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NATION अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्कः: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,							
MARKET दवितीय तल, जी ।				रस टी भवन / 2 st Floor, GST Bluvan, रोड, / Race Course Ring Road,		CO	
		r. I. P.	राजक	ੀਟ / Rajkot - 360 001		micht 1	
-		-	the second second second	2441142 Email: cexappealsrajko	Ug gmail, com		
रजि	स्टई डाक ए. ।	डी. द्वा	I :- Sons	भूम आदेश में /	Dee	Tat: /	
क	Appeal / File No V2/278/RAJ/	7016	m2 do	03/ADC/RKC/2016-17	0	.2016	
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ख	अपील आदेश		(Order-In-Appeal N				
	आदेश का वि		<u>RAJ-EXCUS-000-APP-076 -2017-18</u> जारी करने की तारीख				
	Date of Ore		27.09.2017	Date of issue:	29.09.20	017	
			युक्त (अपील), राजक	N HELE N 정말 것 같	Dellet		
		80.0833.000		Commissioner (Appeals),	V8274177.000		
ग	अपर आयुक्त/ स मूल ज़देश में स्		सां उपायुकारं स्वायक आयुका,	बेन्द्रीय उत्पद्ध गुल्बर सेलकर, राजकोट / जामलर	र । माधीधामः। द्वारः :	प्रवासिति आ	
	Arising out of	above m	entioned CHC issued by Ad	tditional/Joint/Deputy/Assistant, Commission	er, Central Excise /	Service Tar	
घ	Rajkot / Jamma भगीलकर्ता			Name&Address of the Annel	ant & Resnow	dent 's	
	अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellant & Respondent :- M/s. Sahara Construction., "Sahara"Om nagar Part-A., Mavdi Plot, 150ft Ring Road, Rajkot						
				्मे उपयुक्त परिष्ठाति / पारिकरण के समस्त अर्थ			
(A)				tile an appeal to the appropriate authority countrievers in with order, during press may			
101	अत्रयोत जिल	त अधिनिव्य	म ⁷ 1994 की धारा 86 के अलग	त जिम्ललिखित जगह की जा शकती है ए			
10	Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 358 of CEA, 1944 / Under Section 86 Finance Act, 1994 an appeal lies to:						
60		वनीकरण मुख्यांकन में अस्मतिधत भगी मामले गीमा भूलन, केन्द्रीय उत्पदन मुल्क एवं मेवाकर अपीधीय ल्यायाधिकरण की विशेष पीठ, वेस्ट धर्म 2. आर. के पुरम, नई घेलसी, की की जानी चाहिए ॥					
	The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puxam, New Dethi in al matters relating to classification, and valuation.						
66	उपरोकन परिण्डेद १(a) में बागए गए अपीली के अलावा गेष लमी अपीले सीमा शुल्क केंद्रीय उत्पाह शुल्क एवं संवाकर अपीलीय ज्यायाधिकर (विपरेंट) की पंषियम क्षेत्रिय पीठिकर, , दुविलिय लल, बहुमाली भवन अवाकी अहमदाबाद- ३८००१६ को की जानी याखिए ए						
	To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2 rd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para-1(a) above						
049	गरी प्रपत्र EA-3 और लगाया गया हपाये, 5,000/ ल्यायाधिकरण की संबद्धित हाफ्ट का	को चार पाँ जुमोला, स्थ पाँचे आपका गावा के उ मगाया के उ	तेपी में दर्ज किंपा जामा पाहिए हा 5 लाख वा उससे करा, 5 ल 10,000/ जपत्रे का जिसप्रीत महायक रजिरता के लाम से किंप	मेनदीय उत्पाद गुल्क (अपील) विषयमाकले, 2001 । इनमें से कम से कम एक प्रति के साथ, जहां एव स्वरु या 50 लाख बचा तक अच्चा 50 नाख जमा शुल्क की पति शासरम करें। लिप्टेरिन हो भी शारीजिनक सेर के बेंक दुवारा जारी रेखांकिन ' जहां संबंधित अपीलीय स्वायाधिकरण की शाखा ! ' करता होगा ।/	उत्पाद शुल्क की मॉग श्वप में अधिक है तो शुल्क का मुनलात, र 1 बैंक ड्राप्ट देवारा किय	,स्वाज की मॉन इन्हार: 1,000 संधित अर्थातीय र जाना पाहिए	
	Excise (Appeal 1.000/- Rs 500 above 50 Lac sector bank of	0 Rules 2 0/-, Rs 10 respective the place	2001 and shall be accomp 0.000/ where amount of d ely in the form of crossed where the bench of any r	d in quadruplicate in form EA-3 / as pre- amed against one which at least should it futly demandimensifyenalty/refund is upto bank draft in favour of Asst. Registrar of rominated public sector bank of the place be accompanied by a fee of Rs 500/-	be accompanied by 5 Lac. 5 Lac to brench of any non	a fee of Rs 50 Lac an minated public	
(8)	लिपोरित प्रपत 5 (उनमें में एक पौ जुमोना, रुपए 5 हंपसे अध्यक्ष 10.0 सहायक एतिस्टार बेंच की उस शाख	1.5 में च ति प्रमाणित नाम वा उठ 100/- रुपये के लाम से 1 में होना प	स परियों में की जा सकेनी एव जोनी पाहिए) और इनझे से क समें कम, 5 लाख हपए था 50 का निर्धारित जमा शुल्क की परि किसी भी सार्शजेल्ल क्षेत्र के के	1994 की पारा 86(1) के जनगैल सेवाकर जियम उसके माथ जिस जहेश के विरद्ध अगीन की का स में कम एक प्रति के साथ, जहां सेवाकर की लाव स्थर तक प्रति के साथ, जहां सेवाकर की लाव स्थर तक प्रति के साथ के सुरुष्ट होना किया जा पराधिकरण की साथ जिसत है। स्थलन अहेश (ती हो, उसकी पीते शाप सीम हवाज की सॉस 3 हे लो कसका 1,000/ ल अमीजीय स्वायाधिक सा पालिए । अंबोधिक का	त में जंगरज को तीन ज़लावा मंग जंगये, 5,000 रण की सार्व्य के प्रेल का इट्रांग्राय	
	quadruplicate is copy of the or 1000'- where t amount of ser Hs.10.000'- wh	n Form S der appea he amoun vice tax 8 ere the a	T.5 as prescribed under F aled against (one of which it of service tax & interest interest demanded & pe- mount of service tax & in	of the Finance Act, 1994, to the App ule 9(1) of the Service Tax Rules, 1994, shall be certified copy) and should be demanded & penalty levied of Rs. 5 Lake nalty levied is more than five lakes but writed demanded & penalty levied is mon ant Registrar of the bench of nominated	and Shall be accorr accompanied by a hs or less, Rs.5000 not exceeding Rs than fifty Lakhs n	repanied by a fees of Rs where the Fifty Lakts uppers, in the	

- (i) जितन अधिनियम, 1994 की धना 85 की उप-धाराओं (2) गई (2A) के अन्यतेन दर्ज की गई उपील, संजकर जियमहाती, 1994, के नियम 9(2) गई 9(2A) के नहल विद्योदित प्रयत्र S.T.-7 में की जा जर्मनी एवं उसके आप आजुका, केपहींव उत्पाद मुलक आपवा आयुक्त (अपील), केपहींच उत्पाद मुलक थ24) के तहन विभागत प्रथम हो। ये के बात के एक पनि प्रसाणित होती शाहिए। और आयुक्त त्यांग सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय इलाग परित आदेश की प्रतियों सालया को (उनमें से एक पनि प्रसाणित होती शाहिए) और आयुक्त त्यांग सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पद शल्म वेशामर, को अपीसीय व्यायाधियरण को आगेटन दने काले का निर्देश देने वाले आदेशें की पति भी साथ में मौगरन करनी होती । / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST 7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules. 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner. Central Excise (Appeals) (one of which shall be a centified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax. to file the appeal before the Appellate Tribunal.
- हीमा सुरक, बेज्हीय उत्पद्ध सुरक एवं नेवाकर अपीलीय प्राधिवरण (मेन्ट्रेट) के पनि अपीली के मामले में केन्द्रीय उत्पद्ध सुरक अधिविधम 1944 की (ii) धारा अंडरफ के अलगेत, जो की विश्तीय अधिनियम, 1994 की धारा 83 के अलगेत जेताकर को भी जागू की नई है. इसे आदेश के पनि अधीनीय पाणिकरण में अपील करते लगग उत्पाद शुल्कामेवा कर मांग के 10 प्रतिशत (10%), जब मान एवं जुमोल विवादित है. या जुमोल, जब केवल जुमोला विवादित है, का धुनलान किया जाए, बशनें कि इस धारा के जलवेल जमा कि लानें तानी अपेक्षित देव ताजि दम करोड़ स्था में अधिक न हो।

केन्द्रीय उत्पाद शुरक १४ हेवाका के अपनेत 'मांग किए गए शुरुव' में निमन शामित है

- धारा 11 ही के अनलेन रक्षत 10
- सेनवेट जम्म की ली मई मानत साति 60
- रोपलेट जम्म जिल्लावणी के विश्वम 6 के अंतर्गत देश रक्त 140
- बच्चने यह कि इस प्रथम के प्रांवधान जिल्लीय (J) 39 अप्रैसियम 2014 के आफ में पूरे किसी अप्रैसीय प्रांतिकारी के बमल विचालपीन वचगत अजी एवं अपील को लागू नहीं होगे।/

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall be before the Tribunal on payment of 10% of the duty domanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

- Under Central Excise and Service Tax, "Duty Demanded" shall include 416 amount determined under Section 11 D
- 00 amount of erroneous Cerwat Credit taken.
- amount payable under Rule 6 of the Censol Credit Rules. (140
- provided further that the provisions at this Section shall not apply to the stay application and appeals pending before
- any appellate authority prior to the commencement of the Finance (No.2) Act. 2014.

आरत सरकार को पसरीक्षण आदेदन ; (C)

109 of the Finance (No.2) Act. 1998.

Revision application to Government of India इस आदेश की पुनरीक्षण आधिका निम्ननिधित मामजो में, केहींग उत्पाद शुल्क अधिनियम, 1994 की घंगा 35EE के प्रथम पांतुक के अनमेन अवर सचिव भारत सांत्रान, पुनरीक्षण आवेदन इंकाई, जिल मधाव्या, गाउन्य विद्यांग, गोंधी मजिल, जीवन देल मतन, संसद माने, नई दिल्ली-110001 की विद्या जवन जविता । figure search and the search

A revision application lies to the Under Secretary, to the Bovernment of India, Revision Application Unit, Ministry of Final Department of Revenue, 4th Floor Jeevan Deep Building, Parliament Street, New Delte 110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first provisis to sub-section (1) of Section-35B itsid

पटि मान के किसी जुकसान के सामने में, जहां सुकारान किसी भाग को किसी कारधाने ने भंडा। युह के पारणसन के दौरान या किसी अन्य कारधाने या फिर किसी एक शहर गुह से दूसरे शहर गुह पारणमान के टीरान. या किसी शतर गुह में था अंडारण में जान के प्रसंस्करण के टीरान, किसी कारखाने या किसी शहर गुह से साल के नुकारान के सामने में।' 111 in case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one

watehouse to another during the course of processing of the goods in a watehouse or in storage whether in a factory or in a warehouse

- भारत के बाहर किसी राष्ट्र या सेव को जिस्तेन कर रहे माल के डिजिमोण में प्रयुवन करने साल ना भंगे गई केन्द्रीय उत्पाद शुल्क के छुट (स्विट) के सामने में, जो भारत के बाहर किसी राष्ट्र ना सेव को जिस्तेन की लगी है। / In case of rebute of duty of excise on goods exported to any country or territory outside India of on excisable material used in (0) the manufacture of the goods which are exported to any country or territory publide India.
- दरि उत्पद्ध मुल्क का कुंगलान किए जिला अगरत के बाहर, लेपाल पा कुंटान की साथ जियाँग किया, गया है। / In case of goods exported outside India export to Nepal or Bhutan without payment of duty (III)
- भूतिक्वित उत्पाद के उत्पादन शुरुक के भूगताल के लिए जो इंगूरी केडीट इस अपिनियम एवं इसके विमिन्न पावधानों के तहल माल्य की गई है और ऐसे ज़रदेड जो ज़ायुक्त (ज़्यॉल) के द्वारा वित्त जीपिनियम: (न. 2), 1998 की धारा 109 के द्वारा जिसत की गई तारीख अधवा मनायाविधि पर या बाद में पानित किए भए है।/ (iv) Credit of any duty allowed to be utiliced towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appendit) on or after, the date appointed under Sec.
- उपलेक्स आवेदल की दो पतिया प्रयत्र मागम EA-8 में, जो की केन्हीय उत्पादन शुल्क (अणीस) लियमलकी, 2001, के नियम 9 के आल्मेल विभिष्टिष्ट है. इस आदेश के संपेषण के 3 माल के अन्तर्गत की जानी पाहिए । उपलेक्स आवेदन के साथ मूल आदेश व अपील आदेश की दो पतिया ससमन की जानी पाहिए। साथ ही केन्द्रीय अयद शुल्क अधितियज्ञ, 1944 की प्रथा 35-EE के तरत निर्धातित शुल्क की अदायनी के साहथ के और पर TR-6 की पति (v) अंतरमं की जानी आहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appenils)

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 DIO 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.

- पुलरीक्षण आवेदन के साथ निरन्तनिवित नियंतीत सुरक की अदायणी की जानी धारिए । तहाँ संसरन रक्त एक लाख रूपये वा उससे कम ही तो रूपये 2000 का सुगतान किया. जाए और वरी संसरन रक्तम एक लाख रूपये में ज्यादा ही तो रूपये 1000 -7 का भुगतान किया जाए । (vi) The revision application shall be accompanied by a fee of Rs. 2007 where the amount involved in Rupees One Lac or less and Rs. 10007, where the amount involved is more than Rupees One Lac.
- यदि इस आदेश में कई मूल आदेशों का अमलोग है तो प्रत्येक मूल आदेश के लिए शुल्क का मुगलान, उपयुक्त दंग से किया जाना चाहिये। इस तथ्य के होने हुए भी की तिक्षा पही काये से बचले के लिए ययाहियांने अपीलेग जाताधिकरण को एक अपील या कैदीय सरकार को एक आवेदन किया जाना है। / to case, if the order covers various numbers of order in Original, lee for each 0.1.0 should be paid in the aforesaid manner, not withstanding the fact that the one appaal to the Appellant Tritunial or the one application to the Central Gold. As the case may be is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 1004 for each (D)
- (रुक अधितियास 1975, के अनुसूची-) के अनुसार सूल आदेश एवं स्थासन आदेश की पति पर दिग्रांसिन 6.50 रुपये का राधामंत्रोधित न्याराजय ह (E) comment specification or 0.10, as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act. 1975, as amended.
- ग्रीमा शुल्क, केन्द्रीय उत्पद शुल्क एवं सेवाकर अपीतीय न्यायाधिकाल (कार्य थिपि) नियमायले, 1982 में डॉलेंज एवं जन्म संबन्धित मामली को सनिमहित करने दातें नियमों की लेर थी प्यान अकवित किया जाल है। ((F) Atlantion is also invited to the rules covering these and other related matters contained in the Customa. Excise and Service Appellate Tribunal (Procedure) Rules. 1982.
- प्रत्य अपीलीक धारीकारी को उसील राजित करने से संबंधित स्थापक, विश्वत और सर्वफलम प्रान्तप्रभी के लिए, अपीलाधी विभागीय वेबलाइट (G) www.cbec.gov.in #2 28 If#if # i / For the elaborate, detailed and latest provisions relating to filling of appear to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

::ORDER IN APPEAL ::

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The present appeal has been filed by M/s. Sahara Construction, "Param", Om Nagar Part-A, Mavdi Plot, 150 Feet Ring Road, Rajkot (hereinafter referred to as "the appellant") against Order-in-Original No. 03/ADC/RKC/2016-17 dated 27.09.2016 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central Excise & Service Tax, Rajkot (hereinafter referred to as "the lower adjudicating authority").

2 The facts of the case are that the appellant is engaged in providing taxable services in the category of "Commercial or Industrial Construction service" and "Renting of Immovable Property service" and registered with the department. The appellant had filed ST-3 returns for the period from April, 2010 to September, 2010. October, 2010 to March, 2011 and April, 2011 to September, 2011 showing service tax liability of Rs. 37,15,491/- as paid, however they had paid Rs. 17,00,000/- only during the said period resulted into short-payment of service tax of Rs. 20,15,491/-. The statement of Shri Ghansyambhai Popatbhai Pambhar, Partner of the appellant firm recorded under Section 14 of the Central Excise Act, 1994 (made applicable to service tax matters vide Section 83 of the Finance Act, 1994) wherein he admitted that they could not pay the service tax in full due to financial crisis; that they, have under wrong impression had shown the service tax as paid; that service tax liability upto March, 2012 came to Rs. 29.89 lakhs; that they debited cenvat credit of Rs. 7,99,725/- and voluntarily tendered post dated cheques of Rs. 15 lakhs and Rs. 11 lakhs towards their service tax liability for the period upto March, 2012. The service tax liability for the period from October, 2011 to March, 2012 of Rs. 9,95,895/- and interest of Rs. 8,956/- were also adjusted from the amount paid by the appellant, Rs. 23,94,874/- was considered as lump sum payment for the disputed period as against total liability of Rs. 26,48,841/- (Service Tax Rs. 20, 15, 491/- and interest Rs. 6, 33, 350/-).

2.1 Show Cause Notice No. V.ST/AR-I/DIV-I-RJT/ADC(PV)/88/2015-16 dated 21.10.2015 was issued to the appellant demanding Service Tax of Rs. 20,15,491/- under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act and appropriation of Rs. 23,94,874/- against service tax and Rs. 6,33,350/- against interest so demanded and for imposition of penalty under Section 77(2) and Section 78 of the Act. The SCN was adjudicated by the lower adjudicating authority vide impugned order wherein he confirmed demand of Service Tax of Rs. 20,15,491/- along with interest of Rs. 6,33,350/- and appropriated the said amount deposited against service tax and interest liability of the appellant and imposed penalty of Rs. 10,000/- under Section 77(2) of the Act and penalty of Rs. 20,15,491/- under Section 78 of the Act.

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 Being aggrieved with the impugned order, the appellant filed the present appeal, interalia, on the grounds that the appellant had paid service tax Page No. 3 of 6

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before issuance of SCN and the entire amount of interest also before issuance of the impugned order. However, the lower adjudicating authority has imposed penalty under Section 78 of the Act. The appellant has correctly assessed service tax in their ST-3 returns and the only reason for short payment of service tax was the financial crisis of the appellant which had been explained to the lower adjudicating authority. The department did not find any extra liability of payment of service tax than those assessed by the appellant. The appellant has not suppressed material facts from the department while filing ST-3 returns. Delayed payment cannot be equated with evasion of tax, hence extended period cannot be invoked for demanding service tax and penalty under Section 78 of the Act cannot be imposed, when there is no intention to evade service tax. No SCN was required to be issued in terms of Section 73(3) of the Act as service tax was paid along with interest except part amount of interest remained to be unpaid before issuance of SCN. The imposition of penalty of Rs. 20,15,491/- is very harsh. The SCN is time barred as it was issued on the basis of ST-3 returns for the period from April, 2010 to September, 2011 filed within statutory time limit as per Section 73 and SCN issued on 21.10.2015, after 4 years.

4. Personal hearing in the matter was attended to by Shri Rushi Upadhyay, Chartered Accountant, who reiterated grounds of Appeal. He submitted that penalty is not imposable under Section 78 of the Finance Act, 1994 as there is no suppression of facts; that the service tax demanded has been arrived on the basis of ST-3 returns filed by them; that on the query that SCN has invoked Section 76 and hence if Section 78 is not applicable then penalty is imposable under Section 76 of the Finance Act, 1994, he requested for more time to make written submission in this regard. He was allowed to make submission and personal hearing in this regard fixed on 15.09.2017. He appeared on 15.09.2017 and submitted written P.H. submission that penalty under Section 76 of the Act should not be imposed as the SCN has not proposed penalty under Section 76 of the Act and as per settled principal of law, the adjudicating authority cannot go beyond charges alleged in the SCN.

Findings:

5. I have carefully gone through the facts of the case, impugned order, grounds of appeals and submissions made by the appellant. I find that the issues to be decided in the present appeal are that (i) whether imposition of penalty of Rs. 20,15,491/- under Section 78 of the Act in the facts of the case is proper or not; and (ii) whether penalty under Section 76 of the Act is imposable if penalty under Section 78 is not imposable.

6. I find that the appellant has not challenged the liability of payment of service tax and interest on account of delayed payment of service tax and penalty imposed under Section 77(2) of the Act. Hence, the impugned order confirming

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demand of Service Tax of Rs. 20,15,491/- along with interest and imposing penalty of Rs. 10,000/- under Section 77(2) of the Act is upheld.

6.1 The appellant has vehemently contested the impugned order imposing penalty of Rs. 20,15,491/- under Section 78 of the Act by contending that they had paid differential service tax of Rs. 20,15,491/- before issuance of SCN and the entire amount of interest after issuance of SCN but before issuance of the impugned order and that no SCN was required to be issued in terms of Section 73(3) of the Act as service tax had been paid. I find that the partner of the firm during recording of his statement had deposed that he would pay service tax debiting cenvat credit of Rs. 7,99,725/- and he had tendered post dated cheques of Rs. 15 lakhs and Rs. 11 lakhs towards their service tax liability for their outstanding service tax liability. However, Rs. 9,95,895/- and interest of Rs. 8,956/- required to be paid by the appellant for period under investigation and Rs. 23,94,874/- only were available towards service tax liability for the period April,2010 to September, 2011 against service tax liability of Rs. 20,15,491/- and interest amount of Rs. 6,33,350/-. Since, interest was not fully paid by the appellant, there was need to issue SCN by the department and the appellant cannot fine fault for issue of SCN as they had not paid interest and also penalty as prescribed under Service Tax law.

The appellant has contended that the department has not found any 6.2 extra liability of payment of service tax other than those assessed by the appellant and that the appellant has not suppressed any material facts from the department while filing ST-3 returns, hence extended period cannot be invoked for demanding service tax and imposing penalty under Section 78 of the Act and also cannot be imposed, when there is no intention on their part to evade service tax. However, I find that this is factually not correct as they had declared in their ST-3 returns as service tax having been fully paid. Even though ST-3 returns were filed within time but service tax paid had been falsely declared as paid whereas they had not paid service tax. In such facts of the case, the appellant's say that this was wrongly declared under wrong impression is nothing but to escape the clutches of law. I find that the appellant had attempted to evade payment of service tax by false declaration in ST-3 returns as service tax paid. Therefore, I find reason to hold that the appellant has suppressed the facts of non-payment by stating service tax paid with intent to evade payment of tax. Hence, I uphold penalty of Rs. 20,15,491/- imposed on the appellant aug under Section 78 of the Act by the lower adjudicating authority.

6.3 Since first issue whether penalty is imposable under Section 78 or not in this case is already answered, there is no need to go into 2nd issue as to whether penalty under Section 76 of the Act is imposable or not.

 In view of above facts and legal position, I uphold the impugned order and reject the appeal.

७.१ अपीलकर्ता द्वारा दर्ज की गई अपील का निपटास उपसेक्त तरीके से किया जाता है।

The appeal filed by the appellant stand disposed of in above terms.

क्रि.स. १९२० ग्राम (कुमार संतोष) आयुक्त (अपील्स)

By Regd. Post AD

M/s. Sahara Construction, "Param",	मै. सहारा कन्स्ट्रकशन, "परम",	
Om Nagar Part-A, Mavdi Plot,	ओम नगर पार्ट – अ मवडी प्लॉट,	
150 Feet Ring Road, Rajkot	१५० फीट रिंग रोड, राजकोट	

Copy to:

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To

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1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.

- 2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
- 3. The Assistant Commissioner, GST & Central Excise, Division-I, Rajkot.

4. Guard File.