FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
CUSTOMS APPEAL BRANCH

Dated: 20/06/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70271/2016-CU[DB] dated 30/05/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/797/2009	**KHANNA POLYMERS** C-36, SECTOR 63, NOIDA NOIDA,U.P. 201301
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-NOIDA C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3Advocate(s) / Consultant(s):

R. KRISHNAN
297-E, POCKET-II, PHASE-I,
MAYUR VIHAR, DELHI
110091

4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.ST/797/2009(DB)

(Arising out of Order-in-Appeal No. 193/CE/APPL/NOIDA/09 dated 29/07/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Khanna Polymers — **Appellant**

Vs.

Commissioner of Central Excise, Noida — **Respondent**

Appearance:

Shri R. Krishnan, Advocate — for Appellant
Shri Pawan Kumar Singh, Supdt (AR), — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 30/05/2016
Date of Decision : 30/05/2016

Final ORDER NO....70271/2016....

Per: Anil G. Shakkarwar

Present appeal is against Order-in-Appeal No. 193/CE/APPL/NOIDA/09 dated 29/07/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The brief facts of the case are that the appellants are selling agents for M/s Reliance Industries Ltd. and M/s IPCL. They receive commission. They are paying service Tax on the amount of commission received with effect from 09.07.2004. In addition they were receiving amounts as incentive and early payment incentive. The department issued a show cause notice dated 21.11.07 demanding Service Tax of Rs.7,32,611/- on early payment incentive received by them. The demand was for the period from 01.07.2003 to 31.01.2007. The show cause notice was adjudicated through Order-in-Original dated 27.11.2008 through which demand was confirmed and penalty was imposed. Appellant preferred appeal before Commissioner (Appeals) who passed Order-in-Appeal No. 193/CE/APPL/NOIDA/09 dated 29.07.2009, holding that with effect from 16.06.2005 the amount received under the head early payment incentive is classifiable under "Business Auxiliary Service" and directed the ~~revenue~~ original authority for re-quantification of demand. He also modified the penalty imposed by

reducing it to be equaled to requantified demand. Against the said Order-in-Appeal the appellant is before us.

3. Heard the learned counsel who has stated that the appellant is "Del-Credere" agent as per the agreement. The appellant is responsible for both sale of the goods and recovery of the payment. For sale of the goods appellant received commission, paid Service Tax on such commission and there is no dispute about the same. The terms of payment are that the payment should be made within 14 days by the purchaser and if the purchaser makes early payment the purchaser gets cash incentive at the rate of Rs. 35/- per Metric ton per day. The assessee made payment to Reliance Industries Ltd. from his own funds even before receipt of payment from purchaser and received cash incentive from Reliance Industries Ltd. The department contends that the cash incentive is covered by the "Business Auxiliary Services" and attracts Service Tax. He further contended that it was held in the case of Tradex Polymers Pvt. Ltd. Vs Commissioner of Service Tax, Ahmedabad 2014 (34) S.T.R.416 (Tri.-Ahmd.) incentives like cash discounts cannot be treated as consideration for providing taxable service. Learned Departmental Representative has reiterated contents of the impugned order.

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 Auxiliary Services". We, therefore, allow the appeal with consequential relief. No Costs.

(Dictated in Court)

Sd/- {Anil G. Shakkarwar}
Member (Technical)

Sd/- {Anil Choudhary}
Member (Judicial)

akp

प्रमाणित प्रति / Certified True Copy
8.7.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001