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exceeding expectations

GST Summit 2025-The Emerging Jurisprudence

THE SHIFTING SANDS OF ITC CLAIMS: HOW COURTS ARE RESHAPING THE ITC LANDSCAPE

SHIVAM MEHTA, EXECUTIVE PARTNER | 26TH JULY 2025

Agenda

- ITC Evolvment over past years
- Refund of ITC on closure of business
- Impact of Safari Retreats
- Discount Schemes

ITC Evolvement over past years

Relevant Conditions for availing ITC-

Section 16(1)

SECTION 16. Eligibility and conditions for taking input tax credit. —

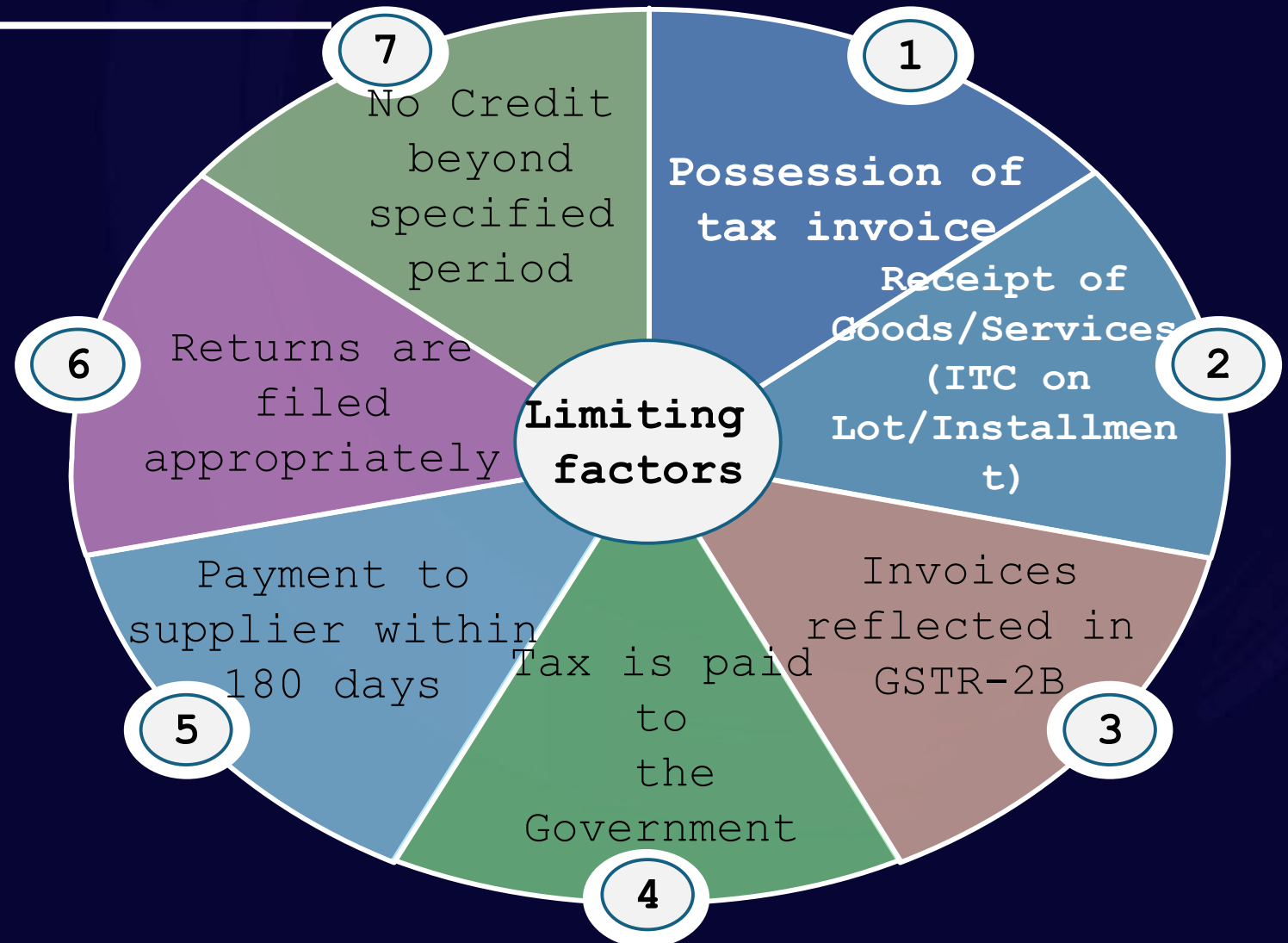
(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance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

Availing ITC – Conditions [Section 16(2)]

According to Section 16(4), ITC can be availed by

➤ Before 30th day of November following end of financial year to which invoice / debit note relates

➤ Filing of Annual Return (whichever is earlier)



Proof of receipt of goods?



Burden on claimant of ITC

GST LAW (SECTION 155.-Burden of proof)

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

KVAT LAW

70. Burden of proof.-(1) For the purposes of payment or assessment of tax or any claim to input tax under this Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer.

(2) Where a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to tax at a lower rate, or that a deduction of input tax is available, the prescribed authority shall, on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty:

(a) in the case of first such detection, three times the tax due in respect of such transaction or claim; and

(b) in the case of second or subsequent detection, five times the tax due in respect of such transaction or claim.

Ecom Gill Coffee Trading Private Limited- Recent SC Decision

- Decision of Quest Merchandising distinguished.
- Burden of proving the correctness of credit- upon dealer and cannot get shifted on the revenue.
- Mere production of the invoices or the payment made by cheques not enough
- Dealer to furnish name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc.

- Genuineness of the transaction and physical movement of the goods to be proved

HOW TO PROVE RECEIPT OF SERVICES??

Documents required to establish Physical Receipt of Goods

- Invoice or bill of supply or delivery challan, as the case may be
- A copy of the e-way bill in physical form or the e-way bill number in electronic form
- Name and address of the selling dealer
- Details of the vehicle which has delivered the goods
- Payment of freight charges
- Acknowledgement of taking delivery of goods
- Payment particulars
- Toll Tax receipt, in case of inter state movement

Circular No. 171/03/2022-GST dated 6th

July, 2022

Subject: Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices-Reg

Scenario

1 :

'A' liable for penal action under
Section 122 (1) (ii)

'A'
(registered
person)

Raises tax invoice without any underlying
supply of goods or services (**Fake
Invoice**)

'B'
(Registered
person)

Circular No. 171/03/2022-GST dated 6th July, 2022

Scenario 2

⋮

'B' liable for recovery of ITC under Section 16(2) (b) along with interest and penalty under Section 74 of CGST Act. No penalty under Section 122

'A'
(registered
person)

Raises tax invoice without any underlying supply of goods or services (**Fake Invoice**)

'B' avails ITC on the basis of the said tax invoice.

'B'
(Registered
person)

Passes on the said ITC to 'C' by issuing invoices ('Genuine Supply')

'C'
(Registered
person)

Circular No. 171/03/2022-GST dated 6th July, 2022

Scenario 3

⋮

'B' liable for penal action under section 122(1)(ii) and section 122(1)(vii)

'A'
(registered
person)

Raises tax invoice without any underlying supply of goods or services (**Fake Invoice**)

'B' avails ITC on the basis of the said tax invoice.

'B'
(Registered
person)

Passes on the said ITC to 'C' by issuing invoices without underlying supply supply'

'C'
(Registered
person)

Suncraft Energy Private Limited (Calcutta High Court)

- Invoices not being reflected in GSTR-2A.
- SCN issued to deny excess ITC on the basis of difference in GSTR-2A and GSTR-3B.
- Held that no allegation on recipient that there is no receipt of goods and services or it is not in possession of tax invoice
- Payment details submitted by recipient
- Held that without resorting to the action against the supplier, ITC cannot be denied unless there is a case of collusion
- In case of default in payment of tax by the seller recovery shall be made from the seller however, reversal of credit from the buyer shall also be an option available with the revenue authorities to address the exceptional situations like missing dealer, closure of business by supplier or supplier not having

Suncraft Energy Private Limited (Supreme Court)

Having regard to the facts and circumstances of this case(s) and the extent of demand being on the lower side, we are not inclined to interfere in these matters in exercise of our powers under Article 136 of the Constitution of India.

[No detailed reasoning given by Supreme Court]

Conflicting Decisions under GST regime

Credit Allowed

Suncraft Energy Private Limited (Calcutta High Court affirmed by SC) – Recipient: Last Resort

Similar views in other Madras, Kerala High Courts

Credit Disallowed

Allahabad High Court [M/s Malik Traders, M/s Anil Rice Mills]

Other High Courts – Madras (Remanded back the matter)

Decisions denying ITC under GST regime

M/s Anil Traders (Allahabad High Court)

"12. In the case in hand, the petitioner has only brought on record the tax invoices, e-way bills, and payment through banking channel, but no such details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof has been provided. Thus in the absence of these documents, the actual physical movement of goods and genuineness of transportation as well as transaction cannot be established and in such circumstances, further no proof of filing of GSTR 2 A has been brought on record, the proceeding has rightly been initiated against the petitioner."

Decisions denying ITC under GST regime

M/s Shiv Trading Vs State of UP and 2 others [Allahabad High Court]

8. It is admitted fact between the parties that the goods have been shown to be purchased from M/s Krishna Trading Company, Mathura. In support thereof, tax invoice, e-way bill, weighment receipt before & after loading, bilty, etc. were filed and on the basis of the said documents, ITC was availed by the petitioner. Thereafter, on scrutiny, neither M/s Krishna Trading Company was found to be in existent, nor the persons, who issued the bilty and weighment slip, was found in existent. Once the very basis to show that the movement of goods has taken place was doubted, the petitioner, apparently, failed to prove actual physical movement of goods.

"9. The authorities have categorically recorded the fact that the petitioner failed to show actual movement of goods and therefore, the judgements cited by the petitioner, as referred to hereinabove in the preceding paragraphs, are of no aid to the petitioner. The petitioner also could not distinguish the judgements of the Apex Court in **M/s Ecom Gill Coffee Trading Private Limited** (supra).

12. From the perusal of the record shows that the petitioner failed to discharge its onus to prove and establish beyond doubt the actual transaction, actual physical movement of goods as well as the genuineness of the transactions and as such, the

Decisions denying ITC under GST regime

M/S. Devine Impex vs UOI [Bombay High Court]

"7. The Appellate Authority has dismissed the Appeal since the Petitioner could not produce any documentary evidence in support of his submission although he undertook before both the authorities and in the previous round of litigation before this Court to produce all the documents.

8. The Commissioner (Appeal) has followed the decision in the case of **State of Karnataka vs Ecom Gill Coffee Trading Pvt Ltd 2023 (72) G.S.T.L. 134 (S.C), Civil Appeal No. 230 of 2023 with C.A. Nos. 231-232 & 216-217 of 2023, decided on 13.03.2023.**, and the said decision read with Section 155 of the CGST Act requires the Petitioner to discharge the onus of proving the claim which in the instant case, the Petitioner has miserably failed.

9. In our view, no interference is required by this Court since there is no documentary evidence furnished before the authorities in support of the claim that the transactions of purchase and sale are genuine. There are concurrent findings of fact by both the authorities that on physical verification of the supplier, they were found to be non-existence and, therefore, consequently, the ITC claim was bogus. No perversity is brought to our notice in the impugned order."

SCN being issued regarding non-existence of reputed companies

TVL Sri Balaji Trading Company vs AC (ST) [Madras HC] [2025-VIL-680-MAD]

- Revenue contended that Tvl. Hindustan Unilever Limited is a 'fictitious business entity' and a 'non-existent supplier and blocked the ITC claimed by petitioner on receipt of supplies from HUL.

Held:

- The Department has erred seriously in branding HUL as a fictitious entity without proof.
- HUL is engaged in various businesses, and it cannot be simply alleged that they are "non-existent" without providing tangible evidence to support such a serious allegation.
- The impugned order was held as arbitrary and passed without proper application of mind, as the Department failed to consider the

Suggestions/Recommendations to be GST compliant

- Always check if invoice/delivery challan is valid with correct particulars such as name, address etc.
- Check the particulars in e-way bill specially in case of bill to ship to transactions
- Check if Part A and Part B of e-way bill is filled.
- Due Diligence of seller and buyer
- Check for the details of the vehicle which has delivered the goods along with transporter details
- Proof of payment of freight charges
- Acknowledgement of taking delivery of goods (very important)
- Payment particulars

Refund of ITC on closure of business

SICPA India Private Limited & Anr Vs. UOI &

Ors. **Issue:**

- Whether refund of un-utilized ITC under Section 49(6) of the CGST Act is limited to companies carved out under Section 54(3) of the CGST Act or is it available upon closure of business?

Held:

- There is no express prohibition in Section 49(6) read with Section 54(3) of the CGST Act for claiming a refund of ITC on closure of unit.
- Although, Section 54(3) of the CGST Act deals only with two circumstances where refunds can be made, however the statute also does not provide for retention of tax without the authority of law.
- Relied on ***The Union of India vs. Slovak India Trading Company Private Limited [2006-VIL-53-KAR-CE]***
- Possibility that the ratio laid down in this judgement will be challenged in higher forum.

Slovak (Karnataka HC) – Refund Allowed

5. There is no express prohibition in terms of Rule 5. Even otherwise, it refers to a manufacturer as we see from Rule 5 itself.

Admittedly, in the case on hand, there is no manufacture in the light of closure of the Company. Therefore, Rule 5 is not available for the purpose of rejection as rightly ruled by the Tribunal. The Tribunal has noticed that various case laws in which similar claims were allowed. The Tribunal, in our view, is fully justified in ordering refund particularly in the light of the closure of the factory and in the light of the assessee coming out of the Modvat Scheme. In these circumstances, we answer all the three questions

as framed in para 17 against the Revenue and in favour of the

Slovak (SC)

- Learned ASG appearing for the Union of India fairly concedes that those decisions of the Tribunal, which were relied upon by the Tribunal, have not been appealed against.
- In view of the concession made by the learned ASG, this special leave petition is dismissed.
- No discussion on Merits

Jain Vanguard Polybutlene Ltd

- Bombay High Court allowed refund- Relied on Slovak
- Delay condoned by Supreme Court and SLP dismissed- No detailed reasoning

Decisions in Pre-GST regime-Refund denied

Gauri Plasticulture vs Commissioner of C. Ex. [2019 (6) TMI 820 (Bom-HC)]

- “30. ... Merely because the inputs were lying un-utilised or were capable of being utilised, but the manufacturing activities came to a stand still on account of closure of the factory would not enable the assessee to claim refund of Cenvat Credit. That such credit can be availed of provided the inputs are used and not otherwise is clear from the scheme of the rules to which we have made a detailed reference in the foregoing paragraphs.”

Decisions in Pre-GST regime-Refund denied

Gauri Plasticulture vs Commissioner of C. Ex. [2019 (6) TMI 820 (Bom-HC)]

Distinguished Slovak Decision and Jain Vanguard (both upheld by SC)

"33. When the matter was carried to the Hon'ble Supreme Court by the Revenue, the Hon'ble Supreme Court noted the concession of the learned Additional Solicitor General. That concession is that the views of the tribunals to the aforesaid effect have not been appealed against by the Revenue/Union of India. Pertinently, there is no concession by the Additional Solicitor General of India on the point of law. Hence, going by this concession on fact, the Special Leave Petition of the Revenue was dismissed. This, by no stretch of imagination, is a confirmation or approval of the view taken by the South Zonal Bench of the Tribunal at Bengaluru or the High Court of Karnataka."

"35. The Special Leave Petition was dismissed, but the question of law was expressly kept open. It is in these circumstances that we are not in agreement with Mr. Patil that the issue or the controversy before us stands concluded against the Revenue. "

Correctness of Decision?– Relevant Provisions

Section 49(6) of CGST Act

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

Section 54(1) of CGST Act

54. (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in ⁵[such form and] manner as may be prescribed.

Correctness of Decision?– Relevant Provisions

Section 54(3) of CGST Act

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than--

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

VKC Footsteps India Pvt. Ltd- Supreme Court

"61 ...Accumulated ITC may result due to a variety of circumstances, some of which may while others may not lie within the volition of a registered person. We have referred to some of these factors earlier, including

(i) High discount pricing;

(ii) Predatory pricing;

(iii) Shut down of business or industry;

(iv) Business loss;

(v) Economic compulsion to sell at below value prices; and

(vi) Stoppage of work.

62 These examples are indicators that the class, comprising of registered persons with unutilized ITC, covers a bundle of species as opposed to one unique or homogenous specie..... In doing so, Parliament while enacting sub-section (3) of Section 54 has stipulated that **no refund of unutilized ITC shall be allowed other than in the two specific situations envisaged in clauses (i) and (ii) of the first proviso.** Whereas clause (i) has dealt with zero rated supplies made without the payment of tax, clause (ii), which governs domestic supplies, has envisaged a more restricted ambit where the credit has accumulated on account of the rate of tax on inputs being higher

Pre-GST regime vs GST regime

- No enabling provision in pre-GST regime
- Specific enabling provision [Section 49(6)] in GST regime for allowing refund in such cases.

Issue: Whether Section 49(6) of CGST Act can be read in isolation when it allows refund in accordance with the provisions of Section 54 of the CGST Act?

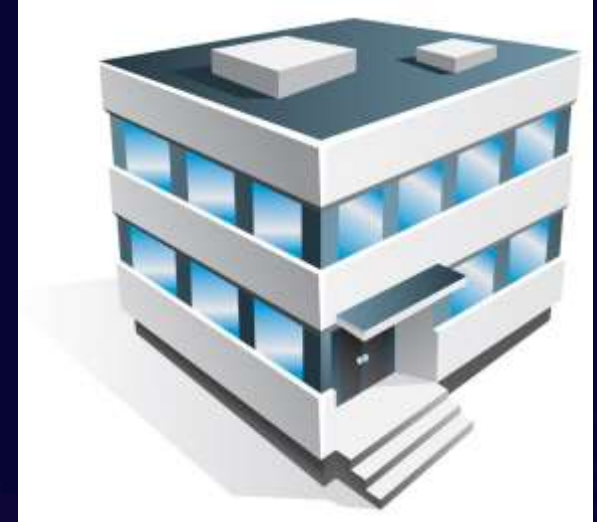
Misuse of Provision?



Closure of
Business A
in Maharashtra



Claims refund of
Accumulated ITC
pertaining to
Business A on its
closure of
Business.



Opens Business B
in Maharashtra
(New
Registration)

Safari Retreats

Section 17(5) : Blocked credits

SECTION 17(5) (C) :

- ITC not available in respect of
 - Works contract service
 - Received for construction of immovable property
- Except:
 - If Immovable property is plant and machinery
 - For further supply of works contract service

SECTION 17(5) (D) :

- ITC not available in respect of
 - Goods or services or both
 - Received for construction of immovable property on own account
 - even when used in course or furtherance of business
- Except:
 - If Immovable property is ^X plant or machinery plant and machinery

“Plant and Machinery” vs “Plant or Machinery”- Relevance after amendment in Section 17(5) (d)?

Definition: Plant and machinery

As per Explanation to Section 17, “Plant and machinery” means

- An apparatus, equipment and machinery
- Fixed to earth by foundational or structural support

Includes

- Foundational or structural supports

Excludes

- Land, building or any other civil structures;
- Telecommunication towers; and
- Pipelines laid outside the factory premises

SC: Reasoning & Findings: Analysis of Section 17(5)(d)

- Section 17(5)(d) restricts credit on goods and service used for construction of immovable property
- Allows for 2 exceptions to the restriction: Independent or cumulative?
 - If construction of Immovable property qualifies as “plant or machinery”- No Relevance after amendment
 - If construction of Immovable property is not “**on own account**”
- Construction is on “own account” only when
 - Made for personal use and not for provision of service; or
 - When used as a setting for carrying out own business.
- Construction is not on “own account”, if intended to be sold or given on lease or license.

The Two Exceptions: Independent or Cumulative?

"32. ... There are two exceptions in clause (d) ... The first exception is where goods or services or both are received by a taxable person to construct an immovable property consisting of a "plant or machinery". The second exception is where goods and services or both are received by a taxable person for the construction of an immovable property made not on his own account. Construction is said to be on a taxable person's "own account" when (i) it is made for his personal use and not for service or (ii) it is to be used by the person constructing as a setting in which business is carried out. However, construction cannot said to be on a taxable person's "own account" if it is intended to be sold or given on lease or license."

"55. Under the CGST Act, as observed earlier, *renting or leasing immovable property is deemed to be a supply of service*, and it can be taxed as output supply. Therefore, if the building in which the premises are situated *qualifies for the definition of plant*, ITC can be allowed on goods and services used in setting up the immovable property, which is a plant."

Case Study: Office Building on Lease?

- ABC Developers receives various goods and services for the construction of an office building.
- No special technical requirement for the building
- ABC developers further leases out the units in the office building to customers – Pays output GST
- Immovable property constructed “on own account”?
- Whether building still needs to qualify as “plant”?



Two Stage Analysis with Safari Retreats

Whether qualify as
"Plant and machinery"?

Yes

ITC not
restricted
under 17(5) (c)
& (d)

Whether not
'on its own account' in
view of Safari Retreats
Judgement?

Yes

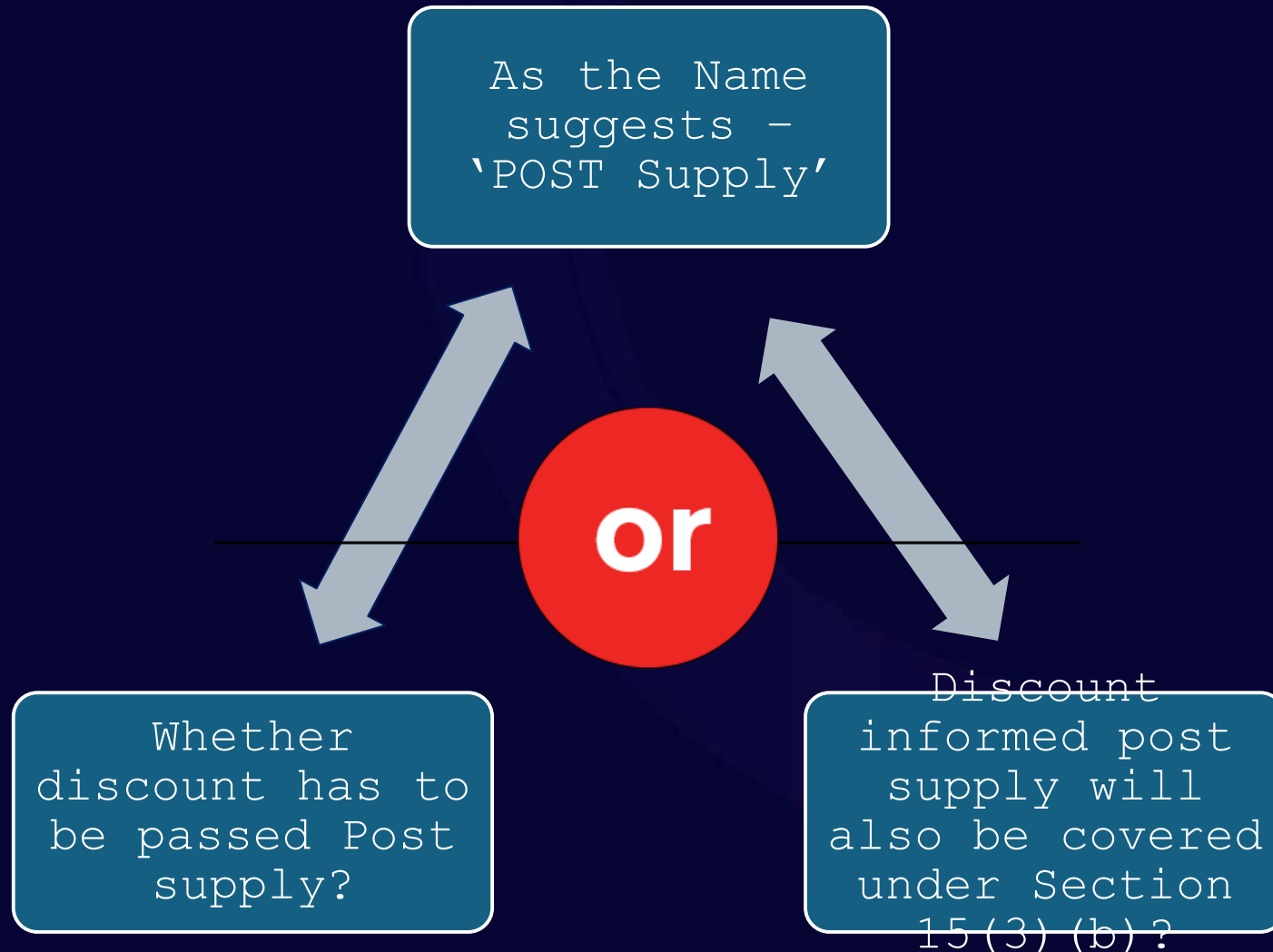
ITC not
restricted
under 17(5) (d)

Discount Schemes

Condition for excluding discounts from value

Section 15(3) (a) - Discount on invoice	Section 15(3) (b) - Post supply discounts
<p>The value of the supply shall not include any discount which is <u>given before or at the time of the supply</u> if such discount has <u>been duly recorded in the invoice</u> issued in respect of such supply.</p>	<p>The value of the supply <u>shall not include</u> any discount which is given--</p> <p>(b) <u>after the supply</u> has been effected, if-</p> <p>(i) such discount is <u>established in terms of an agreement</u> entered into <u>at or before the time of such supply</u> and <u>specifically linked to relevant invoices</u>; and</p> <p>(ii) <u>input tax credit</u> as is attributable to the discount on</p>

Post Supply Discount



Judicial Pronouncement under GST

- **M/s Ultratech Cement Limited – AAR, Maharashtra**

- Dealers purchased at say, Rs. 100. Later due to market conditions dealer has to sell the product at 95, the 'rate difference' of 5 was paid by Ultratech.

- **Held**

- The wordings of Section 15 (3) (b) (i) very clearly states that quantum of discount that 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

Principles emerging from the jurisprudence

❑ Availability of discount was known at the time of removal/supply

➤ Given for Commercial reasons and within trade practice

Should not come back to supplier in any manner

3. Quantum may not be known necessarily

Actual quantum should be passed to customer either through credit note or in cash

Judicial Pronouncement under Excise

Held

- Both, the availability of the incentive as well as its quantum were contingent upon the customers' purchasing a particular quota and during a particular period.
- Incentive was not as a matter of course accompanying each purchase. It was more in the nature of a contingent benefit. It could hardly be described as a trade discount.

S.S. Miranda Ltd. Vs. Union of India (Bombay HC)

Established in terms of an agreement

- Section 15(3)(b)(i)
- Contemporaneous documents - sales invoice, agreement, brochures, communication, circular etc.
- Terms of discount explained- *with consensus ad idem*
 - Availability
 - Nature of scheme or discount
 - Conditions for entitlement of discount

Established in terms of an agreement

- Mere mention that recipient will be entitled to discount
 - *Eg. Blanket circular announcing that discount will be given without any details*
- Events linked to discount (i.e. criteria) are given, without quantum of discount
 - *Eg. Purchase Target communicated, but no details of amount, rate etc.*
- Computation criteria informed but not triggering event
 - *Eg. Overall Di*

How much is sufficient??

Dealer Incentive Schemes

Surprise discount

January

- Annual purchase Target – 12 lakh units
- By December
- 5%
- Dealer will also be eligible for surprise discounts

1st July

- Meet annual target by **31st August** AND purchase Additional 2 lakh units in July and August
- Additional 3% 'discount' on Total purchases from January to August.

Whether additional 3% will qualify to be trade discount?

Retail Incentive Schemes

Retail Incentive Scheme

Sale of target quantity of goods by dealers



Whether post supply discount by manufacturer?
Whether additional consideration for supplies by dealer to customer?

Whether Supply of services by dealer to manufacturer?

Retail Incentive scheme–Judicial Pronouncements under service tax regime

Incentives received by dealers on achieving sales targets



provision of promotion or marketing services under business auxiliary service. These incentives are in the form of trade discount.

Commissioner of Service Tax, Mumbai -I Vs. Sai Service Station Limited , Sharyu Motors Vs. Commissioner of Service Tax, Mumba, Satnam Auto Vs. Commissioner of Central Excise & ST, Meerut- I, M/s Popular Vehicles and Service Ltd. Vs. Commissioner of Central Excise, Customs and Service Tax, CESTAT Bangalore

M/S. Kwaliti Mobikes (P) Ltd – AAR, Karnataka

Retail Incentive scheme – International Jurisprudence

Mere acceptance of an obligation or making of the promises cannot be seen to have a nexus with the payment of the incentives. The fact that the dealer receives a payment as an incentive when certain thresholds associated with running the business in this way does not mean that the dealer is supplying a service to the manufacturer for consideration. If the incentive payment were not available there is no basis to infer that the dealer would not behave in the same way for free.

(AP Group Limited Vs Commissioner of Taxation)

Schemes involving activities by dealer

Activities
performed
by
dealer

- 1. Visibility

- Agreeing to display manufacturer's products in a particular manner ensuring visibility
- against decided payment
- discount

Whether it is
discount?

- 2. Participation in Exhibition-

- Promotion of goods by participating in exhibitions against sharing of costs

Whether it is a supply for
consideration by the dealer?

Schemes involving activities by dealer- International Ruling

Worked Example 18: dealer has dedicated showroom for vehicles by manufacturer

253. Max Manufacturer manufactures a range of vehicles targeted exclusively at high end buyers. In order to maintain the exclusivity of the brand, Max Manufacturer runs a campaign under which it undertakes to pay a bonus to each dealer that either only sells Max Manufacturer's vehicles, or those that have a dedicated standalone showroom for Max Manufacturer's vehicles. The payment is calculated at 1% of the dealer's yearly turnover.

254. Delta Dealership is a dealer which sells vehicles from a range of manufacturers. However, Delta Dealership has a showroom which only displays Max Manufacturer's vehicles. Delta Dealership's staff are not allowed to advertise or sell any other brand of vehicle from that showroom.

Is there a supply for consideration?

255. The payment is for Delta Dealership doing something specific for Max Manufacturer - that is only selling Max Manufacturer's

Schemes involving activities by dealer - Understanding of CBIC

Circular No. 105/24/2019-GST dated 28.6.2019
(Withdrawn vide Circular No. 112/31/2019 - GST dated 3.10.2019)

Para 3

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.

Institutional Sales

- Sale to 'specified category of buyers'
- at reduced price

-- Documentary evidence mandatory for claim



Manufacturer

Payment of 20K



Dealer

Original List Price=
5 L

Sale Price = 4.8 L



Doctors

Institutional Sales - Doubts

Whether 20K will be additional consideration for sale by dealer?

Or

Is reducing price for customer a condition of discount, **known at or before the time of supply?**

Or

Services of agreeing to sell the vehicles at lower prices to specified customers? Creditable?

Old Stock Liquidation

Price Compensation on stock lying with the dealer



Whether 1L will be additional consideration for sale by dealer?
Post supply discounts by manufacturer?
Services of agreeing to sale the vehicles at lower prices to customers? Creditable?

Margin Protection

Section 15(2)(e)

The value of supply shall include subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

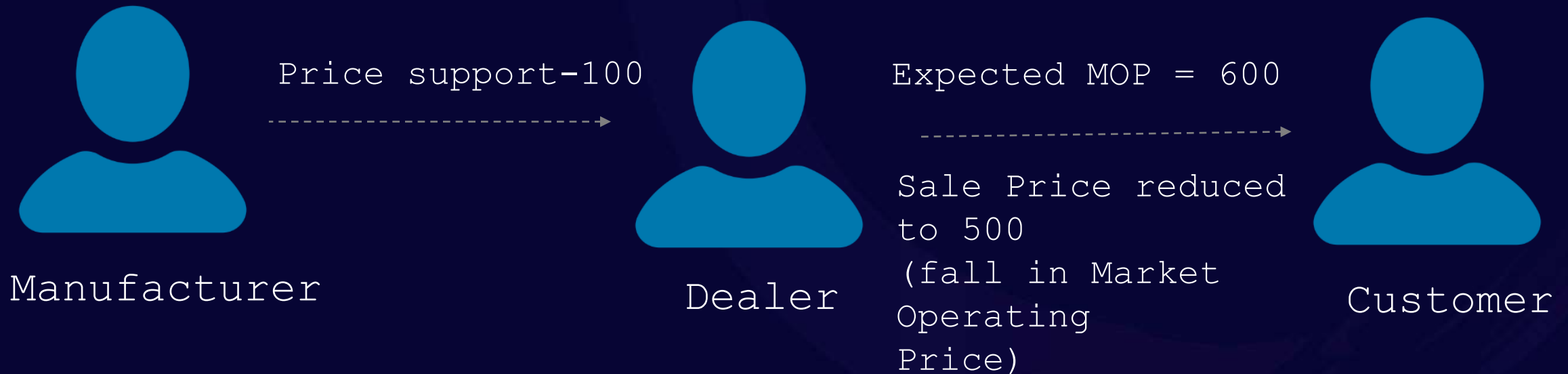
Passing of discount – a condition
to
avail discount by dealer??

Judicial Pronouncements

- The appropriate level for the assessment is the particular supply of the car in question by the dealer and the payment which that supply triggers. The price paid by the customer is clearly consideration for the supply. But so too is the fleet rebate paid by Toyota to the dealer. *(AP Group Limited Vs Commissioner of Taxation)*
- An incentive payment is third party consideration for a supply if the reason for making that payment is the supply of that motor vehicle to a particular customer. *(GST Ruling 2014/1)*

Margin Protection

Compensation for fall in value of dealer stock, due to market conditions



Margin Protection - Doubts

Rs. 100 - Additional consideration or
Subsidy for sale by dealer?

Or

Post supply discounts by manufacturer?

Or

Services of agreeing to sell the vehicles
at lower prices to customers? Creditable?

GST Clarifications

- **Circular No. 105/24/2019-GST dated 28.6.2019 (withdrawn)** – The discount is given to dealer to offer a reduced price to customer (Third Party Consideration)
- **37th GST Council Minutes** – The Representations from Automobile Association.
- **Draft Circular** – If the reimbursement or payment for the inducement of the supply (by the dealer to the end customer at a reduced rate) is received from 'any other person' (other than the customer) it shall still form a part of the consideration for the value of the supply to the customer

Recent Judgements

Hindustan Coca Cola Beverages [2025 (4) TMI 306 – Bombay High Court]

- The revenue contended that the Petitioner's distributor first extended the discount to the retailers and then the Petitioner, in turn, has given sales discount to the distributor in subsequent supplies on the basis of the discount passed on by him, and which is duly recorded in the Distributor Management System of the Petitioner.
- Revenue contended that discounts given by petitioner was a way to reduce the value of current supplies which results in undervaluing the goods sold under current supply under Section 15(3) (a) of the CGST Act.

Recent Judgements

Vardhman Electronics [2025 (6) TMI 512- Delhi High Court]

- The petitioner who is a retailer engaged in selling various household appliances and other electronic goods wherein it is given discounts by various manufacturers.
- However, the revenue construe discounts given by various manufacturers as an income on which GST is payable by construing it as service being rendered by the retailer to promote the goods of the manufacturer.
- Delhi HC while granting a stay observed that discounts given by manufacturers to retailers, prima facie, cannot be considered as a consideration for services rendered by the retailer. Accordingly, the impugned order shall remain stayed.

Promotional Scheme: Key Issues



Whether issuance of GST credit note by the supplier is mandatory?



Implications if credit not reversed by the recipient



Issues on commercial credit note:

- a. Reversal of ITC?
- b. Fulfilment of 180 days condition?
- c. Shown as “other income” – Service?

Question and Answers

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THANK YOU!

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