TAX WIRE™
WIRED TO CONNECT
TAX ALERT FROM SPS LEGAL

Year: 2021-22 **ISSUE: 06** **May 28, 2021**

Can the post-supply reduction in price impact the ITC claim?

Input Tax Credit' ('ITC') is the 'soul' of the 'Goods and Services Tax Act' ('GST'), an Indirect Tax policy. The mechanism of ITC plays a significant role in mitigating the adverse impact of 'Tax on tax' by enabling the taxpayers to pay the tax only on 'Value Addition'.

In terms of Section 16 of the **CGST Act, 2017**, a registered person is entitled to take the credit of the 'Input Tax' charged on the input or input service or both used or intended to be used by him in the course or furtherance of business. No doubt, the benefit of ITC is subject to the prescribed conditions and restrictions. A registered taxpayer procures the taxable input or input service from a supplier under the cover of the tax invoice that contains the prescribed details like value of supply, the applicable rate of tax and the total amount of tax charged on the supply, amongst other details. The recipient taxpayer claims the ITC on the basis of such details declared in the tax invoice by the supplier.

The question that arises here is that in case a supplier, after making the supply of the goods or service under the cover of tax invoice, reduces the price of the supply due to post-supply discount or for any other reason and extends the benefit of price reduction to his buyer, will it require the buyer to forgo the proportionate ITC and reverse the same?

A post-supply reduction in price as a result of the negotiation and agreement reached between the supplier and the buyer is a common occurrence in the business relations. However, while making the 'supply', the supplier would have charged the tax on the basis of the original price of the 'supply' and declared the same in the tax invoice. The recipient taxpayer would also have claimed the ITC against such tax charged in the tax invoice by the supplier. Now, if a supplier, in respect of such supply, extends the benefit of price reduction due to discount or any other reason to the buyer then will it require the proportionate reversal of ITC by the recipient taxpayer?

Let us consider this frequently arising and troublesome issue, first, in light of the relevant statutory provisions. Section 15 of the **CGST Act, 2017** contains the provisions relating to the determination of 'value of taxable supply'. As per Section 15(1), the price charged by the supplier for the supply made by him and which is paid or payable by the buyer constitutes the 'transaction value' where the price is the sole consideration for the supply and dealing is between two unrelated parties. The 'value' so determined form the basis for the computation of the tax payable on the supply. Against the amount of tax (input tax)so ascertained as payable and charged by the supplier in the tax invoice, the recipient

SPS LEGAL™
EXPERIENCE | DEDICATION | INTEGRITY

MUMBAI CHAMBER
119/3, Maskati Mahal, Lohar Chawl
Mumbai 400 002
T: +91 22 2200 5096 - 2200 5087

RAJKOT CHAMBER
201, Trade Centre,
Sardarnagar Main Road, Rajkot 360 002
T: +91 281 246 3757

interact@spslegal.co.in
shaileshpsheth@gmail.com

taxpayer can claim the benefit of ITC in accordance with law. However, there is neither any statutory provision nor any legal obligation for the recipient taxpayer to reverse the proportionate ITC on account of the post-supply reduction in price of this supply effected by the supplier. In case, a supplier offers the discount in the price post-supply and claims the refund of the tax to the extent of such discount, it is then only that the recipient taxpayer will be required to reverse the proportionate ITC in terms of Section 15(3)(b) of the Act but otherwise, is not legally obliged to reverse the proportionate ITC merely on account of the post-supply reduction in price.

As a matter of fact, the legal position as prevalent during the erstwhile Central Excise and Service Tax regime on this issue was not really different. It will, therefore be advantageous to have a look at a few judgements of the Appellate Tribunal on this issue and which have been rendered in the context of the erstwhile tax regime.

As early as in 1996, in the case of **Kerala State Electronic Corporation Ltd. vs. Collector – 1996 (84) ELT 44 (Tribunal),** the Appellate Tribunal had held that a buyer is entitled to claim the Modvat Credit of the duty paid as reflected in the duty paying documents. In this case, the department had sought to deny the benefit of full Modvat Credit of the duty actually paid by the Company on the goods imported by it and restrict the same to the duty 'payable' in terms of the relevant exemption notification. However, deciding in favour of the Appellant, the Tribunal held that the buyer was to be allowed the Modvat Credit as per the amount of duty indicated in the duty paying documents. The Tribunal further held that the excise authorities have no jurisdiction to re-assess the duty on the inputs received by the buyer for the purpose of Modvat Credit and if the duty paid on the inputs is found to be short or in excess of what is payable under the law, the resort can be had at the supplier's end under the provisions of Section 11A and Section 11B of the Central Excises and Salt Act, 1944, as the case may be, by way of demand by the authorities or refund claim by the supplier.

The principle of law established in the above judgement was applied by the Tribunal in the case of **Commissioner vs. Trinetra Texturisers Pvt. Ltd. – 2004 (166) ELT 384 (Tri-Mumbai).** In this case, the Tribunal had declared the action of the department to deny the benefit of Modvat Credit to the extent of reduction in price effected by the supplier by way of issue of the credit note illegal and had dismissed the Appeal filed by the department.

This principle of law has since then been followed consistently by the Tribunal in a catena of decisions including in its judgements in the case of **Commissioner vs. Toyo Springs Ltd. – 2013 (294) ELT 639 (Tri-Delhi)** and **Lunia Brothers vs. Commissioner – 2014 (311) ELT 651 (Tri-Ahmd.)** rendered in the context of the provisions governing the Cenvat Credit. In fact, by its Circular No. **877/15/2008-CX** (F. No. 267(54)/2008-CX-8) issued as early as on November 17, 2008, the CBEC had also recognised this established principle of law. On the issue of the reversal of Cenvat Credit in case of subsequent grant of trade discount or reduction in the price, without reduction of the duty paid by the supplier, the Board, by the captioned Circular, had clarified as under:

"2. The issue has been examined. Since, the discount in such cases are given in respect of the value of inputs and not in respect of the duty paid by the supplier, the effect of reduction of value of inputs may be that the duty required to be paid on the inputs was less than what has been actually paid by the inputs manufacturer. However, the fact remains that the inputs manufacturer had paid the higher duty. Rule 3 of Cenvat Credit Rules, 2004 allows credit of duty "paid" by the inputs manufacturer and not duty "payable" by the said manufacturer. There are many judgements of Hon'ble Tribunal in this regard which have confirmed this view.

3. In view of above, it is clarified that in such cases, the entire amount of duty paid by the manufacturer, as shown in the invoice would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount 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."

It is therefore evident that the Board had acknowledged the legal position that even if the supplier has offered a post-supply discount to the buyer but not claimed the refund to the extent of discount, then the buyer is entitled for the credit of the duty (read 'GST' in the context of the present discussion) paid on the goods supplied by the supplier.

The above established principle of law shall apply on all fours even under the GST laws since the relevant provisions of the GST law are not materially different from the corresponding provisions of the Excise or Service Tax laws. Actually, there is no substantial difference between the fundamental concepts and the provisions of the GST law and the parallel concepts and provisions of the Central Excise or Service Tax or VAT laws. **The law is the same; the taxpayer is the same; the eyes are the same; the eyesight is the same; it is only that the people look at the GST law wearing different coloured glasses and therefore, everything looks so different!**

[Concluded]

[The article is published on "www.taxongo.com" on 28.05.2021 under the "Insight Column"]

Useful link: https://taxongo.com/columnDesc.php?qwer43fcxzt=NTkyOQ==