

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH, MUMBAI

SERVICE TAX APPEAL NO. 86718 of 2025

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/507/2024-25 dated 25.03.2025 passed by the Commissioner (Appeals) CGST & Central Excise, Nashik.)

M/s Thakkers Harmony,
7, Thakkers, Near Nehru Garden,
Nashik-422001.

.....Appellant

VERSUS

Commissioner of CGST & Central Excise,Respondent
Nashik Commissionerate
Plot No. 155, P-34, Jaishtha & Vaishakha,
CIDCO, Nashik-422 008.

APPERANCE:

Shri Rajiv Luthia, Advocate for the Appellant
Shri Dhananjay Dahiwal, Dy. Commissioner, Authorised Representative
for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85790/2026

Date of Hearing : 11.05.2026

Date of Decision : 25.06.2026

Confirmation of demand by the Commissioner (Appeals) of Service Tax of Rs. 90,625/-, alongwith appropriate interest and equal penalty plus penalty of Rs. 20,000/- u/s. 77(1) (c)(d) of the Finance Act, 1994, demanded and confirmed on the basis of differential amount noted in VAT Return and ST-3 Return is assailed in this appeal.

2. Facts, in a nut shell, would go to reveal that appellant had been providing construction of residential complex service. In the Financial Year 2015-16, in the ST-3 Returns, appellant had declared receipt of Rs. 24,55,000/- whereas he had shown receipt of Rs. 49,55,000/- in their Profit & Loss Account for the same Financial Year and if 1% VAT of Rs. 49,550/- is added to it then, it would come to Rs. 50,04,550/-, which was supposed to be taxable value as per department, for which appellant was served with Show-cause-cum demand notice for recovery of the same alongwith interest and equal penalty etc. Matter was adjudicated and demands etc. got confirmed. Unsuccessful attempt by the appellant before the Commissioner (Appeals) against the confirmation of such demand made by the Adjudicating Authority has brought the dispute to this Forum.

3. During the course of hearing, Ld. Counsel for the Appellant, Mr. Rajiv Luthia primarily has raised two grounds while challenging the order passed by the Commissioner (Appeals). The first ground taken by him is that the entire proceedings has to be treated as time barred since Show-cause notice has been issued after five years of demand made for April 2015 to September 2015, as admittedly the date of issue of said Show-cause notice was 15.01.2021, evidenced through postal department letter dated 12.06.2025, when last date for such service of Show-cause was to be taken as 31.12.2021, which was a period extended by Ordinance for service of notice that could not be served on time due to Covid Pandemic. His further submission, as noted in the ground raised before the Commissioner (Appeals), was that invalidity of Show-cause for the past period renders the entire Show-cause notice as void even for the second half. In placing copy of the written submission dated 25.11.2024 filed before the Commissioner (Appeals), Ld. Counsel for the Appellant submitted that this specific ground was not dealt and completely ignored by the Commissioner (Appeals) since it would have resulted in dropping of the proceedings.

3.1 The second argument laid by him was that service tax was paid on the basis of point of Taxation Rules on value upon raising of invoice, when 1% VAT was paid on the basis of value of agreement entered into upon completion of the residential building, which was paid in the instant case on 29.04.2015 and got reflected in the financial statement of 2015-16. On the contrary, the same amount of Rs. 25 lacs. was shown to have been paid as receipt against service during the period October 2014 to March 2015 in the ST-3 Return filed by the appellant for the said period, which is noted by Ld. Commissioner (Appeals) in his order at para-10 itself. He further submitted that differential amount of Rs. 13,375/- that was added to the demand to make it Rs. 90,625/-, was on account of erroneous calculation of the Service Tax on the differential value @ 14.5% whereas the applicable rate of Service Tax for the relevant period was @12.36%.

3.2 Ld. Counsel for the Appellant concluded his argument in saying that this order is bad in law for the reasons that it had dealt with a Show-cause issued for a period for which limitation period was over and taken figures of VAT Returns which was, in fact, split into two financial years through filing of two separate ST-3 Returns, as payment against service was received in those two fanatical years.

4. *Per contra*, Ld. Authorised Representative Mr. Dhananjay Dahiwalé argued in favour of the reasoning and rationality of the order passed by the Commissioner (Appeals) and raised a point that appellant had not taken the limitation issue before the Commissioner (Appeals) for which order passed by the Commissioner (Appeals) need not be interfered with.

5. I have gone through the Appeal Paper Book, submissions made by the parties and other relevant documents filed in support of the stand taken by the appellant. Though Show-cause Notice was signed on 31.12.2020, Postal Department letter dated 12.06.2025, as

annexed in the compilation submitted subsequently, goes to show that the said speed post letter number, matching with its envelope content, submitted here, was booked from Nashik Head Office on 15.01.2021. This being the facts on record, when Show-cause notice covering the first period, that contains the disputed demand, was served much after five years of filing of Return on 24.10.2015 including the period covered upto 31.12.2021 in the Ordinance issued to address Covid Pandemic situation, is to be treated as issued beyond the period of limitation and the demand in question is not sustainable for the fact that it is barred by time as has been established by this Tribunal in the order of Naresh Kumar & Co. Pvt. Ltd Vs. Union of India and Ors on 18th April, 2011, as noted in the written submission filed before the Commissioner (Appeals). Therefore, the entire proceedings is required to be quashed as being initiated with a Show-cause which was unsustainable in law, apart from the fact that appellant's other contention that amount paid by it in 2014-2015 and 2015-16, as revealed from para-10 and para-11 in the Order-in-Original, matches with the payment details reflected for both the periods of two financial years covered under ST-3 returns and under VAT Returns for the Financial Year 2015-16. Hence the order;

The order

6. The appeal is allowed and order passed by the Commissioner (Appeals) CGST & Central Excise, Nashik. vide Order-in-Appeal No. NSK/EXCUS/000/APPL/507/2024-25 dated 25.03.2025 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 25.06.2026)

(Dr.Suvendu Kumar Pati)
Member (Judicial)