Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad
REGIONAL BENCH-COURT NO. 1

Service Tax Appeal No. 10768 of 2020-DB

(Arising out of OIA-CCESA-SRT-APPEAL-PS-053-2020-21 Dated- 07/08/2020 passed by Commissioner (Appeals), CGST & Central Excise -Surat)

INOX AIR PRODUCTS PVT LTD **......Appellant**
Air Separation Unit,
Premises of Essar Steel Limited,
27th K.M. Surat Hazira Road,
Surat, Gujarat

VERSUS

Commissioner of Central Goods & Service Tax
& Central Excise- Surat **......Respondent**
New Central Excise Building,
Opp. Gandhi Baug, Chowk Bazar,
Surat, Gujarat -395001

APPEARANCE:
Shri Amit Laddha, Advocate for the Appellant
Shri Mihir G Rayka, Additional Commissioner (AR) for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10741/2026

DATE OF HEARING: 08.09.2026
DATE OF DECISION: 08.09.2026

SOMESH ARORA

In the instant case, the appellants received late payment charges in the nature of interest in respect of supply of industrial gases made to their clients. The Department was of the view that such charges amounted to provision of a declared service as per Section 66E of the Finance Act, 1994.

2. At this stage, the learned Advocate for the appellant seeks to rely upon the decision of this Tribunal in the case of Commissioner of Central GST and Central Excise, Vadodara-II Vs. Lanxess India Pvt. Ltd. vide final order No. 10143/2026 dated 26.02.2026. The learned Advocate draws our attention to paragraphs 14.2 and 14.3 of the findings, which are reproduced below:-

*"**14.2** From the above definition, it is clear that levy of service tax which is a levy on provision of service can arise only from an activity which is carried out by a person for another for consideration. If this is so, then for being a "service" there has to be quid pro quo by the service seeker to the service provider for the service*

provided. In the second limb of the term 'service' as defined above, following has been provided after the coma (,) "and includes the declared service". Thus, the inclusion clause seems to be expanding the scope of service by including declared service within its domain. We are of the view that the service thus can include any activity carried by a person for another for consideration and can also include a "declared service". From the first limb of the definition as has been phrased by the legislature, it is clear that expression "for consideration" qualifies even the declared service and therefore, consideration must exist even if the service falls within the extended scope i.e. "declared service" defined in Section 66E(e)(ibid). From the above analysis, it becomes clear that "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" equally requires consideration. The term "consideration" has not been defined in the Finance Act, 1994 and therefore, for its meaning definition elsewhere can be looked for. We find that Indian Contract Act, 1872 which is of vintage of more than 150 years, is well established in most commonwealth jurisdictions and had its genesis in the common law. Therefore, it is safe to seek and rely on the definition of consideration as is available in Section 2(d) of the Indian Contract Act, 1872 which reads as follows:-

> *"**Section 2(d):** When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise"*

14.3 *It is thus clear that to be an "act" for valid consideration under the contract law, the consideration should have moved firstly at the desire of the promisor and then from the promisee side, some act or abstinence should be done and it is only such act or abstinence or promise which is called "consideration" for the promise. It is thus clear that "damages" including "liquidated damages" are not done at the desire of the promisor, but normally are outcomes of accidental acts or undesired actions not done deliberately, which lead to a situation where damages become available as remedy to the party, which has suffered any loss due to such undesired action on the part of second party. Therefore, damages are a consequence of breach and not part of consideration for promise. The breach in turn is relatable to an inactivity or such activity, which was not envisaged in the due course of performance of the contract, but is a result of some supervening developments. The basis of various judgments quoted by the respondent which treat breach and consequent damages as not being "consideration" holds good and is the test for determining as to whether there is element of consideration or element of service or consequently liability of service tax, in such situations. We, therefore, first of all pronounce that damages or liquidated damaged as well as penalties even if they are provided for in the contract but are consequence of an undesired act or an unanticipated situation, cannot be considered as "service" because of lack of element of consideration which is essential both for "service" as well as "declared service". We, therefore, are not at variance with all the case laws* *quoted above, by the respondent, which hold as ratio that damages and liquidated damages arising out of breach of contract cannot be considered as part of service, as a general proposition.”*

3. The learned AR when confronted with the aforesaid decision of this Bench, he fairly agreed with above and reiterated the findings of the lower authority.

4. In the aforesaid decision, it has been clearly held that payments in the nature of damages, even if described as interest, would not be covered under the category of declared services. Therefore, the issue is no longer res integra. Following the aforesaid decision, the appeal is liable to be allowed.

5. Accordingly, impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha