

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH - COURT NO. II**

**Service Tax Appeal No. 50963 of 2021 (SM)**

(Arising out of Order-in-Appeal No. 156/CRM/ST/JDR/2021 dated 22.07.2021 passed by the Commissioner (Appeals) CGST, Jodhpur.)

**M/s Varaha Infra Limited**

**Appellant**

6, Umesh Smirity, Paota  
B Road, Jalam Niwas  
Scheme, Dist. Jodhpur  
Rajasthan 342003

*VERSUS*

**Commissioner of CGST, Jodhpur**

**Respondent**

G-105, New Industrial Area'  
Opp Diesel Shed, Basni,  
Jodhpur, Rajasthan-302003

**APPEARANCE:**

Mr. O.P. Agarwal, Chartered Accountant for the Appellant

Mr. Mahesh Bhardwaj, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 50037 / 2023**

**Date of Hearing: 16.11.2022**

**Date of Decision: 16.01.2023**

**ANIL CHOUDHARY:**

The appellant is registered with the service tax department and is engaged in providing taxable services under works contract etc. In the course of audit by the internal audit officers of the department during February 2020, after examining the ST-3 Returns, balance sheet and other relevant documents and after obtaining clarifications from the appellant-assessee, it appeared to revenue that appellant have not paid service tax of Rs. 2,90,628/- under RCM of renting of immovable property (office) in respect of

rent charges paid to its Director, Mr. Mufat Singh Rao. It further appeared that appellant have short paid service tax of Rs. 24,44,446/- due to availment of wrong or higher abatement, as it appeared that the appellant have done repair and maintenance work but have claimed higher abatement of 60% available for new work. It further appeared that appellant is liable to penalty for late filing of ST-3 Returns and is also liable to pay interest on delayed payment of service tax. The SCN was adjudicated on contest by the Deputy Commissioner who was pleased to confirm the proposed demands alongwith penalty under Seciton 78. Further, penalty for late filing of returns under Section 77 r/w Rule 7C was imposed Rs. 80,000/-. Further, interest was demanded Rs. 12,71,358/-. Being aggrieved, the appellant preferred appeal before the learned Commissioner (Appeals), who pleased to reject the appeal confirming the Order-in-Original. Being aggrieved the appellant is before this Tribunal.

2. Heard the parties.

3. Learned Counsel, Mr. O.P. Agarwal, assailing the impugned order inter alia urges:-

3.1 that demand of Rs. 2,90,628/- have been confirmed on payment of rent for office to Director of the Company during the period April 2014 to June 2017. The demand have been raised by invoking the extended period of limitation, on reverse charge basis vide SCN dated 13/07/2020. Admittedly, under the facts, the appellant on payment of service tax on the rent was entitled to Cenvat Credit of the same. Thus, the situation is wholly revenue neutral.

3.2 Appreciating the facts and circumstances, I allow this ground finding that situation is wholly neutral, this ground is allowed and the demand is set aside.

4. As regard the allegation of short payment of service tax of Rs. 24,44,446/-, due to availment of wrong and higher abatement. The learned Counsel submits that under both the work orders No. 15-16/55A & 15-16/81 A, although the nomenclature used is 'repair and maintenance' but, in fact, the appellant have done removal and dismantling and, thereafter, have done the whole construction anew. This is evident from the scope of work which mentions dismantling including removal of plaster and redoing the work, further supply of material mentions that all materials required for the work shall be procured by the contractor at its own cost and charges. Quantities mentioned in BOQ are tentative in nature. Billing and payment shall be done as per actual measurement done at site, duly certified by site in charge. The contractor will get all the materials duly approved by the client's architects before supply/execution. Thus, the appellant in fact has done fresh work of re-construction of the work in question and, thus they have rightly availed the abatement for new construction @ 60%. Further mentions that in respect of the other work order no. 15-16A, the scope of work involved was dismantling and removal of complete railing structure and fabrication and erection of structural steel work for stair case, railing, balcony railing complete. Thus, the appellant have rather done additional work of dismantling of the existing dilapidated structure and, thereafter done new construction.

4.1 Learned AR relies on the findings of the impugned order.

4.2 Having considered the rival contentions, I find that appellant have done execution of new work after removing the existing structure and railing etc. In view of my findings, I allow this ground in favour of the appellant and set aside the demand of Rs. 24,44,446/-.

5. So far the imposition of penalty under Section 77 for late filing of return is concerned, it was alleged that half yearly return for October 2015 to March 2016 was delayed by 693 days, thereafter, return for April 2016 to September 2016 was delayed by 627 days and return for October 2016 to March 2017 was delayed by 440 days. Assailing the imposition of penalty, learned Counsel submits that admittedly, appellant have filed the return *suo moto*. The returns were delayed due to adverse business situations. Further, the Adjudicating Authority have imposed the maximum penalty without recorded a finding of deliberate default on the part of the appellant-assessee. Accordingly, he prays for setting aside the penalty and/or for substantial reduction of quantum of penalty.

5.1 Learned DR relies on the impugned order.

5.2 Having considered the rival contentions, I find that the show cause notice have been issued by invocation of extended period of limitation. Further, prior to issue of show cause notice dated 13.07.2020 appellant have admittedly filed the service tax returns, about two years prior to it in the year 2018. In this view of the matter, I reduce the quantum of penalty to Rs. 2000 per return or a

total penalty of Rs. 6000/- under Section 77 r/w Rule 7C of Service Tax Rules.

6. Appellant further assails the demand of interest under Section 75. It is contended that three challans deposited by the appellant for Rs. 2,241/-+ Rs. 44,008/- Rs. 5,539/- totalling Rs. 51,788/- have not been considered before computing the short payment of interest. These amounts were admittedly deposited but nowhere have not been given credit either for tax or interest, resulting into erroneous calculation. These facts were pointed out to the court below but no finding have been recorded on the same. The appellant have also raised the ground of limitation, urges that the demand of interest is not maintainable for invoking the extended period of limitation.

6.1 Learned DR relies on the impugned order.

6.2 Having considered the rival contentions, I find that interest under Section 75 is payable for delayed payment of service tax, as such tax has not been paid by the due date or within the prescribed period. Thus, this ground is allowed by way of remand directing the Adjudicating Authority to recalculate the interest for delayed payment of tax after giving credit, on verification of the aforementioned challans referred to hereinabove. As the demand have been set aside on merits, the penalty under Section 78 also stands set aside. Accordingly, the appeal is allowed in the aforementioned terms and the impugned order is set aside.

(order pronounced in the open Court on 16.01.2023)

**Anil Choudhary**  
**Member(Judicial)**