

Whether the applicant is duly eligible to take full credit of GST Charge in Tax invoice issued by supplier and GST was paid by such supplier to government even though later commercial/ financial credit note is issued for part invoice. HELD Answered in Affirmative(2) Whether the applicant is required to reverse the ITC proportionately to the extent of financial/ commercial credit note issued by supplier HELD Answered in Negative, provided 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.

Advance Ruling AAR No. 05/AP/GST/2023, Dated 26th May, 2023

BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH

Goods and Service Tax

D.No.12-468-4, Adjacent to NH-16 Service Road, Kunchanapalli, Guntur-522501

Present

1. Sri. K. Ravi Sankar, Commissioner of State Tax (Member)

2. Sri. RV Pradhamesh Bhanu, Joint Commissioner of Central Tax (Member)

1	Name and address of the applicant	M/s. Vedmutha Electricals India Private Limited
2	GSTIN	37AACCV5041K1Z6
3	Date of filing of Form GST ARA-01	12.01.2022
4	Personal Hearing	11.01.2023
5	Represented by	Madhu Jain, Advocate
6	Jurisdictional Authority-State	Bhavanipuram Circle, Vijayawada-1 Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	(d) Admissibility of input tax credit of tax paid or deemed to have been paid

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub- section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the APGST Act.

2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Vedmutha Electricals India Private Limited (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

3.1 M/s Vedmutha Electricals India Private Limited (hereinafter referred to as "applicant") are engaged in business of supply various electronic items. Applicant is having GST Registration number 37AACCV504 1K1Z6. The applicant purchases various electronic items from M/s. Gold Modal Electricals Private Limited (hereinafter referred as 'supplier').

3.2 The supplier issued Tax Invoice in terms of Rule -16 of CGST Rules, 2017, and charged GST on such

taxable value, calculated in terms of Section 15 of CGST Act, 2017.

3.3 The applicant submits that, supplier paid GST and filed GSTR3B for the relevant tax period and reported details of supplies GSTR1.

3.4 Applicant has received the goods and made the payment of consideration as per tax invoice for the goods received from the supplier.

3.5 The applicant has received various incentives, in the nature of "discounts" from its supplier, viz. Turnover Discount, Quantity Discount, Cash Discounts, Additional Scheme Discounts, 3 Months regular scheme discounts, etc. year wise from effective date of registration till date. All the above discounts are in the form of after sale discounts. For the above-mentioned discounts, the supplier has raised financial/commercial credit note without GST for accounting purpose only. The financial Credit Notes were accounted for by the Applicant and also disclosed by distributors in their Income Tax returns. Further, supplier does not reduce its output tax liability in respect to said Financial/commercial Credit Notes, as Section 15 doesn't permit to exclude "Post Supply Discount" from transaction value. Supplier also filed affidavit stating that they don't reduce GST liability on account of financial/commercial credit note.

4. Questions raised before the authority:

The applicant seeks advance ruling on the following:-^

1 .Whether the applicant is duly eligible to take full credit of GST Charge in Tax invoice issued by supplier and GST was paid by such supplier to government even though later commercial/ financial credit note is issued for part amount of invoice.

2 . Whether the applicant is required to reverse the ITC proportionately to the extent of financial/commercial credit note issued by supplier.~

On Verification of basic Information of the applicant, It is observed that the applicant is under State jurisdiction i.e., Bhavanipuram, Vijayawada -1 Division, Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Central tax authorities to offer their remarks as per Sec, 98(1) of CGST / APGST Act 2017.

In response, remarks are received from the State Jurisdictional officer concerned stating that no proceedings lying pending with the Issue, for which the Advance Ruling sought by the applicant.

5. Applicant's Interpretation of Law:

APPLICANT IS NOT REQUIRED TO REVERSE THE ITC AS CREDIT IS VALID

5.1 The applicant submits that Section 16 of CGST Act, 2017, which deals with eligibility to avail credit of Input Tax paid by the recipient of goods or services, on inward supplies, with the fulfillment of below mentioned conditions

Section 16 of CGST Act

16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, -

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation. - For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods,

either by way of transfer of documents of title to goods or otherwise; (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and (d) he has furnished the return under section 39 :

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient falls 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 : (emphasis supplied)

Provided also that 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.

5.2 It is submitted that all the above conditions are satisfied in the present case. The applicant further submits that 'amount towards the value of supply' to be the commercial price, which is mutually agreed upon between the supplier and the buyer and claims that the said proviso does not have any application to the case at hand. Further, legislative intention is to merely ensure that suppliers especially those in the MSME sector are paid the commercially agreed price on time, for which reliance is placed on the discussions and decisions of the 29th GST Council Meeting as relevant to Section 16 of the CGST Act.

5.3 The applicant submits that; Section 9 provides that GST shall be levied on the value as determined under Section 15 of the Act. Section 15(1) states that the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply to unrelated recipients. Section 15(3) provides that 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 in case the discount is given 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 further the 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.

5.4 The applicant further submits that, in the present case since the discounts are not recorded in the invoice issued in respect of such supply and in case of the discount given after the supply has been effected, it is not established in terms of an agreement entered into at or before the time of such supply nor is the input tax credit as is attributable to the discount to be reversed by the recipient of the supply. Hence the value of goods would continue to be the value as determined under Section 15(1), on which GST has been charged.

5.5 The applicant further submits that, a conjoint reading of Sections 15 and 16 leads to the conclusion that a registered person is entitled to take full credit of the input tax charged on the supply of goods or services or both. The provisions of the second proviso to Section 16(2) would come into play only where the buyer/recipient fails to pay to the supplier of goods the amount towards the value of the supply. In the circumstances, if the GST charged and paid is not reversed/refunded in whole or part subsequently in any manner or circumstances, the credit availed on the same need not be reversed. In this regard, reliance is placed on the decision of Appellate Authority for Advance Ruling in MRF Ltd reported at 2019-TIOL-61-AAAR-GST = 2019 (27) G.S.T.L. 578 (App. A.A.R. - GST). Thus, the applicant is of the opinion that ITC need not be reversed on account of commercial/financial credit note, in view of the above rule position.

5.6 The applicant submits that, as per Circular No. 122/3/2010, dated 30-4-2010 issued by CBEC in the context of Rule 4(7) of the Cenvat Credit Rules, 2004 in respect of Services, states as follows:

"In the cases where the receiver of service reduces the amount mentioned in the invoice/bill/challan and makes discounted payment, then it should be taken as final payment towards the provision of service. The mere fact that finally settled amount is less than the amount shown in the invoice does not alter the fact that service charges have been paid and thus the service receiver is entitled to take credit provided he has also paid the amount of service tax, (whether proportionately reduced or the original amount) to the service provider. The invoice would in fact stand amended to that extent. The credit taken would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would also be altered accordingly."

5.7 The applicant further submits that, as per Circular No. 877/15/2008-CX, dated 17th November, 2008, regarding reversal of Cenvat credit in case of trade discount, is as under:

"Representations have been received from trade and industry seeking clarification on the issue whether proportionate credit should be reversed in cases where a manufacturer avails credit of the amount of duty paid by supplier as reflected in the excise invoice, but subsequently the supplier allows some trade discount or reduces the price, without reducing the duty paid by him."

"The issue has been examined. Since, the discount in such cases are given in respect of the value of inputs and not in respect of the duty paid by the supplier, the effect of reduction of value of inputs may be that the duty required to be paid on the inputs was less than what has been actually paid by the inputs manufacturer. However, the fact remains that the inputs manufacturer had paid the higher duty. Rule 3 of Cenvat Credit Rules, 2004 allows credit of duty "paid" by the inputs manufacturer and not duty "payable" by the said manufacturer. There are many judgments of Hon'ble Tribunal in this regard which have confirmed this view."

5.8 The applicant further submits that, In view of above, the entire amount of duty paid by the manufacturer, as shown in the Invoice would be available as credit Irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise. However, If the duty paid is also reduced, along with the reduction in price, the reduced excise duty would only be available as credit. It may however be confirmed that the supplier, who has paid duty, has not filed/claimed the refund on account of reduction in price. D. SAME IS ALSO EVIDENT FROM THE C.B.E. & C. FLYER NO. 19, DATED 1-1-2018

"1. Any registered person can avail credit of tax paid on the inward supply of goods or services or both which is used or intended to be used in the course or furtherance of business.

2. The prerequisites for availing credit by registered person are:-^

(a) He is in possession of tax invoice or any other specified tax paying document

(b) He has received the goods or services. "Bill to ship to" scenarios also included

(c) Tax is actually paid by the supplier

(d) He has furnished the return

(e) If the inputs are received in lots, he will be eligible to avail the credit only when the last lot of the inputs is received

(f) He should pay the supplier the value of the goods or services along with the tax within 180 days from the date of issue of invoice, failing which the amount of credit availed by the recipient would be added to his output tax liability, with interest [rule 37(1) & (2) of CGST Rules, 2017]. However, once the amount is paid, the recipient will be entitled to avail the credit again. In case part payment has been made, proportionate credit would be allowed."~

5.9 The applicant submits that, however, the value of supplies in respect of following shall be deemed to have been paid and ITC shall not be reversed in such cases. Value of supplies made without consideration as specified in Schedule-I Value of supplies on account of any amount added in accordance with the provisions of section 15(2)(b), i.e. 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 (Notification No. 26/2018-Central Tax, dated 13-6-2018).

6. Personal Hearing:

The proceedings of Virtual Hearing were conducted on 11.01.2023, for which the authorized representative, Madhu Jain, Advocate attended and reiterated the submissions already made.

7. Discussion anti Findings:

7.1 We have carefully considered the submissions made by the applicant in their application for Advance Ruling. We have considered the issues involved from which Advance Ruling is sought by the applicant and the relevant facts along with arguments made by the applicant and also their submissions made during the time of the personal hearing.

7.2 The main issue is to decide whether the applicant is eligible to take full credit of GST charged in tax invoice issued by supplier when GST was paid by supplier to the Government even though later commercial/financial credit notes were issued. We will examine the language of 15(3) of the CGST Act, 2017 firstly.

The above said provision states that

(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, the discount value shall not be included, as per 15(3)(b), when such supply has already been effected and the discount is established as per terms of an agreement at or before the time of such supply and there is a link to the invoices of the discount given. Further, the ITC attributable to the discount is to be reversed by the recipient of the supply.

7.3 On examination of the transaction between the applicant and their supplier, M/s Gold Medal, it is found that the supplier is issuing a tax invoice on the supply of goods to the applicant and the applicant is taking ITC on the same. The applicant is issued commercial credit note or financial credit notes under various schemes such as turnover discount, quantity discount, additional scheme discount etc. The credit notes issued are without GST and as per the applicant were issued only for accounting purpose as also given in undertaking by the supplier. The credit notes are duly accounted in the book of accounts of the applicant and also in their income tax returns.

7.4 For the applicability of provisions of 15(3)(b) there should be prior agreement and a link established with the relevant invoices of the discount given. No such co-relation between the credit notes issued by the supplier to the applicant is found except credit note mentioning the scheme and the goods for which the credit note is being given. In absence of such specific information, the benefit of lessening the value of discount from the transaction value as per the provisions of 15(3)(b) is not allowed and therefore the contention of the applicant is correct. Therefore, as being correctly done by the supplier no adjustment in price is done in respect of goods already sold as per their own undertaking nor any adjustment of GST made in the credit note. Therefore, the corresponding reduction in ITC is also not warranted as there is no corresponding reduction of outward liability at the end of the supplier. The amount received by the applicant is in the form of post supply discount by the supplier and it will not affect transaction value between the supplier and the applicant for the reasons discussed above. For the same reasons, the applicant is eligible to take full credit of GST charged in the tax invoice and not required to reverse the ITC to the extent of financial/commercial credit notes issued by the supplier.

However, it is pertinent to note that the financial credit note shall not be used as a conduit to transfer input tax credit fraudulently, by raising an invoice for a higher value to transfer ITC and then reducing the transaction value through financial credit note whereas the ITC transferred is left unaltered. In case such a misutilisation of financial credit note is noticed at any point the same shall be liable for penalties under section 132(b).

7.5 Further reference to the Circular No 92/11/2019-GST can be made wherein it is further clarified that 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) to 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. Thus, this further clarifies the questions raised by the applicant.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question 1 : Whether the applicant is duly eligible to take full credit of GST Charge in Tax invoice issued by supplier and GST was paid by such supplier to government even though later commercial/ financial credit note is issued for part invoice.

Answer: Affirmative

Question 2 : Whether the applicant is required to reverse the ITC proportionately to the extent of financial/ commercial credit note Issued try supplier

Answer : Negative, provided 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.

Sd/-K. Ravi Sankar
Member

Sd/- RV Pradhamesh Bhanu
Member

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.