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Research Paper

(Abridged)

Implications of "Discounts" under GST

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Research Paper on Implications of Discounts under GST

Background

Black law's dictionary defines discounts as *"In a general sense, an allowance or deduction made from a gross sum on any account whatever...."*

Discounts are promotions that businesses offer to their customers that reduce the cost of items or services, often by a percentage or using specific criteria.

Why are discounts given?

Discounts are issued for multiple reasons such as to promote new items, to attract customers or to sell excess inventory.

Discounts result in a higher volume of purchases due to lower prices. An interesting fact about discounts is a lot of consumers usually make a purchase they were not initially intending to make solely based on finding a discount or coupon.

Companies offering discounts benefit equally from such offers and fetch a number of advantages which are mentioned below.

- i. Increase in sales
- ii. Helps in reaching sales target
- iii. Attract new customers
- iv. Engage existing customer
- v. Boost brand reputation
- vi. Create customer loyalty

Therefore, discounts could be a strategy that can be adopted by Companies to generate higher sales, provided the said strategy is used diligently.

From a taxation perspective, treatment of discounts have been varied and complex during pre-GST era.

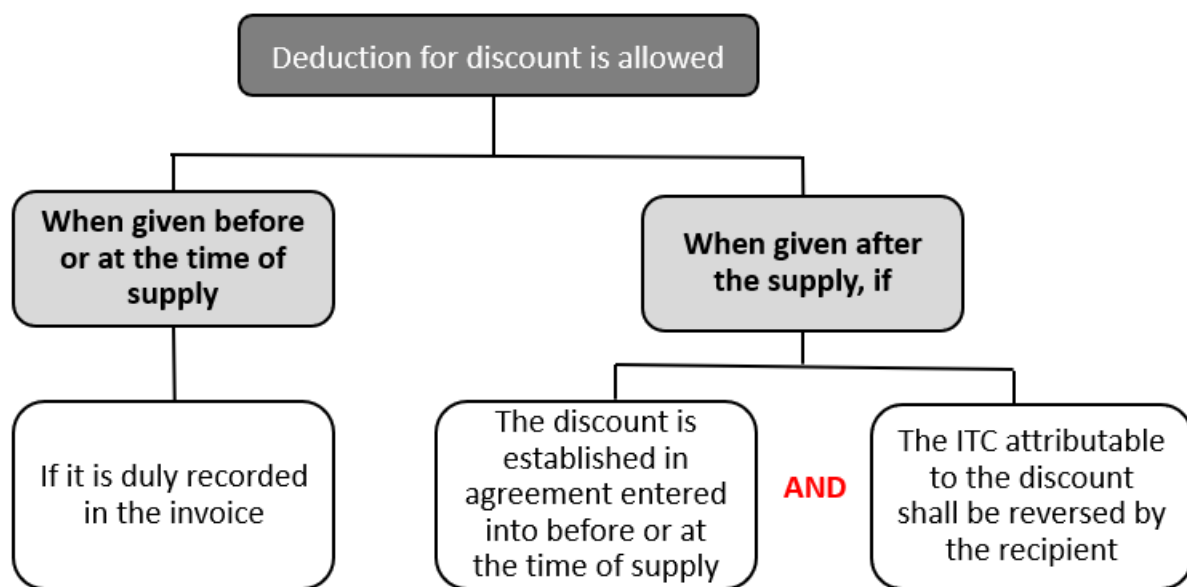
Provisions Applicable under GST laws

Section 15 of CGST Act, 2017 enumerates provisions in relation to "Valuation of taxable supply". Sub-section (3) particularly contains provisions in respect of "Discount". It states:

"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."

Section 15(3) can be summarised as follows:



Types of Discount and GST Implications:

In the trade & commerce world, there are various kinds of discounts which are known by different names, allowed both before and after the time of supply.

They do not necessarily conform to the conditions as specified in the law for their exclusion from the transaction value and hence a detailed examination of the exact nature of such discounts is warranted.

The broad categories of discounts observed across industries are listed below:

- a) Pre-supply discounts/ In-bill discounts/Trade discounts
- b) Post-supply discounts/Off-bill discounts such as:
 - (i) Cash discounts/Early payment discounts

- (ii) Quantity discounts/bulk discounts
- (iii) Turnover discounts

Analysis of GST Implications on various Discounts

Pre-supply discounts/ In-bill discounts/Trade discounts

Meaning:

In general parlance, trade discounts are understood to mean those discounts given in common trade practices in the industry, at the time of sale of goods/provision of service. For example, a stationery supplier providing discount of 10% for students. In such cases, the value shown in the invoice is the sale value less discount.

Black's Law Dictionary defines "Trade discount" as:

"1. A discount from list price offered to all customers of a given type - for example, a discount offered by a lumber dealer to building contractors. 2. The difference between a seller's list price and the price at which the dealer actually sells goods to the trade".

Trade discounts are allowed as a reduction in list price either before or at the time of purchase of goods/availment of services by the recipient.

Example 1: Mr X, a wholesaler purchased 15 automobiles from M/s. Toyota Private Limited, a manufacturer for a list price of INR 1.5Cr. Mr Y allowed a discount of 10% on the list price for such purchases made in bulk quantity. The discount allowed by M/s. Toyota of INR 15 Lakhs at the time of supply of automobiles is a trade discount.

Such discounts are generally allowed by manufactures on sale to wholesalers or by wholesalers on sale to retailers/other resellers, usually as a percentage of the list price/maximum retail price (MRP), in which case the trade discount represents the margin of the purchaser. They are also allowed to retail consumers basis the customer's status & preference, volumes purchased etc.,

The intention behind allowing such discounts may be for promotion of bulk sales of products, improved relationships with the customer and for customer retention. Further, it is a common trade practice followed across industries ranging from manufacturing, trading, service sector etc.

Trade discounts are generally indicated on the tax invoice and are not separately accounted in the books of accounts as the sales are recorded at net price (List price – Trade discount) in accordance with revenue recognition standards i.e., AS 9 and Ind AS 115 which provides that trade discounts given should be deducted in determining revenue.

GST Implications

Pursuant to Clause (a) of Section 15(3) of CGST Act, as trade discounts are offered at the time of supply and are clearly indicated in the invoice, trade discounts can be reduced from the transaction value to arrive at taxable value for the purpose of GST.

C.B.E. & C. Flyer No. 29, dated 1-1-2018 also confirms that trade discounts are part of the normal trade and commerce and therefore are pre-supply discounts i.e., discounts recorded in the invoice which have been allowed to be excluded while determining the taxable value.

Taking cue from the erstwhile laws, in Maya Appliances (P) Ltd v/s Addl Commissioner of Central taxes, under KVAT [2018 (10) G.S.T.L. 6 (S.C.)] Supreme Court held that taxable turnover is turnover net of deductions. All trade discounts are allowable as permissible deductions as such discounts are in accordance with the regular trade practice or the contract or agreement entered into in this regard.

Further, in the case of UOI v. Bombay Tyres International (P) Ltd. - (2005) [3 SCC 787 1984 (17) E.L.T. 329 (S.C.)], Supreme Court described about “trade discount” and held that discounts allowed in the trade should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the nature of the discount being known at or prior to the removal of the goods. Such trade discounts **shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price.**

Post-supply discounts/ Off-bill discounts

Meaning:

These discounts are allowed after the time of supply through issuance of credit note. They can be of **two types**:

- a. The **terms of discount are established** by means of an agreement executed between the supplier and the purchaser **before or at the time of supply**.

Example 2: Supplier M/s. XYZ Ltd agreed to extend discount of INR 50 per unit if the number of units purchased by Mr A during the quarter of April-June 2022 exceeds 10,000. In July 2022, the sales figures for the said quarter were arrived and number of units purchased by Mr A were 12,000. Hence, A is eligible for discount of INR 6,00,000 as the terms of discount were provided in the agreement executed before the time of supply.

b. The **terms of discount are not established before or at the time of supply** and are allowed by the supplier on an ad-hoc basis or based on industry/trade practices.

Example 3: M/s. PPL is a pharmaceutical company supplying drugs and medicines through its pharmacists. During COVID-19, the demand of a drug increased tremendously. As an incentive for the increased sales growth, M/s. PPL offered a discount of 10% per unit sold during COVID period. This discount was not known at the time of supply and is attributable to exponential turnover growth.

Post-supply discounts/Off-bill discounts can be of the following types:

- (i) Cash discounts/Early payment discounts/Sales discount
- (ii) Quantity discounts/Bulk discounts
- (iii) Turnover discounts

GST Implications

For post supply discounts to qualify as reduction from value of supply, the following **conditions as laid down in Section 15(3)** are required to be satisfied:

- a. The **terms of discount are established** by means of an agreement executed between the supplier and the purchaser **before or at the time of supply**
- b. Such discounts should be **specifically attributed to relevant invoices** which now qualify for discounted price
- c. **Input tax credit attributable** to post supply discount which was availed by the recipient at the time of supply is required **to be reversed** based on the credit note issued by the supplier for extending such discount.

Further, as per Circular No. 105/24/2019 – GST dated 28th June 2019 pharmacists, would not be required to reverse ITC attributable to tax already paid on such discount. **Though the circular has been withdrawn**, it can fairly be said that where credit note is received without GST, it is not necessary for the recipient to reverse ITC attributable to the value of discount provided the recipient pays the value of supply after adjustment of the value of credit note and GST paid on the

undiscounted value has not been reversed/refunded. The same view was also upheld in several cases including:

- (i) MRF Limited [2019 (27) G.S.T.L. 578 (App. A.A.R. - GST)] by Appellate AAR Tamil Nadu
- (ii) Santosh Distributors [2020 (32) G.S.T.L. 105 (A.A.R. - GST - Ker.)] by AAR Kerala.

Circular No.122/03/2010 dated 30.04.2010 issued under the erstwhile law in the context of CCR 2004 in respect of services and also Circular No.877/15/ 2008 -CX. dated 17.11.2008 regarding reversal of CENVAT Credit says that the credit would be equivalent to the amount paid as tax and support the view that taxes paid and not subsequently reduced would be fully available to the recipient as credit.

However, if the discount extended is a post-sale incentive requiring dealer to undertake promotional and marketing activities, then the circular clarifies that such advertising services would be a separate supply in itself and the additional discount extended is in lieu of consideration for providing such services by dealer to the supplier. Therefore, the dealer would be required to charge GST on value of such discount and supplier would be eligible to avail ITC.

Cash discounts/ Early payment discounts

Meaning

Black's Law Dictionary defines "cash discount" as *"1. A seller's price reduction in exchange for an immediate cash payment. 2. A reduction from the stated price if the bill is paid on or before a specified date."*

These discounts are allowed on the invoice price to encourage early payment/prompt payment by consumers to whom credit period is extended. They are usually extended as a % of invoice value.

In the case of Commissioner of Customs and Central Excise, Hyderabad vs Sangfroid Pharma Pvt Ltd, [2017 (350) E.L.T. 280 (Tri. - Hyd.)] CESTAT Hyderabad described "Cash discount" as *"Discounts granted for prompt payments"*.

Cash discounts can be of two types:

- a) Cash discount that **is agreed in the payment policy before or at the time of supply**, as a general trade practice.

- b) Cash discounts that are allowed **to recover underlying unpaid dues** in the prudence of continued relationships and cost of recovery measures on need basis which **are not known at the time of supply**

Cash discounts are recorded as an expense in the books of supplier as discount allowed and as an income in the books of the recipient as discounts received.

These discounts are not indicated in the invoice as they are allowed after supply is made and in the form of credit notes.

GST Implications

In the erstwhile regime, Supreme Court in the following cases, held that cash discount is an admissible deduction from the assessable value.

- i) Commissioner v. Indian Tool Manufacturers [2003 (152) E.L.T. A104 (S.C.)]
- ii) Collector v. India Linoleums Ltd. [1999 (108) E.L.T. A60 (S.C.)]
- iii) Commissioner v. H.R. Johnson Ltd. [2000 (119) E.L.T. A239 (S.C.)]

As per CGST Act, 2017, clause (b) of Section 15(3) provides that, cash discount will be allowed as a reduction from value of supply only if:

- (i) The terms of the discount are agreed before or at the time of supply
- (ii) The discount allowed can be specifically linked to relevant invoices
- (iii) ITC attributable to discount is reversed by the recipient of supply

If cash discounts are allowed as a normal trade practice by means of an agreement executed at or before supply and can be traced to relevant invoices, then the same can be claimed as reduction from the transaction value by the supplier provided corresponding ITC is reversed by the recipient.

However, where such discounts are allowed on ad-hoc basis to prevent bad debts and in the larger interest of recovery of underlying dues, the same would not qualify for reduction from the transaction value since it does not amount to discount.

Further, as provided in Circular 105/24/2019 – GST (later withdrawn), Q Ltd, will not be required to reverse ITC attributable to tax already paid on such discount where it has paid the value of supply after adjustment of the value of credit note and GST on full undiscounted value. However, availment of ITC on the tax already paid is subject to the condition that ITC has not been reversed/refunded/re-credited by the supplier. The same view was also upheld in several cases including:

- (i) MRF Limited [2019 (27) G.S.T.L. 578 (App. A.A.R. - GST)] by Appellate AAR Tamil Nadu.
- (ii) M/s. Rajesh Kumar [2022-TIOL-23-AAR-GST] by AAR Madhya Pradesh.

Seasonal discounts/Festive discounts

Meaning:

Seasonal discounts are those discounts that are offered to encourage sales of seasonal product during off seasons. These discounts are allowed in off seasons to clear excess stocks at discounted prices.

Eg: Sale of woollen sweaters by clothing retailers at discounted prices during summer.

These discounts are usually offered on the invoice value at the time of supply and qualify to be In-bill discounts. However, they could also be extended as post supply discounts in the form of cash discounts/bulk discounts/turnover discounts etc.

GST Implications

As per Clause (a) to Sec 15(3) of CGST Act, **any discount given before or at the time of the supply** shall be reduced from the value of supply provided such discount has been **duly recorded in the invoice**. As seasonal discounts satisfy all the conditions as per Sec 15(3)(a), they shall be allowed as a reduction from the transaction value.

If they are allowed as a post supply discount, either in the form of cash discount or bulk discounts, reduction from the transaction value is permissible when:

- (i) The terms of seasonal discount is agreed before or at the time of supply
- (ii) The discount allowed can be specifically linked to relevant invoices by way of issue of credit notes
- (iii) ITC attributable to seasonal discount allowed is reversed by the recipient of supply

Quantity/Volume discounts:

Meaning:

Quantity discount is an incentive given to a buyer/customer as a reduction in price for purchase of large/higher quantity of products. It is popularly known as bulk discount. Depending on the quantity, the delivery and payment for the goods maybe provided at a specified date or maybe spread out through the year.

Black's Law Dictionary defines Volume Discount as *"A price decrease based on a large quantity purchase – also termed as bulk discount; quantity discount"*

Quantity discounts are most useful to the supplier when the supplier is keen on reducing his inventory. However, the principal benefit in this regard is "economies of scale".

For example if a unit of chocolate costs Rs.10 each, a box containing 10 of such chocolates would normally cost Rs.100. However, in case of bulk/volume discounts, the said would cost Rs.80 a box. Thereby reducing the final price for the same quantity is reduced by Rs.20.

GST Implications:

As per the provisions of section 15, the discount must be issued before or at the time of supply and must be indicated in the invoice. If the discount is issued post sale, the said discount must be established in terms of an agreement entered into, linked to a specific invoice and ITC in relation to such discount must be reversed by recipient.

In case of purchases by retailers and wholesalers, the purchases made in high quantities and discounts is a common phenomenon. Therefore, in cases where the customers are made aware of such discount in advance or it would have been provided in the contract, the conditions of Section 15(3)(c) would be fulfilled and deduction may be claimed.

This was also reiterated in the case of Bee Pee Coating Ltd. Vs Collector of Central Tax, Vadodara [2004 (177) E.L.T. 816 (Tri. - Del.)] wherein the Appellant was issuing volume discounts at the end of the year in addition to the other discounts given through the year. The Ld. Authorities had denied such additional discount on the grounds that the said discount was difficult in arriving at. However, the Tribunal has held that difficulties of calculation cannot be a ground for disallowing deduction.

Other Issues:

Buy one get one free

Meaning

Buy one get one offers are generally the most popular kind offers provided by suppliers. It is most prevalent in the supermarts where the goods are sold in larger quantity. For example: buy 2 soaps and get 2 free.

At the outset, it appears that a product is sold free of cost without any consideration. Thereby ambiguity lies with regard to the taxability of the additional product and ITC pertaining to procurement and sale of such product.

GST Implications

The primary question that arises is whether this transaction of buy one get one free is in the nature of discount or is it a supply as such? Let us analyse hereunder.

Since the term “discount” has not been defined in the GST law, reference to law dictionaries are being made:

- Black’s Law Dictionary: *“A reduction from the full amount or value of something esp., a price”*
- P. Ramanatha Aiyer’s Advanced Law Lexicon: *“A reduction from a list price, quoted price or invoiced price. It also refers to the price for obtaining payment on a bill before its maturity”*
“To make a reduction in the face value of an article (or the list price), generally in order to make the purchase more attractive to a customer or perhaps for paying by cash. Bulk discounts and trade discounts are also sometimes available. Discounts are shown as expenses in the company’s profit and loss account. The term has several meanings.
 1. *Deduction from catalog price often allowed e.g. by a wholesaler to a retailer (known as a ‘trade discount’).*
 2. *Inducement offered by a creditor to a debtor to pay swiftly (known as a ‘cash discount’)...”*

It is clear that discount, basically, is a reduction in value/amount payable to the supplier by a customer (which may be due to trade practices, volume of purchase or quick payments).

From the definition of discount analysed above, it could be said that Buy One Get One Free offers do not amount to discount as there is no price reduction for the commodity, but is a promotional scheme wherein a product is given free of cost on purchase of another.

Further, as per Section 15(3), in order to avail the benefit of deduction on account of discounts, it is mandatory that such discount is specifically linked to invoices. In the case of buy one get one offer, there is no linkage to any past invoice issued.

In such case, the GST implications is discussed hereunder.

As per Section 7 of CGST Act, 2017, for an activity to qualify as supply, there shall be a consideration charged for the same (subject to the provisions of Schedule I). The scope of supply as per GST laws is as below:

“7. Scope of supply - (1) For the purposes of this Act, the expression

—supply includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;”

Thereby, in case where no consideration is charged on the product, there shall be no tax levied on such activity/product (except in cases mentioned in Schedule I).

Accordingly, such goods sold free of cost along with purchase of another product could be said to be sold/supplied without any consideration. In such cases, GST implications may be as follows:

- a) When cost of the product given free of cost is NOT added to the price: In this case, a view is possible that since the product is sold free of cost, it would not amount to supply due to lack of consideration. (Subject to transactions in Schedule I).
- b) When cost of the product given free of cost is added to the price: In such case, a view is possible that the second product is sold at a lower (discounted) price. However, in such case, there may be challenges in claiming deduction for such discount as there would be a need to show such discount on the invoice. Given the industrial practices in respect to buy one get one free, especially in the retail sector, it could prove challenging.

For implications of EUVAT in such cases, refer to the full-length research paper.

The CBIC, has clarified in the same lines in its Circular No. 92/11/2019-GST, dated 7-3-2019 as follows:

“Buy one get one free offer :

Sometimes, companies announce offers like ‘Buy One, Get One free’ For example, ‘buy one soap and get one soap free’ or ‘Get one toothbrush free along with the purchase of tooth paste’. As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as ‘supply’ under GST (except in case of activities mentioned in Schedule I of the said Act). It may appear at first glance that in case of offers like ‘Buy One, Get One Free’, one item is being ‘supplied free of cost’ without any consideration. In

fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.”

As per the Circular, the consideration in case of buy one get one free discount would be considered as “2 products sold for the cost of 1” and not “supply free of cost”. Thereby, no product issued additionally in the form of discount would be considered as free of cost. Thereby, the provisions as applicable for any discount u/s 15 would be applicable even in the current scenario.

Therefore, it may be understood that in case of buy one get one free, the value charged shall be consideration for both the products and thereby not free of cost. Accordingly, the restriction under Section 17(5)(h) would not be applicable.

To summarise, if it can be proved that the second product is actually being sold free of cost (and not added to the price of the whole supply), a view may be taken that GST is not applicable on the second product since there is no consideration (subject to Schedule I). However, in such case, ITC restriction under Section 17(5)(h) would come into picture. This would need to be tested judicially.

In case where the value of the product (sold as free) is added to the value of entire supply, it can be either considered as:

- a) The second product being sold on discount (thereby eligible for deduction) if discount shown in invoice; or
- b) Mixed/composite supply (being two/more products sold for one price) as clarified in CBIC Circular No. 92.

From a practical standpoint, it may be suggested to consider “free goods” which attract a GST rate equal to or lower than the primary product in order to avoid any demand or disputes from the Department.

Further, it may also be noted that where the items being supplied free of cost are those items specifically covered under section 17(5) [ex: food and beverages], the ITC in relation to the same may need to be reversed irrespective of the above discussions.

It may also be suggested to the taxpayers to submit an Initial Disclosure Letter to the Jurisdictional Officer wherein details of the business including various transactions undertaken, along with the taxpayer's views on taxability of disputable transactions may be included. This would safeguard the taxpayer from invocation of extended limitation period of 5 years under Section 74 by the Department.

Bonus goods (Discount in kind)

Meaning

Discounts in kind can be in the form of bonus goods wherein upon purchase of a specified quantity of goods, some goods are given free of cost in lieu of discount in monetary terms.

GST Implications

The question that first arises is whether providing such bonus goods amounts to discount? Going by the definition of quantity discount as per Black's Law Dictionary, "*A price decrease based on a large quantity purchase – also termed as bulk discount; quantity discount.*" Since there is no specific deduction from the price of commodities, a view is possible that bonus goods are not discounts.

However, it is important to understand the industry practices and various Court judgements in this regard. In the case of CCE Vs Hindustan Unilever Ltd [2002 (142) E.L.T. 513 (S.C.)], it was held as follows:

"Quantity discount, to put it simply, works thus: a dealer receives from the assessee a stated extra quantity if he buys a certain other quantity. That this will happen is known and agreed at the time the transaction is entered into. It is, therefore, a trade discount and the authorities below have correctly allowed it as such"

Also, it was held in the following cases that free supplies amounted to quantity discount known at the time of removal of goods and thus admissible for deduction from assessable value:

- a) Pesticides India Vs CCE [2000 (122) E.L.T. 143 (Tribunal)]
- b) Perfetti Van Melle India Pvt Ltd Vs CCE [2015 (330) E.L.T. 684 (Tri. - Del.)]

Taking cue from the case laws, a view is possible that:

- a) When bonus goods, being the same as the main goods in question are given free of cost upon purchase of specified quantities, it would amount to quantity discount, known at the time of supply. Thus, deduction u/s 15(3)(a) could be taken.
- b) If the bonus goods are different from the main goods in question, it would not be considered as discount. It may be considered as a separate transaction. It is further relevant to note that even as per Section 15(3)(b), it is required that discount be linked to relevant invoices. In this case, since bonus goods cannot be linked to any past invoices, discount under clause (b) is also not eligible.

In case of (b) above, the following views are possible: (similar to discussion for “buy one get one offers”)

- 1) As there is no consideration involved, it would not amount to supply (subject to Schedule I transactions) and thus not liable to GST. However, ITC on such gifts procured could be restricted under Section 17(5)(h). Although, similar to the concept explained earlier, it can be disputed by the department as not being covered under ‘gift’ and could be litigated.
- 2) If the value of the bonus goods is added to the overall consideration, it could be considered as either composite or mixed supply as there is supply of two or more goods for a single price. In this case, there would be no ITC restrictions.

Discount Vs Incentive

The term “incentive” is defined in P Ramanatha Aiyer’s Advanced Law Lexicon as *“Positive motive (sometimes artificially generated) for performing some task.”*

The debate of whether “incentive” provided to customers would amount to discount has been considered in various Tribunal and Courts under the erstwhile law. Let us examine the same.

It is relevant to note the Supreme Court judgement in the case of CCE Vs Bisleri International Pvt Ltd [2005 (186) E.L.T. 257 (S.C.)] wherein it was held that the amounts received under credit notes as Price Support Incentive from the supplier of raw material and **in absence of any evidence of flow back of any additional consideration from the buyers** of the final product to the manufacturer, are not to be taken into consideration while arriving at the assessable value under Section 4 of the Central Excise.

Although incentives may be considered as discount based on erstwhile judgments, However, under GST, for an incentive to be considered as a discount, fulfilment of conditions mentioned in

Section 15(3) is mandatory. Further, it is also relevant to note that in Circular No. 105 it is provided as follows:

*“3. It is clarified that if the post-sale discount is given by the supplier of goods to the dealer without any further obligation or action required at the dealer’s end, then the post sales discount given by the said supplier will be related to the original supply of goods and it would not be included in the value of supply, in the hands of supplier of goods, subject to the fulfilment of provisions of sub-section (3) of section 15 of the CGST Act. However, if the additional discount given by the supplier of goods to the dealer **is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc.,** then such transaction would be a **separate transaction and the additional discount will be the consideration for undertaking such activity and therefore would be in relation to supply of service by dealer to the supplier of goods.** The dealer, being supplier of services, would be required to charge applicable GST on the value of such additional discount and the supplier of goods, being recipient of services, will be eligible to claim input tax credit (hereinafter referred to as the “ITC”) of the GST so charged by the dealer.”*

Thus, the Circular provides that where an incentive is provided to a customer being conditional, with an expectation that the customer (dealer) is required to undertake a marketing campaign, then it would amount to consideration payable for service supplied by the dealer to the supplier.

For more discussions on jurisprudence in this regard, please refer to the full-length research paper.

Considering the jurisprudence under the erstwhile law, a similar view can be taken in GST also, alleging that such incentives are not towards supply of services and thus not liable to GST. In such case, a commercial/financial credit note may be raised by the supplier to the dealer customer. Thus, having no impact on the output liability of the supplier and the ITC of the dealer.

In this regard, it would be relevant to note the Karnataka Advance Ruling in case of Kwaliti Mobikes Pvt Ltd - 2019 (30) G.S.T.L. 668 (A.A.R. - GST):

- The Applicant is an authorized dealer for Harley-Davidson India who manufactures high-end two-wheeler motor vehicles. The Applicant is eligible for volume discount, when more purchases are made.
- The supplier issues credit note and no adjustment is made in respect of supply already made. The Applicant does not reduce the ITC as it does not affect the price of the goods already sold.
- It was held as follows:

“Since the credit note is issued as a post-sale event, the same is not covered under the clause (a) of the above provision. Further, the applicant has not reversed the input tax credit attributable to the discount received in the form of credit note from the authorised supplier, the same cannot be covered under clause (b) above. Hence in view of the above, the credit note issued by the supplier in the pertinent case does not have any effect on the value of supply and hence is only a financial document for account adjustment for the incentive provided. Hence there is no effect on the GST.”

In the current AAR, the discount issued is a post-sale discount. Such discount is issued vide issuance of credit note and such credit note is considered merely as an accounting document. The advance ruling Authority held that volume discount received on purchases in the form of credit note without any adjustment of GST is not liable for GST.

However, it may be noted that adopting the view that such incentives (which is given to dealers in response to promotions to be made by such dealers), could be prone to litigation, leading to a demand on the same from the dealers. Further, it is to be noted that the erstwhile case laws are at the Tribunal level and **there is no final view provided by a High Court/Supreme Court.**

Further, there are also circumstances in which the supplier instructs the dealer to provide a discount to the customer which would in-turn be reimbursed by the supplier. In this regard, Circular No. 105 specifies the following:

*“4. It is further clarified that if the additional discount is given by the supplier of goods to the dealer to offer a special reduced price by the dealer to the customer to augment the sales volume, then such **additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by dealer to the customer.** This additional discount as consideration, payable by any person (supplier of goods in this case) would be liable to be added to the consideration payable by the customer, for the purpose of arriving value of supply, in the hands of the dealer, under section 15 of the CGST Act. The customer, if registered, would be eligible to claim ITC of the tax charged by the dealer only to the extent of the tax paid by the said customer to the dealer in view of second proviso to sub-section (2) of section 16 of the CGST Act.”*

The Circular provides that a discount of such nature amounts to consideration flowing from supplier to the recipient. However, analysing this scenario, the discount, given by the dealer is enjoyed by the customer. It would amount to discount in the hands of the dealer who can take deduction when it is in the face of the invoice. Whether the discount is recovered from the supplier or not, would not change the nature of the transaction i.e., being a reduction in the list

price of a product. The amount paid by the supplier to the dealer ultimately reduces the transaction value of the purchase by the dealer. Thus, it wouldn't require addition to transaction value if credit is reversed by the dealer.

In this regard, from a practical perspective, the manner of accounting by the dealer needs to be checked. In many cases, such discounts amount given by supplier would be accounted as "incentives" in the books of the dealer, which would attract demand & dispute from the Department based on the views mentioned in the Circular.

Implications on Bad Debts:

From GST perspective, the question arises as to whether credit notes under Section 34 can be issued for bad debts. In this regard, it may be noted that with respect to goods, Section 34 specifically provides that credit note shall be raised on return of goods. Thus, it could be said that credit note cannot be issued in respect of supply of goods as there is no return of goods. However, in case of services, credit note can be issued if the supply is found to be deficient. Thus, it is important that in case of bad debts relating to supply of service, the reason for bad debts needs to be recorded. If it is as a reason of deficiency in service or customer being not satisfied with the service, the reasons could be recorded and a credit note may be raised in this regard.

In case the customer is unable to pay due to financial reasons, it would not fulfil the conditions in Section 34 and thus, a credit note cannot be issued. However, in such scenarios, a view is possible that since there has been no consideration received from the customer and that there is a lack of valuation applicable in such case, the GST levy fails. Accordingly, refund of such GST amount paid may be claimed as refund by the supplier.

However, it is to be noted that the above contention is an aggressive view and highly prone to litigation. In such scenarios, it is suggested to obtain a written professional opinion before adopting any position.

Action points for Taxpayers:

Given the above discussions, taxpayers would be required to take note of the following with respect to GST applicability on discounts and sales promotion schemes:

- a) In case of transactions which are disputable, it is suggested for taxpayers to submit an Initial Disclosure Letter to the Jurisdictional Officer. The letter could include details of the entity, transactions undertaken by it and tax paid by it in such cases. This would safeguard

the taxpayer from extended period of limitation in case the Department undertakes any proceedings.

- b) Agreements entered into with customers/dealers to contain various kinds of discount (on-bill or post-supply) which the supplier may offer. Quantification of the discount is not necessary at the agreement stage itself since discount is allowable even if not quantifiable at the time of supply. [Madras Rubber Factory Ltd. [1995 (77) E.L.T. 433 (S.C.)]
- c) Accounting of discounts to be made according to the nature of transaction. Some taxpayers show discounts as incentives, which may attract dispute from the Department.
- d) Since the CBIC Circular 105 has been withdrawn (other than Circular 92), it is suggested for taxpayers to take a professional opinion before entering into agreements.

Conclusion:

The conditions for claiming of deduction on discounts differ from many of the erstwhile laws in so much as the requirement for linking to invoices is mandatory whether it is on-bill discount or a post-supply discount. However, concepts enumerated in the jurisprudence of the erstwhile laws can be considered for analysis of various discounts and scenarios.

There has not been any Circular from the CBIC providing clarifications relating to various types of discount.

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