

Mechanism for providing Evidence of ITC Reversal on account of Discounts

[Circular No. 212/1/2024-GST dated 26.06.2024]

I. Issue Involved

In many FMCG and white goods industries, discounts are given to the distributors / dealers and other persons in the supply chain to increase sales and for enhancing brand values. Section 15(3)(b) of the GST Act provides 3 conditions which if fulfilled, the supplier can reduce the discount so given from the outward value and therefore reduce the tax liability at its end. One condition out of the 3 is that the recipient has to reduce Input Tax credit on the basis of tax credit note issued by the supplier.

Presently there is no facility available to the supplier as well as the tax officers to verify whether such ITC has been reversed by the recipient or not.

This circular tries to address this question, albeit in our view the solution provided herein is worse than the problem and is also not legally tenable.

II. Transactional understanding of the issue involved

Illustrative facts for understanding the issue involved:

Manufacturer of Maruti car sells cars to its dealer. Maruti gives a discount of 1 crore for a particular month to the dealer for achieving the sales target. This discount is given under the cover of a GST Credit note whereby 1 crore plus 28% IGST + 1 Compensation cess (as applicable on subject cars) is issued by Maruti to the dealer.

Steps after issuance of Credit Note by Maruti

- a. Maruti is required to declare it in its GSTR 1 under the name and GSTIN of the dealer
- b. Reduce its output liability of that month by 29 lacs in its GSTR 3B



- c. This information from GSTR 1 of Maruti travels to GSTR 2A and 2B of the dealer, whereby its eligibility to avail ITC reduces by 29 lacs automatically.

III. Circular clarifies as under:

As said by the circular, there is no system functionality/ facility presently available on the common portal to enable the supplier or the tax officer to verify the compliance of the said condition reversal of ITC by the recipient, till that facility is made available, circular prescribes following procedure:

1. Where the GST and Cess involved in the discount tax credit notes in a Financial Year **exceeds Rs 5,00,000**

Procure a Certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required ITC Reversal.

Said certificate may include details of:

- Credit notes,
- Relevant invoice number against which the said credit note has been issued,
- Amount of ITC reversal in respect of each of the said credit notes along with the details of the FORM GST DRC-03/ return / any other relevant document through which such reversal of ITC has been made by the recipient.
- UDIN of the CA / CMA who has issued the certificate.

2. Where the GST and Cess involved in the discount tax credit notes in a Financial Year **does not exceed Rs 5,00,000**

Said supplier may procure an undertaking/ certificate from the said recipient that the said ITC attributable to such discount has been reversed by him, along with the details mentioned in Para 1 above except UDIN.



IV. Solution prescribed by the Circular is worse than the problem.

As discussed above, tax credit notes are disclosed in the GSTR 1 of the supplier which invariably travels to the GSTR 2A and 2B of the recipient and automatically reduce its ITC eligibility for that period. Unless the supplier discloses these CNs its GSTR 1 it won't be able to reduce its output liability in the GSTR 3B. Section 16 (2)(ba), sub-section (c) r.w.s 38 clearly provide that recipient can avail ITC only if the same is reflecting in GSTR 2B and that the supplier has paid the tax thereon. Both these conditions are mandatory, details thereof are available to the recipient in real time. If the supplier reduces its tax liability by the amount mentioned in Credit Note, it means that he has not paid the tax to that extent and therefore the condition for availing ITC by the recipient is not fulfilled. There is a mechanism available for checking whether a taxpayer has availed more ITC than what is available in GSTR 2B, if one avails ITC in excess of a prescribed limit as compared to GSTR 2B, he is immediately issued a notice in form GSTR 01C, this system can be made more robust.

To the throw the dice against the suppliers and seeking fulfilment of condition in section 15(3) and 34 through issuance of certificates will create huge compliance burden on the trade and give the department a free run to issue (non-existent) demand notices. The manufacturers will pressure the distributors to issue these certificates which will increase their compliance cost.

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