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

REGIONAL BENCH

**Service Tax Cross Application No. 85700 of 2022**
(On behalf of Respondent)
**In**
**Service Tax Appeal No. 85634 of 2022**

(Arising out of Order-in-Appeal No. DL/181/Appeals Thane/BH/2021-22 dated 07.12.2021 passed by the Commissioner of CGST & Central Excise (Appeals Thane), Mumbai.)

**M/s. Lloyd Shipping And Forwarding Agency** ........Appellant
**210, Ecstasy Business Park,**
**2nd Floor, City of Joy,**
**Near Flyover, J.S.D. Road,**
**Mulund (W), Mumbai – 400 080**

*VERSUS*

**Commissioner of CGST & CX, Bhiwandi** ........Respondent
**11th Floor, Lotus, Parel,**
**Lotus Infocentre, Near Parel Station,**
**Parel East, Mumbai – 400 012**

**APPERANCE:**

Shri Jelvis Henrigues, C.A. for the Appellant
Shri Dhananjay Dahiwale, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

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

**FINAL ORDER NO. 85907/2025**

Date of Hearing: 13.06.2025
Date of Decision: 13.06.2025

Issue involved in this appeal relates to the legality of show-cause notice issued after the period of 5 years even though extended period has been involved.

2. I have heard submissions from both sides and perused the appeal paper book, Appellant has submitted attested true copy of the ST-3 Return for the relevant period that was filed on 23.04.2014 for which show-cause invoking extended period cannot be issued on or before 22.04.2019. In this context, it would be relevant to reproduce para 9, last sub para of the order passed by the Commissioner (Appeals) on dated 07.12.2021 it reads:

*"9. …*

*From the record, I find that the show cause notice was dated 23.04.2019, whereas the ST-3 return for the period October, 2013 to March 2014 (which is the period covered in the SCN) is filed on 23.04.2014. The period of 5 years from the relevant date ie. the date of filing the return would be 23.04.2019, and also the show cause notice is issued on 23.04.2019. Therefore, I find this claim of appellant is not legal and proper, hence I reject the same."*

3. As could be noticed from the show-cause notice the Assistant Commissioner of CGST and Central Excise had signed the same on 23.04.2019 and that was dispatched on 24.04.2019 (page 16 of the appeal paper book), photocopy of which is reproduce below:-

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v) Penalty under Section 77 (1)(d) of the Finance Act, 1994 should not be imposed on them for failure to pay the service tax electronically as prescribed under Rule 6 of Service Tax Rules, 1994.

10. They are required to produce at the time of showing cause all the evidence upon which they intend to rely in support of their defence. They are further required to indicate in their written explanation as to whether they desire to be heard in person before the case is adjudicated. If no mention is made about this in their written explanation, it will be presumed that they do not desire a personal hearing.

11. If no cause is shown by them against the action proposed to be taken within 30 days of the receipt of this notice or if they do not appear before the adjudicating authority when the case is posted for hearing, the same would be adjudicated on the basis of evidence on record without any further communication to them.

**12. This notice is issued without any prejudice to any other action that may be taken against them under the Finance Act, 1994, and the Rules made there under or under any other law for the time being in force.**

23/04/2019

(P.A. Tanna )
Assistant Commissioner
CGST & Central Excise,
Bhiwandi Commissionerate

F. No.:- V/GST/Bhiwandi/AE/ITR-TDS/08/2019-20 /608
Mumbai, the 24th April, 2019

**To,**
**M/s. Lloyd Shipping & Forwarding Agency,**
**CHS Ltd Brahmand Complex B-2/G-3 Phase-III G.B. Road Brahmand Thane**
**Thane Thane MAHARASHTRA 400607,**

Copy to :-
1.DY. Commissioner, GST & CX, Division-I, Bhiwandi Commissionerate
2.Office copy.

4. This Being facts on record, even if learned Commissioner (Appeals) contention is accepted that show-cause notice was issued also on 23.04.2019 there was a delay of one day in issuing show-cause notice which is beyond the statutory power of the proper officer to do so. Therefore, the show-cause notice issued on 24th of April 2019 is *nonest* in the eye of law and all proceeding initiated on the basis of said show-cause notice are here by quashed. Appeal is accordingly allowed with consequential relief, if any.

5. Cross objection stands disposed of as not maintainable.

(Dictated and pronounced in the open court)

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

*Prasad*