



# TREATMENT OF DISCOUNTS, OFFERS, FREE SAMPLES IN GST

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**F**or any business to flourish, the taxpayers have to offer various promotions like trade discounts, turnover discounts, free goods, offers, etc.. All these are required for the organizations to capture the market share, attract new customers, and increase profits. All these are the business requirements, but at the same time, the taxpayers also have to ensure that they are following all the provisions of the law and changes in the law from time to time. Another important aspect is that GST is a business process reform and not tax reform. This has been proved time and again from the various orders passed by the Honourable High Courts and the orders passed by the Advance Ruling benches and the National Authority for Anti-profiteering.

The additional amount offered by the taxpayer in whatever name it is are covered under Section 15 of the CGST Act 2017 and wide Rules 27 to 35 of the CGST Rule 2017.

In any business, there will be two types of discounts, offers, schemes, or by whatever name we call it. The first one is known at the Time of Supply, and the second is given Post Supply. The provisions of the law are very clear in case of discounts, schemes or by whatever name given at or during the Time of Supply. The provisions related to this are given in Section 15(1) of the CGST Act

*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 and State Governments.*

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

*Discount or offer is not defined in the GST Act and for this we have to refer to the Corpus Juris Secundum, vol 26A page 974 as follows*

*"The term trade discount means the difference between the seller list price and the price at which he actually sells goods to the trade a percentage deduction from the regular list or catalogue price of goods."*

### **Discount**

Say, for example, if the retailer or distributor gives a discount of 10% on the goods or services sold, then on the tax invoice, the amount of discount given is shown, and the customer pays the net amount of discount as it will be transaction value and on this only GST will be considered.

### **Offer / Free**

In normal life, we come across terms like Buy 2 and get 1 free. In this case, the buyer has to pay for the two numbers, and then only the third one is given as free. This means there is nothing free as the buyer has to pay for the two units, and the third one is given as free then only, which means that the taxpayer will issue an invoice for three units and charge the price for two units only. In this case, the taxpayer can have an option of showing the number of units is three and charge the amount for two. GST will be computed on the price of two items, and the inventory also will be updated for three units.

Alternatively, the taxpayer can show two lines, one line item for two units and the third with one unit, and prices for the first will be shown for two units, and for the second line, the price can be shown as Zero.

It is for the taxpayers to adopt whatever they want or any other method to show it on the tax invoice, and there is no need to reverse the input tax credit in case of the third item as there is consideration received, and then only the third unit is given free.

The above will be covered as part of the discount/offers / free or by whatever name called as pre-shipment discounts, and the taxpayer will be charging taxes only the transaction value as it is known at the time of supply and recorded on the tax invoice.

### **Post Supply Discounts**

Post supply discounts can be in the form of turnover discounts, or reimbursement of expenses incurred by the agent on behalf of the principal, or trade discount or free trip to different locations within India or outside India or any time given as gifts on the achievement of pre-determined turnover or by whatever name it is called has a different treatment under GST.

The provisions for such treatment are given in Section 15(3) of the CGST Act 2017.

*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*

From the above provisions, it is clear that any discount given post supply should be documented and mentioned on the agreement or the tax invoice. If any such details are not there, then any such discounts given will not be considered in the value of supply, and for such a discount, there will be any impact of GST, and it will be a normal financial credit note only, and the tax will not be reversed.

If any discount or any reimbursement passed subsequently and not documents will not have any GST impact, and the same is echoed in the order issued by the **AAR of Maharashtra in the case of M/s UltraTech Cement Ltd.**

### **Facts of the Case**

M/s UltraTech Cement Ltd. Is a registered taxpayer under GST and is in the business of manufacturing and supply of Cement.

The applicants enter into an agreement the authorized dealers/stockists for the supply of goods on a principal-to-principal basis.

The dealer/stockists are supplied cement at a pre-determined price.

As cement pricing is dynamic, sometimes the dealer/stockist sells the same below his purchase price as the industry practice because the principal will reimburse the same as a Trade discount.

The agreement entered has a clause that says the price difference will be reimbursed as a trade discount.

The bench, in its ruling, has stated the following

- The wordings of Section 15 (3) (b) (i) very clearly states that quantum of discount is given after the supply of goods has taken place has to be there in the terms of such agreement i.e. it cannot be open ended not based on any criteria. Thus this discount quantum cannot be arrived at without any basis only at the discretion of the supplier. The supplier has to clearly mention the quantum of discount or percentage of discount which is to be worked out on the basis of certain parameters or certain criteria which may be agreed to between the supplier and the recipient and which are predetermined and mentioned in agreement in respect of supply of the goods.
- According to the Applicant's agreement with authorized stockists, the company will pay discount at such rate as may be decided by the company from time to time on the quantity sold to the authorized stockists in a particular month. But there is no basis or criteria or parameter (which may even be of personal relations nature between the parties to the agreement) mentioned in the agreement on the basis of which the quantum of discount to be given on the goods which have already been supplied is mentioned.
- Hence the amount paid to the Dealer towards "rate difference" and "special discount" as mentioned above, post supply do NOT comply with the requirements of section 15(3)(b)(i) of the CGST Act and therefore cannot be considered and allowed as discount for the purpose of arriving at the 'transaction value' in terms of Section 15 of the CGST Act.

The bench has also ruled that the trade discount given cannot be considered as the transaction value

- Whether the amount paid to authorized dealers towards "rate difference" after effecting the supply of goods by the applicant to aforesaid dealers can be considered for the purpose of arriving at the 'transaction value' in terms of Section 15 of the CGST Act. **Answered in the Negative**
- Whether the amount paid to authorized dealers towards "rate difference" after effecting the supply of goods would be allowed under Section 15(1) read with Section 34(1) of the CGST Act or under Section 15(3) read with Section 34(1) *ibid*. **Answered in the Negative**

If the terms of the contract clearly state that the distributor or dealer or by any other name called, the same is to be considered for the payment of GST.

## Facts of the Case

The applicant M/s Santhosh Distributors is an authorized distributor for M/s. Castrol India Ltd, Mumbai. The applicant uses the software provided for the billing.

The applicant does not have any control over the pricing to be provided to its customers, M/s Castrol India Ltd determines the price.

In view of this, the applicant has the following questions

- i. On the tax liability of the applicant for the transactions mentioned herein and explained as above. The petitioner 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 stockist.

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

- ii. Whether the discount provided by the Principal Company to their dealers through the applicant as shown in Annexure D attracts any tax under the GST laws.

*It is established from the statement of the applicant that the prices of the products supplied by the applicant is determined by the supplier /principal company and the applicant has no control on the price of the products. Therefore, it is evident that the additional discount given by the supplier through the applicant; which is reimbursed to the applicant is to offer a special reduced price by the distributor / applicant to the customers and hence the amount represent consideration paid by the supplier of goods / principal company to the distributor / applicant for supply of goods by the distributor / applicant to the customer. Therefore, this additional discount reimbursed by the supplier of goods / principal company to the distributor / applicant is liable to be added to the consideration payable by the customer to the distributor / applicant to arrive at the value of supply under Section 15 of the CGST / SGST Act at the hands of the distributor / applicant.*

- iii. Whether the amount shown in the Commercial Credit note issued to the applicant by the Principal Company attracts proportionate reversal of input tax credit.

*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 the ITC attributable to the commercial credit notes received by him from the supplier*

- iv. Is there any tax liability under GST laws on the applicant for the amount received as reimbursement of discount or rebate provided by the Principal Company as per written agreement between the Principal Company and their dealers and also an agreement between the principal and distributors.

*The applicant is liable to pay GST at the applicable rate on the amount received as reimbursement of discount / rebate from the principal company.*

From the above orders, it is clear that if the discount is mentioned clearly, then the credit note issued will attract GST and the recipient has to reverse the input tax credit accordingly.

In the case of the FMCG companies, the distributors or dealers are given as free gifts on reaching pre-determined turnover. If such gift details are given in the agreement or documented on the agreement or tax invoice, the supplier needs to reverse the input tax credit on such free goods as specified under Section 17(5)(h) of the CGST Act 2017.

*goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and*

When purchasing the gifts to the dealers or distributors or by whatever name they are called, if the supplier avails the input tax credit, then the same need not be reversed. The free gifts can be given in the form of Gold Coins or consumer durables or laptop, or any other item.

Similarly, there will be cases where the supplier will be offering all paid trips to different destinations in India or abroad to dealers or distributors or by whatever name they are called, if they achieve a pre-determined turnover or who achieves the highest turnover. In such cases, if the same is documented and known at the time of supply, in such cases all the expense which is incurred for the trip, the input tax credit is eligible. As per the provisions of the CGST Act, the input tax credit can be availed on all inputs and input services if used in the course or furtherance of business. The sponsored trips are part of the furtherance or in the course of business, and they are eligible to take the input tax credit.

## **Conclusion**

As per the provisions of the CGST Act, orders passed by the Authority for Advance Ruling at the state level are applicable to the applicant and the office only. From the orders passed by the AAR, the jurisprudence can be taken, and the interpretation and the intent of the law can be observed. The basis on that, if required, the taxpayers have to change their business process wherever possible to avoid litigations. The provisions of the law are clear, and if *there* are implemented in the true spirit, there will not be any legal issues for the taxpayers, and can do their business without any hassles. Some of the provisions of the GST should not be compared with the erstwhile provisions of Central Excise or Service Tax or VAT. As it is a new law, there will be some gaps or amendments are required in the provisions based on the judgments passed by the Honourable Supreme Court of India. Treatment of discounts post supply is a concern for many of the taxpayers. If the same are interpreted accordingly, and the business process are modified to meet the provisions of the law, then the taxpayers can spend their valuable time on business improvement.

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