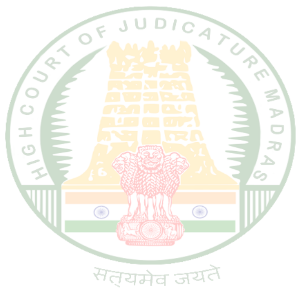
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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	24.08.2023
Pronounced On	10.01.2024

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.13424, 13427, 13429, 13433 and 13435 of 2023
and
W.M.P.Nos.13098, 13099, 13102, 13103, 13104, 13105, 13110, 13111, 13112 and 13114 of 2023

In all W.Ps.

M/s.Supreme Paradise ... Petitioner

Versus

Assistant Commissioner (ST)
North 1 Circle,
Tirupur. ... Respondent

Prayer in W.P.No.13424 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the Respondent leading to issuance of impugned order dated 09.03.2023 (vide GSTN.No.33AAVFS9545H1Z1/2017-18).

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Prayer in W.P.No.13427 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the Respondent leading to issuance of impugned order dated 09.03.2023 (vide GSTN.No.33AAVFS9545H1Z1/2018-19).

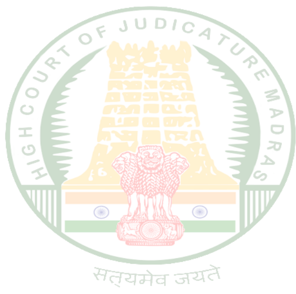
Prayer in W.P.No.13429 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the Respondent leading to issuance of impugned order dated 09.03.2023 (vide GSTN.No.33AAVFS9545H1Z1/2019-20).

Prayer in W.P.No.13433 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the Respondent leading to issuance of impugned order dated 09.03.2023 (vide GSTN.No.33AAVFS9545H1Z1/2020-21).

Prayer in W.P.No.13435 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the Respondent leading to issuance of impugned order dated 09.03.2023 (vide GSTN.No.33AAVFS9545H1Z1/2021-22).

In all WPs.

For Petitioner	:	Mr.S.Sathyanarayanan for M/s.KMC Arunmokan
For Respondents	:	Ms.Amirtha Poonkodi Dinakaran Government Advocate.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COMMON ORDER

By this common order, all the five Writ Petitions are being disposed.

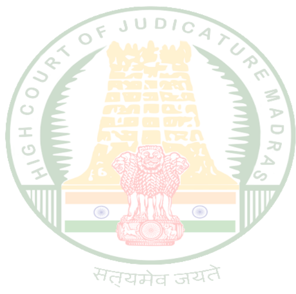
2. In all these writ petitions, the writ petitioners have challenged the impugned assessment year for the following years:

S.No.	W.P.Nos.	Assessment Years	Tax Demanded	Penalties imposed	Interest
1.	13424 of 2023	2017-18	Rs.72,52,140/-	Rs.72,52,140/-	Rs.57,76,330/-
2.	13427 of 2023	2018-19	Rs.2,97,17,504/-	Rs.2,97,17,504/-	Rs.1,82,161,406/-
3.	13429 of 2023	2019-20	Rs.1,19,63,236/-	Rs.1,19,63,236/-	Rs.51,50,486/-
4.	13433 of 2023	2020-21	Rs.1,39,81,594/-	Rs.1,39,81,594/-	Rs.34,81,416/-
5.	13435 of 2023	2021-22	Rs.1,86,16,384/-	Rs.Rs.1,86,16,384/-	Rs.12,37,988/-

3. All the impugned orders read identically save that the amounts have demanded in the respective assessment years are different and are based on the information gathered before passing of the respective impugned orders for the respective assessment years.

4. For the sake of clarity, relevant portion of the impugned order passed for the assessment year 2018-19 is reproduced below:-

> *"The wordings of Section 15(3)(b)(i) very clearly states that if the quantum of discount is given after the*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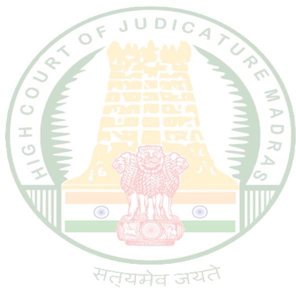
supply of foods has taken place, it has to be given as per the terms of such agreement i.e., it cannot be open ended/not based on any criteria. Thus this quantum of discount cannot be arrived without any basis, only at the discretion of the supplier. The supplier has to clearly mention the quantum of 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 supply of the goods. Thus, the bare word 'discount' if left open ended or without any quantifications or criteria attached can mean there can be any percentage of discount ranging from bare minimum to even 100% as per discretion of supplier and certainly such abnormal discounts without any criteria or basis in no way be considered as fair and no taxation statute can be construed to be having open ended discount."

5. The petitioner is engaged in retail sale of mobile phones. The department had issued notices to the petitioner in DRC-01 for the respective Assessment Years on 16.12.2022 followed by a reminder dated 01.01.2023, 16.02.2023 and 03.03.2023.

6. The petitioner had given a reply on 06.02.2023 and submitted to the Office of the respondent on 14.02.2023. Thereafter, a personal hearing, was held, pursuant to which the impugned orders have been passed by the respondent, confirming the proposals contained in the DRC-01.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7. In the impugned orders, it has been concluded that discount on the value of supply can be allowed only in the cases specified in Section 15(3)(a) and (b) of the respective GST enactments. It has been concluded in the impugned orders that the wordings of Section 15(3)(b) of the respective GST enactments clearly state that value of supply shall not include any discount, which is given after the supply has been effected, if-

> (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
>
> (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

8. Mr.S.Sathyanarayanan, learned Counsel for the petitioner submits that Section 15 of CGST Act, 2017 / TNGST Act, 2017 states that amongst the non-related parties, the transactional value shall be the value on which GST is levied. GST is levied and paid on the entire invoice amount, which includes volume discount. As amount of volume discount is already part of the transactional value as reflected in the invoice and GST is computed on such transactional value, the volume discount cannot

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be added to the invoice value and levy GST thereon. Doing so, would be taxing the same amount twice and the Respondent has no jurisdiction to tax the same amount again.

9. It is therefore submitted that the Respondent has erred in levying GST on volume discount amount once again under the pretext that its inclusion is covered u/s 15(2) of the CGST Act, 2017/ TNGST Act, 2017.

10. It is therefore, submitted that Section 15(3) of CGST Act, 2017 / TNGST Act, 2017 provides that the discount which do not qualify the conditions stated therein cannot be deducted in arriving at the transactional value. The Petitioner has not deducted the volume discount amount from the invoice value while arriving at the transactional value for GST levy purposes. It is further submitted that the invoice value (without deduction of the volume discount amount) including the GST is paid to the Vendor supplier. Hence, it is submitted that the Petitioner need not pay any further tax on the volume discount amount as stated by the Respondent. Therefore, the impugned order is erroneous and has to be quashed.

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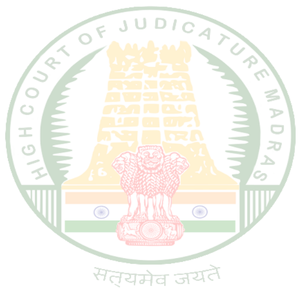
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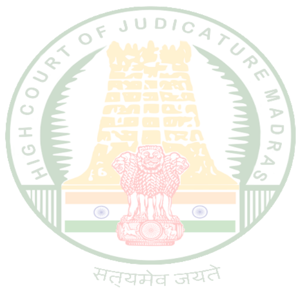
11. It is submitted that the Respondent failed to appreciate the prevalent business practice where the manufacturer would direct the dealer to sell the mobile phones at a discounted price for a particular season and that such discount cannot be construed as subsidy as contemplated u/s. 15(2)€ of TNGST Act, 2017.

12. It is submitted that the Respondent failed to appreciate that there shall be no specific criteria, basis or rationale for arriving at discount for a particular mobile phone and it shall purely be depend on the market conditions and the same shall not be contemplated at the time of supply.

13. It is submitted that the Respondent failed to appreciate that it is prevalent trade practice where manufacturer would issue credit note to the dealer at the time of discount season to protect the dealer from sustaining losses if the goods supplied already does not get sold.

14. It is submitted that the Respondent failed to appreciate the fact that the credit note shall be issued by the manufacturer to the dealer only after the supply and not at the time of supply.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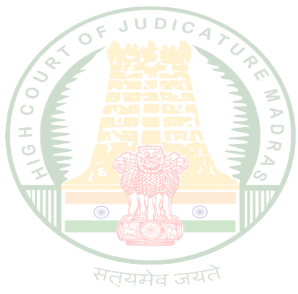
15. It is submitted that the contentions raised by the Petitioner in their reply dated 06.02.2023 and 07.03.2023 were ignored by the Respondent only on the ground that the Petitioner had not had produced any agreement showing the discount granted by the manufacturer. This is purely a non-appreciation of prevalent trade practice.

16. It is submitted that the Respondent wrongly construed the incentive given by the manufacturer to the Petitioner for achieving the sales target as consideration as per S. 2(31)(b) of the CGST Act, 2017/ TNGST Act, 2017.

17. It is submitted that the Respondent failed to appreciate that as per S. 34(2) of the CGST Act, 2017/TNGST Act, 2017 it is duty of the person who issues credit note to declare such credit note in the monthly return or before 30th of November of following the end of financial year. Hence, the manufacturer/distributor of the mobile were duty bound to file their returns in respect of credit notes and not the Petitioner herein.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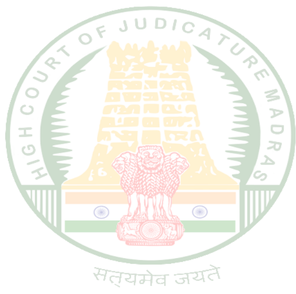
18. It is submitted that the Respondent failed to consider the decision rendered by the Hon'ble Apex Court in the case of Eicher Tractor vs CC (2000) 122 ELT 321 wherein it was categorically held that discount is a commercially acceptable measure and no criteria is required for arriving at a particular discount rate.

19. It is submitted that the Respondent failed to consider the decision rendered by the Hon'ble Supreme Court in the case of Southern Motors vs. State of Karnataka (2017) 98 VST 207 wherein it was held that insisting the quantification of trade discount for deduction at the time of sale itself, by incorporating the same in the tax invoice/bill of sale would be to demand the impossible for all practical purposes and thus would be illogical. Further the Court had held that transaction allowing discount has to be proved on the basis of contemporaneous records. The relevant portion of the judgement is extracted below:

> *"On an overall review of the scheme of the Act and the Rules and the underlying objectives in particular of Sections 29 and 30 of the Act and Rule3 of the Rules, we are of the considered opinion that the requirement of reference of the discount in the tax invoice or bill of sale to qualify it for deduction has to be construed in relation to the transaction resulting in the final sale/purchase price and not limited to the original sale sans the trade*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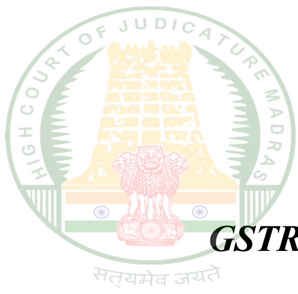
discount. However, the transactions allowing discount have to be proved on the basis of contemporaneous records and the final sale price after deducting the trade discount must mandatorily be reflected in the accounts as stipulated under Rule 3(2)(c) of the Rules. The sale/purchase price has to be adjudged on a combined consideration of the tax invoice or bill of sale as the case may be along with the accounts reflecting the trade discount and the actual price paid. The first proviso has thus to be so read down, as above, to be in consonance with the true intendment of the legislature and to achieve as well the avowed objective of correct determination of the taxable turnover. The contrary interpretation accorded by the High Court being in defiance of logic and the established axioms of interpretation of statutes is thus unacceptable and is negated. The appeals are thus allowed in the above terms. No costs."

20. It is submitted that the Judgement rendered by the Hon'ble Apex Court in Southern Motors case is reiterated by the Apex Court in the case of ***Maya Appliances (P). Ltd. vs Additional Commissioner of CT (2018) 53 GSTR 49.***

21. The Respondent had failed to consider the decision rendered by the Mumbai Bench of Tribunal in the case of ***Sharyu Motors vs Commissioner of Service Tax (2016) 43 STR 158*** and Delhi Bench of Tribunal in the case of ***T.M. Motors Pvt. Ltd vs. CGSTC & CE (2018) 58***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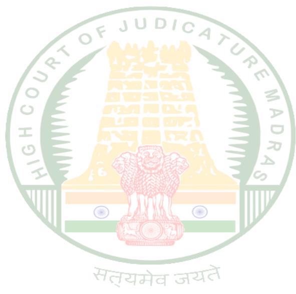
GSTR 176 wherein it was held that the discounts/incentives received from manufacturer are not liable to be service taxed and cannot be treated as Business Auxiliary Service.

22. The Respondent failed to consider the decision rendered by this Hon'ble Court in the case ***Kun Motor Company Pvt. Ltd. Us Assistant Commissioner (CT) 2020 SCC OnLine Mad 28128*** wherein it was held that the trade discount offered by the manufacturer to the dealer does not in any manner enhance the taxable value of the motor cars sold by the dealer to the retail buyer at showroom, thereby the same cannot be added to the taxable turnover of the dealer. The relevant portion of the judgement is extracted below:

> *"11.I have considered the impugned order and the notices pursuant to which the impugned order came to be passed. There is no dispute that the petitioner is a dealer in motor cars and had received trade discount from the manufacturer from whom it had purchased the cars for retail sales at its show rooms. The trade discount which has been offered by the dealer is an incentive given by the manufacturer based on the performance of the petitioner in the retail market. The trade discount offered by the manufacturer to the petitioner does not in any manner enhance the taxable value of the motor cars sold by the petitioner to the retail buyer at its show rooms. I therefore find that there is no basis on which the aforesaid amount of Rs.*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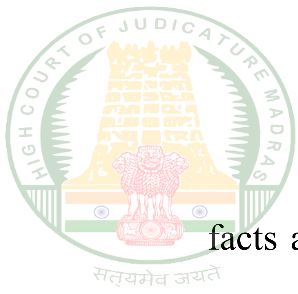
3,48,08,441 can be taxed as taxable turnover of the petitioner. The two transactions are independent transactions. One transaction is between the manufacturer who is also a dealer who had passed on incentives to the petitioner and the second transaction between the petitioner and its buyers of its retail show room to whom the petitioner has sold the cars. As these two are independent transactions there is no basis on which the trade discount passed to it by the manufacturer (dealer) to the petitioner can be added into the taxable turnover of the petitioner for the purpose of assessment under the TNVAT Act 2006."

23. Therefore, in any event the Impugned Order passed by the Respondent is unsustainable under law and is liable to quashed.

24. Mr.S.Sathyanarayanan, learned counsel for the petitioner would further submit that the issue is squarely covered by a decision of this Court in ***Kun Motor Company Private Limited, Represented by its Accounts Manager Vs. The Assistant Commissioner (CT) 2020 SCC Online Mad 28128*** rendered on 20.01.2020 in the context of Tamil Nadu Value Added Tax Act (TNVAT) Act, 2006.

25. The respondent has not filed the counter. However, the case was argued as the dispute does not pertain to any disputed question of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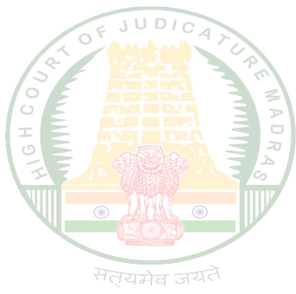
facts and dispute pertained to only interpretation of the provisions of the respective GST enactments.

26. Defending the impugned order, Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate for the respondent on the other hand submits that the petitioner has an alternate remedy before the Appellate Commissioner and therefore, the petitioner has to workout the remedy only before the Appellate Commissioner under Section 107 of the CGST/SGST Act on merits

27. It is submitted that these writ petitions are not maintainable as the petitioner has alternate remedy under Section 107 of the respective GST enactments that has been also mentioned in the preamble to the respective orders.

28. The learned Government Advocate has placed reliance on the clarification issued by the Central Board of Indirect Taxes and Customs dated 07.03.2019 bearing Ref.F.No.20/16/04/2018-GST in Circular No.92/11/2019-GST.



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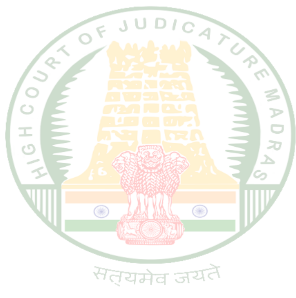
29. The learned Government Advocate has further drawn attention of this Court to Clause-C of the clarification, which pertains to discount including 'Buy more, save more' offers:

> *"C. Discounts including "Buy more, save more" offers:*
>
> *(i). Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example-Get 10% discount for purchases above Rs.5000/-, 20% discount for purchases above Rs.10,000/- and 30% discount for purchases above Rs.20,000/-. Such discounts are shown on the invoice itself.*
>
> *(ii). Some suppliers also offer periodic/year ending discounts to their stockists, etc., For example-Get additional discount of 1% if you purchases 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.*
>
> *(iii). It is clarified that discounts offered by the suppliers to customers (including staggered discount under 'Buy more, save more' scheme and post supply/volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down*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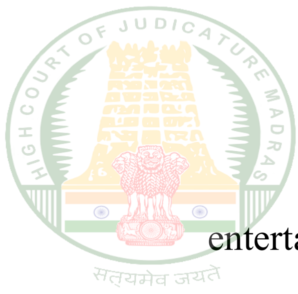
in sub-section (3) of Section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document(s) issued by the supplier.

(iv). It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts."

30. It is therefore, submitted that these writ petitions are not maintainable as the petitioner has alternate remedy under Section 107 of the respective GST enactments that has been also mentioned in the preamble to the respective orders.

31. I have heard both Mr.S.Sathyanarayanan, learned Counsel for the petitioner and Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate. I have also perused all the documents and affidavits filed in support of these writ petitions.

32. I have also perused the impugned orders and clarifications issued by the Central Board of Indirect Taxes and Customs. Although the Court exercising its jurisdiction under Article 226 of the Constitution, Section 7 of the TNGST Act, 2017 would ordinarily refrain from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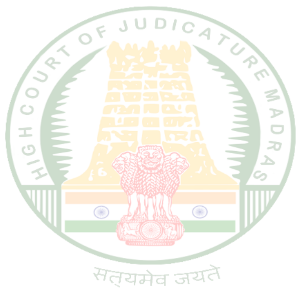
entertaining a writ petition against an assessment order, where the petitioner has an effective and an alternate remedy, the Court is of the view that this is a fit case for entertaining this writ petition.

33. This Court is of the view that the impugned orders are liable to be quashed and the cases deserve to be remitted back to pass a *de-novo* order in the light of the observation contained herein.

34. Earlier clarification in Circular No.92/11/2019-GST dated 07.03.2015 was issued by Central Board of Indirect Taxes and Customs. Thereafter, clarification was issued vide circular No.92/11/2018-GST dated 07/03/2019 by Central Board of Indirect Taxes and Customs. It was clarified that Discounts including *'Buy more, save more'*. In Para C and D of circular No.92/11/2019-GST dated 07.03.2019 it was clarified as follows:

"***C. Discounts including 'Buy more, save more' offers:***

> *i. Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example- Get 10 % discount for purchases above Rs. 5000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-. Such discounts are shown on the invoice itself.*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ii. Some suppliers also offer periodic / year ending discounts to their stockists, etc. For example- Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

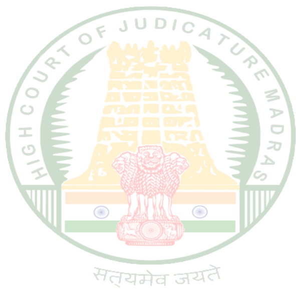
iii. It is clarified that discounts offered by the suppliers to customers (including staggered discount under „Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

iv. It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

D. Secondary Discounts

i. These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet.

ii. The provisions of sub-section (1) of section 34 of the said Act provides as under: "Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue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to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed."

iii. Representations have been received from the trade and industry that whether credit notes(s) under sub-section (1) of section 34 of the said Act can be issued in such cases even if the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. It is hereby clarified that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.

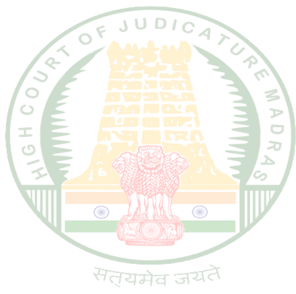
iv. It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied.

v. In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above in para 2 (D)(iii) or by any other means, except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied.

vi. There is no impact on availability or otherwise of ITC in the hands of supplier in this case."

35. A fresh clarification was issued on 28.06.2019 in Circular No.105/24/2019-GST. In para Nos.3 to 7 of it was clarified as follows:

"*3. It is clarified that 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*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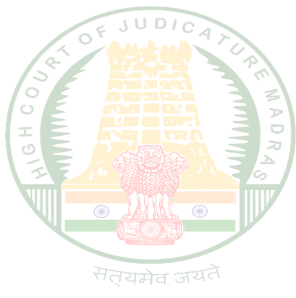
additional discount given by the supplier of goods to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc., then such transaction would be a separate transaction and the additional discount will be the 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.

4. It is further clarified that if the additional discount is given by the supplier of goods to the dealer to offer a special reduced price by the dealer to the customer to augment the sales volume, then such additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by dealer to the customer. This additional discount as consideration, payable by any person (supplier of goods in this case) would be liable to be added to the consideration payable by the customer, for the purpose of arriving value of supply, in the hands of the dealer, under section 15 of the CGST Act. The customer, if registered, would be eligible to claim ITC of the tax charged by the dealer only to the extent of the tax paid by the said customer to the dealer in view of second proviso to sub-section (2) of section 16 of the CGST Act.

5. There may be cases where post-sales discount granted by the supplier of goods is not permitted to be excluded from the value of supply in the hands of the said supplier not being in accordance with the provisions contained in sub-section (3) of section 15 of CGST Act. It has already been clarified vide Circular No. 92/11/2019-GST dated 7th March, 2019 that the supplier of goods can issue financial / commercial credit notes in such cases but he will not be eligible to reduce his original tax liability. Doubts have been raised as to whether the dealer will be eligible to take ITC of the original amount of tax paid by the supplier of goods or only to the extent of tax payable on value net of amount for which such financial / commercial credit notes have been received by him. It is clarified that the dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount received by him through issuance of financial / commercial credit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notes by the supplier of goods in view of the provisions contained in second proviso to sub-rule (1) of rule 37 of the CGST Rules read with second proviso to sub-section (2) of section 16 of the CGST Act as long as the dealer pays the value of the supply as reduced after adjusting the amount of post-sale discount in terms of financial / commercial credit notes received by him from the supplier of goods plus the amount of original tax charged by the supplier.

6. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

7. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

36. Both the clarifications are not relevant to the facts of the present case either in support of the present writ petition or in favour of the respondent to dismiss the writ petition. They are not in any event binding on this Court in terms of the decision of the **Collector of Central Excise Vs. Dhiren Chemical Industries** (2004) 6 SCC 722. The Hon'ble Supreme Court held that clarification of the Board are not binding on the Courts though they may bind the Assessing Officers and field formations.

37. Under the scheme of the respective GST Enactments, 2017 each instance of supply of goods or services are chargeable to tax under Section 9. The expression “supply” has been defined in Section 7 if the

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respective GST Enactments, 2017.

38. Section 7 of the TNGST Act, 2017 reads as follows:

"7. (1) For the purposes of this Act, the expression -supply includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(d) 3 [Omitted]

(1A) -Where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.;

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III; or

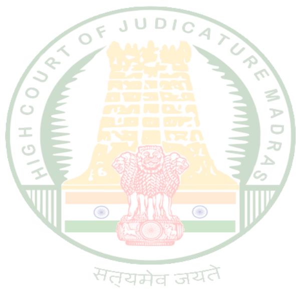
(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of 1 [sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods."



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39. The petitioner herein who is a taxpayer has been assigned to the State Jurisdiction for the purpose of assessment.

40. Section 15 of the respective GST enactments, 2017 prescribes a mechanism for "valuation". The value of a supply of goods or services or both shall be the transaction value. Transaction Value is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. Sections 15 (2) and 15 (3) of the respective GST Enactments, 2017 indicate what can form part of supply and when the value of the supply shall not include any discount.

41. Sections 15(2) and 15(3) of TNGST Act, 2017 which are relevant and extracted below:

Section 15 (2) (e) TNGST Act, 2017	**Section 15 (3) TNGST Act, 2017**
The value of supply shall include— .... **(e) Subsidies directly linked to**	(3) The value of the supply shall not include any discount which is given— (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and (b) after the supply has been effected, if —

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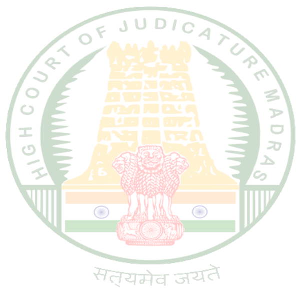
Section 15 (2) (e) TNGST Act, 2017	Section 15 (3) TNGST Act, 2017
the price excluding subsidies provided by the Central Government and State Governments.	(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

42. As far as the petitioner is concerned, it is the "transaction value" that is relevant for payment of tax on the supplies effected by the petitioner.

43. As per Section 15(1) of the respective GST Enactments, the "transaction value" is the price actually paid or payable for the supply of the goods or services or both were the supplier and the recipient of the supply are not related and the prices the sole consideration for the supply.

44. Where, the supplier offers discounts to buyer/recipient, such discount cannot form part of the "transaction value" of the buyer/recipient on further supply to his client or customer as the case may be.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45. Section 15(2)(e) of the respective GST Enactments will come into play only when a part of the consideration payable for the supply by respondent is subsidised by a 3rd party other than the Central Government or the State Government. The subsidy will get embedded into the "transaction value" only if the subsidy is disguised as a discount.

46. A further sale or supply of goods or services by the recipient of such goods or services at a discounted price cannot form part of the "transaction value" of such recipient/seller, unless such discount was on account of the subsidy for such supply given by a 3rd party and was disguised as a discount.

47. If the value of supply is subsidised by a 3rd party, the transaction value of the supply will include the value of such subsidy. Only if the price is subsidised by the Central Government or the State Government, the value of supply will not include such subsidy. If a discount offered on a supply is also directly linked to subsidy by a 3rd party, the value of such subsidy will be includible in the "transaction

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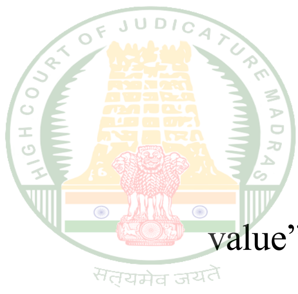
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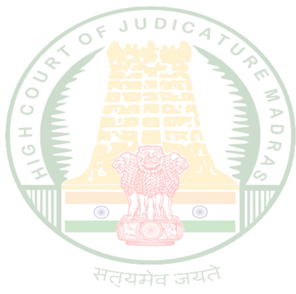
value" of the supply.

48. A discount by itself will not qualify as subsidy. However, a discount offered by a distributor or a supplier or the manufacturer to buyer/recipient simplicitor cannot form part of the "transaction value" unless such a discount is offered on account of the subsidy for such supplies by a 3rd party. In other words, a discount linked to the subsidy alone can form part of the "transaction value".

49. Section 15(3)(b) of the respective GST Enactments is relevant only for determining the "transaction value" of the supplier where after the supply is affected and discount is offered to a recipient.

50. Suppose after the supply was affected to the petitioner and discount was offered based on the scheme, the supplier would have been entitled to state that the discount offered to the petitioner cannot form part of the "transaction value" provided the conditions stipulated therein are satisfied namely:-

> (i) Such discount is established in terms of an agreement entered into at or before the time of supply and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was specifically linked to the relevant invoice;

(ii) Input tax credit attributable to the discount on the basis of the document issued by the supplier namely the petitioners manufacturer or distributor as the case may be, is reversed by the recipient of the supply like the petitioner.

51. Thus, the discount offered to the petitioner can impact only the "transaction value" of the supplier of the petitioner. As far as the "transaction value" of the petitioner is concerned, it is the price which has been paid or actually payable for the supply of the goods.

52. There is no scope for confusing the discount offered to the petitioner and the discounted price at which the petitioner effects further sale to its customers. They are two independent transactions and there is no scope for intermingling them for demanding tax from the petitioner. The discounted price at which the petitioner sells the goods is relevant only for determining the "transaction value" adopted by the petitioner.

53. Unless, the discounted price itself was on account of the subsidy as a result of which while the supplier would have been compensated without including into the "transaction value" in the invoice,

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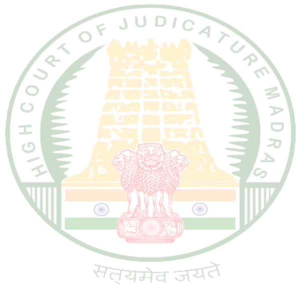
question of adding such value to the transaction value of the petitioner cannot be countenanced.

54. Therefore, the impugned orders are quashed and the cases are remitted back to the respondent. The respondent is directed to pass order on merits in accordance with law, within a period of three (3) months from the date of receipt of copy of this order. Such order shall be passed in accordance with procedure that were going at the time when notice was issued.

55. These writ petitions are allowed with the above observations. There shall be no order as to costs. Connected miscellaneous petitions are closed.

10.01.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citations : Yes/No
nst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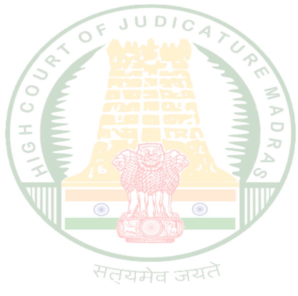
To
Assistant Commissioner (ST)
North 1 Circle,
Tirupur.



C.SARAVANAN, J.

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Pre-Delivery Common Order made
in
W.P.Nos.13424, 13427, 13429, 134332 and 13435 of 2023

10.01.2024