

Receipt of Credit Notes from the Seller – Impact on Tax Credit of the Purchaser under the Delhi VAT Act

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A. Introduction

Delhi, being the trading centre, issuance of credit notes in respect of discounts and incentives by the sellers to the buyers is a common marketing phenomenon. Where the consideration as per the original sale bill is reduced due to offer of discount, incentives, etc., credit note is issued by the seller to the purchaser. Many a times, credit note is issued in the chain of marketing supply, i.e., from the manufacturer to the distributor, then to the wholesaler, and then to the retailer; so that the benefit of incentive is passed on to the ultimate consumer.

Ideally, the seller is required to reverse its output tax on the amount of such credit notes, and the buyer to reverse its corresponding input tax credit. However, sometimes, the seller does not reverse its output tax due to certain difficulties discussed later; and accordingly buyer does not reverse its input tax credit. The DVAT Department is invariably rejecting the input tax credit accruing to the purchaser based on these credit notes, even if the seller has not reversed/adjusted its output tax. Numerous cases are pending before the DVAT Tribunal and the Objection Hearing Authorities.

With the issuance of Circular No. 30 of 2013-14 dated 19th December 2013 by the DVAT Department, the stand of the Department is very clear. The said circular states, -

“1. Under section 10(1) of the DVAT Act, 2004 where any purchaser has been issued with a credit note or debit note in terms of section 51 of this Act or if he returns or rejects goods purchased, as a consequence of which the tax credit claimed by him in any tax period in respect of which the purchase of goods relates, becomes short or excess, he shall compensate such short or excess by adjusting the amount of the tax credit allowed to him in the tax period in which the credit note or debit note has been issued. Such adjustment of tax credit shall be made in the context of sale/purchase made in Delhi and not in the context of inter-state sale/purchase.

2. The credit note issued by the selling dealer may relate to :

- (i) Trade discount by any name called including quantity discounts, end of year discounts, close out discounts, target discounts, bonus or incentives in the form of general credit to the purchaser's account or supplying additional quantity of the goods dealt in by the selling dealer or providing/supplying perks, such as allowing package tours or giving gift articles, etc. [Post sale perks and discounts].*
- (ii) Relating to goods returned or rejected by the purchaser.*
- (iii) Due to variation in rate or quantity in individual sale invoice.*

- (iv) Consideration for other facilities offered by the purchaser, such as, rent for window display, sign-boards, lease rental of premises, other establishment expenses, etc.
- (v) Reimbursement of expenses incurred by purchaser on behalf of seller.
- (vi) Cash discount. (For payment made before the agreed date).

3. Trade vs. Cash Discounts

Trade discounts are incentives for a customer to purchase a product. They may be new customer discounts, quantity discounts, repeat customer discounts, end of year discounts, close out discounts, and many more. Whatever be the type, they are designed to entice a customer to purchase now, to purchase more and to purchase this. Trade discounts are generally reflected in the credit side of the Trading Account of the dealer.

Cash discounts, on the other hand, are incentives for a customer to pay the bill once they have made that purchase. They tell the customer when the bill must be paid, and communicate whether there are financial benefits (discounts) for paying before that deadline. Cash discounts are generally reflected in the credit side of the Profit & Loss Account of the dealer.

4. Trade discounts could further be classified into two types of discounts-

- (a) Discounts given at the time of sale – According to the trade practice, such discounts are offered at the time of sale and VAT is charged on the resultant cost. Suppose, the cost of a good is Rs. 120/-. The seller offers a discount of Rs. 20/-. The resultant cost of the commodity now becomes Rs. 100/- and VAT @ 12.5% (say) would be Rs. 12.50 making the sale price to Rs.112.50. The seller is liable to pay Rs. 12.50 as VAT to Government and the buyer is entitled to an ITC of Rs. 12.50 on the purchase. The tax liability of the buyer would depend on the sale price at which the good is sold to consumer. In this case, no VAT adjustment is required to be made.
- (b) Post sale discounts – If in the above example, the original seller offers a post-sale discount of say Rs. 10/-. Then, the cost of the good would become Rs. 90/- and VAT liability would be Rs. 11.25. But, the seller has already paid Rs. 12.50 as VAT and accounted for the same in his books of accounts. Thus, the seller is entitled to make adjustment of Rs. 1.25 (12.50-11.25) in accordance with the provision of Section 8 of DVAT Act. The sale price would now be reduced to Rs. 101.25 (112.50 -11.25). By reducing the cost price by Rs. 10/-, the seller has to issue credit note of Rs. 11.25 (10 + 1.25) to the buyer. It hardly matters whether the seller indicates the value of credit note as Rs. 11.25 or Rs. 10.00 plus Rs. 1.25 as VAT. Consequently, the buyer now becomes entitled to an ITC of Rs. 11.25 instead of Rs. 12.50 already claimed. Thus, an ITC of Rs. 1.25 (12.50-11.25) has to be reduced by the purchaser as provided in section 10 of DVAT Act.

5. The reduction in ITC by buyer is independent of reduction in output tax liability by seller. The seller may reduce the liability by revising return or making adjustment for the reduction in the output tax liability of current tax period's return in terms of section 8. While assessing or scrutinizing the return of buyer in a particular ward, it is difficult to find out whether the pairing selling dealers have also reduced their output tax liability. The sellers may be registered in different wards. There is no system of issue of certificate to buyer by seller stating that the output tax corresponding to credit note has been adjusted or not and neither it is desirable in VAT regime.

6. Cash discount stated at 2(vi) issued by selling dealer is not eligible for adjustment to output tax in terms of provisions of Section 8 of the DVAT Act. Therefore, the credit notes issued on this account need not be mentioned in Annexure 2C of the return. Similarly, the purchasing dealer need not to mention such Credit notes in Annexure 2D of the return in Form DVAT-16.

7. Input tax credit has to be adjusted by the purchasing dealer in respect of credit / debit notes related to items listed at 2(i) to 2(v). Credit note related to cash discount need not be subjected to ITC reversal. Consequently, the selling dealer will not be eligible to make adjustment of output tax on account of issue of credit note with respect to 2(vi) i.e. cash discount.”

Under the Delhi VAT Act, a purchasing dealer is eligible to claim input tax credit under section 9 of the Delhi VAT Act on his eligible purchases meant for the purpose of making taxable sales within Delhi or inter-State sales or exports made out of India. The purchasing dealer is required to adjust his input tax credit under section 10 of the Delhi VAT Act due to, amongst other reasons, return/rejection of goods or issuance of credit/debit note by the selling dealer. In accordance with section 8 of the Act, a selling dealer shall adjust his output tax in the specified circumstances and issue a credit/debit note in terms of section 51 of the Act disclosing the amount of VAT separately.

If the seller has adjusted his output tax in his VAT returns u/s 8 of the Act, the purchasing dealer shall undoubtedly reverse his input tax credit u/s 10 based upon the amount of tax separately disclosed in the credit note issued by the seller. However, where, inspite of payment of full tax by the seller on the basis of his original invoice and not adjusting the output tax by him u/s 8 of the Act in his VAT returns, the purchasing dealer is asked by the Authorities to reverse his input tax credit, it causes double taxation and undue harassment.

In this Article, an attempt has been made to analyze various provisions of the Delhi Value Added Tax Act, 2004 (DVAT Act, in short) in this regard and to find an answer to the following question: -

“Whether the purchasing dealer is obliged to reverse his input tax credit u/s 10 of the Act even if the selling dealer has paid full tax on the basis of original invoice and has not adjusted his output tax u/s 8 of the Act read with section 51 and rule 45 of the Delhi VAT Rules?”

B. Provisions under the DVAT Act and Rules made thereunder

B.1 Section 2(1)(zd) - “‘sale price’ means the amount paid or payable as valuable consideration for any sale, including-

(i) to (vii)

less -

(a) any sum allowed as discount which goes to reduce the sale price according to the practice, normally, prevailing in trade;

(b)

and the words “purchase price” with all their grammatical variations and cognate expressions, shall be construed accordingly;”

B.2 Section 8 - Adjustments to tax

(1) Subject to such conditions as may be prescribed, this section shall apply where, in relation to the sale of goods by any dealer –

- (a) that sale has been cancelled;
- (b) the nature of that sale has been fundamentally varied or altered;
- (c) **the previously agreed consideration for that sale has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason;**
- (d) the goods or part of the goods sold have been returned to the dealer within six months of the date of sale; or
- (e) the whole or part of the price owed by the buyer for the purchase of the goods has been written-off by the dealer as a bad debt;

and the dealer has –

- (i) provided a tax invoice in relation to that sale and the amount shown therein as tax charged on that sale is not the tax properly chargeable on that sale; or
- (ii)

(2) Where a dealer has accounted for an incorrect amount of tax as contemplated in sub-section (1), that dealer shall make an adjustment in calculating the tax payable by that dealer in the return for the tax period during which it has become apparent that the tax is incorrect, and if –

- (a) the tax payable in relation to that sale exceeds the tax actually accounted for by the dealer, the amount of that excess shall be deemed to arise in the tax period in which the adjustment is made, and shall not be attributable to any prior tax period; or
- (b) **the tax actually accounted for exceeds the tax payable in relation to the sale, the amount of that deficiency shall be subtracted from the tax payable by the dealer in the tax period in which the adjustment is made, and shall not be attributable to any prior tax period.**

B.3 Section 10 – Adjustment to tax credit

(1) Where any purchaser has been issued with a credit note or debit note in terms of section 51 of this Act or if he returns or rejects goods purchased, as a consequence of which the tax credit claimed by him in any tax period in respect of which the purchase of goods relates, becomes short or excess, he shall compensate such short or excess by adjusting the amount of the tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned.

(2) to (4)

(5) Where the goods which have been purchased by a dealer are sold at a price lower than the price at which it was purchased by the dealer, the tax credit on such purchases shall be reduced proportionately in the tax period during which the goods are sold.

Explanation. – The tax credit claimed on a particular purchase shall not exceed the amount of tax payable on its sale."

B.4 Section 51 – Credit and Debit Notes

Where a tax invoice has been issued in respect of a sale and –

- (a) the amount shown as tax in that tax invoice exceeds the tax payable in respect of the sale, the dealer shall provide the purchaser with a credit note, containing such particulars as may be prescribed; or*
- (b)*

B.5 Rule 6A(3) – Restrictions and Conditions governing Tax Credit

(3) The provisions of sub-section (5) of Section 10 of the Act relating to proportionate reduction of tax credit on purchases of goods sold at a price lower than the purchase price shall apply to the cases where, during the tax period, the dealer receives credit note or notes from the selling dealer, on account of discount, commission, rebate, remission in price or incentive, or by whatever name called.

Explanation :- For the removal of doubt, it is hereby clarified that the provisions of sub-section (5) of Section 10 of the Act shall not apply to a case where in the ordinary course of business the goods are sold by a dealer at a loss.

B.6 Rule 45 - Credit and Debit Notes

For the purposes of section 51, a credit note and a debit note shall be signed by a person authorised to sign the return to be filed under the Act and shall contain the following particulars, namely:-

- (a) the name, address and registration certificate number of the selling registered dealer;*
- (b) the name and address of the purchaser and his registration number where the purchaser is a registered dealer;*
- (c) a description of the reason for issuing the credit note or debit note, as the case may be;*
- (d) the serial number of the relevant tax invoice affected by the credit note or debit note, as the case may be; and*
- (e) the amount of the variation to the tax amount shown on the tax invoice.*

C. Nature of credit notes generally issued by the selling dealer

Generally, the credit notes issued by the selling dealer are of the following nature: -

- (i) Relating to goods returned or rejected by the purchaser;
- (ii) Due to variation in rate or quantity in individual sale invoice;
- (iii) Bonus or target discounts or incentives in the form of general credit to the purchaser's account or supplying additional quantity of the goods dealt in by the selling dealer or providing/supplying perks, such as allowing package tours or giving gift articles, etc [Post sale perks and discounts].;
- (iv) Consideration for other facilities offered by the purchaser, such as, rent for window display, sign-boards, etc.;
- (v) Provision of various services, such as, window hiring for display of goods, deploying man-power for promotion of goods, etc.; and
- (vi) Reimbursement of expenses incurred by the purchaser on behalf of the seller.

D. Issue of credit notes under the DVAT Act

As per section 51(a) of the DVAT Act, where a tax invoice has been issued in respect of a sale and the amount shown as tax in that tax invoice exceeds the amount of tax payable in respect of the sale, the dealer shall provide the purchaser with a credit note, containing such particulars as may be prescribed.

The said section should be read along with section 8 of the DVAT Act, which, *inter alia*, has laid that a selling dealer shall adjust his output tax if -

- 8(c) the previously agreed consideration for that sale has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason;

Moreover, reading the entire clauses of section 8 together, which allow the sellers to reverse their output tax not only due to cancellation of sales, offer of discounts and return of goods (within six months), but also even for the bad debts; intention of the Statute *prima-facie* appears that wherever consideration payable by the purchaser to the seller is reduced subsequent to the date of sale for whatever reasons, the seller is allowed to reduce its output tax.

It may also be noted that the DVAT provisions require issuance of debit/credit notes by the seller; and do not require issuance of corresponding credit/debit notes by the purchaser.

E. Reversal of Output Tax by the selling dealer

There are various judgments by the Courts pertaining to 'Sales Tax Era' where it was pronounced that cash discount, incentive, turnover discount and bonus discount do not form part of the sale price, and hence, no tax was payable on such discount. However, these judgments have lost their significance under the VAT Enactments due to input tax credit mechanism, inspite of similar definitions of the term "sale price" under both the regimes. Under the VAT structure, unlike the sales tax regime, output tax is reversed on the amount of discount, and the selling dealer may pass on this tax to the purchasing dealer, who, in turn, shall reverse his input tax credit. Needless to say that these judgments, at present also, have relevance for the purposes of Central Sales Tax Act where the purchasing dealer cannot claim set-off of tax paid by him to the selling dealer.

In terms of section 2(1)(zd) of the DVAT Act, while determining "sale price", a dealer is eligible to reduce, from the valuable consideration, any sum allowed as discount which goes to reduce the sale price according to the practice, normally, prevailing in trade. Under the DVAT Act, post-sale discounts are allowed by way of adjustment in the output tax u/s 8 of the Act.

In a recent judgment in *IFB Industries Ltd. vs. State of Kerala (2012) 49 VST 1 (SC)*, it was held that trade discount, which is uniformly allowed to all the purchasers, does not form part of the sale price. In *BPL Ltd. vs. Asstt. CCT (2014) 69 VST 149 (MP)*, the Court held that the trade discount, which is not shown in the invoices and is allowed to the retailers subsequently through credit notes, shall be allowed as deduction from the sale price.

It may, however, be pertinent to note that inspite of Circular no. 30, which requires the selling dealer to reduce its output tax on the amount of credit notes, few VAT officers have disallowed reversal of such output tax to the sellers since the sellers failed to provide necessary evidence to the Authorities in respect of reversal of corresponding input tax credit by the purchasers.

Why the sellers sometimes are reluctant to reverse their output tax:

- Sellers are operating through common SAP; and States are having different provisions in respect of reversal of input tax credit on the credit notes. Central Excise also does not require for such reversal.
- Many a times, it also happens that the discount does not pertain to any single invoice and it is not practically feasible to compute the impact of tax on such discount by the selling dealer. To illustrate, a company is selling goods to a distributor, taxable at 0%, 4% and 12.5%, and at the end of the year, since the distributor has exceeded the specified target of turnover, a discount of 2% is allowed on total off-take. In the credit note issued due to target discount, it is difficult for the company to ascertain the amount of bill-wise output tax to be reversed.
- In some other cases, credit notes are given for reimbursement of expenses incurred by the purchaser, rent for display of goods, etc., which are not relatable to any sale or purchase.
- Another reason is that the Authorities ask the selling dealers to provide for the evidence of corresponding reversal of input tax credit by the purchaser.

F. Reversal of Input Tax Credit by the Purchaser u/s 10(1)

Before proceeding further, it is significant to mention that in the Andhra Pradesh and Tamil Nadu VAT Act, it has been provided that wherever any credit note is to be issued for discount or sales incentives by any dealer to another dealer after the date of issuing tax invoice, the selling dealer shall pass a credit note without disturbing the tax component on the price in the original tax invoice. In other words, the quantum of input tax credit already claimed by the buying dealer as well as the tax already paid by the selling dealer shall not be reversed.

Under the Kerala VAT Act and the U.P. VAT Act, the respective Commissioners have issued circulars stating that where the supplier has not claimed deduction in terms of the credit note for the amount of discount and has paid full tax as shown in the sale bill, then, the purchaser shall be entitled to avail full input tax credit on the basis of his purchase bill, provided the supplier has issued a declaration to the purchaser to the effect that entire tax, as shown in the sale bill raised on the purchaser, has been paid and no deduction in the turnover has been claimed by him based upon such credit note.

However, in the DVAT, instead of providing such mechanism, the VAT Authorities are disallowing the input tax credit on the credit notes, even if the selling dealer has not adjusted his output tax under section 8 of the Act. Circular No. 30 dated 19.12.2013 has gone a step further, which requires reversal of input tax credit even on the amount of rent for window

display, sign-boards, lease rental of premises and reimbursement of other expenses. Since these amounts are paid / credited by the seller either towards provision of certain services or for reimbursement of expenses, and are not related to sale or purchase of goods, purchaser should not be required to reverse its input tax credit.

In accordance with section 10(1) of the DVAT Act, the purchaser is under an obligation to reverse his input tax in the following two circumstances, namely, -

- (i) Where the purchaser rejects or returns goods to the seller, he will reduce his input tax credit in relation to that purchase, irrespective of issuance of credit note by the seller.
- (ii) If the discount (based upon the targets or in the nature of incentives) or other adjustment is allowed by the seller, then the purchaser shall compensate to the Government by making adjustment in his input tax credit based upon such credit note issued in accordance with section 51 read with Rule 45 (i.e., where the seller has adjusted his output tax).

However, where the seller has not adjusted the output tax, and has accordingly issued a credit note without separately indicating the amount of VAT (i.e. seller has paid DVAT on full value of the invoice without making any subsequent adjustment); should the purchaser reverse his input credit u/s 10(1) of the Act in relation to such credit notes?

Answer of the author is “No” because reversal of input tax credit, in such a case, shall be lawful only if the selling dealer has adjusted his output tax in terms of section 8 of DVAT Act and has issued a credit note, disclosing the amount of tax separately, in terms of rule 45 of the DVAT Rules. Moreover, any such attempt will definitely be against the intention of the Legislature and spirit of the VAT mechanism, which allows credit to the purchaser for tax paid by him to the seller on his eligible purchases. We have already seen that several other States have either made provisions or have issued circular to avoid undue harassment to the dealers and, simultaneously, to safeguard the revenue.

Concept of input tax credit, as envisaged in the DVAT Act, is not new in India. It has been adopted in the Central Excise Act by way of Modvat/Cenvat Credit for more than twenty five years. Under the Central Excise Act, in a number of cases, it has been held that the purchasing dealer is not required to reverse his Cenvat Credit unless the selling dealer has also reversed the same or sought a refund in relation thereto. In the case of *Brown Kraft Industries Ltd. vs. CCE 2007 (6) STR 275*, the Mumbai Tribunal (also *Kedia Electricals Ltd. vs. CCE 2006 (206) ELT 852* (Bangalore Tribunal) held, -

“There is no loss to the revenue as far as the payment of duty is concerned by the assessee, i.e., supplier of the goods on the proper correct assessable value. If there is a short payment of duty or refund claimed by the assessee supplier or reduction of sale price of the goods, there is some meaning in the action of the department to demand the appellants to reduce or reverse the credit equal to short payment of duty or refund claim. There is no such exercise by the authorities concerned at the suppliers end. Duty is paid on the basis of regular practice which is as per trade practice or on mutual agreement and the trade discounts/ cash discounts and other discount are the normal practice, which cannot be quashed by the department as long as they receive the correct quantum of duty, on correct assessable value. Therefore, I am of the

confident view that the department cannot direct the appellant to reverse the credit or to disallow the credit as the Appellants had paid the duty and taken credit which is equivalent to duty shown in the invoice issued by the supplier, as such the confirmation of the demand for excess credit is not sustainable and penalty imposed thereof along with interest is not sustainable.”

Similarly, there is no loss to the Government due to non-reversal of input tax credit by the purchaser since the seller has not reversed his output tax. Since there is no loss to the Government, nothing requires compensation to the Government in terms of section 10(1) of the Act. In addition, through this reversal of input tax credit, there would be an unjust enrichment on the part of the Government by retaining the double taxation (both from the seller as well as the purchaser on a single transaction of sale and purchase). Moreover, if the Government can make the e-system for verification of claim of input tax credit of the purchasers (through matching of Forms 2A and 2B), it can certainly make the e-program for reversal of the input tax credit of the purchasers in those cases where the sellers have reversed their output tax based upon the credit notes.

In the case of *Andhra Agencies vs. State of A.P.* (2009) 19 VST 1 (SC), the matter before the Supreme Court was whether the value representing the credit notes issued by the manufacturer were to be included in the taxable turnover. In Andhra Pradesh General Sales Tax Act, 1957, at relevant time, the intermediate dealer of liquor was required to pay tax on the incremental value. The Revenue sought to tax the intermediate dealer at “sale value – purchase value – value of credit notes”. However, the Apex Court held that the intermediate dealer would be liable to pay tax at “sale value – purchase value”, i.e., in other words, he would pay tax on the value of credit notes only if the tax was not paid on such value by the manufacturer. The same has been discussed by the Supreme Court by way of an illustration, as under :

“..... Hypothetically taking the sale price to be Rs. 100, the tax to be paid by the selling dealers has to be on 100. He may collect 90, after giving discount. If the sale price of the intermediate seller is Rs. 110 his liability to pay tax shall be on Rs. 10 i.e., 110-100. The Department’s stand is that it should be 20 i.e., 110-90. This stand will not be correct if the first seller had paid tax on 100. Therefore, it has to be verified as to what was the amount on which tax was paid on the illustrative figures given above by the selling dealer.”

In two separate judgments, the Haryana Tribunal [*Vishal T.V. Care vs. State of Haryana* (2010) 7 VSTI C-372 (Har Trib) and *Laxmi Narain Ved Prakash vs. State of Haryana* (2010) 7 VSTI C-255 (Har Trib)] held that the Authorities were not justified in reducing input tax credit without verification of the fact that the selling dealers have claimed benefit on such credit notes by reducing output tax liability; and therefore, matter was remanded for verification.

Further, the provisions in respect of credit notes have been inserted in the DVAT Act [Section 10(5) discussed in the next Para] with effect from 1.4.2010; and specifically in respect of credit notes. Incorporation of section 10(5) under the DVAT Act itself signifies that reversal of credit notes were never covered within the scope of section 10(1); that is, had that been covered within section 10(1), there were no need to insert section 10(5).

Therefore, the purchaser is not required to reverse its input tax credit u/s 10(1) on the amount of credit notes unless the seller has reversed its output tax on such credit notes; and thus, the Circular no. 30 dated 19.12.2013 in respect of reversal of input tax credit by the purchaser in all the cases (i.e., whether or not the seller has reversed the output tax) does not seem to be in accordance with the intent and spirit of the Law.

G. Reversal of Input Tax Credit by the Purchaser u/s 10(5)

Sub-section (5) has been inserted in section 10 of the DVAT Act w.e.f. 1.4.2010 restricting the input tax credit to the purchasing dealer if the goods have been sold at a price lower than the purchase price. Effective from the same date, Rules 6A(3) and (4) of the DVAT Rules have been inserted to confine the scope of section 10(5) to those cases where the dealer receives credit note(s) from the selling dealer on account of discount, commission, rebate, remission in price or incentive, or by whatever name called. Therefore, we may say that section 10(5) read with Rule 6A(3) are the direct and specific provisions in respect of input tax credit on the credit notes relating to discount, incentives, etc.

Insertion of these provisions is an attempt by the Government to set at rest the litigation relating to reversal of input tax credit by the purchaser on the amount of credit notes received from the seller, particularly in those cases where the seller has not reversed output tax on the amount of credit notes.

Similar to the DVAT Act, the Karnataka VAT Act also requires reversal of the input tax credit which is in excess of output VAT where goods were sold below the purchase price. Interpreting these provisions and section 10(5) of the DVAT Act, the Karnataka High Court held that where goods were sold below the amount stated in the original tax invoice, the said provision would be invoked and the purchasing dealer would reverse his input tax credit. [*Jayam & Co. vs. Asstt. CCT (2013) 65 VST 261 (Kar)*]

Let us take an illustration to understand section 10(5) and Rule 6A(3) in relation to credit notes. Suppose, "PQR" purchases goods at Rs. 1000/- (ITC of Rs.50); and receives post-sale credit note from his seller of Rs.100/- (Tax Rs.5/-). If he sells goods at Rs. 1020/-, he is not required to reverse input tax credit u/s 10(5), since inspite of receiving the credit note of Rs.100/-, he sells the goods at above the original purchase price of Rs.1000/-. Suppose, he sells the goods at Rs.980/- (below Rs.1000/-), then he is required to reverse the input tax credit proportionately only on Rs.20/- (and not entire Rs.100/-) u/s 10(5). Where, however, the seller has reversed his output tax by Rs.5/-, and accordingly, the purchaser has reversed his input tax credit by Rs.5/- u/s 10(1), then the purchaser shall not be required to again reverse the input tax credit u/s 10(5).

Another question which invites our attention is: whether section 10(5) of the DVAT Act is applicable, retrospectively, that is, to the credit notes issued before 1.4.2010? Applying the judgment of the Delhi High Court in the case of *Shanti Kiran India (P) Ltd. vs. CTT (2013) 57 VST 405 (Del)*, where the Court held that insertion of section 9(2)(g) of the DVAT Act (allowing input tax credit to the buyer if the seller has paid its output tax) w.e.f. 1.4.2010 is not applicable retrospectively; it may be stated that section 10(5) is also applicable prospectively.

Therefore, to conclude, purchaser is required to reverse proportionate input tax credit under section 10(5) based upon the credit notes issued by the seller if he has sold the goods

below the price stated in the tax invoice; and only to the extent of such negative value. Where, however, the seller has reversed his output tax on the amount of credit notes, the purchaser shall reverse his input tax credit u/s 10(1) of the Act.

Before parting, it is necessary to quote few lines from the judgment of the Gujarat High Court in the case of **Vimal Enterprises vs. Union of India 2006 (195) ELT 267** (para 18), -

“If, on facts, it is possible to find out that the transaction is genuine and bona fide transaction, the identity of the supplier is established, the document showing duty paid inputs is supported by the facts, and the records of the supplier show that the supplier has purchased duty paid goods before resale and passed on the credit of duty, there is no reason why the benefit should be denied. Once the object for which a provision is enacted is satisfied merely venial or technical breach by itself should not permit the authorities to adopt a stand which frustrates the object for which the entire scheme of Modvat has been framed. The endeavour must be to ensure that the scheme is made effective and not frustrated. In other words, the goods, which have been subjected to duty when used as inputs for manufacture of final product, should not be made to bear duty once again as that would have a cascading effect not intended by legislature in so far as the ultimate consumer is concerned.”

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