Rachit Agarwal
Chartered Accountant, Kolkata
Email: rachitagarwal1@gmail.com

DISCOUNT RECEIVED- ITC REVERSAL?

As a matter of Trade Policy, the suppliers allows the discounts on the goods supplied. Discounts may in nature of

1. Turnover Discount
2. Volume Discount based on Quantity
3. Value Discounts
4. Bonus
5. Incentives
6. Commission

All the above terminology falls within the ambit of discount provided the supplier and recipient has acted on Principal to Principal basis.

Commissioner of Service Tax vs Jaybharat Automobiles Ltd [2016 (41) S.T.R. 311 (Tri. - Mumbai)]- The relationship between the appellant and the dealer is on a principal to principal basis. Only because some incentives/discounts are received by the appellant under various schemes of the manufacturer cannot lead to the conclusion that the incentive is received for promotion and marketing of goods. It is not material under what head the incentives are shown in the Ledgers, what is relevant is the nature of the transaction which is of sale. All manufacturers provide discount schemes to dealers. Such transactions cannot fall under the service category of Business Auxiliary Service when it is a normal market practice to offer discounts/institutions to the dealers.

As per Section 15 the tax is to be charged on the Transaction Value considering the supplier and recipient not related and price is the sole consideration of supply. Pursuant to Section 15(3)

(3) The value of the supply shall not include any discount which is given —

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if —

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

All such discounts are linked to the supply of the goods made by the supplier to the recipient. Discounts may be allowed by way of

a. Discount on the Invoice Itself- Deductible from Value of Supply
b. Discount after the supply for which there is prior agreement before or at the time supply- Deductible from Value of Supply
c. Discounts after the supply for which there is no prior agreement before the supply- Non Deductible from the value of the supply

When the discounts are given on the invoice or discounts is given by way of Credit Notes for which there is a prior agreement, reversal of the input tax is done on the basis of invoice and credit note.

With respect to the discounts for which there is no prior agreement, the supplier issues the credit notes without giving any effect of GST popularly known as Financial Credit Notes.

Revenue is sometime of the view that the recipient is required to reverse the input tax credit based on credit notes being in nature of Financial Credit Notes on the basis that

a. Credit of tax is to be allowed on the proportionate purchase after discount.
b. Goods have been sold at the lower rate than that of purchase after considering discount.
c. Any discount being received after completion of the sale transaction would have the effect of altering the sale price
d. reverse excess credit equivalent to differential duty calculated on discount amount
e. To the extent of discount received, consideration remains unpaid.

In all the cases above, there is no requirement of reversal of credit of input tax subject to condition that

1. The supplier has made the payment of the tax based on the invoice without any deductions. In case where the supplier has issued the credit note after the issue of invoice without effect of tax and the recipient takes the credit on the basis of the invoice, there is no loss of revenue.

2. There is no condition prescribed in the statute for the reversal of the credit if goods are sold at a price less than purchase price.

Circular No. 877/15/2008-CX., dated 17-11-2008

Whether proportionate credit should be reversed in cases where a manufacturer avails credit of the amount of duty paid by supplier as reflected in the excise invoice, but subsequently the supplier allows some trade discount or reduces the price, without reducing the duty paid by him?

Entire amount of duty paid by the manufacturer, as shown in the invoice would be available as credit irrespective of the fact that subseuent to clearance of the goods, the price is reduced by way of discout or otherwise. However, if the duty paid is also reduced, along with the reduction in price, the reduced excise duty would only be available as credit. It may however be confirmed that the supplier, who has paid duty, has not filed/claimed the refund on account of reduction in price

Circular No. 122/3/2010-S.T., dated 30-4-2010

Whether the receiver of input service can take credit only after the full value that is indicated in the invoice, bill or challan raised by the service provider, and also the service tax payable thereon, has been paid. It has been represented that in many cases, after the invoice is issued by the service provider, the service receiver does not make the full payment of the invoiced amount on account of discount agreed upon after issuance of invoice; or deducts certain

amount due to unsatisfactory service; or withholds some amount as security to be held during contract period.?

Substantive law i.e. Section 67 of the Finance Act, 1994 treats such book adjustments etc., as deemed payment, there is no reason for denying such extended meaning to the word 'payment' for availment of credit. The form of payment is not indicated in the same and the rule does not place restriction on payment through debit in the books of accounts.

Receiver of service reduces the amount mentioned in the invoice/bill/challan and makes discounted payment. The mere fact that finally settled amount is less than the amount shown in the invoice does not alter the fact that service charges have been paid and thus the service receiver is entitled to take credit provided he has also paid the amount of service tax. The credit taken would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would also be altered accordingly.

Judicial Pronouncement

High Court of Rajasthan in case of Commercial Tax Officer vs Jyoti Electronics [[2015] 57 taxmann.com 381 (Rajasthan)]- Respondent-assessee is a dealer of electronic items, was granted trade discount by the manufacturer/purchaser. Revenue contended that the assessee wrongly claimed Input Tax Credit and sold the goods to the consumers even lower than bill/invoice.

Tax Board, after appreciation of evidence and factual finding, has come to the conclusion that the assessee sold goods to the ultimate consumers on discounted amount and it was none of the business of the Revenue to interfere in the affairs of the assessee. Even if the assessee sells goods at a loss at least revenue should not have grudge or concern. It is also not debarred under the sales tax law and/or VAT law to sell the goods below the invoice value. Once a whole seller has issued an invoice, then Input Tax Credit is allowable as per VAT invoice alone and the same requires to be allowed to the assessee. *CTO* v. *Narendra Kumar Govind Prasad* in SB Sales Tax Revision Petition No.65/2014 vide order dt.19/01/2015, has held that the sales tax law does not debar if the assessee chooses to sell the goods keeping in view the prospective discount or rebate which may be received by the assessee and in passing the same to the consumer on account of the business expediency or otherwise. I do not find any infirmity or perversity in the order impugned so as to call for interference of this Court.

Commissioner Of C. EX., SURAT *Versus* Trinetra Texturisers Pvt. Ltd. [2004 (166) E.L.T. 384 (Tri. - Mumbai)]- Respondents had taken Modvat credit on the basis of duty paying documents received from their suppliers. Subsequently, the suppliers had issued credit notes in favour of the respondents. Departmental authorities have coerced the respondents to debit the input credit amount equivalent to the duty reduction consequent to value reduction on the inputs, which occurred consequent to such credit notes. The respondents reverse the corresponding amounts, as directed.The respondents *suo moto* took credit of the reversed amount. Issue involved is whether by issue of credit note, assessable value gets scale down and corresponding input tax also get scaled down. Held the entire exercise at the end of the purchaser factory for cutting down the credit, was without the authority of law. The illegal and coercive reversal of credit on one hand, at the same time claiming that the respondents lack the authority to *suo moto* claim back the said credit on the other hand, tantamounts to adding insult to injury. Held that the credit taken was only to restore the actual credit available on the basis of

duty paying documents and there was no effort to take credit in excess of the credit mentioned in the duty paying documents

Brown Kraft Inds Ltd Versus Commissioner Of Central Excise, Thane-Ii [2007 (212) E.L.T. 369 (Tri. - Mumbai)]- In certain cases, trade discount is conditional, example it may be related to the quantity purchased/dispatched, the terms of payment or the volume of sale/purchase to be decided at the end of a specified period. Such discounts are given on the price inclusive of duty and taxes, without affecting the assessable value or duty paid. The discount was given after payment of duty, without reducing the assessable value or claiming any refund by the assessee. Held There is no loss to the revenue as far as the payment of duty is concerned by the assessee i.e. supplier of the goods on the proper correct assessable value. Duty is paid on the basis of regular practice which is as per trade practice or on mutual agreement and the trade discounts/cash discounts and other discount are the normal practice, which cannot be quashed by the department as long as they receive the correct quantum of duty, on correct assessable value. Department cannot direct the appellant to reverse the credit or to disallow the credit as the Appellants had paid the duty and taken credit which is equivalent to duty shown in the invoice issued by the supplier.

If there is a short payment of duty or refund claimed by the assessee supplier or reduction of sale price of the goods, there is some meaning in the action of the department to demand the appellants to reduce or reverse the credit equal to short payment of duty or refund claim.

R.K. Distributors Versus Commissioner Of Commercial Tax, U.P. [2019 (20) G.S.T.L. 333 (All.)]- Assessee purchased SIM cards of value Rs. 3,57,379 was liable to pay tax Rs. 17,868.95. Tata Teleservices Ltd., Lucknow had charged tax @ 5% on the total invoice amount including the discount availed by the assessee on such purchase. The amount of discount being Rs. 17,99,385/-, the total sale price on which the tax @ 5% was charged by that seller came to Rs. 21,56,764/-. Thus, the assessee had been charged and he had paid tax of Rs. 1,07,838.41/. Assessee sold goods giving rise to a sale turnover of Rs. 4,83,815. In view of the fact that against 5% tax payable on the sale turnover of Rs. 4,83,815/- being Rs. 17,868.95/-, the assessee had claimed I.T.C. of Rs. 1,07,838.41/-, resulting in refundable amount to the assessee. The amount of Rs. 1,07,838.41/- represents 30% tax on the goods purchased by the assessee. The language of Section 13(1)(a) [table entry 1(1)] read with Section 2(p) of the Act, is sufficiently clear and provides that the input tax credit would be referable to the entire amount of tax i.e. the aggregate amount of tax paid or payable, in respect of the purchase of goods. The reasoning offered by the authorities based solely on the excess realization of tax made by the seller cannot be sustained

Merely because the selling dealer may have acted with abundant caution in realizing the higher amount to avoid any litigation with the State authorities and in absence of any allegation of the assessee had passed on the liability of higher tax paid, the question of law raised in the present case is answered in favour of the assessee and against the revenue

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Chartered Accountant, Kolkata
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IF SPECIFIC PROVISION FOR THE REVERSAL OF ITC ON GOODS SOLD AT PRICE LESS THAN PURCHASE PRICE

On August 19, 2010, By the Tamil Nadu Value Added Tax (Second Amendment) Act 2010, an amendment was inserted by way of Section 19 (20) in the TNVAT Act to provide for reversal of the amount of ITC for the goods over and above the output tax in those cases where a registered dealer has sold the goods at a price less than the price of the goods purchased by him "Section 19(20) Notwithstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed."

10(5) inserted in the DVAT Act with effect from 1st April 2010. As per 10 [(5) Where the goods which have been purchased by a dealer are sold at a price lower than the price at which it was purchased by the dealer, the tax credit on such purchases shall be reduced proportionately in the tax period during which the goods are sold.

If any such condition exist, then the recipient is bound to reverse the credit as the input tax credit is not a right but concession.

SLP filed by Revenue was dismissed by Supreme Court of India. Delhi High Court in case of Challenger Computer Ltd vs Commissioner of Trade Taxes, Delhi [2015] 63 taxmann.com 120 (Delhi). 10(5) inserted in the DVAT Act with effect from 1st April 2010 As per Section 10 [(5) Where the goods which have been purchased by a dealer are sold at a price lower than the price at which it was purchased by the dealer, the tax credit on such purchases shall be reduced proportionately in the tax period during which the goods are sold. Revenue submitted that it was incumbent on assessee to claim ITC only to proportionate extent after accounting of discount received from selling dealer and, consequently, assessee had to adjust input tax and reverse ITC claimed by it against discount received from selling dealer - High Court held that introduction of section 10(5) did not alter scheme of ITC in any manner; only effect of said section would be that ITC available to a purchasing dealer would not exceed amount of tax payable on its sales - Therefore, assessee was not required to reverse ITC claimed on purchases made by it. Section 10 (5) brings about a change which is substantive and not procedural. It is a change that adversely affects the substantive rights of the buying dealer. There cannot, therefore, be a presumption of retrospectivity as far as the said provision is concerned.

Jayam & Co. vs Assistant Commissioner [2018 (19) G.S.T.L. 3 (S.C.)]- It so happened that after the original tax invoice and availing ITC, the vendor had given discount and purchase credit note was issued for a lesser price. The dealer took into account the price it paid to M/s. LG Electronics after adjusting the discount that was subsequently given to the dealer to arrive at net cost and adding VAT which was limited to the vendors by the dealer, the goods were re-sold at a lesser price. On August 19, 2010, By the Tamil Nadu Value Added Tax (Second Amendment) Act 2010, an amendment was inserted by way of Section 19 (20) in the TNVAT Act to provide for reversal of the amount of ITC for the goods over and above the output tax in those cases where a registered dealer has sold the goods at a price less than the price of the goods purchased by him. Held such a provision, therefore, cannot have retrospective effect, more so, when vested right had accrued in favour of these dealers in respect of purchases and sales made between January 1, 2007 to August 19, 2010

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DISCOUNTS GIVEN WITH OBLIGATION TO PASS ON THE DEALERS

Further certain discounts are given with obligation to pass on the dealers and other times there is no such obligation to pass the discounts.

As per Section 15(2)(b) Value of Supply shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

Hence if the discount is given with an obligation to pass to the other person, then such discounts would not be allowed as deduction from the transaction value.

In an application filed before AAR under GST, Kerala by Santosh Distributor reported in 2020 (32) G.S.T.L 105. Applicant is authorized distributor of M/s Castrol India Ltd. Castrol India managing entire marketing activities of their products. Billing is done by the applicant using M/s Castrol India Billing Software. Invoice issued by the applicant based on various rate scheme pre-fixed by M/s Castrol India. Invoice is generated after deducting discount as per pre fixed scheme. Such Discounts are being reimbursed by M/s Castrol India by financial credit notes. Distributor bound to supply products as per the Invoice Value. Held additional discount reimbursed by the suppliers of goods to the distributor is liable to be added to the consideration payable by the customer to the distributor to arrive at the value of supply u/s 15 of CGST Act, 2017

NO REVERSAL OF ITC – COSIDERATION PAID BY WAY OF BOOK ADJUSTMENT

As per Section 16(2) read with Rule 37, the credit of the input tax is to be reversed if the consideration for the value of the inward supply is not paid within 180 days from the date of invoice. The reverse amount can be reclaimed upon payment of the consideration amount. Section 2(31) of CGST Act, 2017 gives the inclusive meaning of the term consideration. Hence the meaning of consideration is wide enough to include the payment by book adjustment which is also upheld by Circular No. 122/3/2010-S.T., dated 30-4-2010

In an appeal filed before ***Appellate AAR by Sanghvi Movers Limited [2020 (32) G.S.T.L 586]-*** AAR has denied the Input Tax Credit to the applicant on contention of non-payment of consideration to Head Office for services received from HO by the applicant being the Branch Office. Held ITC is not deniable as consideration being the value of the Tax Invoice stands paid to HO either directly by customer or by setting of same between HO and appellant in terms of accepting accounting principles.

Similar view was considered in case of Appeal filed before Appellate Authority of Advance Ruling by MRF Ltd [2019 (27) G.S.T.L. 578 (App. A.A.R. – GST)]

In an application filed before AAR under GST, West Bengal by Senco Gold Ltd. [2019 (24) G.S.T.L. 688 (A.A.R. - GST)]- Consideration, as defined in GST law, is so wide that no form of payment is excluded - Accordingly, consideration paid by way of setting off book debt is proper payment - Objections raised by Revenue have no relevance - ITC admissible, subject to fulfilment of other conditions - Section 16 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017

The above Article is based on the Personal Understanding for Educational Purpose