

TAX FLASH NEWS

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GST applicable on reimbursement of discount / rebate by supplier to distributor

Appellate Authority For Advance Ruling (AAAR), Kerala¹ has held that additional discount reimbursed by the supplier to the distributor is to be added to the consideration payable by the customer of the distributor and thus liable to GST.

Facts of the case

- 'Applicant' is a 'Distributor' of industrial and automotive lubricant for its 'Supplier'.
- They have entered into a distribution agreement which states that:
 - 'Distributor', while selling the goods to its 'Customers' shall not charge price other than that recommended by the 'Supplier';
 - 'Distributor' is obliged to give discounts to its 'Customers' as announced by the 'Supplier' and in turn entitled to this additional post-sale discount;
 - 'Seller' issues financial credit notes for such post-sale discount. It does not reduce the transaction value or the amount of GST on account of such post-sale discounts i.e. collects and pays GST on the value which includes discount;
- 'Applicant' filed an application before Kerala AAR primarily in respect of whether discount provided by 'Supplier' to the customers of 'Applicant' through the 'Applicant' attracts any GST and whether it has any GST liability for amount received as reimbursement of discount / rebate from the 'Supplier'.

- Kerala AAR held that additional post-sale discount reimbursed by 'Seller' to 'Applicant' is liable to be added to the consideration payable by the 'Customers' to the 'Applicant' to arrive at the value of supply under section 15 of the GST Act at the hands of 'Applicant'.
- Aggrieved by the decision of Kerala AAR, 'Applicant' had filed an appeal before the AAAR, Kerala.

Applicant's contentions

- Discount is a concept which by statute is intrinsically co-related to the value of supply and thus any discount given by manufacturer to distributor is intrinsically co-related to the value of supply.
- Definition of the term 'consideration' should be read qua definition of transaction value. Credit notes issued by 'Supplier' cannot be construed to be in nature of additional consideration for supply of goods by 'Applicant' to its 'Customers'.
- There is nothing in CGST Act which states that trade discount offered by the 'Supplier' must be treated as additional consideration in the hands of the 'Distributor' who supplies goods to its customers.
- Additional discount is thus a purely financial transaction and not a supply.

AAAR's order

- 'Applicant' has no control on quantum on discount as it is offered on instructions of 'Seller' to its 'Customers' which is thereon reimbursed to the 'Applicant'.

¹ Santhosh Distributors [2021-VIL-32-AAAR]

- Wordings of section 15(3)(b)(i) of the CGST Act, 2017, indicate that quantum of post-supply discount must be given as per terms of agreement. It cannot be open-ended.
- Amount paid to 'Applicant' as rate difference or special discount is not covered under this section.
- Commercial credit note issued by 'Supplier' does not satisfy the conditions prescribed under this section.
- Additional discount is thus liable to be added to the consideration payable by 'Customers' to 'Applicant' for the purpose of arriving at value of supply between 'Applicant' and 'Customers'.

Our comments

In several Industries, providing discount is a common practice and the same is always considered as reduction in purchase price. However, this ruling has considered discount / rebate as consideration liable to GST. Though an AAR is binding only on the applicant and concerned officer or jurisdictional officer in respect of the applicant, it will have far reaching impact on the Industries in case tax authorities start applying this ruling.



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