

.आव्यतः !%पीतः वे कः कार्यक्ष प्रवास । एवं सेवर कर ३°र केन्द्रीयः सुध्यद्व प्राप्तः । COST IN COMMISSIONER JOEPINGS (SS) 5. (EN HAUES/ISE

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<u>रामानंद्र (-...)छ। अध्यक्ता</u>

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अधिक का दिवांक्टर

96.07.20 [8]

प्रशिक्तने की तमीकर

99.07.2013

Date of Codes

Date of School

भूभार संतीय, जानुकर ('पोक्स') एकवर्तर उद्युक्त १४५० र

Pessed by Shri Kumar Sonizali, Commissioner (Appeals), Raikot

এম জমুলা মাুল কার্লা বাজের উপেন ১৮৮১ চন্ত্র ১৯১৮ চনত ১৮৮ ২৮৮ চনত চলা চলাল ১ কার্যাল চার্টালে জ্বাস্থ্য ১৮০৮ চন aan waxa ee gaar 👉

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MA Nicoldia Mangalainh Goldt & Co., 209. Nicolal place Taliga Road, Bhavnagur 364 1117

কৰাৰ লৈছে গাঁহে কি কাৰ্যনিক কৰি কাৰ্যকৈ হিচাপে লোক কৰি কৰা কৰি কৰি এই কাৰ্যনিক কাৰ্যকে কৰিব কৰে। এই সংখ্যা কুছ কি বাৰে আৰু সংখ্যা হৈ কোন হৈ কোন কৰিছিল। এই আননা আৰু এই বাৰ ইন্দ্ৰান্ত কৰে কোন কুছে বাৰ্যনিক কিছে বাই কোনো কুছ

होंगा देन के के किस कर के कि **का करियेय कार्यांग**्य के हों। (अस्त कि देन के कार्यां का कार्यां के कार्यां के कार असमें का क्षेत्र के किस के किस को बाद देन के _{किसी} हैं का देन आहे हैं का **मार्या**ं के 17.1

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कार बाका के कृतिका अवेदर . नेपान का कृतिकार के किलानामा को बाव के किलान कार्य कुछ कोड़ीका, असन की का उक्त के क्षेत्र का कुछ के कुछ है कोड़ी, कार कार्य , कृतिकार बाका कार्य केंद्र कार्यकार की किला, की में का अस का कार कार कार्य के कार के कार कार कोड़ी, कार कार्य , कृतिकार बाका कार्य केंद्र कार्यकार की के किला, की में कार की अस कार कार कार्य के कार कर की क

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- ে বিশ্ববিদ্যালয় কোনা কোনা কোনা কি প্ৰস্তুতি কি জেগতে সুগালে ইয়া কি জেজনা কোনা কোনা কা কা কোনা কৈ এই নাম কোন আজ্ঞান কুলা বিশ্ববিদ্যালয় কৰিছে। উল্লেখ্য কৈ কোনা কোনা কোনা কোনা আৰু কোনা আৰু কা কোনা কোনা কোনা কা কান্ত্ৰীয় কোনা কোনা কোনা কোনা কুলাৰ সুক্ষাৰ জালিঃ বিশ্ববিদ্যালয় কোনা কোনা কোনা কোনা কোনা আৰু কানা কোনা কোনা কোনা কোনা কোনা কৰিছে।
- the five deals and the stiff of the characters of 100 to 1 --1
- and effect परिवर्ती की कोट वर्तिय कार्य में उन्होंस बारक किस्तुत का उत्तरकार एक्टरन के 15 of Amil (1905) (1905) अरुपात कार्य कार्य के बार उसके हैं। कि कार्य के अरुपात के बीर कार्य कार्य करने किया (तरकोड़ का बीर में पहलब का का बीर के बादकार कार्य कार्य का कार्य प्रोत में के विद्यालय कार्य के बीर अरुपात में स्टब्स्ट्र करेंग ÆШ

:: ORDER-IN-APPEAL ::

M/s. Nirubha Mancalsinir Gohil & Co., Office No. 399, Nirmal Plaza Complex, Talaja Road, Nisar Speskar Mandal Chewk, Brownegari (bereinable: referred to as "the appellant") filed appeal against Order-. 01/AC/STAX/D0V/2017-18 deied 17.04.2017 (Dereinalter referred to as "the impugned bider") baseed by the Assistant Commissioner (Aff), Central Excise HQL, Braynocani (hereinally) referred to us "the lower adjudicating authority").

The binef facts of the case and that the appellant provided 2. taxable services "Commercial or Industrial Constitution Gervego"; Business Auxiliary Service": Erection, Commissioning and Installation. Service": and "Site Formation and Gearance, Excuyation and Earthmoving and Demolition Service" to various dustomers, either as: a contractor or as a sub-contractor put made pattry payment of Rs. 1,787/- nolly howards service tax. Accordingly, inquiry was intered. against the sopel ant under summons processings and the appellant. stated that they did not pay only other amount towards service tax. except Rs. 1,767/- during the period from 2010-11 to 2015-14; [hat] they were doing work as the work order/agreement entered with: various customers, however, there was no work order/agreement in writing with M/s. Bhavtagar Energy Contacty Limited; M/s. Bright Construction and M/s. Khushal Corporation during the period from $\,$ $2010\text{-}11~ ext{so}$ 2013/14; that they were not sware of service $ext{tab}$ provisions on the addivities underlargen by them and as such neither. collected any amount towards service tax actioate it to the Government Exchequen except Rs. 1,7877- and no ideclared actual. taxable amount of consideration in ST 3 Seturns; that the appellant submitted various financial documents like work orders/Letter or $\chi_{N}^{n} > 0$. Intent/Involces/Hinancial Ledgers/Andia Reports (due: Ific) the information submitted by the appellant revealed that as per them various financial documents, they received gross taxable income of Rs. 4,12,15,119/- during the period from 2010-11 to 2013-11. tuwards provision of services, having service tax liabilities of Rs.



46,19.722/- however, they paid service tax of $8s.\,1,787/$ - only and : hence they have short-raid so were tax of Rs. $48.17,975/\gamma$. I covewer, the sope antipaid service tax of Rs. 4.00,0007 on 17.11.2014. Show if Cause Notice F. No. V/15-125/Dem-5T/RQ/2013-16 (Send-10.02.2016 was issued to the abbeilant propositio recovery of service. uax ox Rs. 45.17,975/ Janobri proviso te Section 73(1) el cibri Financo. Act, 1994 (heremafter referred to as "the Act") along with interest. under Section 75 of the Act and for imposition of penalty under Section 70, 76, 77, 77(1)(a), 77(1)(b), 77(1)(c)(a) & 78 of the Adv. The SCN was adjudicated by the lower adjudicating accomity vide. impurped order wherein demand of service tax of Rs. 49/17/375/4has been confirmed under provise to Section 70(1) of the Act and appropriated Rs. 4,00,0009- paid; recovery of interest under Scotion. 75 of the Action's imposed penalty of RA, http://doi/i-leach.under. Secricia 77(2), 77(1)(a), 77(1)(b), 77(1)(c)(ii) & Rs. 48,17,975/... under Section 78 of the Act.

- 3. Reing aggneved by the impugned ergor, the appollant field the present appeal, *informity* on the grounds that,
- (i) The service tex was not being baid because of a bonalide policition. That the same was not payable and the appellant did not know the service tex law: however, the appellant paid service tax Rs. 4,00,000/- or 17,11,2014 or ing investigation.
- (ii) The appetent did not contest levy of service tax. Since, the appellant was under bonalide better regarding was activity falls under service tax or not, therefore, there was a reasonable cause on aper part in each depositing service tax. The appellant is of the view that they are entitled for the pencill of Section 80 or the Ad. and accordingly, no wealty should be imposed on them.
- (iii) Mere detection by the copartment does not mean that non-payment of service tax was with intention to evade unless the department linings out clear facts that the appellant was having the knowledge that service tax was payable but still they did not pay the same with intention to evade. As such fact forthooming from SCR as well as impugned order. It is a fact that the appellant had not factorized.

recovered the Sarvior tax from their customers. herefore, the appellant requested to grant immedity from the penalty as pendecision of the Hon'ble Bordbay High (Court is the case of Ashish Vavantruo Patel reported as 2008 (10) STR 5 (Bora) and Lark Chemicals reported as 2008 (9) STR 23H (Born).

4. Personal hearing in the matter was attended to by Shri Madhav N. Vadodriya, CA, who resterated the grounds of appeal and submitted that they have paid Rs. 4 lastic curing investigation which has also been appropriated in the implicance order; that penalty is not impossible on them and needs to be weived under Section 85 of the Act as there was no suppression of facts on their path in this case.

Findings:-

- I have carefully gone through the facts of the case, take impugned order, appear incongrandum and the submissions of the appelled. I find that the impugned order was received by the eppellant on 03.65.2017 and appeal is tiled on 27,07,2017 i.e. delay. of 25 days beyond normal period of 60 days from the date of recept. of the impugned order. The appellant has stated that their obost type: was engaged with adjugication proceedings of various authorities. due to drive of adjudication: reply work of notices issued by the Income Tax Department due to demonstration of $\operatorname{minor}(\gamma)$ statulory audit work of Nationalized Banks and migration & consulting work of GST etc. Since delay in filing appeal is of 25 days. only. I condene delay and proceed to decide the appeal on merits. The issue to be decided in the present appeal is as so whether the impugned order imposing penalty, in the given facts of the case, is: proper or otherwise. $\{\binom{m}{p_{k}}, n\} \setminus \binom{p}{p_{k}} = 1$
- 6. I find that the appellant has not confessed demond of vervice tax of Rs. 48,17,975/- confirmed vide the impugned order and has free appeal section inpuriority from imposition of penalty of terms of Section 50 of the Act.
- 5.1 I find that the lower adjudicating authority has belo that the

appellant provided various takable services during the period from 2010-11 to 2013-14 but, they neither assessed appropriate service tax non-pald service tax payable to the Government; that the appellant never disclosed receipt of income from such caxable services in their \$1-3 Returns. These facts could be unearthed by the department after investigation and the appellant made payment of due service tax of Rs. 1,787/- against liability of Rs. 48,17,975 on their ewin about Rs. 1,00,000/- after persuasion by the department. The appellant contravened the provisions of Section 68 and Section 70 of the Act with invent to develop payment of service tax and therefore, the lower adjudicating authority has correctly confirmed the demand choor the provise to Section 73(1) of the Act invoking extended period.

optoended that The apport antihas they charged/collected service tax and horizo not baid service law on account of their ponalide belief that the activities carried but by them. were not liable to service lax and therefore, this is not a kass of suppression of facts with intent of evade payment of service lex $k_{\rm CM} m_{\rm c} k_{\rm M}$. Hence, imposition of penalty is required to be set aside. and barreft under Section 86 of the Ast may be granted to them. It find that Section 80 of the Act can be invoked only when the appellant is able in establish that dhere was reasonable cause for their failure to pay service lex. In the present case, the appellant has not provided any justified reason for their failure in making payment. g) ggrvine tax. The appellant has not baid service tax physicle even. now, after more than 3 years of detection by the department.

6.3 If find that the turnover of the appellant is substantial and bence, if they had any could regarding changing & payment of service tax, they could have and should have inclined from the appartment, which was not close by them. In view of above facts, I have no option but to held that they suppressed the tacts from the department right from the beginning with intent to evade payment of exercice. Tax. The part payment of Rs. 4.00,000/- made by the

appollant during investigation, after detection by the dispatchent, could not be of any help to them. The marafide intent of the appollant is established beyond doubt in this case due to 1665-bayment of full service fax even now and therefore, this case is not 14 to lavake the provisions of Section 80 of the Act.

- 7. The act of the appellant also rannot be over ocked in the name of Ignorance of Sw- I find that the Pontoke Gujurut. Tigh Count in the case of Rejeshree Dyg. & Ptg. Mills (P) 1td. reported as 2014 (505) E.L. 1442 (Guj.) had held that "We are conscious of the fact that this being the provision embedded in the statute itself, nationly can be permitted to pload ignorance of the law. We are also aware that this being the law and interior of legislation being also very clear all concerned are expected to know the law 1. The Humble Supreme Court in the case of Cummins India 1th reported as 2013 (297) E.L.1. 468 (G.O.C.) has held that it is settled principle that ignorance of law is no excuse not to pay taxes.
- 8. In view of above facts, the demand was coincide contained invoking extended period under Section 73 (1) of the Act. I have already held that the appealant had subpressed the material facts from the department with intent to evade payment of service tax and hence, confirmation of demand of Rs. 48,17,975/- and imposition of penalty of Rs. 48,17,975/- under Section 78 of the Act is nonest, legal and proper. Since, the improped order had already given obtain to pay penalty to 25% of Rs. 48,17,975/- as provided under Section 78 of the Act, no further relaxation can be granted by this Appellate Authority.
- 8.1 If find that the appellant failed to obtain Service Tux. Registration and also folion to do, it amonded in time in terms of Section 69 of the Actiread with Rule 4 of the Service Tux Rules) 1996 (hereinalter referred to as "Rules"). Herce, penalty of Rs. 10.0007 imposed under Section 77(1)(a) of the Act is upheld.
- 8,2. The lower adjudicating authority host that the appellant falled

- 8.3 If also uphold recovery of rate fee of Rs. 1,300/imposed/payable whore Rule 7(e) of the Rules read with Section 70 of the Act for late filling of SY-3 Returns for the period from April, 2013 to September, 2013,
- 8.4 The lower adjudicating authority has held that the appellant did not file prescribed ST-3 Returns under Section 70 of the Act in respect of taxable services in question and therefore, penalty imposed under Section 27(2) of the Act, whereas late too of Rs. 1,300/- intoosed for Plina returns late. Thus, penalty of Rs. 10,000/- imposed under Section 77(2) of the Act is set aside.
- 9. In view of above, Luphold the sipugaed order (except behalty of Rs. 30,000/- imposed under Section 77(2), 77(1)(b) and 77(1)(c)(i) of the Act as discussed in Paia 8.2 and 8.4 above) and reject the appeal.
- ९.९ अपीलकर्ता द्वारा दर्ज की गई अपील का निपटाद उपरोक्त तरीके से किया आला है।

9.1 The appeal filled by the appellant stand disposed off this above terms. -2.5 - 83.0%

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आयुन्त (प्रपील्स)

Page No.3 or 9

By Regd. Post A.D.

Τυ,

M/s. Nirultha Manga sinh Gobil & Co., Office No. 309, Nirma: Plaza Complex, Toloja Road, Near Sansker Mandal Chowk, Bhavnagar. में. निकास मंगवितिह गोहील ८ थुः ऑफिस न. ३०६ निर्मल प्लाजा कॉम्प्लेक्स, ताबाजा रोह, संस्कार सप्हार भौक है। पास, भावनगर,

Copy for information and necessary action to:

- The Calef Commissioner, (333) & Central Excisa, Alimitational Zune, Ahmedahad for his kind information.
- The Commissioner, CGST & Central Excise, Bravnaçan Commissionerass, Bhawragan.
- 3) The Assistant Commissioner, CGST ක Ceptral Excise Division-I, Bhavriagan නි Gwrd Dio.