CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.88598 of 2018

[Arising out of Order-in- Appeal No.NSK/EXCUS/000/APPL/133/17-18, dt.09.07.2018, passed by the Commissioner (Appeals), GST & Cx, Nashik]

M/s Nerkar Properties ......**Appellant**
1st Floor, Shree Rushiraj Heights, Mahatma Nagar,
Nashik 422 007

VERSUS

Commissioner CGST & C.E., Nasik ......**Respondent**
Plot No.155, Sector P-34, Jaistha & Vaishak,
CIDCO, Nashik 422 008

Appearance:
Shri Rahiv Luthia, Chartered Accountant for the Appellant
Shri S.B. Mane, AC (AR) for the Respondent

CORAM:
HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86171/2019

Date of Hearing: 27.06.2019
Date of Decision: 27.06.2019

PER: D.M. MISRA

Heard both sides. This appeal is filed against Order-in- Appeal No.NSK/EXCUS/000/APPL/133/17-18, dt.09.07.2018, passed by the Commissioner (Appeals), GST & Cx, Nashik.

2. Briefly stated the facts of the case are that the Appellants are providing taxable service of construction of flats, shops etc against the development agreement dt.01.03.2013. During the course of Audit, it was noticed that the Appellant had short paid service tax of Rs.15,24,756/- by not determining the value taxable of the service correctly in accordance with Section 67(1) of Finance Act, 1994 read

with Service Tax (Determination of Valuation) Rules, 2006. A Show Cause Notice was issued to them on 31.03.2017 for recovery of the service tax short paid during the period 01.03.2013 to 30.09.2015 with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the Appellant filed an appeal before the learned Commissioner (Appeals), who taking note of the submission of the Appellant, reduced the Service Tax demand to Rs.12,56,407/- with interest and penalty. In the said order, the learned Commissioner made an observation that the Appellant had already the Service Tax of Rs.12,56,407/-, interest of Rs.9,47,056/- and 25% of the penalty of Rs.3,14,102/- and accordingly directed them to discharge the balance interest amount of Rs.2,53,209/-, failing which penalty will be charged 100% of the confirmed Service Tax under Section 78 of Finance Act, 1994. Hence, the present appeal.

3. At the outset, the learned Chartered Accountant Shri Rajiv Luthia for the Appellant submits that before this Tribunal, the Appellant do not dispute the liability of Service Tax, interest and 25% of the penalty, which was already paid. The learned Chartered Accountant for the Appellant has submitted that before the order of the Commissioner (Appeals) was passed, they have already paid a total amount of Rs.25,17,565/- which includes Service Tax amount, interest and penalty including the additional interest amounting to Rs.2,53,209/-.

4. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals). He submitted that the interest

amount of Rs.2,51,756/- included in the payment made on 02.12.2017, needs to be verified by the Adjudicating authority. He prays that the matter may be remanded to the Adjudicating authority.

5. I have carefully considered the submissions of both sides and perused the records. I find that the learned Chartered Accountant for the Appellant does not dispute the liability service tax, interest and penalty as determined by Commissioner (Appeals) in the impugned order. Their claim is that the interest amount of Rs.2,53,209/- calculated by the learned Commissioner (Appeals) has already been paid by them. To ascertain whether the amount of Rs.2,53,209/- directed to be discharged as interest in addition to the interest already discharged by the learned Commissioner (Appeals) needs to be verified by the Adjudicating authority. Accordingly, the matter is remanded to the Adjudicating authority for the purpose of verification of above facts.

6. Appeal is allowed by way of remand.

(Dictated and pronounced in the open court)

(D.M. Misra)
Member (Judicial)

Bahalkar