CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Service Tax Appeal No. 86192 OF 2025

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP (MK)-199/2024-25 dated 31.01.2025 passed by the Commissioner (Appeals-I), Central Tax, Pune

Anil Lingappa Palle **.....Appellant**
Proprietor of Khushi Enterprises
7, Survey No. 135, Near Bal Heights
Mohan Nagar, Chichwad, Pune

VERSUS

Commissioner of Central Excise & Service Tax, Pune I **.....Respondent**
2nd Floor, F Wing, GST Bhavan
41/A, Sassoon Road, Opp. Wadia College,
Pune

APPEARANCE:

Shri Makrand Joshi, Advocate for the appellant
Shri S B P Sinha, (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 85894/2026

DATE OF HEARING : 07.05.2026
DATE OF DECISION : 16.07.2026

Per: AJAY SHARMA

This appeal has been filed assailing the impugned Order-in-Appeal dated 31.01.2025 passed by the Commissioner (Appeals-I), Central Tax, Pune whereby the Order-in-Original was partly modified by reducing the service tax demand to Rs.1,52,243/- with equal penalty and interest on the re-quantified amount of demand.

2. At the outset learned counsel for the appellant raised a preliminary submission, which according to him, goes to the very root of the matter. Learned counsel contended that the show cause notice dated 28.12.2020, on the basis of which the entire proceedings have been initiated, was never served upon the appellant. Consequently, the appellant had no knowledge either of the contents of the show cause notice or the initiation of adjudicating proceedings and resultantly the Order-in-Original dated 29.6.2024 came to be passed ex-parte.

3. According to learned counsel, the said order was served upon the appellant on 5.7.2024 and only then the appellant became aware about the existence of the show cause notice (supra) and the adjudication order. He further submits that though they raised this plea before the learned Commissioner (Appeal), however, the same was brushed aside by the learned Commissioner by observing that *'The claim of the Appellant that SCN was not received etc. including non adherence to the principles of natural justice, limitation period etc., do not get attracted to the instant proceedings for the very reason that after having sufficient knowledge about the proceedings, adequate opportunities have been provided to the Appellant to furnish material information which could have been verified prior to arriving at a decision on the issue.'*

4. Learned counsel submits that the non-service of the show cause notice on the appellant is a gross-violation of the principle of natural justice and violation of Section 73 of the Finance Act,

1994 and the demand is liable to be set aside on this ground alone. According to him, the reasoning given by learned commissioner, while rejecting the contention of the appellant, is legally unsustainable as subsequent participation in the appellate proceedings cannot cure the foundational defect arising from non-service of the show cause notice.

5. I have heard learned counsel for the appellant and learned Authorised Representative for Revenue and also perused the case records. Non service of show cause notice on the appellant is a serious lapse on the part of the department and it goes to the root because its service is not an empty formality. It is the very foundation of adjudication proceedings u/s. 73 ibid. A notice calling upon a person to explain why tax, interest and penalty should not be recovered, must necessarily be brought to the notice of such person in the manner known to law. Unless the notice is served, the noticee is deprived of the valuable statutory right to submit a reply, produce evidence, contest the allegations and avail an effective opportunity of personal hearing. Any adjudication undertaken without such service strikes at the root of the proceedings and constitutes a clear violation of the principles of natural justice.

6. The appellant has placed on record the affidavit dated 24.01.2026 stating on oath that the show cause notice dated 28.12.2020 was never served upon him and that he became aware about its existence only after receipt of the Order-in-

Original (supra) on 05.07.2024. The same remains uncontroverted.

7. The copy of the show cause notice was not even annexed with the instant appeal. Upon being informed that the appellant was never supplied with the notice, this Tribunal vide order dated 21.11.2025 directed the learned Authorised Representative appearing for department to produce evidence establishing service of show cause notice upon the appellant.

8. Pursuant thereto, the department produced a communication dated 06.03.2026 received by them from the Assistant Commissioner (L&T), CGST, Pune-I which is extracted hereunder:-

"F.No.: GEXCOM/REV/MISC/74/2023-REV
Date- 06.03.2026

To,
The Superintendent (A.R.)
CESTAT Mumbai
1st Floor, Jai Centre
P D'Mello Road, Masjid (East),
Mumbai

Subject: Proof of service of show cause notice issued to M/s Anil Lingppa Palle – reg.

Please refer to your letter F.No. ST-Diary/86192/2025 dated 03.02.2026 on the above subject conveying direction of Hon'ble Tribunal to provide the proof of delivery of Show Cause Notice No. 3571/P-I/TGN/DC/ADJ/ST/2020-21 dated 28.12.2020 to the appellant M/s Anil Lingappa Palle.

2. In this regard, this is to inform that as per the information received from the concerned Division office (copy enclose for ready reference), the Show Cause Notice dated 28 December 2020 was issued under DIN No. 20201268UC00001631DD to M/s Anil Lingappa palle. Office Copy of SCN enclosed for ready reference which do not have any dispatch number so its dispatch could not be verified.

This is for your kind information and necessary action please.

Encl. As above

(Manisha S Patil)
Assistant Commissioner (L&T)
CGST, Pune I "

9. Significantly, this communication does not disclose any dispatch particulars, postal acknowledgment, speed post receipt, acknowledgment due card, delivery report or any other documentary evidence demonstrating that the show cause notice dated 28.12.2020 had ever been dispatched or served upon the appellant. The department has expressed its inability to produce any evidence whatsoever regarding service of the notice and rather mentioned that the dispatch could not be verified.

10. The period involved herein is years 2015-16 for which the show cause notice was issued on 28.12.2020 after invoking the extended period of limitation u/s. 73(1) ibid. For ease of reference Section 73 (1) ibid is extracted hereunder:-

"Section 73. Recovery of Service tax not levied or paid or short levied or short paid or erroneously refunded. (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within eighteen months from the relevant date, <u>serve notice</u> on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice : Provided that where any service tax has not been levied or paid or has been shortlevied or short-paid or erroneously refunded by reason of — (a) fraud; or

> *(b) collusion; or (c) wilful mis-statement; or (d) suppression of facts; or (e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "eighteen months", the words "five years" had been substituted"*
>
> *(Emphasis supplied)*

11. The language employed in section 73 assumes significance. The expression employed in is "serve notice" and not merely "issue notice". The distinction is deliberate and carries legal significance. The legislature has consciously used the expression "serve notice". The statutory requirement is satisfied only when the notice is duly served in accordance with law. The burden of proving such service squarely rests upon the department. In the present case, despite a specific direction of this Tribunal, the department has failed to produce any dispatch register, postal receipt, acknowledgment due, delivery report or any other contemporaneous evidence to establish service of the show cause notice. In these circumstances, mere production of a copy of the notice or reliance upon its date cannot substitute the mandatory requirement of service. The law is well settled that where communication or service is the statutory requirement, the relevant date is the date of service and not merely the date borne on the notice. The proceedings initiated without establishing valid service of the show cause notice are, therefore, vitiated both on account of violation of the principles

of natural justice and failure to comply with the mandatory requirement of Section 73 of the Finance Act, 1994.

12. Now the issue arising herein is whether the show cause notice dated 28.12.2020 was served on the appellant within the prescribed period. Learned counsel submits that since the notice was not served till date, the demand is barred. Where the department seeks to sustain proceedings initiated within the prescribed limitation, the burden lies squarely upon it to establish that the notice was duly served. In the absence of any evidence regarding dispatch or delivery, the statutory requirement cannot be presumed to have been complied with.

13. Except for asserting that the show cause notice was issued on 28.12.2020, the department has failed to produce any material whatsoever to establish that the notice was ever served upon the appellant. On the contrary, the appellant has filed a sworn affidavit asserting non-service. In the face of the department's inability to produce even the basic proof of dispatch or service despite a specific direction of this Tribunal, there is no reason to disbelieve the appellant's categorical assertion.

14. The finding recorded by learned Commissioner (Appeals) about subsequent opportunities granted to appellant during appellate proceedings cured the defect of non-service of the show cause notice is legally untenable. The right to contest the allegations commences at the stage of the show cause notice

itself. An appellate proceeding cannot substitute the statutory adjudication contemplated under Section 73 nor can it retrospectively validate proceedings initiated in violation of the mandatory requirement of service.

15. Once it is held that the show cause notice was never served upon the appellant, the entire adjudication stands vitiated for violation of the principles of natural justice. Further, in the absence of service of the show cause notice even within the extended period prescribed u/s 73 ibid, the proceedings cannot be sustained and the demand is liable to be held as barred by limitation.

16. In view of the finding recorded hereinabove that the department has failed to establish service of the show cause notice dated 28.12.2020 upon the appellant, the proceedings initiated pursuant thereto are unsustainable in law. Accordingly the impugned Order dated 31.1.2025 is liable to be set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in open Court on 16.07.2026)

(Ajay Sharma)
Member (Judicial)

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