

Discounts and Incentives-implications under GST

CA Roopa Nayak

Background

In GST regime, the dept has been issuing notices, making tax demands on discounts and incentives given to the suppliers, especially in context of dealers and distributors of products. Practically the manufacturers are seen to give various types of discounts. Such discounts could be based on sales targets reached, price drop schemes, pre-agreed end customer discounts reimbursements. In few cases, the incentives are given for doing advertisement, sales promotion of manufacturers. The manufacturers could issue commercial credit notes[without GST] to such dealers to give effect to these discounts/incentives schemes.

The term discount is not defined in GST law. When a term is not defined we can look at the Dictionary meaning to understand meaning. Similarly set out in Star Paper Mills case. Discount means to reduce the price of something (Cambridge Dictionary). Discount is always linked to the price of the goods or services either based on percentage or volume. Discount is given as a reduction to the sales done earlier by way of adjustment towards the sales price.

In GST law, discounts can be claimed as deduction from transaction value of supply of goods/services, when given in face of tax invoice. However, the post supply discounts can be deducted from value of supply, only when it is known under agreement entered prior to making supply, and the supplier issues GST credit note towards same+ recipient has reversed credit related to such credit note.

It would do good to recall that under GST law, credit notes are issued with GST effect under section 34. Section 34(1) of CGST Act, 2017 provides that a credit note may be issued by a supplier **only** in the following circumstances:

- (a) The **taxable value** shown in the invoice **exceeds** the taxable value of the supply;
- (b) The **tax charged** in the invoice **exceeds** the tax payable on the supply;
- (c) The goods supplied are **returned** by the recipient;
- (d) The goods/ services are found to be **deficient**.

Sec 34(2) provides that credit note has to be issued not later than on or before the 30th of November following the end of the FY in which the supply was made or date of filing of relevant annual return whichever is earlier. It is to be noted that the said restriction applies

only to a GST credit note. On a careful perusal of the reasons for raising a credit note under GST, we understand that it could interalia be for a reduction in taxable value. However it is optional and not mandatory to issue credit note with GST effect. In other words, there is no bar to issue commercial credit note, for giving discounts. This view is clarified in Circular 72/46/2018 GST. There is no time limit to raise a financial credit note. In this background, the question that arises is whether giving of the discount/claims by the Manufacturer to the dealer/distributor is actually a consideration received by the distributor for supplies of goods/services made and thereby is there GST levy applicable thereon? The paperwriter in this article has examined the GST implications of the various kinds of discounts/incentives given.

Analysis of GST implications on various kinds of discounts and incentives

GST is leviable only when there is supply of goods/services for a consideration. Merely because credit notes are being issued towards the discounts being given by manufacturers cannot lead to assumption/presumption of tax levy thereon. In the absence of supply of goods/services being there, GST levy fails[section 7 r/w Section 9 GST Act] .

In the present case, we have examined scenarios wherein manufacturer, distributor and the end Customer are not related persons, wherein the value of supply would be the price actually paid or payable i.e., transaction value, for the said sale of goods.

- a. Price drop given on instruction of Manufacturer by distributor/dealer of goods to end Customer:** Price drop is commonly being given effect by credit note without GST effect by manufacturers. As these are given as reduction in purchase price of goods supplied by Manufacturer to dealer, there is no GST implications of such price drop/discount given under GST. In this case there is no supply of goods/services being done by Dealer against such discount, levy fails.

- b. Damaged Goods:** Dealer issues a GST credit note when collection of damaged goods are done from the Customers, later manufacturer issue financial credit note to Dealer for the same. If a GST credit note is issued by dealer, the same has to be disclosed in Returns and recipient have to reverse the ITC pertaining to such credit note. Therefore, dealer is right in issuing the GST credit notes to his

Customers for return of such goods. Dealer can adjust the GST credit note against the future tax liability.

Further, where a financial credit note has been issued by Companies without the GST effect, no reversal of credit would be required to be done by dealer. This view is clarified in Circular 72/46/2018 GST.

- c. Post Sale Discounts:** Dealer is asked to supply goods at a discounted price to the Customers as per the agreement with Manufacturer Companies. The discounts given by Dealer are adjusted by the Manufacturer Companies by reducing their trade receivables against Dealer. In this case, the discount is computed based on the sales done by Dealer to the Customers and the price at which these sales are done.

As these are given post sales, as reduction in purchase price of goods supplied by Manufacturer to Dealer, there is no GST implications of such post sale discount given under GST for Dealer.

Whether invoice could be issued and GST to be paid for the discount amount by Dealer? There is no separate supply of goods/services by Dealer to the Companies in exchange for post sale discount. Hence tax invoice is not required be raised by Dealer to the Companies.

- d. Point of sale Promotions:** In this type of transaction, the Manufacturer Companies direct Dealer's to give additional discounts to their end Customers. Customers gets the reimbursement from Dealer via reduction in their payables and Dealer receives the compensation as a reduction in its Accounts payable from the Companies.

In this kind of transaction, post sale discount after supply of goods is given by the Manufacturer Companies to the Customers. Dealer is only acting as a pass through for passing the discount from the Companies to the Customers. GST credit note cannot be issued for post-sales discounts which were not agreed before or at the time of supply.

These discounts are given as reduction in purchase price of goods supplied by Manufacturer to Dealer, there is no GST implications of such post sale discount given under GST for Dealer.

Other issues and GST implications thereon for the Dealer as discussed below:

- (a) Commission from manufacturers for agency service and they deduct TDS for the same - The amount is received as commission and not in the form of discount. Receipt of commission indicates principal agent relationship and GST should be paid for providing agency services.
- (b) Manufacturer make payment to Dealer for mentioning their name in the Advertisement which dealer provides in newspaper, hoardings etc. - Advertisement services are being provided by dealer to these companies. Dealer should raise a tax invoice for advertisement services and discharge applicable GST Credit would be availed by Manufacturer.
- (c) For displaying advertisement of Manufacturer in dealer's showrooms - Dealer is providing space to manufacturer for displaying advertisement. Dealer should raise an tax invoice charging GST for renting/leasing of advertisement space. GST Credit would be availed by Manufacturer.

Way ahead

As explained in detail above, GST is not leviable on the claims/ discounts paid against procurements of goods for following reasons:

- b. It is paid essentially against the transaction to purchase of products from say FMCG manufacturers [such as of chocolates/noodles] by Dealer.
- c. Sec. 7(1)(a) of the CGST Act, 2017 defines the scope of supply to include supplies of goods or supply of services made or to be made "for" a consideration. Dealer by way of getting these claims cannot be said to have made any supply of goods/services "for" a consideration where it is granted discounts. Hence it has to be treated merely as part of its overriding contract of purchase of various products from the Manufacturers and not as a separate supply of any services by Dealer.
- d. Therefore, it cannot be considered as a separate consideration paid to Dealer for any supply of goods/services.

- e. Further this should be established clearly from the recital in documents entered by Manufacturer and distributor/dealer, there is no intention or provision of marketing/sales promotion or any other services done by Dealer to the manufacturers against the payment of discount/other claims.
- f. In the absence of supply of goods/service done by Dealer to Manufacturer against such payments, the GST levy would fail on Dealer.

Similarly held in the following decisions:

- i. Bharat Petroleum Corporation Ltd. v. CST [2014 (36) S.T.R. 433 (Tri. – Mumbai)]:
In the said case the facts were that the appellants viz. BPCL/HPCL were engaged in marketing of petroleum products. The appellants purchased Compressed Natural Gas (CNG) from Mahanagar Gas Limited (MGL) and, thereafter, sold the same to their dealers. As per the dealership agreement M/s. MGL was to be provided adequate space at the site by the appellant for installation of the equipment and construction of proper foundation, trenches, etc., at the site. The appellants were liable to make provisions for supply of water, electricity and other utilities, the cost of which are borne by MGL. The appellants were also obliged to take due care of the equipment and ensure that the same are properly handled and the required safety provisions are followed and all statutory approvals of the concerned authorities for opening and operating the retail outlets/installation of equipment, etc., were to be obtained by the appellants and the appellants were also required to pay all municipal taxes, property taxes, rents, etc., where the retail outlets operates. Department sought to recover service tax from the appellants on the ground that by undertaking the given activities they have provided services in the nature of marketing of the goods. It was held as under:

*“11. As per the said provisions, the service provider provides service to his client for marketing or promotion of the goods to third party. **In these cases, appellants themselves are buying goods from M/s. MGL. Therefore, the question of rendering the service to the client for marketing of the goods does not arise.** We further find that MGL is discharging VAT/ST liability while selling the CNG to appellants. Although the RSP is fixed but it does not mean that the profit margin shall be constituted as commission for rendering the service. On examination, it is found that all the transactions shown by the appellants are done on principal to principal basis. Moreover, the appellants are*

selling these CNG on payment of VAT/ST to the buyers. **There is no commission component that have been received by the appellants from M/s. MGL.** FOR e.g., if the appellant is receiving goods from MGL at ` 100/- per kg. including VAT but these goods are sold by the appellant to customers on RSP fixed at ` 102/- per kg., that does not mean that the appellants are receiving commission of Rs. 2/- from MGL. In fact the appellants are also paying VAT on ` 2/- also. **It is also a fact that the appellants are not receiving any commission from M/s. MGL. Therefore, it cannot be presumed that appellants are rendering any service to MGL.”**

- ii. In the case of Sharyu Motors vs. Commissioner of Service Tax 2016 (43) S.T.R. 158 (Tri. – Mumbai). In the said case the issue was whether incentives received on achieving the sales target would be subjected to service tax or not as a business auxiliary service. The Tribunal observed as under:

*It is the case of the Revenue that such amount is taxable under Business Auxiliary Services, we find no substance in the arguments raised by the learned AR as well as the reasoning given by the adjudicating authority. **The said amounts are incentive received for achieving the target of sales cannot be treated as Business Auxiliary Services**, as incentive are only as trade discount which are extended to the appellant for achieving the targets.*

..... We find that this view has been taken by the Tribunal in the case of Sai Service Station (supra). With respect, we reproduce the relevant paragraphs :-

14. In respect of the incentive on account of sales/target incentive, incentive on sale of vehicles and incentive on sale of spare parts for promoting and marketing the products of MUL, the contention is that these incentives are in the form of trade discount. The assessee respondent is the authorized dealer of car manufactured by MUL and are getting certain incentives in respect of sale target set out by the manufacturer. These targets are as per the circular issued by MUL. Hence these cannot be treated as business auxiliary service.

18. In respect of sales/target incentive, the Revenue wants to tax this activity under the category of business auxiliary service. We have gone through the circular issued by MUL which provides certain incentives in respect of cars

sold by the assessee-respondent. These incentives are in the form of trade discount. In these circumstances, we find no infirmity in the adjudication order whereby the adjudicating authority dropped the demand. Hence, the appeal filed by the Revenue has no merit.”

Said ratio would therefore continue to hold good even under the GST regime. Consequently, even under GST regime, purchase related discounts would not partake a character of a consideration against supply of any services.

The Federal Court of Australia in the case of *AP Group Limited v Commissioner of Taxation* [2013] FCAFC 105 dismissed the appeal of the revenue against the decision of the Tribunal holding that incentives received by motor vehicle dealers cannot be considered as a consideration received against any supply made to vehicle manufacturers so as to be exigible to GST. This decision is applicable to discussion under reference as well.

In the case of *Rohan Motors Ltd* [2021 (45) G.S.T.L. 315 (Tri. - Del.)], it was held that Incentives i.e., discount from Maruti Udyog Ltd, which was referred to as “incentives” under relevant Schemes, received could not be treated as consideration for any service and not be leviable to service tax. Similarly held in the case of *Toyota Lakozy Auto Pvt Ltd* [2017 (52) S.T.R. 299 (Tri. - Mumbai)] and *Prabhakar Marotrao Thaokar & Sons* [2019 (20) G.S.T.L. 294 (Tri. - Mumbai)].

Conclusion

It is suggested to capture clearly in agreement between distributors/dealers with manufacturers reasons for incentives/discounts being given, to ensure dept does not raise frivolous demands with interest and penalty, wherein legal proceedings thereafter has to be then undergone by assessee.

In this article paperwriter has examined GST implications of discounts incentives and validity of demands of tax on discounts given against procurements of goods.

For any queries can mail roopa@hnaindia.com