

Deduction for Post Supply Discounts - an Illusion or Reality?

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- What is Post Supply Discount?

Post Supply Discounts, generally refers to discounts which are allowed subsequent to the supply of goods/services. Post Supply Discounts could be further sub-divided into 2 types (i) Known at the time of supply but quantified post supply or (ii) Known and quantified post supply. Post Supply discounts are invariably offered to incentivize/boost sales and are commonly quantified based on quantity or turnover achieved for prescribed period. Such discounts are a part and parcel of any distribution business.

- Deduction of Post Supply Discount under GST

The GST law envisages a deduction for pre and post supply discounts from the transaction value, for the purposes of levy of GST, subject to meeting the conditions specified in Section 14(3) of the GST law, set out herein below:

Section 14(3) - *The value of the supply shall not include any discount which is given*

- *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*
- *after the supply has been effected, if*
- *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*
- *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*

Pre-supply discounts are typically reflected on the body of the invoice itself and seeks to reduce the transaction value/consideration for a supply leading to a consequent reduction in the quantum of GST, applicable thereon. Thus claiming deduction for pre-supply discount poses no challenge what-so-ever.

However post supply discounts, which are known at the time of a supply but quantified subsequently (For example target/turnover discount, year-end discounts etc.) enter into the pricing of a supply and are typically allowed through the instrumentality of credit/debit notes. The issuance of credit notes by a supplier post supply, in the accounting parlance, has the effect of reducing the original price/consideration for the supply. Given that GST is an advalorem levy and therefore a function of price/consideration, the issuance of a credit note for post supply discounts would imply that the price with proportionate GST incidence thereon also stands reversed/reduced. At this stage, it would be pertinent to invite the attention of the reader to the following provisions of the GST law:

Section 34(2) - *Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:*

Provided that no reduction in output tax liability of the supplier shall be permitted **f the incidence of tax and interest on such supply has been passed on to any other person.**

Given the above, it transpires that under GST, post supply discounts can be claimed as deduction inter alia subject to the condition that incidence of tax thereon has not been passed on to any other person. The principle of non-passing of incidence to any other person for becoming eligible to claim refund/adjustment emanates from the doctrine of Unjust Enrichment i.e. one should not enrich himself at the cost of the other. In this regard, it would be worth-while to refer to the decision of the Hon ble Supreme Court in the case of **CCE Vs. Solar Pesticides** reported in **2000 (116) ELT 401** wherein the Hon ble court has taken a view that passing of tax incidence could either be directly or indirectly as part of price of the goods. Again in **CCE, Madras vs. M/s Addison & Co. Ltd.** reported in **2016(339) ELT 177 - [TS-101-SC-2017-EXC]** also delivered in the context of the said principle, the Hon ble Court has taken a view that the expression "any other person" would mean the ultimate consumer and not the immediate buyer. Thus, for a supplier to claim the deduction for post supply discounts, it will have to be established through documentary evidence that the GST incidence has not been passed on to any downstream buyer in the supply chain and not only to the immediate buyer.

Having regard to the aforesaid discussions, it is quite likely that the GST authorities may deny the benefit of post supply discounts though proportionate ITC has been reversed by the recipient solely on the ground that the price charged by the immediate buyer remained unaffected even after post supply discounts. The risk of such denial would be particularly higher for any business involving a multi-layered distribution network.

*The article has been co-authored by **Mr. Rahul Dhanuka, Principal Associate***