आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलेफैक्स07926305136

DIN: 20221164SW000000B348

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2729/2021-APPEAL / 5147-Hb

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-64/2022-23**
दिनाँक Date : **21-11-2022** जारी करने की तारीख Date of Issue 24.11.2022

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **CGST/A'bad North/Div-VII/ST/DC/35/2021-22** दिनाँक: **11.08.2021**, issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Saakar Infra Nirman Pvt. Ltd..
   Office No. 9, Vasudha Society, Near Sardar Patel Colony,
   Naranpura, Ahmedabad – 380013

2. Respondent
   The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad North , 4th Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से कियां जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Saakar Infra Nirman Pvt. Ltd., Office No. 9, Vasudha Society, Near Sardar Patel Colony, Naranpura, Ahmedabad – 380013 (hereinafter referred to as "the appellant") against Order-in-Original Number CGST/A'bad North/Div-VII/ST/DC/35/2021-22 dated 11.08.2021 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the fact of the case is the appellant are engaged in providing mining services and having Service Tax Registration No. AARCS9332FSD001. During the course of audit of the records of the appellant by the CERA Audit, it was noticed that the appellant was a sub-contractor of M/s. Sakaar Saraswati Joint Venture and the Principal Employer was M/s. Bharat Coke and Coal Ltd. The terms and conditions of the agreement entered between the appellant and M/s. Sakaar Saraswati Joint Venture were the same as the terms and conditions of the agreement between M/s. Sakaar Saraswati Joint Venture and M/s. Bharat Coke and Coal Ltd. As per Rule 3 of the Point of Taxation Rules, 2011, Service Tax is payable on earlier of the invoice issued or payment received. On verification of the invoices raised by the appellant to M/s. Sakaar Saraswati Joint Venture during the period 2014-15 to 2015-16, it was noticed that the appellant was reducing 'keep back amount' from the Gross amount at the time of payment of Service Tax and has not paid Service Tax on such 'keep back amount', which is required to be paid, as per Rule 3 of the Point of Taxation Rules.

2.1 Subsequently, the appellant was issued a Show Cause Notice, which was adjudicated vide the impugned order by the adjudicating authority and the demand of Service Tax amount of Rs. 10,34,157/- was confirmed under proviso to Section 73(1) of the Finance Act, 1994 along with Interest under the provisions of Section 75 of the Finance Act, 1994. Further Penalty of Rs. 10,34,157/- was imposed on the appellant under the provisions of Section 78 of the Finance Act, 1994 and penalty of Rs. 10,000/- was also imposed on the appellant under the provisions of Section 77(2) of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

- The adjudicating officer has erred in law and in facts as the impugned OIO is made disregarding terms of the contract, nature of transaction, provisions of the Finance Act, 1994 and rules made there under and also without correctly considering the submissions made hence the impugned OIO is baseless, against the provisions of law and is not tenable in law.

- The adjudicating officer erred by disregarding the facts of the case that applicant has provided continuous supply of service and relevant provision is Proviso of Rule 3(a) of

Point of Taxation Rules, 2011. As per proviso, point of taxation for continuous supply of service is completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service. Hence, as per the said provisions, service tax liability arises when as per the contract at the time when the service receiver is required to pay for the service received now for quantity held as keep back the service receiver is required to pay only when the shortfall in the target is covered and not at the time quantity and it's work value is held as keep back because at that time service receiver is not liable to pay for that quantity as per the terms of the contract. Hence, it is clear that point of taxation as mentioned in order for levy of service tax on "keep back amount" was without considering their facts of the case and relevant provision of the law.

- The adjudicating officer erred in disregarding the facts of the case that the work quantity which was kept back was subsequently made up in FY 2021-22, hence invoice was issued on 28.06.2021 and payment was received on 16.07.2021, and as none of three incidences occurred in Service Tax regime considering the relevant provisions of service tax, incidence of tax didn't arise in the service tax regime and as all the three events occurred in the GST regime the incidence of tax arose in GST regime. Hence, appellant billed the said quantity in GST regime and charged and paid GST and not the service tax. The applicant has already paid tax @18% GST (9% CGST + 9% SGST) on keep back amount as against service tax demanded @15% under Service Tax Regime.

- Without prejudice to other grounds, though the appellant is of very clear view that tax liability arose in the GST regime and the appellant had correctly discharged the said liability hence there is no question of levying tax under both regime on one transaction, in any case, incase if liability arose in the service tax regime instead of GST regime and requested to issue direction to appropriate the amount paid as CGST and SGST towards the service tax demand.

- The adjudicating officer erred in levying interest under Section75 of the Finance Act, 1994, as discussed hereinabove as per the facts and circumstances of the case and provisions of the law, where the demand of tax is unsustainable, demand of interest under Section 75 of the Finance Act, 1994 also becomes unsustainable.

- The adjudicating officer erred in imposing penalty under Section 77(2) of the Finance Act, 1994. It is submitted that where the demand is unsustainable as stated in above, levy of penalty under Section 77 (2) of the Finance Act, 1994 also becomes unsustainable.

- The adjudicating officer erred in imposing penalty under Section 78 of the Finance Act, 1994, as per the provisions section 78 for failure to pay service tax for reasons of

fraud or collusion or wilful mis-statement or suppression of facts etc. but as there is no fraud nor wilful mis-statement nor any suppression of fact hence provisions of Section 78 could not be applied.

4. Personal hearing in the case was held on 18.11.2022. Shri Hemal P. Doshi, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He submitted a written submission during personal hearing. He reiterated submission made in appeal memorandum as well as in additional written submission

4.1 In the additional submission dated 18.11.2022, the appellant have reiterated submission made in appeal memorandum.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and in additional submission dated 18.11.2022 and documents available on record. The dispute involved in the present appeal is whether Service Tax is to be charged on gross value including 'keep back amount' or otherwise?

6. It is observed that the main contention of the appellant is that the they have provided continuous supply of service and relevant provision is Proviso of Rule 3(a) of Point of Taxation Rules, 2011. It has been mentioned that the work quantity which was kept back was subsequently made up in FY 2021-22 and they have issued invoice for 'keep back amount' on 28.06.2021 and payment was received on 16.07.2021. As none of three incidences for incidence of service tax occurred in Service Tax regime considering the relevant provisions of service tax, incidence of tax didn't arise in the service tax regime and as all the three events occurred in the GST regime the incidence of tax arose in GST regime and they have charged and paid GST and not the service tax. As the Tax liability arose in the GST regime and the appellant had correctly discharged the said liability, hence there is no question of levying tax under both regime on one transaction.

7. In order to understand the matter in proper perspective, the relevant Rule 3 of the Point of Taxation Rules, 2011 is to be examined, which reads as under:

"3. Determination of point of taxation.- For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-

(a) the time when the invoice for the service provided or agreed to be provided is issued: Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Provided that for the purposes of clauses (a) and (b),-

(i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;

(ii) wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a).

Explanation .- For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance."

7.1. As per the Point of Taxation Rules, 2011, in case of continuous supply of service, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion or each such event as specified in the contract shall be deemed to be the date of completion of provision of service. To have better understanding of the matter, the relevant portion of the Contract dated 03.04.2013 is reproduced as under:

"(i) If the average daily progress of work executed during the calendar month is more than 80% and less than 100% of stipulated rate of progress, penalty equal to 10% of the contract value of the shortfall in work shall be levied.

(ii) If the average daily progress of work executed during the calendar month is less than 80% of stipulated rate, penalty equal to 20% of contract value of the shortfall in work shall be levied.

(iii) The aggregate of the penalties so levied shall not exceed 10% of the total contract value.

(i), (ii) & (iii) Penalties will be calculated every month and withheld. The contractor shall be allowed to make up the short fall within the stipulated time of completion. Once the shortfall is fully made up on cumulative basis, the so withheld penalty will be released. Commensurate amount of the penalty already deducted shall be released as & when part or full short fall is made up on Progressive basis."

8. I find that, in the present case the appellant has received payment of service provided against RA Bills issued from time to time i.e. every month, therefore, the date of issuance of RA

Bills is to be considered as the date of completion of provision of service, and the "point of taxation" will be as per Rule 3(b)(i) of the Point of Taxation Rules, 2011, which clearly specified that '*in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service*'. I also find that the contention of the appellant that they have provided continuous supply of service and relevant provision is Proviso of Rule 3(a) of Point of Taxation Rules, 2011 is not correct. I also find that as per the contract the 'keep back amount' is qualified as penalties, which is returned back at the point of completion of work. Therefore, the 'keep back amount' is not required to be reduced from the Gross amount at the time of payment of Service Tax. Thus, I hold that the Point of Taxation in the present case is the date of issuance of the RA bills and the appellant is required to pay service tax on the 'keep back amount', which is not paid by them at the relevant time.

8. Further, in the present case, it clearly transpires that the appellant has intentionally suppressed the correct taxable value by deliberately withholding of essential information from the department though they were registered under the Service Tax. They also suppressed the value of taxable services provided by them in ST-3 returns, with an intent to evade taxes. Also, the appellant has never informed the department about the short payment of Service Tax and the said fact could be unearthed only at the time of audit by the CERA Audit. Therefore, I find that all these acts of willful mis-statement and suppression of facts on the part of the appellant, with an intent to evade payment of Service Tax, are the essential ingredients that exist in the present case which makes the demand is to be raised against them by invoking the extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994. Further, when the demand sustains, there is no escape from the liability of interest, hence the same is, therefore, recoverable from them under Section 75 of the Finance Act, 1994.

9. Further, I find that the imposition of penalty under Section 78 is also sustainable, as the demands were raised based on detection noticed during the course of audit of the records of the appellant by the CERA Audit. Section 78(1) of the Finance Act, 1994, provides for penalty for suppressing the value of taxable services by reason of fraud or collusion' or 'willful misstatement' or 'suppression of facts' with 'the intent to evade payment of service tax'. Since the issues covered in the present appeal are on settled issues, the appellant cannot bring into play the interpretation plea to avoid penalty. After introduction of measures like self assessment etc., a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules and private records maintained by them for normal business purposes are accepted, for all the purpose of service tax. All these operates on the basis of the trust placed on the service provider and therefore, the governing provisions create an absolute liability when any provision is contravened as there is a breach of the trust placed on them. It is the responsibility of the appellant to correctly assess their tax liability and pay the taxes. The deliberate efforts by not paying correct amount of Service Tax are utter dis-regard to the requirement of law and breach

of trust deposed on them. Hence, I find that the act of willful mis-statement and suppression of facts with an intent to evade payment of tax, made the appellant liable to demand by invoking extended period of limitation for demanding service tax and also liable to impose penalty on them under the provisions of Section 78 (1) of the Finance Act, 1994.

10. As regards penalty imposed under Section 78 of the Act, the Appellant has pleaded that since there was no suppression of facts, no penalty can be imposed upon them under Section 78 of the Act. I have already upheld invocation of extended period of limitation on the grounds of suppression of facts as per discussion in para *supra*. Hence, penalty under Section 78 of the Act is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, hold that the Appellant was liable to penalty under Section 78 of the Act.

11. As regards the penalty of Rs. 10,000/- imposed on the appellant under Section 77 of the Finance Act, 1994, I find that as per the provisions of Section 70 of the Finance Act, 1994 (as amended from time to time), "every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed. In the present case, it is observed that the appellant has not disclosed full and correct information about value of the services provided by them in the relevant ST-3 Returns and failed to self-assess the correct taxable value for the services provided by them and thereby contravening the provisions of Section 70 of the Finance Act, 1994. Accordingly, as the appellant has failed to comply with the provisions of Section 70 of the said act, they are liable to the penalty under Section 77 of the Finance Act, 1994. Hence, I find that the impugned order to the extent of penalty of Rs. 10,000/- imposed on the appellant under Section 77 of the Finance Act, 1994 is legally correct.

12. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax of Rs. 10,34,157/- is legal and proper.

13. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

..21st November, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)

Date : 21.11.2022

Attested

(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,

M/s. Saakar Infra Nirman Pvt. Ltd., — Appellant

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Naranpura, Ahmedabad – 380013

The Deputy Commissioner, — Respondent

CGST, Division-VII,

Ahmedabad North

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad North
3) The Deputy Commissioner, CGST, Division VII, Ahmedabad North
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North (for uploading the OIA)
5) Guard File
6) PA file