

GST-Two years and confusion continues

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It has been two years since GST was introduced by the Government. While the Government claims it to be a Good and Simple Tax, in reality it is Good but not a Simple Tax. Firstly, it is one nation and 29 taxes (*and not one tax*) and therefore not simple and Secondly, the frequent changes and cumbersome compliance burden has added to the woes of the taxpayer. Often, the Circulars issued by the Board add to the confusion rather than clarifying the purpose for which it has been issued.

The case in point here is circular No. 105/24/2019 dated 28.06.2019. The said circular has apparently been issued to clarify various doubts related to the treatment of secondary or post sales discounts. The circular provides that if the post sales discounts given by the supplier of goods to the dealer is without any further obligation or action required at the dealer's end, then the post sale 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 the supplier of goods, subject to fulfillment of provisions of sub-section (3) of section 15 of the CGST Act. However, if the additional discount given by the supplier of the 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 subject to GST. The Circular also makes a mention of a commercial credit note which can be issued without any GST implications. In addition to the above, paragraph 4 of the circular deals with a situation whereby to augment the sales, the manufacturer gives a special discount. The Circular provides that such an additional discount is subject to GST. ***The clarification ends here, and the confusion begins when one reads the said paragraph which is reproduced below:***

"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.”

Let us try to understand the implications of the aforesaid paragraph by way of an example. Consider a Manufacturer who sells the goods for Rs. 100 to the dealer. The dealer and manufacturer are acting on a principal to principal basis. The dealer is supposed to sell the goods at Rs. 150 to the end customer. For simplicity, let us assume that the goods in question are subject to GST@5%.

When the manufacturer sells the goods, he will raise an invoice of Rs. 100 + 5% GST to the dealer. The dealer will sell the goods to the ultimate consumer at Rs 150+ 5% GST i.e. at Rs 157.50/-. The dealer will take input credit of Rs. 5 and pay the balance of Rs 2.5/- to the tax authorities. Due to some reasons the product is not well received by the market, which forces the manufacturer to drop the price of the product. Accordingly, the manufacturer instructs the dealer to sell the goods at Rs. 120 instead of Rs150 and that the manufacturer would reimburse the differential cost of Rs 30 to the dealer. The 30 Rupees which the dealer gets from the manufacturer as an additional discount is now being made taxable by including the same in the value of supply. The issues which arise basis this Circular are discussed below:

1. Is the additional discount offered a ‘Supply’ within the meaning of the said term as provided for in section 7 of the CGST Act. This is a pure financial transaction between the manufacturer and the dealer. By offering an additional discount to sell the product, has the dealer or the manufacturer supplied any goods or any extra service so as to make it chargeable to GST. The answer should be a straightforward No.
2. As per the Board, the additional discount is a ‘consideration’ and therefore should be included in the value of supply for the purposes of GST. Let us look at the definition of the said term. Section 2(31) of the CGST Act provides that *“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.

3. Let us look at the above definition closely. Part (a) of the above definition refers to a ‘payment made to or to be made’. Discount is not a payment rather it is something which is

given up or a loss assumed by the person giving the discount. Part (b) of the definition refers to the 'monetary value of any act'. This presupposes that there are two different things i.e. the 'act' in itself for which a monetary value can be assigned. Discount on the other hand is itself a monetary value and therefore cannot be covered in the aforesaid definition.

4. Assuming, for a moment that the discount being offered is a Supply subject to GST and the discount also gets covered in the definition of the term 'consideration', the next question who will bear the incidence of tax on this 30 rupees? The Circular mentions that it will be added as *the consideration payable by the customer, for the purpose of arriving value of supply, in the hands of the dealer*. A literal interpretation would mean that this has to be added to the consideration payable by the customer. If that be the case how would the customer get the benefit of the reduced price? This interpretation therefore, goes against the spirit of the circular and has to be ignored.
5. Therefore, someone else besides the customer has to pay the differential tax i.e. the tax on Rs 30. The dealer will not bear the tax of Rs 1.5 (5% of Rs 30). If the dealer has to recover the tax from the manufacturer it will have to raise a taxable invoice for the additional discount so as to pass on the benefit of the GST to the manufacturer. This will pose further accounting challenges.
6. Will the manufacturer be allowed to take the input credit of the tax that is recovered by the dealer from the manufacturer or there is a break in the input credit chain. If there is a break in the credit chain, then this goes against the very concept of GST. On the one hand, the manufacturer is being hit by a reduction in the price and on the other hand, the manufacturer is being made to bear the GST on a value which is not realized. This is extremely harsh.
7. If the additional discount is made subject to GST then does it mean that there is a service which has been rendered by the dealer to the manufacturer. If yes, then is it also subject to TDS under Chapter XVII -B of the Income-tax Act 1961. Any smart assessing officer will raise this issue and start litigation.

The Board has accepted the concept of a commercial credit note in its earlier circulars and even in this Circular the same position is reiterated. It would have been so simple had the Board merely clarified (if at all it was required) that such issues can be taken care of by way of a commercial credit note rather than making a pure financial transaction subject matter of GST.

The Board seriously needs to re-consider this Circular otherwise it will add to another set of litigation and make running businesses more complex as opposed to the stated intent of the Government regarding 'ease of doing business'.