

PRE-BUDGET MEMORANDUM OF REPRESENTATIONS – 2023 - 24: GST & INDIRECT TAXES

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
1	Section 15(3) and Section 7 of CGST Act 2017	<p><u>“Post-Sale discount”</u> passed on through commercial Credit Notes are <u>treated as a service rendered by the recipient under GST</u></p>	<p>A distributor purchases goods (say mobile phones) from a Supplier. They make the payment also to supplier also for the supply of such goods. Now due to a post sale scheme of turnover discount offered by supplier, the distributor receives a Credit Note (CN) from the supplier. The said CN is a Commercial CN (i.e. non GST CN) as the post sale discount does not comply with the conditions mentioned u/s 15(3) of The CGST Act 2017. The amount of the CN is also adjusted by means of a book entry from the running account between the parties. Certain field officers are raising doubts regarding treatment of such post sale discount offered by the supplier as a service rendered by the distributor to the supplier.</p> <p>In the said case, our submissions that such a post sale discount should not be considered as a service are as follows –</p> <ol style="list-style-type: none"> 1. For a supply of Service to happen, there has to be a supply of something other than a moveable property. There should be a positive performance of some activity by the supplier to the recipient of the service and for which the recipient of the service pays some consideration to the supplier of the service. Hence there has to a ‘quid-pro-quo’ between the performance of an activity on the one hand and payment of the consideration on the other hand. In other words, incase no activity is performed on the part of the supplier, there will be no payment of 	<p>Various field formations are taking non-uniform views with respect of post sale discount passed on through commercial Credit Notes.</p> <p>Hence, to bring about uniformity in implementation of the provision and “Ease of Doing Business” it is recommended to issue necessary instructions / clarificatory circulars on this critical aspect.</p>

			<p>consideration on the part of the recipient of the service.</p> <ol style="list-style-type: none"> 2. Similarly, when goods are supplied, the ownership of a moveable property is transferred (instead of an activity taking place) and a consideration is paid. 3. Post such supply of goods or services, again there are certain discounts which are passed on due to meeting of some targets/terms by the recipient. This time also there is no supply but a financial benefit for meeting the target/terms in relation to the underlying goods/services. 4. The difference between 'discounts on goods' and 'supply of service' is therefore the fact whether there is the performance of an activity or whether it is just a financial benefit provided due to meeting the target/terms. In case it is just a financial benefit provided due to meeting the target/terms of in relation to an earlier supply, it is a discount. However, incase there is an independent activity done with no relation to an earlier supply, then it the provision of a service. 5. In the instant case, there is a supply of goods from Supplier to the distributor (recipient). There is a consideration also which is paid for the same by the recipient to the supplier. Therefore, the recipient in the instant case is a Trading Company in Commercial 	
--	--	--	---	--

			<p>Terms which deals in goods and earns a profit margin on purchase and sale of the goods. As per the market conditions, the supplier provides an additional post sales discounts on a case to case basis when certain targets/conditions in relation to the earlier supply of goods are met by the recipient of the goods.</p> <p>6. A mere passing of an additional discount by supplier to the recipient of goods is a pure financial transaction rather than being a 'supply of services'. By offering an additional discount to sell the product, the supplier did not receive supply any extra services so as to make it chargeable to GST.</p> <p>7. Since, there is no supply of service at all in case of a post sale discount, hence no transaction value of the same can be determined. Artificially fabricating a post sale discount into the transaction value of a service would not be as per Valuation norms under the GST Law as there is no Price paid for supply.</p> <p>8. In case of post-sale discount which does not meet the criteria laid down under Sec 15(3)(b)(ii), issuing of commercial credit notes without GST is a perfectly established trade practice. The same is also accepted by the CBIC vide Circular No. 92/11/2019-GST dated 07.03.2019.</p> <p>9. The following clarification was issued as per CBIC Circular No. 105/24/2019-GST dated 28.06.2019 -</p>	
--	--	--	---	--

			<p><i>‘..If the post-sale discount is given by the supplier of goods to the dealer without any further obligation or action required at the dealer's end, then the post sales 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 supplier of goods, subject to the fulfilment of provisions of sub-section (3) of section 15 of the CGST Act. However, if the additional discount given by the supplier of 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 and the additional discount will be the consideration for undertaking such activity and therefore would be in relation to supply of service by dealer to the supplier of goods. The dealer, being supplier of services, would be required to charge applicable GST on the value of such additional discount and the supplier of goods, being recipient of services, will be eligible to claim input tax credit (hereinafter referred to as the "ITC") of the GST so charged by the dealer’</i></p> <p>However, the said Circular was withdrawn ab-initio by Circular No. 112/31/2019 – GST dated 03.10.2019.</p> <p>10. Hence as of now, even after the clarification provided in Circular No. 92/11/2019-GST dated 07.03.2019, there is a doubt in the minds of field formations.</p> <p>In the above scenario, various field formations are taking non-</p>	
--	--	--	--	--

			uniform views. Hence, to bring about uniformity in implementation of the provision and “Ease of Doing Business” it is prayed to issue necessary instructions/ clarificatory circulars on this critical aspect.	
2	Section 17(5) of CGST Act 2017	Non-availability of ITC in respect of medi-claim expenditure done for the employees	<p>Section 17(5) of The CGST Act 2017 Blocks the ITC in respect of medi-claim expenditure for employees.</p> <p>In this era where medical expenses are unimaginable and where there is not much social benefits from the Government for medical contingencies, it is but unjust to disallow ITC on the same.</p> <p>This also results in “cascading effect of GST” which is against the very foundation of the GST Law.</p>	The CGST Act must be amended for allowance of ITC on medical expenditure done for employees.
3	Section 16 of CGST Act 2017 read with Section 20 of IGST Act 2017	Allowing IGST credit available to be adjusted against IGST payment towards import consignment	<p>At present IGST on Imports are paid in Cash at the time of clearing The Bill of Entry even though the Importer may have an IGST credit in his ITC Register on the GST Portal. This is causing a huge financial hardship on importers.</p> <p>A procedure must be developed for allowing the IGST credit available to be adjusted against IGST payment towards import consignment.</p>	The CGST Act must be amended for allowance of ITC on medical expenditure done for employees.
4	Section 25	GST Registration	GST Registration is suspended even without issuance of any query/notice or even without any mail or opportunity of	For taxpayers who have been registered for long at least, there

		<p>Cancellation/Suspension</p> <p>Pension by Tax officer</p>	<p>hearing. Thereafter it takes weeks to get the same unblocked leading to stoppage of business of taxpayers.</p> <p>A ready instance is the state of Chattisgarh (Raipur City) wherein in last few months hundreds of GSTINs were cancelled/suspended on flimsy grounds including minor differences between GSTR-1 and GSTR 3B. Many times, even service of notice was not proper.</p>	<p>is no immediate risk of the department of evasion of tax. In such cases officers should be directed to first issue query/notice/mail and give an opportunity of hearing.</p> <p>In most such cases, it will be seen that there would actually be no requirement of suspending/cancelling registrations at all. In most instances, for genuine taxpayers, differences in ITC is due to reconciliation items.</p>
5	Section 31 read with Section 13 of CGST Act	<p>GST is required to be paid on accrual basis on raising the invoice even for continuous supply of services like membership fees, delegate fees. This creates a lot of issue for NPOs and Associations who sometimes do not get the member ship payment from the members and delegates from the workshops.</p>	<p>For NPOs, Trade and Other Associations, the GST should be payable on receipt basis, at least on membership fees and delegate fees.</p>	<p>For NPOs, Trade and Other Associations, the GST should be payable on receipt basis at least on membership fees and delegate fees.</p>
6	Section 9(3) of The CGST Act 2017 read with N No 4/2017 CGST (Rate) dated 28th June 2017	<p>Issue faced by Steel Scrap Recycling Industry due to fake invoicing by the scrap dealers in the value chain.</p>	<p>Scrap industry, by large, is an unorganized sector with no proper regulation to administer the generation and distribution of scrap across India. The Steel Scrap Recycling Policy is a step by the Government to promote and facilitate the establishment of metal scrapping centres in India in an organized manner.</p> <p>Apart from the scrap generation from organized industry</p>	<p>It is suggested that following amendment should be made to reduce tax evasion as well as supporting industries in the steel scrap business:-</p>

	<p>Change in GST Rate for Steel Scrap</p>		<p>players such as Railways, Automobile OEMs etc a significant amount of metal scrap is generated from households as well. Such sectors are highly unorganized and include several dealers in the scrap collection process till the same reaches the iron and steel product manufacturers.</p> <p>A number of dealers in the value chain are engaged in availment of irregular input tax credits based on fake input credit invoices without any underlying supply of goods or services. To the extent the input tax credit availed is fake, there is an underpayment of tax to the Government. In order to curb such tax evasion, several efforts have been undertaken by the GST bodies so that such fraudulent practices are investigated and necessary actions are taken against the fraudulent dealers.</p> <p>While the Government bodies have made efforts to curb tax evasion on account of fake input tax credit, the actions taken by these bodies have also led to certain practical challenges in the scrap business</p> <p>Frequent notices from tax authorities to genuine manufacturers seeking details of scrap purchased from scrap dealers:- In the course of their investigation of scrap dealers, tax authorities frequently issue summons to the manufacturers for producing several documents to evidence the purchases made from such dealers and their reporting in the GST returns by the dealers. This unnecessarily causes harassment to the genuine manufacturers despite making purchases on the strength of a valid tax invoice and duly paying taxes on such purchases to the dealers. As a result, a</p>	<ol style="list-style-type: none"> 1. Supply of steel scrap between various dealer should be exempted or be rated @0.1% at all stages except the manufacturer (ultimate user) stage. Tax should be imposed on the manufacturer (ultimate user) under reverse charge. 2. Rationalization of GST rate on steel scrap to 5% from 18%. Since the ultimate use of the steel scrap is production of steel products after recycling which is subjected to 18%, there will be no loss to govt. revenue.
--	--	--	--	---

			<p>significant amount of time and effort is lost in managing these unwanted compliances. In many cases, this is also followed by a disallowance of ITC to the genuine buyer on the assumption that the credit distributed by the scrap dealer is irregular.</p> <p>Disruption in supply chain by restriction of entry of goods supplied by scrap dealers into the factory premises of the manufacturers:- In many cases, the tax authorities hold investigations on suspicious dealers who are likely to engage in fraudulent practices. While these investigations are going on, the tax authorities restrict the entry of goods supplied by such dealers into the factory premises of the Manufacturers or direct to not deal with certain scrap dealers leading to disruption in the value chain.</p> <p>In the light of above issue, it is suggested that following amendment should be made to reduce tax evasion as well as supporting industries in the steel scrap business:-</p> <p>1. Supply of steel scrap between various dealer should be exempted or be rated @0.1% at all stages except the manufacturer (ultimate user) stage. Tax should be imposed on the manufacturer (ultimate user) under reverse charge.</p> <p>Rationalization of GST rate on steel scrap to 5% from 18%. Since the ultimate use of the steel scrap is production of steel products after recycling which is subjected to 18%, there will be no loss to govt. revenue.</p>	
7	Customs Act	Online processing of Refund Applications	Presently importers/exporters are manually pursuing their all	Faceless e-assessment may also cover the cases of excess

			<p>refund applications which is a very time taking process.</p> <p>This is resulting in delay in refund.</p> <p>If online refund module is developed and is also integrated with faceless e-assessment, it will simplify the refund process and will also ensure transparency & faster disposal.</p>	<p>payment of custom duty, resulting in refund to the importers. Few circumstances of excess payment of custom duty are as under: -</p> <ul style="list-style-type: none"> o Bill of entry filed in advance with payment of duty and Bill of Entry is subsequently cancelled, o Short shipment of goods sought to be imported, o Typographical error in filing bill of entry such as wrong price declared o Double Payment of Duty
8	Customs Act	Centralized database for Trade Notices	<p>Presently various Trade Notices are being issued by various Customs Commissionerate to facilitate export and import process. These Trade Notices can be viewed through web site of respective Customs Commissionerates or at times importers/exporters had to personally visit Customs House for obtaining these trade notices</p> <p>This results into unnecessary procedural hassles and lacks assessment transparency</p>	<p>It is suggested that issuance of these Trade Notices may be centralized and a common web-based database may be maintained which is made available to importers/exporters on a real-time basis.</p> <p>This will bring greater assessment transparency & will also ensure that assessment practices across all Custom ports are uniform.</p>