

ITC cannot be claimed on debit notes issued in FY 2020-21 pertaining to the transactions made in FY 2018-19

The AAR, Gujarat in the matter of *M/S I-Tech Plast India Pvt. Ltd. [Advance Ruling No. GUJ/GAAR/R/10/2021 decided on January 20, 2021]* held that, Input Tax Credit (“ITC”) in relation to Central Goods and Services Tax (“CGST”) and State Goods and Services Tax (“SGST”) charged separately, cannot be claimed on Debit Notes (“DN”) issued by the supplier in current Financial Year (“FY”) i.e. 2020-21, towards the transactions for the period 2018-19. Further held that, even after amendment in Section 16(4) of the Central Goods and Services Tax Act, 2017 (“CGST Act”), the ITC on DN should be seen w.r.t. the FY for which corresponding invoices were issued instead of FY in which DN were issued.

Facts:

M/S I-Tech Plast India Pvt. Ltd. (“**the Applicant**”) is engaged in manufacturing and supply of toys made of plastic and/or rubber or both wherein essentially plastic is the main component. The supplier of the Applicant seeks to issue DN in respect of transactions entered into during FY 2018-19, which represents price variation, as the supplier had mistakenly charged lower price and on noticing the error, the supplier desires to rectify the same by issue of DN in FY 2020-21, and proposes to issue DN to the Applicant whereby CGST and SGST reflected separately.

The Applicant contended that, linkage between invoice and DN, as envisaged in the Section 16(4) of the CGST Act, has been dropped now by deleting the phraseology “invoice relating to such” DN, vide the Finance Act, 2020 (“**the Finance Act**”). Thus, the Applicant is eligible to claim ITC of past periods also, where the error occurred in past periods is noticed in subsequent periods.

Issues:

- What is the appropriate classification and rate of GST applicable on supply of the Plastic Toys?
- Whether the Applicant can claim ITC of GST charged on DN issued by the supplier in current FY 2020-21, pertaining to the original transaction took place in FY 2018-19?

Held:

The AAR, Gujarat in **Advance Ruling No. GUJ/GAAR/R/10/2021 decided on January 20, 2021** held as under:

- Noted that, the toys are made of plastic meant for children and are not electronic toys, and concluded that the plastic toys manufactured and supplied by the Applicant are correctly classifiable under heading 95030030 of Chapter 95 of First Schedule to CTA and taxable at 6% CGST (total @ 12%) under Serial No. 228 of the **Notification No. 01/2017-Central Tax (Rate) dated June 28, 2017 (“Goods Rate Notification”)**.
- Observed that, amendment in Section 16(4) of the CGST Act vide Finance Act has not brought about any drastic or far-reaching change in the interpretation of Section 16(4) of the CGST Act, and even if a DN issued by a supplier in connection with an invoice due to increase in price of a particular commodity, is issued in a different FY than that of the financial year in which the original invoice was issued, the FY to which the DN pertains, will always be considered to be the year in which the original invoice was issued.
- Analysed Section 34(3) of the CGST Act, and the particulars to be provided in a DN, and stated that, DN is not an independent document or an invoice in itself and is connected to an invoice as it is issued in pursuance to change in value of an invoice and hence, the same would also be dependent on the original invoice. Further referred to the definition of ‘DN’ under Section 34(3) of the CGST Act, and noted that DN contains the ‘serial number and date of the corresponding tax invoice or, as the case may be, bill of supply’ and the very purpose of making said the entry in the DN is to enable the recipient of the supply to correlate the said DN with the original invoice issued by the supplier and to take credit of the same in his ITC account.
- Further observed that, the intention of the Government, by amending Section 16(4) of the CGST Act, was not to disconnect DN from the original invoice so as to give an independent existence to DN and to allow taxpayer claim of ITC of GST charged separately in DN issued in FY 2020-21, relating to the transaction of FY 2018-19.
- Stated that, the Applicant shall be entitled to claim ITC only in respect of DN issued by supplier in respect of goods supplied to the Applicant during the FY 2018-19, on or before due date of furnishing of return under Section 39 (GSTR-3B) for month of September following end of said FY 2018-19 or date of furnishing of annual return, whichever is earlier.

- Held that, the Applicant cannot claim ITC of CGST/SGST charged separately in DN issued by supplier in current FY i.e. 2020-21 towards the transactions for the FY 2018-19 on account of price variation.

Our Comments:

Section 16(4) of the CGST Act before amendment linked the time limit to claim the ITC on the DN with the FY in which the corresponding Invoice is issued instead of FY in which DN is issued. This was a big loss to the recipient of DN without any revenue loss to the Government as the Supplier is required to pay GST charged on such DN, whenever issued.

Thus, to rectify this anomaly, amendment was specifically made to delink DN from original invoice so that, availability of ITC can be determined independently on the basis of FY in which DN has been issued.

However, the above AAR completely overlooked the intent of the amendment and thus, is erroneous in the eyes of law.

Relevant Provision:

Section 16(4) of the CGST Act:

Before Amendment vide Finance Act:

“16. Eligibility and conditions for taking input tax credit-

*(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or **Invoice relating to such** debit note pertains or furnishing of the relevant annual return, whichever is earlier”*

After Amendment vide Finance Act:

“16. Eligibility and conditions for taking input tax credit-

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date

of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or ~~Invoice relating to such~~ debit note pertains or furnishing of the relevant annual return, whichever is earlier”

Serial No. 228 of the Goods Rate Notification:

Schedule II – 6%

Sr. No.	Heading	Description of goods
228	9503	Toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof) [other than electronic toys]

Section 34(3) of the CGST Act:

“34. Credit and Debit Note-

(3) 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 be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.”

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