sub-clauses for

Page 1 of 14

۰.

Appare: No. 752745277236527

various services. In this case, the oblicity of the motor vehicles i.e. towa, Coper 8 bulkers 7 compare and traders was for movement of row motorials within factory precises and did not fact order any of the categories mentioned in scoclapses and bence not covered under sub-clause (8) or (9) of 80 a 2(a) of the Rules and hence cannot be used to be capital gapes. As the subject motor vehicles do not fact under the definition of capital gapes, the services of supply of cangible goods and repsilitant maintenance as specified in sub-clause (2222) and (201 at clause (100) or Section 60 of the Act, (cannot be fact datase (222)) and (201 at clause (100)) or Section 60 of the Act, (cannot be fact datase (222)).

£.

The definition of (capital goods' was smervled vide Not. (cation Not 2.1 28/2012 LEON (dated 2006-2022 weet, 01.02.2012 wherein cumpaniane tippers. were included as capital goods of the same were used for providing culput. services and the condition of specified services as stiplilated partier wave dispanses with. Increfore, the costale pervices rendered by the mater volucies for which the credit is available as capital goods are defined as 'hipput service' weed, 81-07-2032 as per the exception to the exclusion clause (4) of Fride 2(5) of the Rules and hence, the Certrat credit on the repair and maintenance services. of the domages and there are supply hims of motor vehicles would be inadmissible curring the period from April, 2011 to June, 2012, Appellant had availed Cenvat sparit on services of supply of meter vehicles var. Syster, stapen and bulker and had declared these services in the category of "Business Auxiliary Services'. Lowever, setuting of bills/invarce assued by the service provider revealed that the sensite providers had charged monthly lixed amount for supplyof vehicle and had not beclared under their invaldes the cutokery of service as 'B isidess /untiliary Servico'. Even agreements between the oppollant and service providers for litting of motor vehicles clarified these under the category of 'Supery of Langibus Geoda', it was alleged that the appellant barline iterately shows the same under callegoly of "Business Aaxilians Service" with intention to avail Central proof of service tax on the basis of bills of service providers under which they had provided mater vehicles on three which was not acknissible as input service. Thus, the break taken on services of supply/hinny of motor vehicles, bywa, typaets H builters provided during the period from 01.04.20 \pm 1033, 35, 7912 alleged to be incorrect.

 The above observations led to issuance of Show Units: Notice Plane LTC///UNIX.2016L_3/ACL/LA/SID:/48/2017/13 cated 56.05.2011 (ALS) proposed.

 $M \in H^{1}(A) \to \mathbb{C}^{1}(A)$

to installow one recover writingly availed Cenval credit of Rs. 17.93.876/- on "Repair of motor vehicle - duringent & Uppen" and on "supply offlog of motor vehicles - hywa, tigpets & bitkers" during the period from C1.04.2011 to 33.36.2032 under Role 14 of the Roles read with Section 11Ar(1)/14) of the Central Excise Act. 1944 (hereing tex referred to as "the Act") alongwith interest under Section 11AB/11AA of the Act. If was also proposed to impose penalty under Role 15(2) of the Roles read with Section 11AC of the Act. The sale Show Cause Notice was edjundened by the lower adjudinating authority which the impugner order where in Cenves Credit of Rs. 17,93,876/- was disallowed under Kule 13 of the Roles read with Section 11A(1)/(4) of the Act. The lower sid under Role 14 of the Roles read with Section 11AD/AC of the Act. The lower sid under Role 14 of the Roles read with Section 11AD/AC of the Act. The lower adjudicating authority imposes penalty Q_ARC of Cenvet modificient Role 16(2) of the Roles read with Section 11AD/AC of the Act. The lower adjudicating authority imposes penalty Q_ARC of Cenvet medit (oder Role 16(2)) of the Roles read with Section 11AC(1)(c) of the Act.

 Being aggreent with the integral order. The appellant preferred this appeal, integration on the following groups:

- The services under consideration i.e. frepart (il maintenance of Dumper I. Tipper: and faipp youting of bywa, topens & bulkers' were input provides which were considered in relation to manufacture of time, cuttable goads; that the allegation that sendles under consideration has no besus with manufacturing activity has been dropped in the improper order.
- 2. The dumpers L Lippers used by them are not motor vehicle and therefore, exclusion claube (R) or the input acriate collision is not applicable in the present case and hence credit is correctly amniculate to them; that they may on definition or motor vehicle as mentioned at Section 55(70) of the Act read with Section 2(28) of Mater Vehicle Act, 1988 and they rely on juligate it in case of Gractyper Findla, to reported as (997 (92) ILT 14 (SC).
- 3. It is increasived fact that credit in respect or impugned services was available for the period prior to Auril, 2011 and for the period after une, 2019; that the intention of the government has always been to allow predition the impugned services; that it is increased to suggest that a source services are not input perior for specific period along the April, 2011 to June, 2012; that exclusion perior given in the definition of the input service was inserted in the definition of input.

ಿವ್ಯಕ್ಷಿಗೆ ೧೯೯೬

e**

sonade as defined under Rule 200 of the Rules vide Notification Net 3/2015-C.E. (NT) valued 01-03-70% and prior to 01.03,2011, exclusion clause was not chose in the definition of mout services: that therefore, or for to 01.03.2011, they were efficience to take over themat the input services received by them thirespect of durban (rippers used by them) that and 00.05.2012, definition of term capital goods as given under folde 2(a) of the Poles was prepared vide Notification Net 28/2012-C.E.(NT) dates 20.06.2012 as per which durpers is impers used within the lattice precise version encoded of curayers/hippers is accurately of input service received in respect of curayers/hippers is accurately to them for the period after 01.07.2012; that alones dial menuments prade to the Rules were clarificatory in nature and may rely or judgment of WPIL reported as 2005 (161) CIT 259 (SC), Subma Wetal Products 100 - 2011 (273) FIT 117 (T), Heater Shermiters (India) Pvt. 104, 2015 (319) LT 246 (Art).

- 1. Dumpers are classifiable as inputs and there is no resultation on usage of logist services recover in respect of matter and hence product at impugned input services is correctly addissible to their dual the goods used in or to relation to the manufacture of final product whether directly of indirectly is when exolgs to cover the dumpers used for transportation of itmestone from mixing area to innestone crusher and they rely on following decisions.
 - (a) instan Copper Corph. Ltd. : A R 1966 SC 891 L 16 S-C 259 (SC) .
 - (b) Hockleter Zind Uta 2002 (142) F (T 242)

re; J. X. Cettion Spail & Wwg, With Co. Ltd. - 1997 51T 34 (SC).

5. The entire demand is time betwee as extended period of limitation is not invakable in the facts of the case as the differential daty demand for the period from April, 2011 to June, 2017 and Soaw Cause Netrice was issued on 06.05.7.011; that there was to suppression of facts with intent to evade payment of euty and hence demand is time barred; that they are regularly filling monthly returns alongwith Genval credit details with the departmental authorities from time to time; that they are based company and requires to monthly them on inclusion and interpretion to respect of the credit taken by them on inclusion services which was evenable on record; that the cubit objection in the broach case, was issued on 76.0.2018, and Soaw Cause Notice was present.

Page 5 of 14

Sector Sector

issued on Gal0512016; that the department was aware of the fact that they had evalued closet of 3 pugned services since 2013, however, department has issued show Gause Nation after borned of more than three years; that they cannot be benatized for belay in issue he of Show Gause Notice and hence invocation of extended perfor of Unication under the provisions of Section 114(1) of the Act is incorract: that they place in lance or bolicying Juograms;

Lance locustries Etc. - 2011 (265 ELT (18 (T)))

Rejeathan Traffle W/Js - 2006 (203) ELT 539 (7).

3. Crampton Greeves (to = 2006 (204) (4.1, 502 (- 5)

4. NoU camir altes Pvt. Ltd - 1997 (96) ELT 191 (T).

Proute Engineering Co. - 1995 (75) BUT 257 (Guj.).

6. Tani UNadu Housing, Inard (1994) (34) LL (9 (50))

A Contribuinta, Foundation - 2007 (216) ELT 177 (50).

8. Padmini Products - 1989 (43) 1711 (90) (90)

9. Chemplia: Drugs - 1989 (40) SLT 276 (SC)

(Guuet Prokish Tabustries Limited - 2002 (144) EUT 481 (SC)

17. Anald Nichikows Co. Ltd. (2005) (188) 1111 (40 (St.)

12. Exstparts Pharmage initials Company - 1993 (78) FLT 404 (SC).

13. Tata Iron and Stee, Co. Ltd. - (\$88 (35) ELT 605 (\$C)

In this nase the issue (hyperbolic class of anterpretation of law and hence it using the alleger that appellant had dehaperately suppressed information that two with an interfully evade sayment of service tax and roly as case laws reported as 2007 (b) STR 308 (1) and Sori Stakfi (76 - 2005 (187; ELT 487 (T)).

6. No penalty is imposable on them in Absence of element of subpression, inde-statement with intent to evade payment of kuty and her centered is no reason to impose penalty for suppression, misistatement with intent to evade payment of duty and they rely on Binduston specified intent to evade payment of duty and they rely on Binduston specified as 1969 (2) SC 627, Kellner Pharmaceuticals Etd reported as 1969 (2) SC 627, Kellner Pharmaceuticals Etd reported as 1969 (2) SC 627, Kellner Pharmaceuticals Etd reported as 1965 (201 EET, that in case of interpretation of provisions of case, non-alty is not imposible and they rely on following judgments: (1) Swaroop Chemicals (P) Etd. - 2006 (204) Et T 492 (T) (7), Jacob Petrochemicals Etc., 2006 (204) Et T 97 (T) (8) Teles Etd. - 2006 (196) ELT 308 (T) (4) styleam statement at million to 2006 (196) ELT 204 (T).

Page 73.14

1

. .

c,

(5) Sikar Ex Servicement Wellary: Chop. Society 144 (2006) (4) SER 213 (1)
 (1)
 (6) Hindustan Steel Edd. - 1978 (2) ELT (1979) 501

7. Intervsuis pat recoverable as original comand is not sustainable.

4.1 Personal hearing in the matter was held which was attended by Shri Praceep Sawant, Sri Manager and Shri K. T. ManagUya, Manager. They relationed the grounds of capeal and submitten that duripers. Tipotes attackere required to be treated as capital goods as held in the case of Northern Coallie ds 1td. - 2017 (13 SH 2121) for Delp) by the Herribus CLSCAL. Delbi and not vehicles as held by the Herribus CLSCAL. Delbi and activable to chem in view of above facts and level position as detailed by them in them written in where of above facts and level position as detailed by them in them written as detailed by them in them written in submission dated (2.05.2013).

4.2 So further written submission files at the time of personal hearing the appellant contested that compare and oppers used by them are not motor vehicles and therefore, exclusion clause (8) of the input service definition is not applicable in present case and hence credit is admissible to there that they rely on definition of moutiservice, capital goods, notorivel idle given at flute 2(1) of the Rules, Section 66(72) of the Act as well as Section 2(20) of Motor Vehicle Act, 1686; that they rely on progradation equations for Section 40, 200 et al. 1987; (92) ELT 14 (SC): they are lower edjusticating bothemity cos not considered the alloceted clauses in additional pathonal clause of Coodystal locies (10, reported as 1997 (92)) ELT 14 (SC): they are lower edjusticating bothemity cos not considered the alloceted clauses in addition them.

4.2.1 They further submitted that dumpers are classificable as timuts and there is no restriction on usage of front soluties received to taspet, of labors and hence credit of input services is admissible to there that any goods used in or in colation to the manufacture of final product whether creatily or indirectly would be covered by the definition of finput'; that compensitippers hared by them word used for transportation of linput'; that compensitippers hared by them whether within the mining area and these dumpers are to be treated as used in or in relation to the manufacture of final product: that they rely on to lowing (lingments:

(a) Indian Copper Corput Ltd. - AIR 1955 SE 991 of 16 S. (1259 (St.))
 (b) Mind istan / ind Ltd. - 2002 (342) FUE269
 (c) J. R. Collon Spatia Wyg, Write Co. Ltd. - 1997 EL1 C4 /St (

(c) Northern Coalifeids Ltd., reported as 2017 (b) GMD 217 (Trip-Dyl.).

Page Suf 4

١.

:

(2.2) The report 2 mentionance of rumper and tipper and supporthining all types and bulkers have nexus with n anotacturing activity and thus these services are liquit schedes: that extended period of limitation is not invokable as Snew Cause Notice has been issued on 07.03.2013 covering period from November, 2017 to January, 2017 under Section 11A(1); that as per Section 11A of the Art, Show Cause Notice is required to be issued within 1 year from the relevant date and hence Show Cause Notice is carried by unitation; that Show Cause Notice alleges suppression and not alleged that there is "withit" suppression and the lower acjudication, authority failed to give clear indices in this regard: that they celly or decision to case of Casette Sye Cherateal reported as 1993 (75) ELT 721. Crentpline Drugs and Emiments - 1989 2 SCC 127.

4.2.3 The penalty under Kulo (5.2) of the Rules is not imposable as the ingrodients of Rule (5.2) and Section (1.4C) are essentially the same; that since there is no suppression, omission or failure to (%) are information on their bart, no benalty can be responded upon them; that they rely on judgment in case of Practicus (%) essentially the section of duty is set aside, consequently the imposition of the penalty has to be set aside and they rely on to low as the imposition of the penalty has to be set aside and they rely on to low as the imposition of the penalty has to be set aside and they rely on to low as gradyments:

- 1. H.M.M. LUC. 1995 (76) CL1 497 (50)
- Coolada Boverages Ltd. 2004 (1972) ELT 451 (Alt).
- 3. II. Gun. Instrument (1998 (104) Ec.) 8 (All)
- Prince Industries Valves Wig. Col. 2009 (236) ELT 523 (T).

4.2.4 That benalty under Section 11AC of the Act is imposable only when there is froud or pollusion on any without displatement or suppression of facts or contraversion of any of the provisions of the Act of the Rules made there under which is absence in the present wave and thus Section 11AC of the Act has be application in this case; that they rety on judgments in case of Coastal Papers its. 2005 (192) Hill 1090 (1993), locan Qil Corpolation United 12005 (191) Hill 996 (Trill). Goost Zarda Deyes - 2005 (188) ELT 251 (50); that they have not visited any of the provisions of the Act or Rules and thus he penalty is imposable on their as the presence of "inversives" is absent in this case; that they rely on to lowing judgment in support of their claims.

- 1. Tamilrodu Lousing Board (1991 (74) EET 9 (90)
- 2. Hindustan Steel Ltd., 1978 (2) PLL, 199 (50)

. . .

. . .

Page Coll 14

¥.

9

Shiwhere Fatechand (1983 (99) 975 289 (SC))

Compart Marketing Corp. of India - (980) [6] EL1-29 (SL).

51 (5) Navinchandra - 1987 (25) ELT 497. (50) -

4.7.7 That since the question of outy demand itself does not survive, the question of charging interestials does not survive.

HINDINGS:

5. It have carefully gone to rough the facts of the case, the inpugned order and written as well as oral submissions made by the Appellant. The issues to be recaded are as to whether:

(i) Convolutional Service Tax on "Repair of water Vehicle - Dumpan P. Tipper" and "Support times, of Meter Vehicles - I ywa. Tippers & Bulkers' availed and utilized by the appellant dump the period trees 01.344.7011 to 30.06.2012 (s. allowable to them or not;

 (i) Appellant is hade to bay interest on such availed and utilized Cenval credit, or not;

("iii) Appellant, 's lighte to be introped pertativities done in the impospec order or pat.

6. If find that appellant had availed and utilized Cerival credition services of Repair of Water Vehicle - Dumper & Tipper' classifiable under Section 65 (105) tool of the Act and (Supply/Hinks of Motor Vehicles - Hywa, Tippers E Bulkers' classifiable under Section 65 (105) (7227) [1] of the Act as input service during the second 1.40, 01.04.2011 to 30.06.2012. The definition of input service under Rule 2(f) prevailing at material time is required to be looked into, which was as and/arc

Rule 2(1) "input sense" mount any nervice,

(7) used by a provider of halable service for providing all output service: or

(ii) used by the manufacturer, whether directly or manostly, in an inrelation in the manufacture of float products and themake of final products apto the place of removal.

and incluses services used to relation to inclendentialities, respective or repairs of a factory, premises of provider of output service or no office relating to such factory or premises, advantament or sales promotion, market research, storage upto the place of removal, procurement of upputs, accounting, eadicing, financing, rescaltment and quality control.

Page Doll4

K. C. S.

conching and training, compater natworking, creat rating, sixerregistry, business axhibition. legal services, inward transportation of inputs or capital goods and patword transportation upto the place of removal:

but exclusion services.

(M)

. ...

> (8) "peadfled in sub-clauses (d), (a), (za) and (zzzz)) of clause (105) of Section 65 of the Finance Act, in so far as they relate to a mater vehicle expect when used for the provision of tooble services for which the credit on mater vehicle is available as capital goods: or

 δa^* . The definition of capital goods as envisaged under Rule 2(a) of the Rules, provading at the material time was as injoin:

- (c) "cap/ful yoods" means.
 - (A) The following goods numerity-

··· ·····

- (8) Mutor vehicle registered in the name of provider of output service for providing texeble service as specified in sub-clause (f), (n), (n), (n), (zzp), (zzt) and (zzw) of clause (10%) of Section (i) of the visionce Act;
- (C) <u>Compare on Hypers</u>, Jobby Under Compter 87 of the First Schedule to the Control Excise Cariff Act, 1985 (7 of 1986) <u>registered in the Prope</u> of <u>provident of autour service for providing facilitie services</u> or <u>specified to sub-clouses (2220) and (2222) of clouse</u> (1011 of Section 63 of the sold Elecance Act.

<u>-- ارتار</u>

سرتيجي بجي

6.2 Convationeers on "Sepair or Motor Vebale" Rinper & Tipper' E 'Sapoly/Lining of motor vehicles - Howe, Tippers (J Bulkers' was proposed to be demod. Therefore, I proceed to decide the issue service-wive, Let us discuss the admissibility of 'Repair of Metor Vehicle', Compet & Traper' as defined under Section 65 (195) (76) of the Act. The said service was proposed to be device on the Ground that since the said vehicles were not registered in the name of Appaliant but were registered in name of service providers and hence appellant. is not eligible for Cenvat prepri in torns of sub-placed (3) C (C) of Rule 2(a) of the Bullds read with Bule 2(0) (b) (B) of the Rules. It is on record that the services delined under Section 55 (105) (20) of the Activere specifically excluded from the scope of 'input service', except when credit is available as capital goods as defined under 2(triff) of the Rules. It is up record that the Compare and tiphers were in the hame or service provider and not ha the name of appellant. and therefore, Cenvel credit on these vehicles were not available to the appellant as capital goods and hence, Convationed9: on (Report of Mater Venutly, Dumper C Tipper' was not admissible to the appellant as it was excluded from

Page 1 - of 14

12

the scope of input service.

6.3 If find U at Conval, credit to thopply: Hiting of motor vehicles. Hywall ippers a Bulkers' was availed by appellant under business auxiliary service though they had engaged the vehicles of hite basis from the service stoviders. The top igned order cooled Lenvat credit to the ground that the said vehicles were not registered in the name of Appellant but were registered in the name of service providers. It is a fact that Section $6\times (105)$ (7227) of the Act bas saterficatly azolided this service from scope of finput service, as defined under 21.) fill (B) of the futes. It is on record that Motor Vehicles - Hywall Tippers Ξ follows were registered in the name of service providers and not in the name of appellant. It therefore, find that the appellant was not eligible for Cenvat credit on those the scope of motor vehicles - Hywall Tippers Ξ was evalued from the scope of motor were registered in the name of service providers and not in the name of appellant. It therefore, find that the appellant was not eligible for Cenvat credit on those the scope of motor vehicles - Hywall Tippers's as it was excluded from the scope of motor vehicles - Hywall Tippers's as it was excluded from the scope of motor vehicles - Hywall Tippers's as it was

A.4 Appellant has belied upon program in case of Northern Coalitetts Lte reported as 2017 (5) GSTL 217 (Tril Gell) whermin type re-treaking services, maintenance of vehicles services. Find that in this case the demoers are owned by Sorthern Coalitetts, ed and thus Lonvat preservices were allowed by Sorthern Coalitetts, and maintenance of vehicles and maintenance of vehicles services were allowed by Herline CESTAT. Delin, whereas in the case on hand, the dumpers are not ewhed by appellant but are owned by the service providers and the store, the judgment cited by appellant is not applicable as ad as the facts of both the cases are offerent a together.

7. Appellant contended that the depand is thre barred and the extended porced of limitation is not invokable in this case as there is so surpression or facts on their part and there is no intent to evade payment of duty; that they has been regularly filing monthly returns alongwith all terrart details required to be tilter); that they involute net filler and all statistical evolution in respect of the credit taken by them had been provided by them to the show Califer Volue was leaved on 05.05.2016. The Show Cause Notice has not given any detail that the appellant files all monthly returns provided by them information. It is also a fact they the appellant files all monthly returns provided by them in our directions and the suppression of facts car. (and, be leaved by them is not given any detail that the appellant files all monthly returns provided by them information. It is also a fact they the appellant files all monthly returns provided by them in our directions and on which was legally required to be prevised by them. In such case, it hold that suppression of facts car, can't be leavened on the

Fligt 12 (1 4

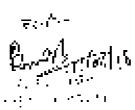
appellant. I find from the records that Audit Meino was issued by the Department on 16,04,0013 while auditing repares or the happellant and bench, the Show Cauce Notice has been based on information available with the department and given by the appellant enty. Take (ind that Aurit month dator 26,00,0015 was issued by the Gepartment to the depellant, which was replied by the Appellant on 30,04,2013. However, the Department issued Show Cause Notice on (0,00,000 thronking extended period without presence of ingredients like fraud or willful misstalement or suppressue of fants even with intervatio evence pryments or duty. Had the Show Cause Notice been issued end in May, 2013, the entire period of 01,04,2011 to 33,06,2012 would have been environd inder name period of two years. However, "I was not done and the department table 's years to issue dome at bottler in May, 2016, 1 the that there is no materia. Table available in this case to hold their there is from on which misstalement or suppression of value is no materia. There is from on which misstalement or suppression of racts on contravention of the provisions of the Appellant.

5. In view of the facts exclusive in this case, I how that the contention of aphohant that domand is time barred is context and extended bened can't be invoked against them as ingretients for extended for issuing Now Carlie Notice for extended period are absent in this case. I, therefore, have no obtion out to allow the support helding domand as time barred, since compared is helding domand as time barred, since compared is held into a since barred, haven of loted time barred, haven to loted est and imposition of penalty on the appellant domaic arise.

5. If View of above, liset as de the impugned order and allow the appeal.

९.१ — अमीलकती झारा कल की गई अपीत का निपटास ऊपरोब्त सर्वके से किया जाता है ।

Y.1 I had expend then by the Appellant is disposed of tas above.



आपलन (अपकरा)

<u>INY KPAD</u>

<u>। In</u> 1 M/s. Wobuja Cements Ltd., (Unit: िज़र्स ल्यूज़ा संग्रेहर किंग्यत न्भ्रेट Ambujañagar) Takika: Kodinar, अल्ज्ञालगरा, तातुभ्यः भ्रोटलार, जिल्ला Dist.: Jonagada, Gojavat । :

Page 12 of 14

a

•

Convitor information and necessary action to:

1) The Other Commissioner, SIST H. Central Excise. Abmediabad Zone, Aquie tablet counts which incompation.

. .

- 2) The Commissioner, S50 & Contral Periso, Blavnagar Commissionerate, Phastagar.
- 3) The Assistant Commissioner, GST C Central Excise Division-, Junagadh.
- 4) /The Superintendent, CST & Central Excise, Rance: Kodinar, UST Guard File

.

-age 11 of 14