



GST updates

**Is 'trade discount' an eligible deduction under
Model GST Law?**

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The term 'trade discount' is used to describe the amount by which the list price of an item is reduced when selling to a business (i.e., wholesalers or distributors or dealers) that will eventually resell the item. The objective behind offering discounts is to incentivise the buyers to buy bulk quantity from the seller.

In terms of eligibility of deduction of trade discount from taxable turnover, the Apex Court in the judgement of **Union of India & Ors. Vs. Bombay Tyres International Ltd., (2005) 3 SCC 787**, held that trade discounts (by whatever name such discount is described) should be allowed as deduction from the sale price, if its allowance could be established under agreements or under terms of sale or by established practice and the nature of discount was known at or prior to the removal of goods. Further, Supreme Court found that such discount should not be disallowed only because they were not payable at the time of each invoice or deducted from the invoice price.

The above judgement was further relied upon in the case of **IFB Industries Ltd. Vs. State of Kerala, 2012-TIOL-22-SC-CT**, wherein the Apex Court held that trade discounts could not be denied solely on the ground that such discount amounts were not shown in the sale invoices when such discount was given in accordance with the regular trade practice and duly accounted in the books of accounts.

In view of the above ratio, the conditions for claiming deduction of trade discounts from taxable turnover, are as follows:

- Given as per trade practice
- In accordance with the terms of the Agreement
- Known prior to the removal of goods
- Not necessarily required to be payable at the time of each invoice or deducted from the invoice price.

Nonetheless, at present, owing to inconsistency in different state Value Added Tax (VAT) laws pertaining to eligibility of deduction of trade discounts (granted through invoices) from taxable turnover, there is no uniform applicability of the above principles, enunciated by the Supreme Court. For instance, Karnataka does not allow deduction of trade discounts unless provided through invoice but some states such as Delhi, Andhra Pradesh and Kerala allow trade discounts even otherwise, subject to conditions.

However, in contrast to the above, as far as levibility of excise duty on trade discount is concerned, the ratio of the above Supreme Court's judgement in the case of Bombay Tyres International Ltd., is squarely applicable. Accordingly, if it is proved that the trade discount is given as per trade practice and in accordance with the terms of the agreement which was known prior to the removal of goods, then deduction of trade discount cannot be disallowed only because they were not payable at the time of each invoice or deducted from the invoice price.

Further, regarding the applicability of service tax on volume

discount/trade discount, the Mumbai Tribunal vide an order in the case of **Grey Worldwide India Private Limited, 2014-TIOL-1650-CESTAT-MUM**, held that in order to levy service tax on such discount, it must be proved that an activity was undertaken by the applicant for the media owner, which resulted in media owner giving such discount to the applicant. Further, it was observed that in the absence of any agreement between applicant and media owners, media owners were not under any legal obligation to extend such discount to the applicant and it was purely discretionary on the part of media owners. Therefore, in the absence of any service provided by applicant to media owners, no service tax was leviable on such discounts.

As an outcome of the above, the prevailing yardsticks enunciated for levibility of VAT or excise duty or service tax on trade discount are different. The scenario under the proposed Goods and Service Tax (GST) regime could be different, due to subsuming of VAT, Service tax and Excise duty in GST.

Under the proposed Model GST Law, Sections 15(2)(h) and 15(3) provide for deduction of discount from the transaction value, subject to fulfillment of the following conditions:

- a. In case of discount allowed after supply:
 - i. if such discount is established as per the agreement
 - ii. if it is known at or before the time of supply and
 - iii. if it is specifically linked to relevant invoices.
- b. In case of discount allowed before or at the time of supply:
 - i. if such discount is allowed in the course of normal trade practice and
 - ii. if duly recorded in the invoice issued in respect of the supply.

In brief, it appears that in the GST regime, irrespective of whether trade discount is allowed pre-supply or at the time of supply or post-supply, the condition of it being linked to/ duly recorded in the invoice, would be uniformly applicable. Alternatively, if there is no whisper in the invoices as to the trade discount being allowed, then it shall not be eligible as a deduction from the transaction value.

In this view, clarity needs to be obtained on terms such as 'allowed', 'linked' and 'recorded'. In the absence of any statutory definitions under the Model GST Law, the above terms may be open to various interpretations. For instance, in order to claim post supply discount as an eligible deduction, is it sufficient if the invoice simply reflects (as a footnote) that a percentage would be allowed as discount (since computation of discount was not possible at the time of making the invoice) or is it necessary that total discount allowed must be bifurcated invoice wise, in order to establish a link with the relevant invoice?

Further, similar doubts may arise in case of discount allowed before or at the time of supply, such as, if it is necessary

that applicability of trade discount should be recorded in the invoice itself or quantum of trade discount is required to be mentioned and recorded in each invoice.

As a fallout of the above, more clarity is required for the dealers in various states such as Delhi, Kerala, Andhra Pradesh, Telangana etc., who at present claim deduction against extending trade discounts (even in the absence of

such trade discounts being effectuated through sale invoices). Given the above, such stakeholders should consider re-structuring their sales incentive policies, so as to streamline any additional cost under GST regime and may also need to approach the government for getting suitable clarifications on this matter so as to avoid ambiguity.



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