



प्रधान आयुक्त का कार्यालय,  
**Office of the Principal Commissioner,**  
 केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय  
 Central GST, Commissionerate- Ahmedabad South,  
 छठी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.  
 6<sup>th</sup> Floor, GST Bhavan, 380015



फा.सं. CGST/4-82/O&A/2014-15

DIN:-20221164WS000000C9B9

आदेश की तारीख: Date of Order: 30/11/2022  
 जारी करने की तारीख: Date of Issue: 30/11/2022

द्वारा पारित /Passed by: Shri T.G.Rathod, Additional Commissioner

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मूल आदेश सं./Order-In-Original No.: 47-49/CGST/Ahmd-South/ADC/ TGR/2022-23

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यह प्रति उस व्यक्ति )यों (को ,जिसके )जिनके (लिए यह आदेश जारी किया गया है ,उसके )उनके (व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त )अपील ,( केन्द्रीय जीएसटी ,केन्द्रीय जीएसटी भवन ,आंबावाड़ी ,अहमदाबाद- 15को प्रारूप इ.ए.-1 में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रुपए -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं.इ.ए 1-में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क )अपील ( नियमावली 2001 ,के नियम 3के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए। इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T-4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 108 of the CGST Rules 2017. It shall be accompanied with the following:

उक्त अ की प्रति।

Copy of the aforesaid order.

निर्णय की दो प्रतियाँ )उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है (अथवा उक्त आदेश की अन्य प्रति जिसपर रु -/2.00का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त)अपील (में शुल्क के 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference : कारण बताओं सूचना फा.सं. F.No. (1) STC/4-82/O&A/2014-15 dated 15.04.2015 (2) STC/4-53/O&A/ADC/D-II/15-16 dated 05.02.2016 & (3) SD-02/SCN-10/O&A/Tradex /2017-18 dated 18.04.2017 issued to M/s. Tradex Polymers Pvt Ltd., 3/C, Centre Point, Panchvati, Ellisbridge, Ahmedabad- 380007

### **Brief facts of the case :-**

M/s Tradex Polymers Pvt Ltd., 3/C, Centre Point, Panchvati, Ellisbridge, Ahmedabad-380 007 (hereinafter referred to as the "said assessee") were engaged in providing taxable services of Business Auxiliary Service, for which they were registered with Service Tax, holding registration number AAFT7279HST001. They worked as *Del credere* Agent, who fetches buyers for the goods sold by the principals i.e. M/s Reliance Industries Ltd as well M/s IPCL. They received commission from recipients of services on which service tax was paid at the appropriate rate.

2. During the course of audit conducted by officers of Service Tax Audit Branch, Ahmedabad, it was observed that the said assessee was receiving "early payment incentive", "discounting charges" and late payment charges from their clients. It appeared that the principals i.e. M/s Reliance Industries Ltd as well as M/s IPCL, evolved a credit policy wherein 14 days interest free credit, early payment incentive and cash discount against full payment of advance was given to the assessee. The said assessee contented that these "early payment incentive" and "cash discounts" were not taxable and therefore, they have not paid Service tax on said income. The contention of the assessee appeared to be incorrect in as much as the early payment incentive or cash discount was retained by the middleman i.e. service provider and the same was not passed on to the actual buyer of goods. Therefore, these early payment discount or cash discount was considered to be an extra commission/remuneration for the services provided by them under the category of Business Auxiliary Service.

3. Accordingly, the said assessee were served with the following Show Cause Notices for non-payment of Service Tax on Early Payment Incentive (EPI) and Discounting Charges.

Sl. No.	Show Cause Notice F No. and date	Issued by	Period	Amount involved (Rs)	OIO No.
1	STC/35/O&A/SCN/TP/ADC/D-III/12-13 dated 17.10.2012	Additional Commissioner, Service Tax, Ahmedabad	2011-12	20,20,287/-	05/STC/AHD/ADC(AS)/13-14 dated 07.06.2013
2	STC-23/O&A/DEM/Tradex ADC/D-III/13-14 dated 18.10.2013	Additional Commissioner, Service Tax, Ahmedabad	2011-12	11,40,252/-	23/STC/AHD/ADC(AS)/13-14 dated 06.01.2014
3	STC-43/O&A/SCN/TP/L/JC/D-III/13-14 dated 02.09.2014	Joint Commissioner, Service Tax, Ahmedabad	2012-13	40,69,722/-	AHM-SVTAX-000-ADC-000-15-16 dated 20.07.2015

4. In order to ascertain whether the said assessee continued with the same practice of not paying Service Tax on Early Payment Incentive (EPI) and Discounting Charges, they were asked to provide details for the further period from April-2013 to March-2014. The said assessee, vide letter no. Nil dated 16.02.2015, provided the requisite details.

5. On perusal of the details submitted by the said assessee, it was observed that they have continued to follow the same practice of not discharging the service tax liability on Early Payment Incentive (EPI) and Discounting Charges, during the financial year 2013-14, as well.

6. Thus, on the basis of the details provided by the said assessee, it was observed that they did not pay Service Tax amounting to Rs 56,89,335/-, on the total taxable value of Rs. 4,60,30,216/- collected by them on account of Early Payment Incentive (EPI) and Discounting Charges.

7. Up to 30.06.2012, the service rendered by the said assessee, would be classifiable under the category of "Business Auxiliary Service" falling under Clause 65 (105)(zzzb) of Finance Act, 1994, hence liable for Service Tax. The Business Auxiliary Service was brought under the net of Service Tax with effect from 01.07.2003. The Business Auxiliary Services is defined under Section 65 (19) of the Finance Act, 1994 as under:-

*Business Auxiliary Service means any service in relation to:-*

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or*
- (ii) promotion or marketing of service provided by the client; or*
- (iii) any customer care service provided on behalf of the client; or*
- (iv) procurement of goods or services, which are input for the client;*

*Explanation- For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client; or*

- (v) production or processing of goods for, or on behalf of, the client;*
- or*

- (vi) provision of service on behalf of the client; or*

*(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or*

supervision, and includes services as a commission agent, but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause (f) of Section 2 of the Central Excise Act, 1944.

*Explanation* - For the removal of doubts, it is hereby declared that for the purposes of this clause,

(a) "Commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person -

(i) deals with goods or services or documents of title to such goods or services; or

(ii) collects payment of sale price of such goods or services; or

(iii) guarantees for collection or payment for such goods or services; or

(iv) undertakes any activities relating to such sale or purchase of such goods or services;

(b) information technology service "means any service in relation to designing, developing or maintaining of computer software, or computerized data processing or system networking, or any other service primarily in relation to operation of computer systems.

Further, as per Section 65 (105) (zzb) of the Finance Act, 1994, the taxable business auxiliary service means

"any service provided or to be provided to a client, by any person in relation to business auxiliary service".

8. However, post 01/07/2012, with the introduction of negative list regime, there is no service wise classification, and the activity carried out by the said assessee falls under the purview of definition of "Service" in terms of Section 66B read with Section 66D of Finance Act, 1994, as the activities carried out are neither covered by negative list nor are exempted by any exemption notification.

9. The valuation of the taxable service is governed by the provisions of Section 67 of the Finance Act, 1994, which is reproduced below for ready reference :

"67. (1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall, -

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) *In a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;*

(iii) *in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.*

(2) *Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.*

(3) *The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.*

(4) *Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.*

*Explanation.—For the purposes of this section,—*

(a) *"consideration" includes any amount that is payable for the taxable services provided or to be provided;*

(b) *"money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travelers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;*

(c) *"gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.*

Further, the valuation of any taxable services is also governed by the provisions of Service Tax (Determination Of Value) Rules, 2006. Rule 5 of Service Tax (Determination Of Value) Rules, 2006 reads as under :

*"(1)Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.*

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-

- the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

- the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

- the recipient of service is liable to make payment to the third party;

the recipient of service authorizes the service provider to make payment on his behalf;

- the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

- the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

- the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

- the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account”.

**10.** In the present case, M/s Reliance Industries Ltd as well M/s IPCL in the guise of a well evolved credit policy wherein 14 days interest free credit is given and gave early payment incentive and cash discount against full payment of advance. The early payment incentive or cash discount is retained by the middleman i.e. service provider and the same are not passed on to the actual buyer of goods. Therefore, these early payment discount or cash discount is an extra commission/remuneration for the services provided. The late payment charges collected by service provider from buyers are also retained with them and not paid to their principals i.e. M/s Reliance Industries Ltd and M/s IPCL and therefore, it also forms their taxable value. In view of the above provisions, the amount of Rs. 4,60,30,216/- collected by them on account of Early Payment Incentive (EPI) and Discounting Charges, during the Financial Year 2013-14, would be considered as the taxable value and accordingly, would be liable to service tax at applicable rates. (Early payment incentive received Rs

1,68,86,592/- Plus amount of discounting charges received Rs 2,91,43,624/-).

**11.** As the facts and circumstances as well as the contravention of the provisions of the Finance Act, 1994 and the grounds relied upon are similar to the previous 03 (Three) show cause notices discussed in para 3 supra, Section 73(1A) of the Finance Act, 1994 was invoked for the three Show Cause Notices that were issued subsequently.

**12.** In the first Show Cause Notice to be adjudicated now, M/s Tradex Polymers Pvt Ltd., having office at 3/C, Centre Point, Panchvati, Ellisbridge, Ahmedabad- 380007 were called upon vide F. No. STC/4-82/O&A/2014-15 dated 15.04.2015 to show cause to the Joint Commissioner, Service Tax, Ahmedabad having office at Central Excise Bhavan, 1st Floor, Near Government Polytechnic, Ambawadi, Ahmedabad-380015 as to why:

(i) Service tax amounting to Rs 56,89,335/- (Rs Fifty Six lakhs Eighty Nine Thousand Three Hundred and Thirty five only) (including Education Cess & Secondary and Higher Education Cess)(as per Annexure-A to the SCN) not paid by them during the period from April-2013 to March-2014 in respect of Early Payment Incentive (EPI) and Discounting Charges for the activity defined as "Service" in terms of Section 66B read with Section 66D of Finance Act, 1994, should not be demanded and recovered from them under sub-section (1) of Section 73 of the Finance Act, 1994;

(ii) Interest as applicable on the amount of service tax liability should not be recovered from them under Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for failure to make the payment of service tax within the stipulated time period;

(iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994, as they failed to pay appropriate service tax and did not file correct service tax return under the provisions of Section 70 of the Finance Act, 1994;

Since the said assessee continued with the practice of not paying Service tax on early payment incentive (EPI) and discounting charges received by them, the following 02 (Two) Show Cause Notices were also issued in terms of Section 73(1A) of the Finance Act, 1994 during the subsequent period of 2014-15 and 2015-16.

**Second Show Cause Notice:-**

**13.** The second show cause notice was issued under Section 73(IA), covering the period from April, 2014 to March, 2015. Based

on the information provided by the Noticee, the Early Payment Incentive received is Rs 1,30,51,903/- Plus Discounting charges Rs 2,15,25,001/-, during this period.

**13.1** The Show Cause Notice F. No. STC/4-53/O&A/ADC/D-II/15-16 dated 05.02.2016, issued by the Additional Commissioner, Service Tax, Ahmedabad, proposed the following:

- i) Service tax amounting to Rs 42,73,705/- (Rs Forty Two Lakhs Seventy Three Thousand Seven Hundred and five only) (including Education Cess & Secondary and Higher Education Cess) not paid by them during the period from April-2014 to March-2015 in respect of Early Payment Incentive (EPI) and Discounting Charges in respect of activity defined under "Service" in terms of section 66B read with Section 66D of Finance Act, 1994 should not be demanded and recovered from them under Sub-Section (1) of Section 73 of the Finance Act, 1994;
- (iv) Interest as applicable on the amount of service tax liability should not be recovered from them under Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for failure to make the payment of service tax within the stipulated time period;
- (iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994, as they failed to pay appropriate service tax and did not file correct service tax return under the provisions of Section 70 of the Finance Act, 1994.

**Third Show Cause Notice:-**

**14.** The third show cause notice was issued under Section 73(IA), covering the period from April, 2015 to March, 2016. Based on the information provided by the Noticee, the Early Payment Incentive received is Rs 99,61,653/- Plus Discounting charges Rs 1,10,86,381/-, during this period.

**14.1** The Show Cause Notice F. No. SD-02/SCN-10/O&A/Tradex /2017-18 dated 18.04.2017, was issued by the Assistant Commissioner, Service Tax Division II, Ahmedabad, proposing the following:

- i) Service tax amounting to Rs 29,38,671/- (Rs Twenty Nine Lakhs Thirty Eight Thousand Six Hundred and



- Seventy One only) (including Education Cess & Secondary and Higher Education Cess) not paid by them during the period from April-2015 to March-2016 in respect of Early Payment Incentive (EPI) and Discounting Charges under "Service" in terms of Section 66B read with Section 66D of Finance Act, 1994 should not be demanded and recovered from them under sub-section (1) of Section 73 of the Finance Act, 1994;
- ii) Interest as applicable on the amount of service tax liability should not be recovered from them under Section 75 of the Finance Act, 1994;
  - (iii) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for failure to make the payment of service tax within the stipulated time period;
  - (v) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994, as they failed to pay appropriate service tax and did not file correct service tax return under the provisions of Section 70 of the Finance Act, 1994.

**Defense submissions:**

**15.** On behalf of the assessee, Shri Nirav Shah, Advocate, filed written submissions dated 08.01.2016 which are reproduced below in brief:

**15.1** "His client received early payment incentive and discounting charges on account of payments made by them to their principals as a "*del credere* agent". His client is a *del credere* agent of M/s Reliance Industries Ltd and M/s IPCL. As per the sales policy and undisputed in the SCN, both these principals allow 10 days interest free credit period to the customers. The customer also gets cash discount when he pays upfront for the supplies. However, when the sales are made under credit, customer gets 10 days time to make the payment to the principal. Now, if the customer is able to make payment in between this 10 days credit period, he is eligible for early payment incentive, as per the sales policy of the principals. Hence, the early payment incentive is nothing but cash discount offered by the principals; that in various cases, it is held that such kind of cash discount cannot be considered as a service. Further, the same can certainly not be classifiable under Business Auxiliary Service and hence the proposal requires to be quashed and set aside.

**15.2** The aforesaid issue, in assessee's own case was decided by the Hon'ble Tribunal (**Final Order No. A/2277/2011-WZB/AHD dated 21/12/2011**), which is followed by the adjudicating authority for demand for FY 2013-14, in favour of the assessee. In light of the aforesaid, the issue pertaining to early payment incentive is no more res integra and the demand is required to be dropped.

**15.3** Regarding discounting charges, it was submitted that the noticee as a *del credere* agent is required to make payment to the principals in event of failure of customer to pay the amount for the supplies made. Hence, *del credere* agent undertakes payment to the principal in the event of failure of customer. For the aforesaid, they also get higher commission than a simple commission agent who does not undertake payment but only brings customer. The discounting charges received in the balance sheet are nothing but overdue interest charged from the customer. It is also not disputed and have been noted in the procedural para at the time of audit of records. It is noted therein that discounting charges are basically late payment/overdue interest charges recovered from the buyers at the end of credit period of ten days. Hence, as per audit para itself, it has no concern with the provision of service to principal. The principal is concerned with its payment which the noticee has to make at the end of credit period of ten days. When customer does not pay, after the credit period, it is normal trade practice to charge interest for delays in payment. This cannot be considered as service by any stretch of imagination. It was therefore, submitted that the proposal to impose service tax on interest is bad in law and requires to be dropped.

**15.4** This issue is decided by the Hon'ble Supreme Court in the case of Collector Vs. Indian Rayon & Industries, reported at 1997 (91) ELT 231, wherein the apex Court had dismissed Civil Appeal filed by the department. The Tribunal in the aforesaid case, had held that interest on delayed payment or financial charges are not includible in the assessable value. The above view squarely applies in the present issue also and interest on delayed payment cannot be included in the value of services. Same view is taken by Hon'ble Rajasthan High Court in the case of M/s DCM Shriram Consolidated Ltd Vs UOI reported at 1992 (59) ELT 260. Hence, issue pertaining to interest on delayed payment is also no more res integra and decided by the Hon'ble Supreme Court also.

**15.5** It was further submitted that earlier SCNs issued on the same grounds were adjudicated and demand raised in the two Orders-in-Original were set aside by the Commissioner(Appeals). In view of the above also, the SCNs are required to be set aside. The present provisions in Service tax do not consider the above two activities as taxable.

**16.** In terms of Circular No. 1049/37/2016-CX dated 29/09/2016, Additional Commissioner is the proper Officer to adjudicate Service tax demands of Rs. 50 Lakhs and above, but below Rs. 2 Crores. Therefore, the then adjudicating authority offered them a personal hearing for all the three cases which was held on 19.05.2022 during which Shri Nirav Shah, Advocate and Shri Subhash Solanki, Authorised Signatory of M/s Tradex appeared and reiterated the earlier submissions dated 08.01.2016 and 05.01.2018. It was submitted that being *Del credere* agents, they receive two kinds of payment from the Principal, apart from the commission. One is early payment commission for making payment within credit period. Another is discounting charges. He submitted copy of Tribunal Order in their own case, wherein it was held that above payments are not for any services rendered and hence, not liable to service tax. A copy of an Order passed by the Commissioner (Appeals), relying on the Tribunal Order cited above, was also submitted.

**17.** Due to change in the adjudicating authority, a fresh personal hearing was granted to the Noticee on 11/10/2022, 14/10/2022, 01/11/2022 and 15/11/2022 in the interest of natural justice. The taxpayer vide their mail dated 11/10/2022 and 01/10/2022 sought more time for hearing due to personal reasons. However, Shri Nirav Shah, Advocate and Shri Subhash Solanki, Accountant of M/s Tradex attended the personal hearing fixed on 15/11/2022 and reiterated the submissions made in written reply dated 08/01/2016. They sought time to submit reply for two other show cause notices dated 05/02/2016 and 18/04/2017. During the course of personal hearing they stated that they are eligible for early payment incentive and cash discount, over due date as per normal trade practice and does not fall under Business Auxilliary Service. They further submitted two case law viz. M/s. Tradex Polymers (their own case) and M/s. Khanna Polymers and relied upon them. They also relied upon Commissioner Appeal's order in their favour dated 21/05/2014. They have been given further time till 18/11/2022 to submit their reply to the two show cause notices as above. Shri Nirav P Shah, Advocate on behalf of the assessee vide mail/letter dated 23<sup>rd</sup> November,2022 submitted reply/written submissions wherein it has been stated that the present case is

settled in favour of the Noticee in their own case for earlier periods and provided the details of the earlier 04 (four) SCNs and their OIO/OIA/Tribunal Order issued in the matter as under:-

Period	SCN	OIO	OIA	CESTAT Order
2003-04 to 2005-06	STC/322/demand/TP/07-08 dated 30.09.2008	STC/AC/MDNagor/Divi-I/2009-10 dated 12.03.2010	341/2010(STC)/MM/Commr.(A)/Ahd. Dated 01.10.2010	Order no.A/2277/2011-WZB/AHD dated 21.12.2011 Reported at 2014 (34) STR 416
2011-12	STC-35/O&A/SCN/TP/ADC/D-III/12-13 dated 17.10.2012	05/STC-AHD/ADC(AS)2 013-14 dated 07.06.2013	AHM-SVTAX-000-APP-042-14-15 dated 21.05.2014	A/12286/2019 dated 28.11.2019
April-12 to June-2012	STC-23/o&A/DEM/TRADEX/D-III/13-14	23/STC-AHD/ADC(AS)/2013-14	AHM-SVTAX-000-APP-00117-14-15 dated 13.08.2014	A/11976-12018/2018
July-2012 to March-2013	STC-43/O&A/SCN/TP/APL/JC/D-III/13-14	AHM-SVTAX-000-ADC-009-15-16 dated 20.07.2015	AHM-SVTAX-000-APP-00113-14-15 dated 05.10.2016	A/12537/2019 dated 20.12.2019

**17.1** It has further been submitted in the reply submitted by them that the first SCN was decided in favour of the present Noticee by the Hon'ble Tribunal, that the order of the Hon'ble Tribunal was followed by the Ld. Commissioner (Appeal) in other 3 matters, that in the 4<sup>th</sup> SCN, even the Adjudicating Authority had dropped the demand which order was confirmed by the Ld. Commissioner (Appeal).

**17.2** It has also been stated that the order of the Hon'ble Tribunal in case of present noticee was further followed in the case of Khanna Polymers Vs. CCE Noida reported at 2017 (47) STR 82 (Tri.-All) and the Copies of all orders were provided at the time of hearing and that they have attached copies of reply submitted earlier. It has therefore been stated by them that the issue is no more *res integra* and settled in Noticee's own case and hence also the demands may be dropped in the interest of justice.

**17.3** The copy of submissions dated 05/04/2016 to the show cause notice dated 05/02/2016 and submission dated 02/01/2018 to the show cause notice dated 18/04/2017 which have been attached by them vide their letter/reply dated 23<sup>rd</sup> November, 2022 reiterates the submissions already made earlier for the show cause notice dated 15/04/2015.

## **DISCUSSION AND FINDINGS:-**

**18.** I have carefully gone through the facts of this case and considered the submissions on record. I find that the issue to be decided in the present three show cause notices is whether the assessee is liable for paying service tax on early payment incentive and cash discount under the category of "Business Auxilliary Service" or otherwise. The assessee is a *del credere* agent for M/s Reliance Industries Ltd and I.P.C.L and were paying Service tax on the commission income received. There were two other streams of income received by the assessee, namely "early payment incentive" and "discounting charges". These payments were also received from their principals but no service tax was paid thereon. The Show Cause Notices propose to tax these amounts by alleging that such payments are also part of the taxable value of business auxiliary service.

**18.1** In reply to the Notices, the assessee have submitted that both these payments were received on account of payments made by them to their principals as a "*del credere* agent"; that as per the sales policy of M/s Reliance Industries Ltd and IPCL, an interest free credit period of 10 days is allowed to the customers. The customer also gets cash discount when he pays upfront for the supplies. However, when the sales are made under credit, customer gets 10 days time to make the payment to the principal. Now, if the customer is able to make payment in between this 10 days credit period, he is eligible for early payment incentive, as per the sales policy of the principals. Hence, the early payment incentive is nothing but cash discount offered by the principals.

**18.2** I find that a *del credere* agent is a selling agent who is engaged by a principal to assist in sale of goods by contacting potential buyers on behalf of the principal. He also stands as guarantor for the payment to be made by the buyer. In case payment for the goods sold is not made by the end of the free credit period allowed, the *del credere* agent has to make the payment on behalf of the customer. In the present case, the assessee has made the payment to their principal within the free credit period allowed and therefore, they have received the early payment incentive. It can be called as one kind of discount for making a speedy payment for the goods supplied. Since the payment was made by the *del credere* agent, he has received the incentive. In view of the above, I find there is no service element involved in giving early payment incentive and as such, the said income is not liable to service tax.

**18.3** On the issue of discounting charges, the assessee submitted that being a *Del credere* agent, they are required to make

payment to the principals in the event of failure of customer to pay the amount for the supplies made. Hence, *del credere* agent undertakes payment to the principal in the event of failure of customer. For the aforesaid, they also get higher commission than a simple commission agent who does not undertake payment but only brings customer. The discounting charges received in the balance sheet are nothing but the overdue interest charged from the customer.

**18.4** I find the discounting charges involve another kind of transactions, namely where the buyer of the goods does not pay within the free credit period. Since the *del credere* agent would be making the payment to the Principal by the end of the free credit period, he becomes entitled to, what is called overdue interest, which is collected from the buyer but given to the agent as payment is already made by the agent. In this case also, there is no service element involved but it is purely a commercial reason, for giving the discounting charges.

**18.5** The assessee has relied upon the case laws of M/s. Tradex Polymers Pvt Ltd Versus Commissioner of S.T., Ahmedabad reported as 2014 (34) S.T.R.416 (Tri.-Ahmd.) and M/s. Khanna Polymers Versus Commissioner of C.Excise., Noida reported as 2017 (47) S.T.R.82(Tri.-All) and submitted copies of these two case laws.

**18.6** I find merit in the contention of the assessee on the grounds that the Final Order No. A/2277/2011-WZB/AHD dated 21/12/2011 has been passed by the Hon'ble CESTAT Ahmedabad Zonal Bench, in the assessee's own case which has been reported as **2014 (34) STR 416 (Tri.-Ahmd)**, wherein it was held at para 3 of the judgement dated 21/12/2021 that

*"retaining early payment incentive is not any service rendered but a discount to the assessee. We find that the decision of this Tribunal in the case of P. Gautam & Co., has laid down the ratio that any incentive/cash discount which has been given will not be covered for liability of Service Tax under Business Auxiliary Service."*

Further the assessee has also placed reliance on the case law of M/s. Khanna Polymers Versus Commissioner of C.Excise., Noida reported as 2017 (47) S.T.R.82(Tri.-All) wherein the Tribunal vide Final Order No. ST/A/70271/2016-CU(DB) dated 30/05/2016 has agreed with the findings of the Tribunal in the case of M/s. Tradex Polymers Pvt Ltd. The relevant portion of the findings as per para 4 of the judgement dated 30/05/2016 are reproduced hereunder:

*"4. We have considered the rival submissions, we agree with the finding of this Tribunal in the case of Tradex Polymers Pvt Ltd and hold that early payment discount in this case are cash discount and received in view of early payments made to the principles and are linked to the number of days by which payment is made early and has no relation with the consideration received for rendering the service in the form of commission under the category of "Business Auxilliary Services". We, therefore, allow the appeal with consequential relief. No costs."*

**18.7** In other words, the Hon'ble CESTAT has held that early payment incentive and discount charges would not be liable to service tax.

**18.8** I find that following the above decision, the Commissioner (Appeals) passed Order-in-Appeal No. AHM-SVTAX-000-APP-042-14-15 dated 21.05.2014, wherein by relying on the Tribunal Order, the Original Order confirming the demand was set aside.

**18.9** I further find that even though the Final Order No. A/2277/2011-WZB/AHD dated 21.12.2011 of CESTAT has been accepted by the department on monetary grounds, I am bound to follow the same as there is binding precedent to follow. On the issue of binding nature of Orders passed by superior Courts or Appellate authorities, the Commissioner(Appeals) in the OIA No. AHM-SVTAX-000-APP-042-14-15 dated 21/05/2014 in assessee's own case, has quoted a decision rendered by Hon'ble High Court of Gujarat in the case of M/s Claris Life Sciences Ltd, reported at 2013 (298) ELT 45. I find it very relevant to discuss here. The relevant para is reproduced hereunder :

***"7. Having heard learned Counsel for the parties, we are of the opinion that the approach adopted by the adjudicating authority was wholly impermissible in law. At the outset, we may record that we are conscious that such order is appealable in terms of statutory appeals provided under Central Excise Act, 1944. However, we find that the adjudicating authority committed serious error in disregarding binding precedent and that there are absolutely no disputed facts. We would, therefore, not insist that the petitioners once again follow the same gamut of taking the appeal route. To revert back to the issue at hand, we may recall that the question of computation of Education Cess and Secondary and Higher Education Cess was decided finally by the Tribunal in favour of the petitioners. As of now, such decision of the Tribunal holds the field. Such decision of the Tribunal would be binding on the adjudicating authority. Even if the Department is of the opinion that the issue is not free***

*from doubt, it is not open for the adjudicating authority to ignore the binding precedent. We may notice that under the Central Excise Act, 1944 and the Customs Act, the Department has the right to appeal even against the order-in-original passed by the adjudicating authority. This is in contrast to the provisions contained in the Income-tax Act, 1961 where against an order passed by the assessing officer, the Department has no right to appeal. Only remedy available to the Revenue is by way of a revision against the order of the assessing officer that too only if it is found that such order is erroneous and prejudicial to the interest of the Revenue. Such rigors however, are not applicable insofar as the Department's right to appeal against the order of the adjudicating authority is concerned under the Central Excise Act, 1944.*

*8. The adjudicating officer acts as a quasi judicial authority. He is bound by the law of precedent and binding effect of the order passed by the higher authority or Tribunal of superior jurisdiction. If his order is thought to be erroneous by the Department, the Department can as well prefer appeal in terms of the statutory provisions contained in the Central Excise Act, 1944”.*

**(Emphasis supplied)**

**18.10** The Hon'ble Tribunal vide Final Order No. A/2277/2011-WZB/AHD dated 21.12.2011 has conclusively held in the own case of assessee that “any incentive/cash discount which has been given will not be covered for liability of Service Tax under Business Auxiliary Service”. I find that the two higher appellate authorities i.e. Commissioner (Appeals) and CESTAT, Ahmedabad in assessee's own case and CESTAT, Allahabad in the matter of M/s. Khanna Polymers Versus Commissioner of C.Ex., Nodia in Final Order No. ST/A/70271/2106-CU(DB) dated 30/05/2016 has also relied on the same decision and decided the issue in favour of the assessee and held that early payment incentive and cash discount is not liable to Service tax. By respectfully following the said decisions, I find that the demand raised in the three Show Cause Notices is required to be vacated.

**18.11** On the binding nature of the orders passed by the appellate authorities, I am bound to follow the precedent set by the appellate authorities in view of the following observations passed in the following cases :

(a) Tradex Polymers Pvt Ltd Versus Commissioner of S.T. Ahmedabad wherein CESTAT, Ahmedabad at para 3 of the final order No. A/2277/2011-WZB/AHD dated 21/12/2021 has held that



***“retaining early payment incentive is not any service rendered but a discount to the assessee. We find that the decision of this Tribunal in the case of P. Gautam & Co., has laid down the ratio that any incentive/cash discount which has been given will not be covered for liability of Service Tax under Business Auxiliary Service.”***

(b) M/s. Khanna Polymers Versus Commissioner of C.Excise., Noida wherein CESTAT, Allahabad vide Final Order No. ST/A/70271/2016-CU(DB) dated 30/05/2016 has agreed with the findings of the Tribunal in the case of M/s. Tradex Polymers Pvt Ltd referred to at (a) above. The relevant portion of the findings as per para 4 of the judgement dated 30/05/2016 are reproduced hereunder:

***“4. We have considered the rival submissions, we agree with the finding of this Tribunal in the case of Tradex Polymers Pvt Ltd and hold that early payment discount in this case are cash discount and received in view of early payments made to the principles and are linked to the number of days by which payment is made early and has no relation with the consideration received for rendering the service in the form of commission under the category of “Business Auxilliary Services”. We, therefore, allow the appeal with consequential relief. No costs.”***

(c) Commissioner (Appeals) in the OIA No. AHM-SVTAX-000-APP-042-14-15 dated 21/05/2014 in assessee's own case at para-8 of the order has quoted as under:

***“8. On going through the impugned order, I find that the appellant submitted the said Order of the Hon'ble CESTAT before the adjudicating authority. However, the adjudicating authority at para 19 of the impugned order rejected the reliance placed by the appellant on the grounds that the said Order of the Hon'ble CESTAT was accepted by the Department on the grounds of monetary limit. The adjudicating authority has erred in arriving at such a conclusion. Even if the Department had accepted the Order on monetary limit, the adjudicating authority was duty bound to follow the Order passed by the Hon'ble CESTAT. The review mechanism is available for the Department, if it is found that the order passed by the adjudicating authority is not acceptable on merits, it is not open for the adjudicating authority to ignore the Orders passed by the higher appellate forums. My view are supported by the decision rendered by the Hon'ble***

***High Court of Gujarat in the case of Claris Lifesciences Ltd reported in 2013(298) ELT 45.”***

**18.12** I further rely on the Honourable Supreme Court's decision rendered in Civil Appeal Nos.8673-8674 of 2013 in the matter of Total Environment Building Systems Pvt Ltd Versus Deputy Commissioner of Commercial Taxes reported as 2022(63) G.S.T.L. 257(S.C.) wherein the Hon'ble Supreme Court has observed at para 10.6 and 10.7 has observed as under :

***“10.6 In the case of Dr. Shah Faesal and Ors. v. Union of India and Anr., (2020) 4 SCC 1, the Constitution Bench of this Court had occasion to consider the principle of stare decisis and the law of precedents/reconsideration/review of earlier decision. After considering the decision of this Court in the case of Chandra Prakash and Ors. v. State of U.P. and Anr., (2002) 4 SCC 234 (paragraph 22), it is observed and held by this Court that doctrines of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. When a decision is rendered by this Court, it acquires a reliance interest and the society organises itself based on the present legal order. By observing and holding so, it is observed in paragraphs 17 to 19 as under :-***

***“17. This Court's jurisprudence has shown that usually the courts do not overrule the established precedents unless there is a social, constitutional or economic change mandating such a development. The numbers themselves speak of restraint and the value this Court attaches to the doctrine of precedent. This Court regards the use of precedent as indispensable bedrock upon which this Court renders justice. The use of such precedents, to some extent, creates certainty upon which individuals can rely and conduct their affairs. It also creates a basis for the development of the rule of law. As the Chief Justice of the Supreme Court of the United States, John Roberts observed during his Senate confirmation hearing, “It is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and even-handedness”. [Congressional Record = Senate, Vol. 156, Pt. 7, 10018 (7-6-2010).]***

***18. Doctrines of precedents and stare decisis are the core values of our legal system. They form the tools***

*which further the goal of certainty, stability and continuity in our legal system. Arguably, Judges owe a duty to the concept of certainty of law, therefore they often justify their holdings by relying upon the established tenets of law.*

*19. When a decision is rendered by this Court, it acquires a reliance interest and the society organises itself based on the present legal order. When substantial judicial time and resources are spent on references, the same should not be made in a casual or cavalier manner. It is only when a proposition is contradicted by a subsequent judgment of the same Bench, or it is shown that the proposition laid down has become unworkable or contrary to a well-established principle, that a reference will be made to a larger Bench. In this context, a five-Judge Bench of this Court in Chandra Prakash v. State of U.P. [(2002) 4 SCC 234], after considering series of earlier rulings reiterated that : (SCC p. 245, para 22)*

*“22. ... The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court.”*

***(Emphasis supplied)”***

**10.7** It is observed and held in the aforesaid decision that even the rule of overruling the judgments should be applied with great caution, and only when the previous decision is manifestly wrong, as, for instance, if it proceeded upon a mistaken assumption of the continuance of a repealed or expired Statute, or is contrary to a decision of another Court which the Court is bound to follow; not, upon a mere suggestion, that some or all of the members of the Court might later arrive at a different conclusion if the matter was *res integra*. It is further observed that otherwise there would be great danger of want of continuity in the interpretation of law. It is further observed and held that the decisions rendered by a Coordinate Bench is binding on the subsequent Benches of equal or lesser strength and a Coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench unless it is shown to be *per incuriam*.”

19. In view of the above discussions, findings and binding precedent of the higher appellate forums, I find it appropriate to vacate the proceedings initiated against the assessee under the three Show Cause Notices and accordingly I pass the following Order:

**ORDER**

I hereby vacate the proceedings initiated under the three Show Cause Notices listed below, against M/s Tradex Polymers Pvt. Ltd, 3/C, Centre Point, Panchvati, Ellisbridge, Ahmedabad.

1. F. No. STC/4-82/O&A/2014-15 dated 15.04.2015, issued by the Commissioner, Service Tax, Ahmedabad.
2. F. No. STC/4-53/O&A/ADC/D-II/15-16 dated 05.02.2016, issued by the Additional Commissioner, Service Tax, Ahmedabad.
3. F. No. SD-02/SCN-10/O&A/Tradex/2017-18 dated 18.04.2017, issued by the Assistant Commissioner, Service Tax Division II, Ahmedabad.

  
(T G Rathod)

Additional Commissioner  
Central GST, Ahmedabad South.

F.No. STC/4-82/O&A/2014-15

Date : 30/11/2022

**DIN:-20221164WS000000C9B9**

**By Registered Post AD/Speed Post/Email**

**To,  
M/s.Tradex Polymers Pvt. Ltd.,  
3/C, Centre Point, Panchvati, Ellisbridge,  
Ahmedabad-380007.**

**Copy to:-**

- ✓(1) The Commissioner, Central GST, Ahmedabad South.
- (2) The Deputy / Assistant Commissioner, CGST Division II, Ahmedabad South.
- (3) The Superintendent, CGST Range-V, Division-II, Ahmedabad.
- (4) The Assistant Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
- ✓(5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
- (6) Guard File.