

AUTHORITY FOR ADVANCE RULING - MADHYA PRADESH

Goods and Service Tax

O/o THE COMMISSIONER, COMMERCIAL TAX.

MOTI BUNGALOW.

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

e-mail: advance.ruling@mptax.mp.gov.in Phone : 0731- 2437315

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING

U/S.98 OF THE GOODS AND SERVICES TAX ACT, 2017

Members Present

1. Shri Manoj Kumar Choubey

Joint Commissioner

Office of the Commissioner of Commercial Tax, Indore Division-1

2. Shri Virendra Kumar Jain

Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

Advance Ruling order No. 01/2022 Dated 06th January, 2022

GSTIN Number. If any/User-id	23AEXPG7454H1Z4
Name and address of the applicant	M/S RAJESH KUMAR GUPTA OF M/S MAHVEER PRASAD MOHANLAL, GANDHI GANJ, JABALPUR, 482002(MP)
Point on which advance ruling sought	a. Admissibility of input tax credit of tax paid or deemed to have been paid. b. determination of the liability to pay tax on any goods or services or both
Present on behalf of applicant	Shri. Anil Gupta
Case Number	07/2021
Order dated	06.01.2022
Order Number	01/2022

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. Shri Rajesh Gupta, proprietor of M/s Mahaveer Prasad Mohanlal is carrying on the business of whole sale trading of rice and pulses. Henceforth, for brevity Shri Rajesh Gupta, proprietor of M/s Mahaveer Prasad Mohanlal shall be called as "Applicant". Applicant is having the dealership of famous rice brand name of India known as "India Gate Basmati Rice" since last more than 15 years.

2. The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

BRIEF FACTS OF THE CASE AND SUBMISSION OF THE APPLICANTS IN THEIR APPLICATION IS AS UNDER-

3.1 The Applicant is having the dealership of famous rice brand name of India known as "India Gate Basmati Rice" since last more 15 years. That for the purpose of brevity, the supplier of India Gate Basmati Rice to the applicant shall be called as "Supplier".

3.2 As a routine, supplier dispatches the goods along with invoice. The supplier offers the incentive for early payment of invoice (bills) by offering a cash discount if payment is made before the due date or with in the certain days from the date of invoice inter alia: -

S. No.	Terms of payment	Rate of discount
1.	Within 2 days	2%

3.3 That the Applicant makes the payment as per his convenience and availability of funds. Thus, the scheme/incentive of cash discount in case of early payment from the due date is optional for applicant. On the basis of time taken for payment of invoices by the applicant to the supplier, the supplier issues the Receipt cum credit note of cash discount without considering GST on such cash discount.

3.4 The supplier also offered various schemes, one of them termed as target incentive. The term of target incentive being quoted as under:-

"If any distributor achieves the yearly target then incentive will be given on value sold only."

The credit note is issued for this target incentive by the supplier to applicant without considering the GST in the form of commercial credit note.

3.5 Supplier doesn't reverse the its output liability of GST and likewise applicant doesn't reverse its input tax credit on such commercial credit notes issued by supplier to applicant without consideration of GST.S

3.6 Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).

(i) As per the terms agreed with the supplier, cash discount is a compensation for making the payment early from the due date of payment of invoice of supply issued by the supplier to the applicant. It is not directly related with cost of goods supplied by the supplier to the applicant. The cash discount allowed to the applicant by the supplier apparently per take the character of interest.

(ii) In Applicant's case, the supplier is issuing the tax invoice on supply of goods to applicant including GST and applicant is taking the credit of such Input Tax charged on the invoices. When the applicant makes the payment to the supplier, the supplier issues a credit note as "cash discount" by considering the days of payment by which the payment has been made earlier than the due date of payment without considering GST. Likewise, when the applicant makes more purchase, they become eligible for target incentive (discount) on purchases and a credit note is issued by the supplier to the applicant and no adjustment of the price is made in respect of the goods already sold nor any adjustment in GST is made in credit notes. The applicant is also not claiming any reduction in Input Tax Credit already claimed by him as it does not affect the price of the goods sold. This discount arrangement is not part of the Purchase Contracts or the invoices since it is not known at that point of time whether supply against the invoices will be considered for the discount and also whether the applicant will take the benefit of cash discount or not. Similarly, the rate /quantum of purchase made by applicant is also not known. It is a case of offering discount post supply falling under "Cash Discount not agreed before or at the time of supply".

(iii) The applicant's draw kind attention to sub-sec 3 of section 15 of Central Goods And Service Act 2017 quoted as under,-

"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".

(iv) Applicant most humbly draws kind attention to sub-sec 1 of Section 34 of Central Goods And Service Act 2017 as under:-

"Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such

goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed."

(v) Applicant submits that the credit note cannot be issued by the supplier which does not satisfy the condition of Sec 15(3) of CGST Act 2017. A question also arises whether the credit note can be issued where the condition of Sec 15(3)(b) of CGST Act is not Satisfied.

(vi) In this case, the quantum of cash discount and incentive were determined and settled post sale, therefore, no credit note in terms of Sec 34(1) of CGST Act can be issued. It means no amount of cash discount/target incentive will be reduced from the value of supply under Sec 15 of CGST Act.

(vii) Furthermore, when credit note in terms of Section 34(1) cannot be issued for cash discount/ target incentive, still credit note can be issued in other forms. The answer to the said question has remained no more res integra in light of Circular No 92/11/2019-GST. The relevant provision of Circular No 92/11/2019-GST is reproduced for further reference:-

"D. Secondary Discounts

i. These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per pocket,

ii. The provisions of sub-section (1) of section 34 of the said Act provides as under:

"Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed."

iii. Representations have been received from the trade and industry that whether credit notes(s) under sub-section (1) of section 34 of the said Act can be issued in such cases even if the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. It is hereby clarified that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.

iv. It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts

are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied.

v. In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above in para 2 (D)(iii) or by any other means, except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied.

vi. There is no impact on availability or otherwise of ITC in the hands of supplier in this case."

(viii) The circular has categorically denied deduction of any discount which does not satisfy the condition contained in clause (b) of sub sec 3 of Sec 15 of CGST Act. In this case, since terms are settled post sales therefore, these credit notes will not be qualified as credit note issued under Sec 34(1) of the CGST Act. The value of supply will not be reduced and accordingly GST charged on supply will not be reversed.

(ix) The Applicant again draw kind attention to Circular No 92/11/2019-GST which prescribes in it's para D(iii) that where the credit note in terms of Sec 34(1) ibid are not satisfied, credit note in form of financial/ commercial credit notes can be issued. It is pertinent to mention here that in case of financial/ commercial credit notes value of supply will not be reduced under Sec 15(3) ibid and accordingly GST on said credit notes will not be allowed for reversal/ deductions. The relevant is reproduced for ready reference

"It is hereby clarified that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties."

(x) Applicant further fortified his view that in para D (vi) of Circular No 92/11/2019-GST government has specifically concluded that supplier who has issued the financial / commercial credit note will not be required to reduce his tax liability of GST on account of issuance of financial / commercial credit note. This also logically concludes that when supplier is not reversing his liability of GST on supply of goods to the applicant on account of financial / commercial credit note then, the applicant will also not be liable to reverse his Input Tax Credit on purchases from supplier on account of financial / commercial credit note.

(xi) It is also a logical conclusion that when the government has already received the GST levied on 100% sale price by the supplier to the applicant then there is no loss to the exchanger if the applicant also claims the same as ITC without considering the reversal on account of financial / commercial credit note.

(xii) At this conjunction, applicant most respectfully draw your kind attention to the advance ruling pronounced by the Hon'ble Kerala Authority for Advance Ruling, advance ruling no. KER/60/2019 dated

06.09.2019 in the case of M/s Santosh Distributors. The relevant issues and ruling pronounced by the Hon'ble Kerala Authority is as under:-

a. Query: On the tax liability of the applicant for the transaction mentioned herein and explained as above. The applicant is paying the tax due as per the invoice value issued by the applicant and availing the input credit of GST shown in the inward invoice received by the applicant from the Principal Company or their stock list.

Argument: The value of supply is governed by the provisions of section 15 of the CGST Act. The deduction of discounts from the value of taxable supply is subject to the conditions prescribed in sub-sec(3) of Section 15 ibid. In the case of the applicant the supplier of goods/principal company is issuing commercial credit notes for reimbursement of the scheme discount provided by the applicant to the customer as per the instructions of the supplier. Since the commercial credit notes issued by the supplier/ principal company do not satisfy the conditions prescribed in Section 15(3) ibid; the supplier is not eligible to reduce the original tax liability. As the supplier of goods is not reducing the original tax liability the applicant will be eligible to avail the credit of the tax paid as per the invoice of the supplier subject to payment of the value of the supply as reduced by the commercial credit notes plus the amount of original tax charged by the supplier. In other words, the applicant will not be required to reverse proportionate input tax credit.

Ruling: The applicant/distributor is eligible to avail ITC shown in the inward invoice received by him from the supplier of goods/principal company.

b. Query: Whether the amount shown in the Commercial Credit note issued to the applicant by the principal company attracts proportionate reversal of ITC.

Ruling: The supplier of goods/ principal company issuing the commercial credit note is not eligible to reduce his original tax liability and hence the recipient/ applicant will not be liable to reverse ITC attributable to the commercial credit notes received by him from the supplier.

(xiii) The applicant would now further draw your kind attention to the third proviso of Section 16(2) of the CGST Act which states that:

"Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed."

(xiv) In the present context a question may arise whether the amount of the commercial credit note on account of cash discount/ target incentive

provided by the supplier to the applicant will be considered as failure on behalf of applicant for payment of invoices to the extent of amount of commercial credit note. Therefore, applicant will be required to reverse the ITC to the extent of credit note of supply received by applicant from the supplier.

(xv) In our considered view, amount of the credit note on account of credit note/ incentive will be treated as payment/ discharge of dues of the original invoice. In this regard we would like to discuss as under:-

(xv)(1) The term 'failed to pay' or 'payment' has not been defined under the GST Law. In the present context, we can link the word failed to pay as payment of consideration. As per Section 2(31) of the CGST Act 2017, the term "consideration" in relation to the supply of goods or services or both includes:-

(a) any payment made or to be made, whether in money or otherwise, in respect of in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

The above definition of 'consideration' provides the scope and ambit for modes of payment to the supplier. The definition is so wide that almost no form of payment is excluded. Thus, payment means transfer of any asset to the payee for discharging any obligation arising out of transactions involving goods, service or other legal obligations. Although most commonly used asset for such payment is money, other assets may also be used provided the payee accepts payment by such assets other than money as goods and sufficient discharge of the obligation. In the payer's books of accounts, such transfer will be reported as a reduction in the book value of the asset being transferred.

(xv).2. The view of the applicant that amount of the credit note issued on account of cash discount/ target incentives issued by the supplier to applicant will be treated as payment/ discharge of original bill, is further fortified by the answer to the question as replied by GST & Indirect Tax Committee of Institute of Chartered Accountant of India December 2020 - edition, book name Practical FAQ's under GST. For ready reference the question and answer are as under QUOTE STARTS:

"Q248. Is it necessary for the recipient to reverse the ITC on discount, which is received by him after the supply has been effected?"

Ans. The answer will depend on two conditions:

- (a) Whether or not the discount meets the conditions of section 15(3) (b) (i) of the CGST Act, that is, discount is established as per the agreement entered into at or before the time of supply and specifically linked to relevant invoices.
- (b) Credit note issued by the supplier is with GST in terms of section 34 of the CGST Act.

Accordingly, answer is given below considering two possible scenarios (A) and (B):

(A) Discount is as per the agreement entered into at or before the time of supply and specifically linked to relevant invoices, but being passed on after supply has been effected: In this situation, the supplier may issue credit note for the discount amount plus the corresponding tax thereon as the transaction fulfils the conditions of section 15(3) (b) (i) of the CGST Act. Assuming that the credit note is issued with GST within the time line provided under section 34 (2) of the CGST Act, the supplier can exclude the discount from value of supply and also reduce his tax liability. In order to complete the process and enable the supplier to make adjustment in value of supply as well as tax liability, it is necessary for the recipient to reverse ITC on discount, as required under section 15 (3) (b) (ii) of the CGST Act. With such reversal, the tax paid and ITC availed against the same will match at invoice level between the supplier and recipient. Where the supplier decides not to issue a credit note under section 34 of the CGST Act or is unable to issue the same due to non-satisfaction of any condition under section 34 of the CGST Act, then there would not be any reduction in output tax liability involved for the , supplier. Supplier may issue an accounting / commercial / financial credit note without impact of GST. Further, the recipient would not be liable to reverse the ITC for the reasons provided in Point B below.

(B) Discount not known or agreed at or before the time of supply is given by the supplier post sale due to certain business exigencies which were not considered earlier or where discount cannot be specifically linked to respective Invoices:

In such a situation, the supplier can issue credit note for the discount amount, generally referred to as financial or commercial credit note, but since the requirements of section 15 (3) (b) of CGST Act are not met, the supplier cannot reduce the discount from the value of supply and accordingly he cannot reduce his corresponding tax liability on discount amount. Thus, what he passes on to the recipient is the credit on the entire value of supply before discount. This position is as noted and clarified at point D "Secondary Discounts" of CIR 92. Here, the recipient pays to supplier basic

amount plus tax as initially invoiced as reduced by the secondary discount provided at a later stage. The only provision which links the eligibility of ITC with the payment of consideration to the supplier is proviso to section 16(2) of the CGST Act read with Rule 37 of the CGST Rules. Failure to pay to the supplier within 180 days from the date of issue of invoice entails reversal of ITC taken earlier as per the said provisions. However, non-payment due to the reduction in the value of supply should not be equated with failure to pay. Only then one can state that reversal of ITC would not be attracted if credit note is received without GST by any recipient of supply. This provision has been discussed below:

1. Failure to pay should ideally arise in a situation where there is a requirement to pay in the first place. On issuance of an accounting/ financial/ commercial credit note by the supplier, there is an acknowledgement by the supplier himself that there is no further requirement of payment. Where no payment is required, there cannot be a failure to pay.

2. Further, the payment required is towards the value. Through the credit note, the value which is required to be paid itself decreases. There is no further obligation of payment and the recipient stands discharged once he makes the payment net of the credit note. No reversal of ITC should be made in such a situation.

3. 'Failure to pay' is due to inaction by the recipient where they are unable to perform the positive activity of having made the payment within the specified time limit. However, when the credit note is received which dispenses with the requirement of having to make further payment, no further action is required by the recipient to the extent of the value of credit note. when no action is required, there cannot be any inaction on the part of the recipient. The recipient should not be penalized when there is no failure or inaction. Therefore, there should not be any reversal of ITC.

4. Payment is also considered to have been made through book entry. There is no requirement of having a monetary consideration in each and every case. When the supplier's obligations are completed through a book entry, that itself can be considered as equivalent to payment. Where there are no pending obligations, there cannot be a failure to pay on the part of the recipient.

5. The mechanism of payment can be through netting of the payables and receivables. What is required to be paid is to be set off partly against receivables in the form of credit note from the point of view of the recipient. After this set off happens and the balance payment is made, both the parties are relieved of their obligations. Thereby the payment is already considered to have been made. As a result, failure to pay cannot arise in such a situation.

6. Raising of the credit note is a unilateral action by the supplier. It is the prerogative of the supplier whether to raise a credit note within the GST law or a financial credit note without GST. Where due to no fault of the recipient, he has no option but to simply

accept the credit note raised by the supplier, there should not be any penalty leviable on such recipient. Thereby, no reversal of ITC should be made by the recipient.

7. Financial credit notes are subject to mutual dealings between the supplier and the recipient. There should not be any losses to any of the parties due to such dealings in B2B transactions. However, in this pure business transaction, there can be a loss to the recipient if the full amount paid as tax is not allowed as credit.

8. Allowance of credit on the undiscounted value without any reversal of ITC due to financial credit note is a revenue neutral exercise. This is because when the original supply had occurred, the complete ITC was availed by the recipient. At the time of reduction of the original value, if there is no reversal of output tax liability, ITC should not be reversed either. In this situation, no loss is caused either to the Government or the taxable person. However, where the ITC is to be reversed by the recipient, it results in a loss proportionate to the value of credit note as the output tax liability had already been paid in full by the supplier. A simple business decision of giving credit note without GST due to any reason should not cause any loss to any person in the credit chain.

9. Reference may be made to 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, in case of subsequent trade discount or reduction / short payment of value. It is clearly provided that payment through debit in books of accounts should also be construed as payment. Further, it goes on to explain that where the settled payment by the recipient is less than the amount shown in the original invoice, the invoice would stand amended to that extent. It finally says that the credit would be equivalent to the amount paid as tax. Though issued under earlier Acts, the circulars have persuasive value and they support the view that taxes paid and not subsequently reduced would be fully available to the recipient as credit.

10. Circular No.105/24/2019 - GST dated 28.06.2019, at para 5 provides:-

"the dealer will not be required to reverse ITC attributable to the tax already paid on such post -sale discount received by him through issuance of financial /commercial credit notes by the supplier of goods ----- as long as the dealer pays the value of supply as reduced after adjusting the amount of post- sale discount plus the amount of original tax charged by the supplier".

Though this Circular has been withdrawn by the Board ab-initio vide Circular No.112/31/2019 - GST dated 03.10.2019, in view of representations received expressing apprehensions on the implication (of other) clarifications given therein relating to treatment of secondary or post sale discounts, the aforesaid

clarification adequately amplifies/ clarifies thinking on the part of Board that reversal of credit is not required in such cases.

From the above, 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."

(xvi) The applicant further draws your kind attention to the ruling of hon'ble AAR West Bengal in Re: M/s Senco Gold Ltd [2019(5) TMI 701] which ruled out as:

"The Applicant can pay the consideration for inward supplies by way of setting off book debt. The GST Act and rules made there under does not restrict the recipient from claiming the input tax credit when consideration is paid through book adjustment, subject to the conditions and restrictions as may be prescribed and, in the manner, specified in Sections 16 and 49 of the GST Act"

(xvii) From the above case it is cleared that applicant is not barred from claiming input tax credit when consideration is paid through book adjustment. Therefore, when a commercial credit note is issued by the supplier to the applicant and his account is adjusted in the books, it will suffice as 'payment' made by the recipient and no ITC reversal is required to be done by the recipient.

(xviii) Assessee further draw your kind attention to the advance ruling advanced by the Hon'ble Authority of Advance Ruling Karnataka in the case of M/s Kwality Mobikers Pvt Ltd. Advance ruling no KAR ADRG 76/2018 dated 24.09.2019. This ruling covers the issues raised by the applicant in this application of advance ruling. The query raised and ruling advanced by the authority as under:-

SNO	QUERY	RULING
1.	Whether volume discount received on purchases is liable for GST? If yes, under which HSN/SAC?	The volume discount received on purchases in the form of credit note without any adjustment of GST is not liable for GST.
2.	Whether volume discount received on retail (on sale) is liable for GST? If yes, under which HSN/SAC?	The volume discount received on retail (on sale) in the form of credit note without any adjustment of GST is not liable for GST.
3.	Whether company has to issue taxable invoice to this effect?	Since the amount received in the form of credit note is actually a discount and not a supply by the applicant to the authorized supplier, the applicant need not issue tax invoice for this transaction.

(xix) In light of the above facts of case, legal proposition and various rulings issued by the Authorities of Advance Ruling, applicant is of considered view that:-

a. ITC should not be reversed by the applicant on account of credit note issued by the supplier to the applicant on account of cash discount/ target incentives without adjustment of GST.

b. The commercial credit note received by the applicant from the supplier without adjustment of GST on account of cash discount/ target incentives should not be treated as separate supply and accordingly no GST is leviable as output supply.

4. QUESTION RAISED BEFORE THE AUTHORITY -

The applicant is soliciting an advance ruling on the following issues/ ambiguities with regard to the applicability of GST provisions: -

(i) Whether the applicant can avail the Input Tax Credit of the full GST charged on invoice of the supply or a proportionate reversal of the same is required in case of post purchase: -

a. Cash discount for early payment of supply invoices(bills) given by the supplier of goods to the applicant without adjustment of GST.

b. Incentive/schemes provided through credit note without adjustment of GST by the supplier to the applicant.

(ii) Whether GST is leviable on cash discount offered by supplier to applicant through credit note without adjustment of GST for making the early payment from the date stipulated for payment of such supply as output supply? If yes, then what is the applicable HSN and rate of GST?

(iii) Whether GST is leviable on incentive/schemes provided through credit note without adjustment of GST by the supplier to the applicant (dealer) as output supply? If yes, then what is the applicable HSN and rate of GST?

5. DEPARTMENT'S VIEW POINT-

The Additional Commissioner(Tech) CGST & Central Excise, Jabalpur has submitted the comments on the question raised by the applicant in their application vide F.No.GEXCOM/TECH/GST/474 dated 22.10.2021 which is produced as under:-

"(A) Section 15 of the CGST Act, 2017 defines the Value of Taxable supplies/services made/received under the Act. As per Section 15,

"(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include,-

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) 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;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government

Explanation.- For the purposes of this subsection, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(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"

Therefore for cases where supply has already been effected, such discount given shall be in terms of prior agreement which was entered into between supplier and receiver at or before effecting supply of goods and is specifically linked to relevant invoices. Also, the ITC (as is due on account of such discount given, basis the document issued by the supplier) has to be reversed by the receiver.

(B) Such discount should be document based for it to be not included in Value of supply whether before or after supply takes place. For instances where discount is given before supply is effected such discount is to be

mentioned in the Invoices itself. The discount should be clearly and specifically attributable to invoices issued in respect of supplies effected.

(C) Furthermore, in cases involving Post supply discounts the proportionate ITC should also be reversed by the receiver with the relevant GST adjustment taking place at the end of supplier in terms of Section 34 CGST Act, 2017.

(D) in the instant case, as per Section 34 of the CGST Act,2017, it is observed that a supplier can issue a Credit Note under following conditions:-

- (a) Where taxable value charged in taxable invoice/s is found to exceed the taxable value or tax payable in respect of such supply, or
- (b) Where goods supplied are returned by recipient,
- (c) Where goods or services or both supplied are found to be deficient. Also, there is no reduction in output tax liability of supplier, if incidence of tax and interest on such supply has been passed on to any other person. From condition (a) above, it can be construed that if any discount is based on prior agreement between supplier and receiver then supplier can issue a credit note attributable to specific invoices issued in respect of supply made.

(E) Upon reading in consonance with Sec.15(3)(b) of the CGST Act 2017, it is clear that in such a scenario the related ITC attributable to such discount is to be reversed by the recipient and the corresponding GST adjustment to be made at the supplier end. It also becomes pertinent to note that as per Section 34(2) of CGST Act.2017 such credit note issued are to be declared by the supplier in the return for the month in which Credit Note issued within the time limit prescribed therein Thus, for adjustment of GST liability arising out of such discount, issuance of credit note is required by supplier.

(F) Thus, statute itself is amply clear in such cases. It can be gathered from above discussion that:-

a. When supply has been made or at the time of supply, a discount is given basis prior agreement between supplier and recipient then

- (i) Supplier issues a credit Note to this effect declaring same in terms of Section 34 of the CGST Act, 2017 in their returns in manner as prescribed, adjusting the GST liability in the course
- (ii) The recipient is on the other hand required to reverse the ITC attributable to such discount on the basis of Credit Note issued.
- (iii) When Supply is yet to be made or at the time of supply, then, such discount is required to be mentioned on the invoice itself, for it to not to be considered as part of transaction value for determination of Value of supply.

(G) In the TNAAR Order No.5/AAR/2019 dated 22.01.2019, where Advance ruling was sought on "Whether the Applicant can avail the Input Tax Credit of the full GST charged on the supply of invoice or a proportionate reversal of the same is required in case of post purchase discount given by the supplier of the goods or services ,

a. the authority has re-iterated the existence of a prior agreement between supplier and recipient for the discount to be allowed and corresponding discounted value as the Value of Supply. If such an agreement is not established then the value of supply is the Undiscounted value mentioned in Invoice in cases of Post sale discount.

b. The relevant observation of the TNAAR in the matter is reproduced for reference "Proviso to Section 16 states that where a recipient fails to pay to the supplier of goods or services or both, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, and the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon. In the instant case, the value of supply is the full undiscounted value indicated in the tax invoice and the recipient /Applicant only makes payment to the extent of invoice value less the discount thrown up by the C2FO software As per proviso to Section 16, the recipient is entitled to avail the credit of input tax on the payment made by him alone and if any amount is not paid as per the value of supply and the recipient has availed full input tax credit, the same would be added to his output tax liability. Therefore, in the instant case, the Applicant can avail Input Tax Credit only to the extent of the invoice value less the discounts as per C2FO software. If he has availed input tax credit on the full amount, he should reverse the difference amount equal to the discount, to avoid adding to his output liability.

The CBIC, New Delhi has issued Circular No.92/11/2019-GST dated 07.03.2019 regarding "Clarification on various doubts related to treatment of sales promotion schemes under 'GST". This office has no further additions to make than those already made in the said circular in respect of various incentives extended to recipients by suppliers and their treatment under the CGST Act,2017.

If a Credit Note issued does not satisfy the conditions of proviso to Section 15, CGST Act. 2017, the discounts therein also not allowed for exclusion from Value of supply. Accordingly, the value of supply is the undiscounted invoice value with the resultant treatment of ITC already availed by recipient as discussed supra.

(I) The CBIC, New Delhi has issued Circular No. 105/24/2019-GST dated 28.06.2019 regarding 'Clarification on various doubts related to treatment of secondary or post-sales discounts under GST". The Circular makes

clear the GST implications upon secondary or post sale discounts.
Relevant portion is reproduced as under:-

"For the purpose of value of supply, post sales discounts are governed by the provisions of clause (b) of sub-section (3) of section 15 of the CGST Act. It is crucial to examine the true nature of discount given by the manufacturer or wholesaler, etc. (hereinafter referred to as 'the supplier of goods') to the dealer. It would be important to examine whether the additional discount is given by the supplier of goods in lieu of consideration for any additional activity / promotional campaign to be undertaken by the dealer.

(iii) 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.

(iv) 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.

(v). There may be cases where post-sales discount granted by the supplier of goods is not permitted to be excluded from the value of supply in the hands of the said supplier not being in accordance with the provisions contained in sub-section (3) of section 15 of CGST Act. It has already been clarified vide Circular No. 92/11/2019-GST dated 7th March, 2019 that the supplier of goods can issue financial / commercial credit notes in such cases but he will not be eligible to reduce his original tax liability Doubts have

been raised as to whether the dealer will be eligible to take ITC of the original amount of tax paid by the supplier of goods or only to the extent of tax payable on value net of amount for which such financial / commercial credit notes have been received by him. It is clarified that the dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount received by him through issuance of financial / commercial credit notes by the supplier of goods in view of the provisions contained in second proviso to sub-rule (1) of rule 37 of the CGST Rules read with second proviso to sub-section (2) of section 16 of the CGST Act as long as the dealer pays the value of the supply as reduced after adjusting the amount of post-sale discount in terms of financial / commercial credit notes received by him from the supplier of goods plus the amount of original tax charged by the supplier "

In the instant case, per-se point 3 of Circular No. 105/24/2019-GST dated 28.06.2019. 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 fulfillment of provisions of sub-section (3) of section 15 of the CGST Act, the applicant receives cash discount offered by supplier to applicant through credit note without adjustment of GST for making the early payment from the date stipulated for payment of such supply as output supply then Since, there involves no further obligation or action at dealers end, the post sales cash discount would not be included in the value of supply subject to the fulfillment of provisions of subsection (3) of section 15 of the CGST Act.

(J) As per applicant submission at point.4 Annexure-2, " The supplier also offered various schemes, one of them termed as target incentive. The term of target incentive being quoted as under:-

"If any distributor achieves the yearly target then incentive will be given on value sold only " The credit note is issued for this target incentive by the supplier to applicant without considering the GST in the form of commercial credit note."

3. In terms of above submission, it can be inferred that applicant is receiving target incentive from their supplier for achieving the Yearly Target. In this scenario, it is also pertinent to note that the credit note in above condition are being issued after sale has taken place. In the circumstances this office is of the view that the plea of the applicant may be accepted subject to fulfillment of conditions prescribed in Section 15(3) of the CGST Act. 2017 and instructions issued by CBIC on this issue "

6. RECORD OF PERSONAL HEARING -

As requested by the party the personal hearing was held through virtual mode. The applicant in the P.H. has reiterated his stand as submitted by them for filing of appeal.

7. DISCUSSIONS AND FINDINGS -

7.1 We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing and the Department's view provided by the jurisdictional officer.

7.2 The main issue is to decide whether the Applicant can avail the Input Tax Credit of the full GST charged on invoices of the supply or a proportionate reversal of the same is required in case of post purchase Cash discount for early payment and incentive/schemes provided through credit note without adjustment of GST by the supplier to the applicant. Further the applicant raised the question whether the GST is leviable on the cash discount and incentive/schemes provided through credit note without adjustment of GST by supplier. For clarify the questions raised by the Applicant, we discuss the issue one by one in foregoing paras.

7.3 On this issue whether the discount included in the value of supply or not, we go through the provision of sub-sec 3 of section 15 of Central Goods and Service Act 2017 which reproduced below:-

"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".

As per the Section 15(3)(b) of CGST Act, for the cases where supply has already been effected and discount given after supply shall be in term of prior agreement before effecting supply of goods and specifically linked to relevant invoices, then such discount shall not include in the value of supply and ITC has to reversed by the receiver. There are two condition to satisfy the Section 15(3)(b) of CGST Act, firstly discount given after supply of goods shall be in term of prior agreement and secondly it should be linked to the relevant invoices.

7.4 We observe that in this case, the applicant submitted that the cash discount and Incentive/scheme provided by the supplier was through credit note post purchase without reversing the GST payable. He further submitted that this discount arrangement is not part of the Purchase Contracts or the invoices since it is not known at that point of time of supply, whether supply against the invoices will be considered for the discount or not. Similarly, the rate /quantum of purchase made by applicant is also not known.

7.5 Further as per of Circular No 92/11/2019-GST. It is further clarified that secondary discounts which is not known at the time of supply shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, value of supply shall not include any discount by way of issuance of credit

note(s) except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

7.6 We observe that in the similar matter in case of M/s Kwaliti Mobikers P Ltd (2019(30)GSTL 668(AAR-GST) AAR Karnataka, in case of MRF limited (2019(27) GSTL 578(App.AAR-GST) Appellate authority of advance Ruling Tamilnadu, in case of M/sSantosh Distributors (2020(32)GSTL 105(AAR GST Ker), the authority have given the ruling in favour of Applicant.

7.7 We observe that the value of taxable supply is governed by the provisions of Section 15 of the CGST/SGST Act. The deduction of discounts from the value of taxable supply is subject to the conditions prescribed in sub-section (3) of Section 15 ibid. In the case of the applicant, the supplier of goods is issuing Commercial Credit Notes for cash discount for early payment and quantity discount after post supply without adjustment of GST. As per the submission of the Applicant we observe that the Commercial Credit Notes issued by the supplier/Principal Company does not satisfy the conditions prescribed in sub-section (3) of Section 15 of the CGST/SGST Act; the supplier is not eligible to reduce the original tax liability. As the supplier of the goods is not reducing the original tax liability, the applicant will be eligible to avail the credit of the tax paid as per the invoice of the supplier subject to payment of the value of supply as reduced by the commercial credit notes plus the amount of original tax charged by the supplier. In other words, the applicant will not be required to reverse proportionate input tax credit.

7.8 Further, we observe that the Applicant when purchase more than his target is eligible for the incentive which is provided by the supplier in the form of a credit note without affecting the sale price of the goods purchased and GST paid on the invoices. Hence, the amount received by the Applicant is in the form of an incentive provided by the supplier and does not affect the sale price of the goods already sold and hence there is no liability to charge GST on the same. Further, as per the condition of Section 15(3)(b) of CGST Act, the value of supply not included the discount in terms of agreement entered into at or before the supply. The agreement must be written or oral. In this case, the Applicant has not submitted any agreement with supplier but in their submission submitted that the said discount is not as per prior agreement and on the basis of submission of applicant that the said discount is not in terms of prior agreement, we find that no proportionate reversal of ITC is required on the said discount as they are not as per prior agreement.

7.9 Further Additional Commissioner, Jabalpur has submitted their reply on the applicant submission and asserted that as per Circular No 92/1 1/2019-GST , the discount can only be availed if all the conditions mention in the Section 15(3) of the Act are met. Further, they have also given detailed provisions of Circular No. 105'24/2019 - GST dated 28.06.2019 in their submission. CBIC vide Circular No. 112 31 2019 GST- withdrawn, ab-initio. Circular No. 105/24/2019-GST dated 28.06.2019. As detailed above, the supplier and applicant have not fulfilled the condition of Section 15(3) of the Act therefore, the benefit of reduced price by way of discount is not available to them. Therefore, supplier has not issued GST credit note under Section 34 of the Act and has not lowered his output tax liability.

8.0 As per GST Act the applicant has to made self assessment of the supplies made by them and also proper ITC availed therefore it is mandatory on the part of the applicant to ensure that the supplier, by giving the discount through commercial credit note, has not reduced their output tax liability post sale i.e. at the time of filing annual return. If the supplier reduced their output tax liability than the applicant is mandatory required to reverse the proportionate ITC.

8.1 Further in respect of other questions, the Applicant is not providing any service to the supplier and is only receiving the incentive/discount. Indirectly, it has an effect on the sale price of the goods purchased by the Applicant from the supplier and is actually in the form of discount. We finds that no GST is leviable on the said discounts received from the supplier.

9 Ruling

9.1 On the basis of above discussion, in respect of Question - 1, the applicant can avail the Input Tax Credit of the full GST charged on the invoice of the supply and no proportionate reversal of ITC is required in respect of commercial credit note issued by supplier for Cash discount for early payment of supply invoices(bills) and Incentive/schemes provided without adjustment of GST, if the said discount is not covered under Section 15(3)(b) of CGST Act, 2017 and the said discounts is not in terms of prior agreement. This is subject to the conditions that the GST paid for the said goods/service is not reversed or reimbursed / re-credited by the supplier to the applicant in any manner.

9.2 In respect of Question 2&3, Since the amount received in the form of credit note is actually a discount and not a supply by the applicant to the supplier, no GST is leviable on receiver on cash discount/incentive/schemes offered by the supplier to applicant through credit note against supply without adjustment of GST.

9.3 The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.

Sd/-

MANOJ KUMAR CHOUBEY

(MEMBER)

Sd/-

VIRENDRA KUMAR JAIN

(MEMBER)

(Please note this is not the Official copy of above order; kindly download the same from official website of relevant Authority)