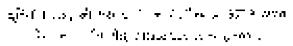
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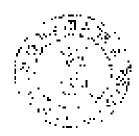
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्राचा के बढ़ाड़ा है जिसे काक हरते. भी पत किया जा प्रत्यात करते हैं हैं किया कारण करते करते के पति के पति के हैं किया है जा करते हैं किया है कि की किया है किया है कि की किया है किया क किया है कि किया किया किया क . . .

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:: ORDER IN APPEAL ::

M/s. Madiru Silica Dv., Ltd., Dt-IV Plot No. 147 Martej. Bhavragar (Secondifier referred to as "Apacitant") fied appeal against Order-In-Original No. R-16/2017 dated 19:06-2017 (Secondifier informed to as "the injugued order") passed by the Assistant Commissioner. Service Tax (IMstan. Bhavragar (commissioners))

- The brief facts of the case are that the Appellant files refund dain: of Rs 33.551/- on 14.64.2017 which was pald by them on confirmation of Order-in-Original No. 29/AC/STAX/DIV/2018 17 cated 01.02.2018 or the issue of Sponsorable service and payment or Samuel Tax by Service Receiver on Reverse Charge basis. Subsequently, the Appellant realized that they ware not required to pay Sorvice lax as por the decision of the Hanble CESTAT in the case of M/s. Here Motocrop Etd. reported as 2013(32)STR371 (77-04) and therefore they find return dains.
- 2.1 The lower adjudicating authority vide the impligate order rejease the refunction multiplication derived iginal No. 59/AC/STAX/DIV/2016-17 dated 01.12.2016 had decided the issue and the order attained finally as no appeal was flot by the appeal enterprise the salt Order AC-Orginal dated 01.12.2016.
- 5. Aggrieved with the impugned order the appellant protestor present aggress and contenced that the refund le grantable as der 15action 1.13 of the Gentral Excise Act, 1944 (here nafter reterred to as fifth worl) and Section 93 of the Finance Act, 1994, is not less was part by them expressly he can be missiund.
- 4. Personal hearing in the matter was attended to by Shri R. R. Devel Consultant wherein he recorated the grounds of appeal and submitted written submissions with request to allow expeal following case law of Mrs. Hero Motocorp Ltd. as stock by them in Appeal Membrandum. No cre-appealed from the Department despite personal hearing notice was issued to the Commissionerate.
- 4.1 in written Philadbiniesion. If elsope lant submitted that not fixing of appeal against any Order of adjudicating authority would not take away their night of getting refund and the mongrand order is reduced to ac set aside.

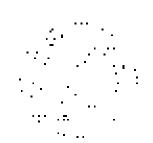
<u>Eliidinge:</u> .

- serve corofully gand through the facts of the case the impagnar order the grounds of eppeal, written and oral submissions made by the Appellar till The issue to be decided in the instant appear is whether the insurgned order rejecting return 1 data? On the ground of non-proferring or appear against the Crobe-Str. Orginal cased by the adjut casing sulf-only confirming the period (naving attained finelly) a conjection nat.
- 5. If find the Order-in-Original No. R/13/2017 dated (£ 08.2017 was passed by the then lower adjudicating authority whereby demand of Rs. \$3,581/4 was confirmed pide Order in Original dater. \$1.12.2016 and was paid by the Appellant along with interest and penalty. The Omeran-Original dated 01.10.2015 was not distillenged by the Appellant and thus has attained finality.
- 7. Subsequently it cawned upon the Appelant after the decision of the Honfale. CHSTAT in the case of Mrs. Hero Motocom the reported as 2010(02)STR071(7) Def) that they were not required to pay service tax, union they had being in our subsect of the Order-In-Original dates 01.12.7016. The appelant then filed refund paint on 34.54.2017 which was released by the lower adjudy coing authority wice the impugned order dated 19.08.2017.
- 7.1 Pass 12 and 15 of the impagned order are reproduced for baller appreciation of lems of this case.
 - *12. I find that the disjoint also have not preferred any opposit against the Order-In-Opposit file 198/ACPSTAXANDAZENTE-LA dataded \$1,12.2916. Further, the heats of retaind itself is not close because there is no order or any appealant authority of otherwise to avoid to reconsider the case electric desired by for original adjusticating sulfactly the advance OPO cas alternative file to the property of the property of the department. I and that manely tiling a reduct claim by reterring a rank laws is not correct procedure and carll be accopted by the department and refund cannot be granted un such grounds.

Therefore, I find that the present refund only ascens brackwise by little office has shown ascended this case one thorous to eny further disciple now the Appellate Authority as the claiment can see that appear against the OSO.

13. <u>I find rimt the digitarent has medic veillen setsetissische in lite C.P.</u> heid on 30.05.2017 that they had not preferred a<u>n appeal appital lite</u> aforesoid. CIC. Therefore, it <u>is biest that the stainent had awa</u> a<u>ppended the optition 300</u>1

[Empaasis supplied]



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- The appoint has contended that payment of Service Tex, interest and ponelty in outsidence of Order-re-Original detect 01.12.2016 was a mistake on their part and hence, this amount (Rs. 33,9774) around to instinded to them. I find that it is well settline taw that (researchings after a subspiced and appeal is not preferred equins, that order, the inconcertings after healthy and it can't be reopered after appear before blove without going in Appeal and obtaining order from higher specified authority/court. The Hon big (subtermo Court in the case of Ms. Plack (table) Pot 1 to imported as 1.2000(1.20)@LT285(80) has sellled the matter as under the
 - 140. Coming to the question that to reison there is little scope for doublithat in a case where an expedienting sufficiely has passed an order which, is appositible under the standa and the perty sugglered did not pirosse to exercise line stability night of thing on opposit, if is not open to line party to gaealism the corrections of the order of the expedicating authority. subsequently by Ming a matter for reflect on this ground that the edjuliceling anthony had convented so error a passing his order if this position is senepted then the provisions for adjudication in the Act and the Ruiss, the provision for appeal in the Act and the Dales will lose their reference and the order resemble will be rendered redundant. This position in our view, with run counter to the acheine of the Aut and will introduce an element of uncertainty in the entire process of learnand collection of excisodaily. Such a pastion cannot be couldeneded. The view taken by as also: gain support from the pierovital \hat{x} sub-rule (3) of Rule (4) wherein x is initial. Down that where as a insulf of only miles passed in support or removes. thrider the Act, refund of any disty bostoms that to enly person, the properofficer, may reduced, the constant to such protein without his having to make any distin' in Stat Cehell. The previous indicates the temporarica apached. m on constitut the equations or cyripopal such only and <math>r , we lead previous . on anise Wildy is superliable wrapt the Act in ant exallement they the <u>order is not table,</u> to be questiment appliths matter is not to be rescented in <u>a proceeding for refinid which if we may tomal it so in by the guidale of </u> <u>convirue of a d</u>ecree/order. In the case of heart it was appulyingly. monthness in the under of the Auditman Contactor that the assesses may nia appear sgatts: ille unter before the Catastar (Appearal it on schlisse)."

[Emphasis supplied]

9.1-1 also rety upon a disclaim of the Hor/De CESTAT is the case of M_{\odot}^{2} . Videocon Narmada Class reported as 2009 (254) LLT 911 (Township) wherein it is field as under .

The instruction of the subsequently the Humble Squame Cook in case of LOE, Hyperianal via Associated Cement Companies Ltd. 2002 (161) E.E.T. 12 (A.C.) and that the credit straight on HSD of its eligible for credit up to 1 2-58 incoordingly, the epoclemi files a fresh claim for related of duty. The sacro warm reported by the epigorities below on proupd that carrier added of the Astri Commissioner relegion such reflect displayers and upperload operation and has effected briefly end if type you upon to the appealant to come the the remain claim for the same ground:

For pages appreciation, we reproduce the relevant paragraph of the Commissioner (Aupenlatic order

In the case, it is an admitted facilities Asti. Denomissionered C. Fir & Outloms, then Rhomeh vive Oil; ite, \$RHM855/2000, dt. 10.1 de discliented the Microrar and availed on HIPD oil deving the period durin 97 to Jan. 100 and order har the day debited under proceed by the appollutus is no part the law and impacted the refund placing have not filed any apparent against the said around. 18-4-90 It is size admitted fact that appealing have not field into appoint against the said around. 18-4-90 It is size admitted fact that admitted suprems. Could represent it 2002 (151) E.T. C. 19 (SO), the apparent then first retaind application covering period fact time (97 to the OS).

In this servicei, I line that in a core where an educioning authority nor passed are order which is appealable under the stabile and the party approach it is not observe to exercise the stability right of thing an appeal, it is not open to the party in question the correctness of the order of the adjudicating authority. Subsequently, by filing a colin for refusei on the ground that the Hondan Rupennia Court can half that court is comissible on Half for the period pair to 6.3.9% If this position is accepted, men the provisions for equalitation in Rules will loose the provisions for opposition the Act and the Rules will loose their measures and the court exercise will be madered cidendari.

d. It is our me appellants case that the corner order passed by the field. Conjunizations of 18-1-18 was separated against. As such the lower sufficiency have enterty hole may be imprediction varied be first for the second time when the capter calculate because first?

[Egypnesie supplied].

- 3. In view of shows I and that the refund claim of the appellant 6 total maintains and has been consolly rejected by the towar adjusticating authority. I, therefore, typicity the impugned refer and raject the appeal.
- ह 1 अमेजकहाँ द्वारा दक्त की **गई** अमोल तह मिलट या अम्मेक्<mark>त तर्रक से किया जाता है।</mark>
- 9.1 The appropriate by the appellant is disposed off in above forms.

THE RESERVE OF THE PARTY OF THE

भूकार संताल अस्मृत्य (अमीनस)

 $\underline{\mathsf{BV}}$ R.H.M.D.

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Mas. Madha Silica Petintol. DU-IV. Dua No. 1472

Flet No. 147,

Varcej.

[heyra]60 - 354 [60]

रोमतंत्री मधु सिलियन सन्दर्भेट तिः

DUAY, फरोट जा. 147, वर्तन, आएनगर - 354 ०६०-

Copy for information and necessary action to :-

1 The Chief Commissioner, (AGY & Central Exciso, Ahmedagan Zune, Altriedabad for his fond information.

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- 2. The Commissioner, GST & Central Exasts Bhavnagar Commissionerale Bhavnagar
- ி The Additional Commissioner, CST & Central Excise Division Bhavnagar 1 நThe Assietant Commissioner, Service Tax Evrision, Bhavnaga. நி Guard F≵e