

### ्ञानुकत (क्योलम्) का कार्यालय,यस्त् रत्न क्षेत्रा क्यूजीर केळ्यीय इत्याद शुक्कः। OF THE COMMISSION REPORT OF SUPERING ADDRESS OF SUPERING AND CONTRACTOR OF

स्थितिक इत्या की एक की त्रियम है दें। संस्कृत **एक** उत्तर आहे आहे रेम कोरी जिल्लाकेस । Reconstruct (mg Resc



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## <u>RAJ-EXCUS-000-APP-120-10-126-2018-19</u>

अर्देश का दिवायक Upte of Order:

18,06,2014

उनी काने की तारीकर Date of issue.

21.06.200B

कुमान सतील, आय्यक (अपोन्क), राजकीत द्वारा आरिता

Passed by Shri Kumar Sentosh, Commissioner (Appeals).Hajket

त्र पर क्षेत्रक <mark>समृत्र कर्मा राष्ट्रम</mark>् आकर राष्ट्रम्, विशेष १७०, १,०० १८० १, १८०३, <sub>१</sub>०,००५ १० विशेष १,५०० १५८ १ 医水杨甲基甲基环毒

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अपोलकर्ता के प्रतिनादी का तथ एवं पता त्रिकाक्ष्मिश्वतिकहर एत (he Appelanta & Rosposcion 🖫 L MS. Referee Industries United, Village : Wochpan Fadana, Gogva, Jamnagor-

हा अविकासिक है के प्रार्थित कीन करिया किया है है। उन्हें के अनुसन्त के के का 'आ' कर की अपना अपना अपना का अस्ता है के प्रारम्भित कुर्तिस्थार के क्यों कि किया कम्फूक्स कार्य प्राप्त के बुकर के कार्य कर कर कर कर कर कर कर कर क

है से पहुंचे किया राज्य राज्य के किया (असीन स्वाप किया) है यह उ*चित्री* सेन अस अपूरण की किया प्रश्न की कार अस के असमा रहे किए की किया (1984 से 1915) के अपने विभागी किया सम्बद्धि का उसके हैं।

A galanta tracción de la Primir e e a el SA, 15,4 en appendiento en de la fight y El Trin Aussiten Ethern urber vestos usat satten, testa o len los elembres et eg

करिका सुरक्षका में राजिया को कान्य कीना रूप र निर्देश उन्हान सुरक का राजका अभिनेत स्वयक्तिया की दिए है के उन्हा स्ट्रीय स ये किया के कुछ निर्देश की की कान प्रदेश हैं Ϊ

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कुर्वका परिवर्तिक एक से १८ ५ १६ अर्थका के अस्तर की उन्हें कोड़ि जीवा उपकृष्टिक अन्तर कुरू को निवर्तक अस्तर अस् (१९८२) विकेश र २० १६६ में १९६म सम्बद्धार का राजने (१०११) अर्थकार रहे १९४१ है। А.

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- को प्रकार में भी पहुंचा के कार है है, जा कुछ जिसे का को नहीं कर कार में सह की नाम का है जो का सिना का नाम का ज कि करने का आपन के हैं कर कहा कुर कर कर के हैं के अपने के आपने के आपने के के कर के से सिना के सिना के सिना के स किही जिसे हुए का को कि एकेक्ट का किसी हैं। अपने का को कि को को अपने के अपने के से स्टब्स का का अपने के कि का कि का कि का का कर अपने का को को को को को की अपने अपने कर का का का का का का का की करने का का का का का का का का की का का की का का THE PERSONS
- मान के बहुत किये जह के बेंग किया कर है जान के विकित्त के पहुक्त करने कर का की का नहींने काम पूर्ण के दूर विकेत क के भी के आफेटर के बाद के बाद के भी को को बोद के कर है है के बाद के का का के के किया के किया के अपने के अपने के किया के अपने के अपने के बाद के किया के आपने प्रकार के कि किया को के बाद की किया के अपने के बाद के किया के किया के अपने के अपने के किया के अपने के अपने के अपने के अपने
- कर्षि करका पुरस्ता के शुक्कान किए हैं है जान के बाहर है कर या सुरक्ष का कर विशेष्ट किया है है है। जा स्वरूप से किस्से, कर कर किया कर कर्षि कर कार्य के किया के किया के स्वरूप स्वरूप के स्वरूप के स्वरूप के स्वरू ΪĹ
- ্নেন্দ্ৰ, মুখ্যালু নামুখ্য সময় (১০০ শংসা) আৰু নিৰ্মেষ সামস্কৃতিক (পশিক সিমানাটো সাচা, শিক্ষিক সাহিত্য সিকিইনা স আনি শিক্ষালোক মুখ্যালোক অনুষ্ঠান সংক্ৰা এইছে ১, ১৯৮৮ চন ইন্যালোক পুনা, এই ১, ১৯৮ ইন্যালিক ইন্যালিক সাহিত্য সিক যাম সুক্ৰিকে সময় কেন্দ্ৰ পশিক্ষিক, সংগ্ৰাহণ মন্ত্ৰী হয় ১৮৮৮ কৰা এক এই ইন্যালিক সংক্ৰা এই ২০০১ চন সিকিইনা সিক 1.6 Howeld Anterior

  The Book of the Common Comm
- ention of the community of States (1988), काल 40 कराइन्हें की कहा होते. कीई हमार पात बाह कर को दे होना कर हो जो कार्य 2004 का सुरक्षा होते । बार वीर यो कमान कार, कर कर की कार्य का हम हमार पहले के प्राप्त की किया कर किया कि 1902) Where we under the even a more from 2000 or act. Jeli and the SEC season for a management of Report Continue of a
- affection and the second of the second first and the second of the second posterior of the second first and the s ILH
- manufile entered and eligible. (20, 2) served to a year or other a vice. (3) वी प्रीक्षण देखींत राज करें का सरकार पुरत्नी किया कर कर की के कार्य (3) का पुरत्नी पूर्व के कार्य के किया के किया कार्य कर प्रकार either a de salation of casos y जीने केटर के राज किया कर के (3) February and a vice to a ball a vice of the salation of the salation of the salation of the salation of the
- and the first place governor described to a confunction of the distribution of the state of the confuse small of <del>All states and the little of the first of the first of the states of the states of the Contains Code and Swelce</del> Applied 18 and 1 to a little of the code of the states and the states of the Contains Code and Swelce . [
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# :: ORDER IN APPEAL 🖫

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MS, Retained for ratios Limites Madedara Tuzzita, Dahej and Jarobager smilk. (hordination referred to be foppellaris)) registered with Lift., Milmost thaying procipal pjące of pysinosa at Mitago – Modrosar Padanai Gagyo, Jahringo – 36: 143, 5:44. seven appeals against Créets n'Cligins No. 30-40(150399) IUMUWGET. 3/00/2017-18 dated 20:09:2017 (here natter retorical to as liaburated expens); passed. by the Deputy Commissioner, Central Excise & Service Tax, H.J. Murrick (horomatics) released to an invertibility catholic  $\gamma$  authority), in terms of CBEC C cubic No. . 1058/5/2017 CX dated 29/8.17 read with Notification No. 2/2017-Atentral Nax dates. 10/8/2017

7 The prief tagte of the case are that appellants had find preen cause for refund aggregating to Rs. 5.20.02.407/ ipsid by them by way of reversal of set v8. 0.40% taken in excess to comply with Rule 8(3A) of Cervat Craft Rules, 7014 (borolaster) referred to be "CCR, 2004"), then while making payment towards finalization of emounts beyond under Rufe 6:3A) of CCR, 2004 at the And of FY 2014-15 and 2015-16 they had calculated reversal of signst services credit based on the formulaprescribed under Rule BISA(sc)fill of CCR, 2004, Blat in the earthformus Milw. multiplied by Fliwhere 'F' periods the fotal convet crede taken on input services busing. FY 2014-15 and 2015-16, that write cardiating the emocrat altributable to input services used in regnulacture and homewall of exempted final products. They considered. He is sitted earwal prefit in apply services in weed of considering the central creditionly on "continent incut services". Show Cause Notices were issued to the appellants proposite repetion of rough) deans on the crosses that that Rule 80% of CCR, 2004 prohibits availabent of central predition only such quantity of most or input service, which is used in the manufacture of exempled goods of for army sign of exampled earliest, except in the discunstances mentioned in authorite (2), that it is outgatory on the part of the manufacturer or dutable and exempted codes and provider of taxable and exempted services to follow Rule Biol CCR, 2004 and their activistion of this tute does not depend upon the valuer of the assesses; that  $\sqrt{2}$ 'oxemptod goods' makina 'exclaable goeds which are exempt from the whole of their daty of expice leviable theteon, and includes goods which are chargeable to Not ate of duly) so as to construct manifely eventprest goods include goods which are exempt from duty under Notification (conditional or unconditional) based (moet Section 5.4 of the A(z) that B(3A(0)) pprox G(3A(0)) and B(3A(0)) allows credit at excess amount paid in  $\mathbb{T}^{n}(2014)$ 15, on their own. The refund divints were rejected by the 'ower activiticating a fibrilly whose permitting impropriet precession the ground that appellants had filed reform blains. under Section 11B of the Central Excise Art, 1944 (Incompation referred to as fore Ap. ). exteress. Section 11B of the Actiddes not previde for refund of smallet inversed under

Rule 2(2/hi/oi(ii) of COR (2004) that Falls 6(2A)(i) of COR, 2004 has provision although assessed to take between edition liber own of excess reverses made under the said rule that in the formula presented under Buts 5(3A)(c)(iii) of COR, 2004, 19° concess total pervanence it taken on input services during the triangle year and country be followed to be Cervica crop traken only on following input services; that each ones was conceded with NoIIII)(altimit No., 10/2010 (CS)(No), dated intima 2015, and not subbilitized as painted by the appellance.

- 3. Being aggridated with the Impital orders, the appointed have preferred these appeals, whereas, on the following grounds: -
- Of the lower seljudicating authority has breef by holding that Section 1.15 of the Asterias has previous for ment of amount reversed under Rule 6(\$4) (r)(n) at COR, 2004. Appellants eclabilited that there was no such improved in SCN, that SCNs were issued on the sate ground that appellants could adjust the excess amount on their own by taking credit of such amount in terms at Bure 8(04) (r) of COR, 2004 and terms rather subject refund claims were not sustainable. The lower adjudicating authority has rather upon Rule 6(3D) of COR, 2(44), which was not reward in the SCN as the basis for reporting the rating plants and the lower adjudicating authority has baseful beyond shoot of the SCNs and the lower adjudicating authority bounds shoot of the SCNs in the selfect legal costator that adjudicating authority bounding beyond the scope of SCN as held in the following judgments of the Bonders Supplied.
  - Loye Engineering India Lyt. 2008 (201) EL 1 813 (80).
  - Champoany Industries Let. = 2001 (241) ELC 481 (80).
  - Nestic India I M 2006 (204) Н —828 (Rom.).
  - Gas Authority of India 2008 (202) ELL 7 (SC).
  - Kandaro Düphha, Jholaka (2014 p.3/r) H: 1 494 (Guj).

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Without prejudice to the above submissions appellants submisso that Explanarion to Bulb 8 of the Contral Excise Rules 2/02 specifically provides that the expressions bulb or bulb of excise shall also include the arborning available interns of COR, 2004. Section 2A of the excise shall also include the expression only blinday in tury of excise and "Stocks of excise" shall be construct to include a reference to "Central Value Added Tax (Central)". Explanation to Section 25T of the Act also provides that 'bully domandor,' shall include amount several under Bulb 6 or COR, 2004. Therefore the appellants are entitled to taking under Sociolo 11E or the Addies a rount reversed in terms of Robe 5 of COR, 2004, a nothing but "duty" as referred in Section 11B of the Add. The lower adjudicating authority has not given any finding on Explanation to Rule 6 of Central Locise, 2005, 2002 even though it was

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referred by the specialists in their submissions. If was stom text that Kulo (3.5) of GDR (2004 is not general in nature but it is framed for the purpose of esemble; notification unity and theore parable by applied universally. In the instant case appoints have not claimed any exemption which has the condition that, no Serva, and to input and input service shall be taken. The reversal machiby the appoint in terms of obligation presented under Bule 6 of CCR, 2004 and not to Tubill any condition of exemption indiffication and hence Bule 9(30) of CCR, 2004 is not approache in the instant case. The decision of the Horibio Gujurat Fight Caust in the case of Inco-Niopou Obernicals Co. Lit. reported as 2005 (183) ELT At 17 (SC) has need that refund dath arising out of modivat credit schome is deviate under Section 113 of the Act. The impugned order passed by the lawer adjusticating authority ignoring the Horibio Supreme Countuallyment is legally not sustainable.

the ligative research bear in the the property of the property of the property of the case of excess reversal of consult credit, there is a provision in CCR, 2004 for the assessment take credit of excess payment methy on their party after reconciliation at the end of the lineards. year. Hence, the lower adjudicating authority ought to have held that, although appellant, is not entitled for referral under Section 113 of the Actions appellant is eminied to restore the said amount is their Conwel Gredii Register under Rub 6(9A) (f) of CCR (2014 and should have baseed order apportugity Memby Legetise appellant.) referred different section of law in their refund applications, substantive right of the appellants cannot be taken away unless the lower adjudicating authority is able to show that prejudice has been caused to the revenue from the refund claims. Appellures relied on decisions in the base of Haveyon Labs Het 146 (reported as 2002) (28) STR 181 ( T = A)md.; and Ajmer Automobiles (2) Eld, reparied as 20-2 (23). STR 19 (Tri. - De.). Hewever, GRT Law, 2017 has been explorated wie to PLC7 2017, a male cross all anytom in the Cenvat Credit Register at this juncture, with not help the appellants as such amount count be utilized rewards payment of their GGT liability. To least with such a squarent, the todistature has a rugdy centemplated under Section 142 (60a) of CGST Act 2017, for disbursement of refund in bash in respect of every appeal proceeding relating to a plain for convet oracle inhatic; whether belore, on or even the appointed date as the amount covered under the refundicialms have not been particultioward as on the appointed day unser CGS Lizet. 2017

(v) There was no allegation in SCNs whether reversal uniter Bule 6 of CCR (2004) is required in respect of "local input service" or "common must service and nance rejection of refuse claims has been made on a ground not covered in SCNs and therefore, the Impugned orders need to be set assist. Without projudice, capalises

submitted that outline openiate is of Rule 5 of GCB. 2004 has fined payed out only to  $\mathsf{SPF}(\mathsf{BV}|\mathsf{Circumstances}|\mathsf{and}|\mathsf{stoation}|\mathsf{whom}|\mathsf{set}|\mathsf{all}|\mathsf{ngtantom}|\mathsf{of}|\mathsf{oregit}|\mathsf{s}|\mathsf{nctava}|\mathsf{set}|\mathsf{ore}$ dispersional Rillo (§2) and Rule  $\theta(3)$  are only much bory provisions which seeks  $\phi$ adoleve the overall objective of Rub IQC) that he credit strong be taken to respect of input and insufficience take for menufacture of exempton ghoss. Hitle eta(2) and Rule S(3) are complimentary and not mutually explict volltrate(the Rule S(2) cannot be read in isolation but it has to be read with Rule 2(2) and in the correct of Rule 9(1) of COR.  $^{20\mathrm{NH}}$  . The GReC, of service tax paid on input solvices analysty (seed for manufacture of duringle godes arromatically gets expluded because of provisions of  $\mathrm{Sub}(\mathfrak{S}(1)|\mathfrak{S}(2))$ contrained there is no question of including such credits for veve ast purpose which does not altract provisions of Rule 6(3). If such predicts included far the oursess at reversal under Bure 5(7A) of CCR, 2004 then it will lend to chaunt result with right defeat the entire expective or convet case (segrepts, it is a selfled legal position that the interpretation which gives like to an anomaly or absumbly the same and, it is a golded. as hald in the decisions in the cases of Malgoo Monsagto Biotech (i) For 1 to incontact 98 2015 (Mr.) STR 181 and Gode Inds. (Prest), reported as 2010 (240) Pr./1 59 (Tr) = Del.) The reliance placed by the Rower eductioning actionsy on the jungment of ACTICITY of Adequate Ruling in the case of Surban industries i mitted reported as 2007. (2.00) 11.1  $\pm 0.08$  (AB is in splaced as the Basile legities), the exist case was interpretation of an exemption notification. It is settled legal position that when form of the basis are a forent ladio cannot be made applicable as hold in Maharaghby. [14] Hey Cort reported as 2014 (35) STR 1295 (Tri. – Muru.) and Cuplo Energy Fab Ltd. reported as 2015 (37) STR 270 (1)n. fallem:  $\{ \hat{\mathbf{g}}_{i,j}^{(k)} : \mathcal{H}_{i,j}^{(k)} : i \in \mathcal{I} \}$ 

(v) There is all be cases when some must services may be commonly used for manufacture or duhable and exempted goods and eligibility misuch credit is subject to fulfillment of obligation provides under Rule 9 of CCR, 2004. Rule 6:15 of CCR 2004, provides that, consist products and not be a lower on such quantity of input and input services which are used in or in retailor to manufacture or exempted goods except in the circumstances mentioned in sub-rule (2). A logical inference which can be drawn from Rule (3) is that, full consist exert shall be allowed on such quantity of must and input service execusively used for manufacture of culiable final products will out any execution. The whole purpose of Rule 2(3) is to provide for seve sating charriers for each attractable to common inputs and common input services used for manufacture of closelyte goods and execution (pairs) therefore, if some input services have not at at been used for manufacture of exempted goods, there is no logic to the earny to be tractice, who externing the liability under Rule 8(2) of CCR, 2004. There cannot be intention of the logic source is not under bose consist creat of exempted solves input services for the purpose of events when it contacts we input services for the purpose of events when it contacts and exempted products are not to exempte (2) of CCR, 2004. There cannot be intention of the logic source to include above consist creat to be accepted.

an interpretation that total cerval and which includes excusive credit use() for man flacture of dutable groups also required to be considered for the purpose of rave sall and at Rule 6(8) is not (us.) able and commistant and is against the spin  $\omega$ Correst Creatify schemic. The lappellants relied on decisions of Horizita CHSDAD. Mumbal in the case of Mengartes Banz India (F), its reported as 2015 FIOL/1550-CHS I/CDMUM and Nitron Valves Industries Educepared 98 70 Pi-110 (47%CHS I/VII). MUM wherein it has earn hate that Rolls 6 in CCR is not encoved as extrest itegal amount from the assessee.

The formula prescribed girden Roje 6(5A) of CCR, 2004 environges predit of agent soremes what is covered under Publich(2) of CCR, 2004 i.e. common in July services which is allowed to be availed in full and then pay on pro-rate hasts what is algebrate in exemption general or exemption senses, as the case may be. This is the reason the legislature has been pareful to use the word felt for rather out and out at all the places even in the formula at dialise S(2/3)(2)(2) and S(2/3)(2)(3). The main objective of these rules is to provide for reversal of our mich cradit attributable to imput assisted lised for manufacture of exempled goods. It same thoughts in per fraveingt at all been used for manufacture of exempted groups. Then Both  $\theta(2)$  cannot be made. applicable for such services. This aspect can also be yoursed from CBTC Circular No. 754/70/2003-0X (rated 09/30/2003 arr) No. 865/6/2008-0X (lated 1/10) 2008 lower adjudicating putnority effect by ignoting CBEC Circular paled 69.10.2003 on the are use that it was issued in the control of abouts are was issued in 2000 recipion to introduction of CCR, 2004. Appellance referred Rule 18 of CCR, 2004 which provides that large not begon corollar, instruction, standing order, frade battee or other order. issued order CCR, 2002 and in torce at the commencement of these roles, at all tothe expert it is relevant and consistent with these sides, be deemed to be walls and igation under the economicating provides of these cules. The lower adjunctating authority arred by ignoring CBEC Circula: dated 06.05.2008 on the ground that the  $\sqrt{2}e^{i\phi_{\mu}^{(1)}/2}$ said clicular does not explicitly in entitin that for the purerso in computation of amount as per Rule 6(6A) of CCR (2004, only the trigoit taken on common input services are to be taken. Appellants submitted that ish enalignmental, are down in the sold simulation that range is required to be taken for convoltation of amount payable unite:  $\Re a \in S(7A)$  , of CCK, 2004 is the credit taken on common input services only. The clarification given by CBEC wide Chooler for 843647011400 definition 4.99 4.2011, it is clear that, full convet cradit of input and input services explasively used for manufacture of \$1,000. goods are ellowed and recessar under Rata Biot 120K, PIAM is required in respect of common input and input services only. The appellants relied on dettain in the case of Chemial Politicism Comparation, its reported as 2012 (268) ELT 467 (Comm., App.). and prime facie view taken by Mor(ble CHS) And Charman in the base of Sify



Formalogy 160, reported as 2014-110 Historia MAD. The invertibility sulfortivinstead of myrigian ebove referred often has chosen to etyla stay order of 0.431A1. Mumbal in the case of Enysystetropy incusties (1 Pet 16d impenso as 2014-17 OL 1825 OESTA1-MUM. The lawer adjudceting authority has meither distinguished the active referred orders report upon by the epvellants not given any 10dings regarding not applicability of the sale orders in violinstant case, this self-ed logal position that, if by a vews are absolute, and reversible to essesse is to be taken in testation matters as hold in Sun Heppit Corporation reported at 1037 (33) His 1941 (330) and Points (0.17), reported as 1932 (33), LT 107Mad (1).

- (viii) Hold 8(3) of COR, 2004 plevaling of the relevant time starts will interpolation obstants obtain a state that, although there is a problet, on for availing predictor mathematical mathematical productions. But C(1) and Hold 8(7), by video of non-obstante double, assessed can introlly about Mili (Alival prediction paintern input services about a manufacture of Culiable and exempted goods and lateratellaw either of the options provided under Rove 6(5)(i) or Role 8(3)(ii) of COR, 2004. The non-obstante decisions are relevant of sub-rules (1) and (2) of Role 6 of COR, 2004 and no, be any other provisions contained in COR, 2004. Therefore, Role 8(3) or 8(3A) of COR, 2004 cannot news over thing effections the enabling provisions of Rule 3(1) and Rule 3(3) of COR, 2004.
- (viii). The lower adjudicating authority has sired by not extending brought at retrospective amondment mode in OCH, 2004 vide Northeathn No. 13/2015-09 dated. 1.3 2016 on the ground that said Notification famends" CCR, 2004 and it is not a isubstitution, as dialned by the appollant, it is true that the said Notitieation was issued smanding different Boles of CCR, 5004 vide which some rules were isubstituted', some rules were confitted' and some rules were inserted'. The impugned, Rule  $\Theta(3)$  was is upstituted, by the said Neithealter, and since the lower adjuriesting authority neal not disputed appollant's authorission on faubatilication, penefit needs to be excended from the cate of original Notification i.e. 13.09.2004. The Part 2 of the said Notification meds as make as improved provided, they shall come into tage on 1.4.2016. The Legal Glassa y 1979 Edition which is a Coverance it of the a publication, in which the phrases. Save as atherwise provided" has been shown to mean. Except when cherwise previoed? Since Bule 5(3) at DOH, 2014 has been substituted wied. 19.09.2004. The words 'save as objervate paint (ac' hecomes significant and the store, coording followed by the stated text liet they shall come into force on 0.4.2016. becomes requirement
- (iii) Appollants has submitted continents issued by Chartered Accountant confinding that the said amount is not energed to expenses and shown as receivable in their books of ecounts.

Personal Heating in the metter was attended to by S/Sinc George Methews Vice-President and Divyosh Suchak, Manager on behalf or appollant who renarded grounds of appears and submitted institures and two sets of SCN but decided by summon order than the impagned order has unveiled beyond the scope of SCN has maximish as the grounds taken to decide the lastic word maximish of SCN: that Selection 13 covers refund in contrast wide claude (a) of sub-section (2) of Section 13 is that reversal is to be made of credit of common chart solution and ratiof total cereat credit, that it is pear from Honfold Himanage Minister Budge, speeds that them was a no change as (a) as substantive part of Side F(7) and Ruth 6(34) of CCR, 2004, that the issues have that a credit reported as 2012 (285), Et 1, 443, (Commit Apolt), and Decal Chemicals to gray 142-149 of paper book of Fill substances in that is view of above appears should be allowed by way of granting refunction path as part 1 tons fibrial. Provisions under Section 143 of Campa Goods & Service Tax Act, 2017.

#### FENELINGS: -

- 5. If have consulty gone intough the facts of the pass, the trip igned order, the appear membrandum and submissions made during the personal hearing. The issue to be decided in whether the impugned order, in the facts and discumplances of the case importing retard of convet and reversed under Rule 5(2/0)(4)(ii) of CCR, 2004 is convet, legal and proper or not.
- Indicate, the appellant has filed reford baths on the ground that they have evaled convet creft on such inputs and open services which were evaluatedly used in manufacture of dictions which were used in manufacture of both dictions and exempted goods during TY 2014-15 and 2015-16, that they have towered the amount determined as per formula passagged used: Rule 8(3A)(c)(fi) of COR, 2004; that they have towered the amount determined as per formula passagged used: Rule 8(3A)(c)(fi) of COR, 2004, at his land of respective triancial year, considering total credit of imput service instead of total qualities of control important payable under the cold Rule and hardford determine presented under the said amount. The lower expectivating authority has held that the loginal presented under three Box (c)(c)(ii) of COR, 2004 where, Technological to be Delivet credit taken only on common input services. I would like the reproduce relevant restrict for Rule 8 of COR, 2004 preveiting at the interest will discover a reproduce relevant restrict of Rule 8 of COR, 2004 preveiting at the interest Units, which needs as under-

Hule 6. Obligation of menulacturer of distable and exampled grads. And provider of testable and examples convices.

<u>(19.75) OFMVA7 (6)</u>			
2000 ( <u>n. 01 (n. 10/0)</u>	<u>មេខ ១០ សី២ ១ខេត្តសង្គ័</u> រ	<u>ესიო დე გაგი</u> უ	siedi pouds ar
ผูญหน้นใด <u>ๆ สา จนดสายใ</u>	<u>YA SAMOON, OS BUNJ</u>	<u>[ 84ľažy</u> pa <u>ta</u> lj	ir ar in relation
Ay the in <u>neurostani</u>	<u>of coloritated galagy</u>	<u>, аруг</u> ууай фум	rance upto the
ളിട്ടായ വ <u>്യാന്ത്യവ് വ</u>	majoranship of exe	<u>แลฟ์รูเน้าฮอ</u> เท <u>เวอ</u> ช	្រុមសេខសំ វ៉ា ដីប្រ
<u>ดูเพียงกระโลกดอร</u>	<i>теаруүе</i> й	<u> </u>	องปราสษาวิท
Hoovided .			

Esalénaduri 1. . . . . .

Explanation 2:...

- (ii) Where a manufacture or provider of output service scalls of OPTOVAL amount or respect of any topols or reput services, and manufactures such and products or provides such cultural service which am observable to obly or law as well as exempted poods or services, then, the manufacturer or provider of output service shall maticiple expension according.
  - *ј*л. ....
  - the the receipt and assignment services—
    - (i) in at its relation to ten associative of exemptive goods and their diseasons upto the place of features.
    - ji) in or so retailed to the manufacture of autable faut attached, excluding executive goods, errometr descends upon the place of removal;
    - f(0) = 1.75 (30) (500)
  - *iid* . . .
- (3) <u>Not which are not asserted in sub-rates (1), and (2)</u> the quarter of grades or the provider of autous spaces, opining out to analytical separate percents, shall tellow any one of the following applicas, as applicable to the canony -
- 初 : <u>50</u>
- (ii) opp an an<u>atholog (66) yngeg utrifor 20h-mio (34.</u>;

\_ \_\_

Provide fithat . . . . . . .

FroAted Suther

Provided also ......

Explanation I .......

Explanation III-

Explanation till - .......

(3A) <u>Egglisianningflun and naument of seminat pav</u>aple <u>under clause</u> (ii) <u>of sequilible (3). The monitorbase of goods at the</u> provider of output <u>service about the tolerung propodure</u> and conditions, currely:

(e) ....

Map 26: 10: 123

 $\widehat{\mathcal{H}_{\mathbf{k}}}(p^{(k)}, p^{(k)})$ 

- (a) The monitorium of goods or the province of quital convice shall, (largerine and pay, provinceally, for exery month), -
  - /ij . . .
  - .gg ... ...
  - for product altabulations input someon until that is reliable to produce or examples goods and their electrons value the place.

    Of removal is a produced for the produced value of the produced of the electron someons (provisional) = (F/F) inally sleed by G, where is denoted to be total value of examples according provided plus the total value of exampled goods manufactured and recovered during the proceding transfer and recovered during the proceding transfer and recovered provided and recovered and lately value of amounts and examples for another than examples for another total value of emovies total value of emovies and accordes total CEMWAT areas taken or input services during the month,
- pt) <u>The many factore</u>s of goods on the growides of policinary ones, about delympted of the smooth of <u>CEMPAT</u> or <u>Stindady</u> to exempted goods and resembled services for the whole financial year in the following manyer, which is
  - (J. ......
  - (32
  - (iii) the smooth attributable to right services used in or in relation to the foliatione of exampled goods and their degrance substitle piece.

    (i) removal or provision of Available Services (id/ls/) hadilotied by F, where id almostes folial value of examples services provided piece the bital value of examples poods to analysis of each piece poods to analysis of each piece and serviced analysis. The monotor year, it denotes total value of output and exampled sorthes provided, and bital value of output and exampled sorthes provided, and bital value of output and removed damp the translating part of denotes to the or input services drawn as foreign of pieces or input services drawn as foreign of part.

 $\widetilde{\mathcal{H}}_{k,n}^{(k)}(x,t) \sim \sum_{i=1}^{k} (1-x^{i})^{k} x^{i}$ 

Fig. 1: time that Bulk Blot COR, 2004 p (wides offligation coor the instrufacturer of callable and exempled goods mashruph as Rate 8(1) of COR, 2004 disablest convoluted to maintasevers which are used to machitacture of emerged goods ement in the disturbances specified in submitle (2), that Rate 6(2) of COR, 2004 provides that the mashradiliter shall maintain separate accounts for optic service means for use in the manufacture of collable final products and means to use in the manufacture of exempted goods and take CLNVAT cross tionly on that quantity of nout service which the internal for use in the manufacture of entirable goods; that to be 1/3) provides an option to manufacturer of dutiable and even piled goods to pay amount attribute to top it senants used in or in relation to manufacture of exempted goods as per formula press itself under Rule 5(2A) (1 (COR, 2004) in the manufacturer do not only maintain senants reports.

3.2 I find that inlent and object of logislation behind above Rule  $8 ext{ of COR}, 2007, 8$ not to allow cerval predition input services, which are used in manufacture of exempted goods or used in providing exempted services and to local with the situations often conveticred tils avallad (-) ingus situ ingu, services which are used for intarufacture of both dutiable as well as exemples goods and no separate records. are maintained, the legislation provides hollow to pay an our trailibulable to input 86 vite8 used in onlingefallor, to manufacture of exempted goods under Rute 15:37a of CCR, 2004 and framed formula to arrive at convationed halfmattable to main tably and prompted godds and so as to editieve the objectives of Cenvat Credit Schemis. In the instant case, the appellant has not awared convenerable in input so stors which were: 63(flotively ased for exempled godds, to that extent they have properly followed Rule: 0.01 of CGR, 2004. At the same time, in respect of such input services which were paraments used for disculations of dutable and exempled goods, they have opled to follow Build G(B) of G(B) 2014, and paid amount attributable murpul services used in or in relation to menutacture of exempted goods as per formals prescribed under Rule. G(U)(c)(iii) of CON (2004) In halfy, the appollunt paid the amount considering ratal insult. services availed by their theorete, they field reford dains on the groups that they have to consider derivationable on common input service only and therefore, they filed eflight daim having earling excess. Looking to the provisions of Build Glot GGR, 2004. und the essence of Cenvat Credit Scheme, I am of the considered ve∞ that cenval regalgliscally demost on incur services which were explusively used for manufacture of dutable goods connectibe considered at the time of payment or amount under Retail 6/34%(3)) of COR, 1994 and accordingly, I hole that his oppositant has correctly filed. wand claim which were paid in excess. However find that the Contral Government has ssried Nothcomm No. 1052018 CE pages 1.3 2018 under which Bina 8(34) of GUR. 200k. I as been eclisic that and the formula to arrive at convetibled, of input service. attriputable to the exempted godge were also substituted, which has born trained to Supplier fishal convet coolin availabilion common inclusiversides" and not "local panyati predictivation on Proceedings (1994). The saut notification gives a observation that the mention of the Government was to replace the old worllings with the how ones as held by the Honthis Styreme Court in the case of live an Tobarco Association reaction as 2365 (197) ELT 582 (86) wherein it has been thic as under:  $\Theta_{\bullet, i}^{*} = \{j_i, \dots, j_{i+1}\}$ 

so. The earth techniques ordinarily visual mass the pid (one) in place of method, or "to replace" in Black's have blockery. First Edition, at page 1281, the world facthspatial can been defined to move "To pure the place of source person on thing our the exchange". In Collins English Dictionary nor word isventible that seem defined to mean "to some or asis of a serve or place of another seem or thing" to replace (another or the except or thing) to replace (another or thing) that we was it place of another, such as a player in a game who lakes one place of an elympol college.

// mishasip papal/ed).

- 5.6 The Lorible High Count of Kannotaka in the base of Foerso Chemica's (India) 19th interceptort as 2015 (India) =1 240 (Kar.) has also be diastanded.
  - 3. Writel is the effect of "substitution" of a provision to the otone or an existing one is no more receiving. The Constitution Bacon of his Hambie Ages. Court in the case of Shanishso V. Papitakar v. For District Magicinste. There, Bontbay & Ginera (Scotter) in AIR 1982 AC page 324, dealing with the ecopy of sylphicition of a provision hy way of amendment bettless index.

When a subsequent Apt amends an extremition in such a war as it medianale itself or a part of the first incomparate itself or a part of the first incomparate itself or a part of the first of the service fearest where the must iterestie the read and continuous fearest where the absurdies as if the element words had been written into the earlier had with sent and into and the old words words words to refer to the amending for a left.

«Layrouses supplied):

- 6.4 In view of above, I find that rejection at second claim on the ground matitatal cervationed Rayaled on most service is to be considered in the formula prescribed uniter Rule  $\theta(\delta A)(\epsilon)(i)$  or  $\theta(\delta A)/2004$  as find by the lower adjudy angle authority is not consect legal and proper.
- The appellant has also contended that GCNs did not a logic as to whether reverse under Rule 5 of GCR, 2004 is required in respect or total input service) or focusition input service) and thus, the lower adjudctoring countries has bravelled depond scope of SGNs which is logally unjustified. Iterf the sciencestor of the appellant is considered and proper and hence, I have no option but to too that morning upded processional travel brayant adopted 5 SGNs in this regard. Therefore I find that the appellant is entitled for refund of Rs. 5,20,22,42% being excess amount had by them as performed under least tips.
- Halso find that the lower adjuticating all persists repeated return towards or life ground that Section 1.13 of the Assidaces not provide for refund of amount reversed under Rule 5(5w) (c)(0) of COR (2004 and for houring so has reflect on Rule 6(3D) of COR (2004 which provides that convet disclineversed under Rule 2(3A) of COR, 2004 is formout front outly. The appointment as veterically argued that they are entitled for refund under Section 1.18 of the Application Axis encount, everywhich the Axis lead with Explanation to Rule 8 of the Central Excise Rules, 2009, which states that the expressions duty or 'duty of excise' shall also include the animum payable in terms of COR (2004). The that the dispate as to whether all the refund deams to be governed under Section 1.18 of the Axis or not, stands settled by the HardVe 8 (prema Control the laterest's judgment of Material positions). Indeed to prove 3.9 CLT 2.17

/Emithasis sugation)

(S.C.), whom indities been held that no claim for resinct is preintainable except under site in secondarite with the provisions of Section 115 of the war; that Replan 10 of the Act provides for returns of quitylaxes which have been collected contrary to tax.

10. On second of a initial matrix of the constitution of a provision of level rule, not feation or regulation if fine that the harbotic High Court of Quijaratials in the case of India-Nippon Chemicals Court in reparts (see 2005 (185) D.D. 19 (Gig) has held as ancer

- 128. We have incline who the provisions contained in finite but and the idelification where theremoder judges of which were supplied to as along with whiten submissions). We do not that anything in Rule 577 or the Northbachan assert theremoder to infer the appropriate place or claims place and the resident that are a constained place provide to sub-section (9) at Section 110 of the Act to log court to a constained in the claim top refer of duty bound on Madrat conductional in provident in providing the provident in an appropriate the provident in an artifact to Rule 577 and the Northbachan assert to mapping the formulation and those sway digital of a party to meet to mapping as the Rule for the Act for each a referred. Rule 577 and the Matrat treat formulation contains actual to be visited under the Matrat treat formulation and provided by the limited or or claiming pack return would be anything for claiming pack return would be anything for claiming pack return would be anything the limited or claiming pack return would be anything of Section 110 of any for.
- find that the above recorded propert has been maintained by the horizon Supremo Contined ted as 2005 (166) ELT ATTY (SC). It also find that refined of the value did reversed in excess by the appointmental and reflect 5(3A)(c)(iii) of CCR. ANA is trily devoted in excess by the appoint this (2) of the Act. It is softled togat excition that previous made in the Act would prevail execute. Rules fromed under the said Act and therefore, rejection of refund plann on the ground of Rule 6(3A)(f) of CCR. 2004 is not correct. It also find that Rule State) has not been invoked in 3CNs true the basis on which refund claims have also rejected to one systematic field. He required that "Artifage of the lower expedicating sufficiely in this regard are not correct legal and proper.
- 9. Indiappollar has centeated that restoration at amount in the Canvat Gredit Register at the junction, without help them as such amount calculable utilized towards payment of their GST Sub-like under GST Law, 2017 in terms of Transmonal Provisions under Section 142 of Central Goods 8. Service Text Act, 2017 It the that Section 142(9)ga3 of CCGST Act, 2017 Is amplicable in this expect, which is would like to reproduce as under the

(6)(a) every unuceeding of appeal, review or reference retaining to a claim for the NEWAL provide animal of whether bottom on or other the appendict may under the existing law <u>about his discussed</u> of in §countering with the provisions of proving law and any amount of

predit found to be admissible to the distinent disting ref<u>inited to the masse</u> notworstanding onything to me continue contained under the provisions of existing law order than the provisions of sub-section (2) of section 110 of the Comran Excise Act. 1963 (1 of 1944) and the consult rejected, if say, shall not be expressible as upply tox orbit under this Act.

Provided that he refund what he allowed of any amount of CHNVA I seems where the balance of the seed amount as on the appointed day has been control to word under this Ach

- 9.1 In view of above provisions, refund drains for convot credit initiated before on or after the appearage day under the existing law are required to be disposed or in an install existing law and amount of central credit needs to be refunded in pash provided that be ance or said amount has not been carried to ward under CGS. Add. The epochland as submitted that they have not carried forward the amount of disputed central credit and transform. I hald that they are ontoted for cash refund of convot credit in view of the atomically providings.
- 10. In Mew of above findings, I set aside the impagned orders and allow appeals with consequential recor-
- १५ १ । अभीलकर्ता दवास दर्ज की गई अमीलों का निम्हारा उनसेवल तरीके के किया जाता है।
- 19.4 The appeals filed by the appel antiam disposort on as show.

्क्ष्रीय - अस्ति हैं (कुपाई संतीम क दूररा (अपीत्स)

Dy («Ք<u>Ֆ</u>D

(i) Mrs. Rotanion unities, les Limiter, Village (ii) — Mogripar, Papana, Cagres, District Jamnager – 98 1140

में, रिवाचरा इंडस्ट्रीज़ जिलिटेंड. विश्तेष प्रतिपद्म प्रदूष्ण-गण्या विद्विष्टा - जामनगर - १६६ १९०

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- 🕸 The Doubty Commissioner (1966) A Control Hobse Division, Jamusgar
- ூர் Guard File.

