APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA
PROCEEDINGS OF THE APPELLATE AUTHORITY FOR ADVANCE RULING
(U/s.101 OF THE KERALA / CENTRAL GOODS AND SERVICES TAX ACT, 2017)

Members present:

Shyam Raj Prasad, IRS
Chief Commissioner,
Central Tax, Central Excise and Customs

Anand Singh, IAS
Commissioner
State Taxes, Kerala

Name and Address of the Appellant	M/s. Santhosh Distributors, XXIX/325,Thiruvathukal Karapuzha, Kottayam-686003
GSTIN	32ABHFS1356H1ZB
Advance ruling against which appeal is filed	16/09/2019
Date of filing Appeal	02/12/2019
Date of Personal Hearing	31/12/2020 – 4 pm
Authorized Representative	Mr. Adithya Srinivasan, B. Com, ACA M/s. D. Aravind & Associates

ORDER No. AAR/10/20 DATED:01-03-2021

1. This appeal stands filed under section 100(1) of the GST Act, 2017 by M/s. Santhosh Distributors (hereinafter referred to as the appellant), an authorized distributor of M/s. Castrol India Ltd ('Castrol') for the supply of Castrol brand Industrial and automotive lubricants bearing HSN code 2710.

Brief facts of the case

2. The appellant preferred an application before the Advance Ruling Authority and sought ruling on the following questions of law:

The appellant is paying tax due as per the value of the invoice issued and availing the input tax credit of GST shown in the inward invoice received by them from the Principal Company Castrol or their stockist. The advance ruling sought clarification on the following issues:

a. On the tax liability of the appellant for the transactions mentioned herein and explained as above. The appellant is paying the tax due as per invoice value issued by them and availing the input credit of GST shown in the inward invoices received by them from the Principal Company Castrol or their stockist.

b. Whether the discount provided by the Principal Company to their dealers through the appellant as shown in Annexure D attracts any tax under the GST laws.

c. Whether the amount shown in the Commercial Credit note issued to the appellant by the Principal Company attracts proportionate reversal of input tax credit.

d. Is there any tax liability under GST laws on the appellant for the amount received as reimbursement of discount or rebate provided by the Principal Company as per written agreement between the Principal Company and their dealers and also an agreement between the principal and distributors.

3. The Authority for Advance Ruling Kerala vide order no: KER 60/2019 dated 16/9/2019 issued ruling as follows:-

a. The applicant/distributor is eligible to avail ITC shown in the inward invoice received by him from the supplier of goods / principal company.

b. It is established from the statement of the applicant that the prices of the products supplied by the applicant is determined by the supplier /principal company and the applicant has no control on the price of the products. Therefore, it is evident that the additional discount given by the supplier through the applicant, which is reimbursed to the applicant is to offer a special reduced price by the distributor / applicant to the customers and hence the amount represent consideration paid by the supplier of goods / principal company to the distributor / applicant for supply of goods by the distributor / applicant to the customer. Therefore, this additional discount reimbursed by the supplier of goods / principal company to the distributor / applicant is liable to be added to the consideration payable by the customer to the distributor / applicant to arrive at the value of supply under Section 15 of the CGST / SGST Act at the hands of the distributor / applicant.

c. The supplier of goods / principal company issuing the commercial credit note is not eligible to reduce his original tax liability and hence the recipient / applicant will not be liable to reverse the ITC attributable to the commercial credit notes received by him from the supplier

d. The applicant is liable to pay GST at the applicable rate on the amount received as reimbursement of discount/ rebate from the principal company.

4. Aggrieved of the above decision, the appellant has filed the instant appeal before this Appellate authority. The appellant submitted following facts for the consideration of this authority.

5. **GROUNDS OF APPEAL**

5.1. The Appellant has submitted the details obtained from Castrol about the transactions, the nature of discounts, and the issuance of credit notes. They have contended that the Appellant and Castrol have executed an agreement dtd.25th Sept. 2013 with respect to the distribution of the above products on a principal to principal basis. Some of the key terms agreed between Castrol and the Appellant (Distributor) under the Distribution Agreement dated 25th Sept. 2013 are as under:

- The Distributor shall maintain a minimum quantity of the Products as mutually agreed.
- Whenever the Distributor effects a sale of the Products, as per Castrol's Automated Order Generation Distributor Replenishment Model, a computerized Purchase Order will be automatically generated to ensure that the Distributor maintains a stock as mutually agreed.
- The Distributor shall purchase the products at the rates which will be fixed by Castrol from time to time.
- The basis of all transactions between Castrol and the Distributor shall be on principal to principal basis.
- The Distributor undertakes that in respect of supplies to be made by it to the

Distributor's customers/ dealer, it shall not charge prices exceeding the prices recommended by Castrol.

- The Distributor undertakes to submit information to Castrol at such intervals as may be agreed regarding the total benefits which the dealers will be entitled to under the schemes of Castrol.

- In consideration of the obligations undertaken by the Distributor pursuant to the Agreement, the Distributor will be entitled to the Distributor's rebate @ 4.3% of the basic price of the Products. For the said purpose, the basic price at which the product is invoiced to the Distributor by Castrol but does not include any type of discounts, taxes, and the said commission rebates.

5.2. To the best understanding of the Appellant, Castrol has two types of dealers: (a) normal dealers, and (b) workshops, sales to whom are made by Distributors like the Appellant. In relation to workshops, Castrol announces (through its Distributors) different types of discounts, namely: (i) SKU discounts, (ii) quantity-based discounts etc., which are serviced by the Distributors.. Castrol also announces various schemes to its normal dealers through its Distributors. The Appellant is entitled to discounts announced by Castrol to appellant's dealers in addition to discount rebate of 4.3%. The Appellant is obliged to give the discounts as announced by Castrol to appellant's dealers and in turn is entitled to receive these additional discount from Castrol. The scheme in question in these proceedings is SKU discount offered by Castrol in relation to a sale by its distributor, the Appellant, with a workshop dealer. For the purpose of better appreciation of the relevant issues, there are two sets of transactions which are of relevance to this proceeding, namely:

1. The transaction of sale between Castrol and its distributors (hereinafter "**Transaction 1**");

2. The transaction of sale between the Distributor and its customers, viz. dealers or workshops (hereinafter "**Transaction 2**").

5.3. Based on economic trends and other commercial factors, in certain instances for specified products and periods, Castrol devises suitable schemes of discounts to augment the sales volumes. Such schemes of discounts are introduced and effectuated on a needs basis. The discounts as offered may broadly be categorised as under:

(i) Discounts known at or prior to the point of time of supply, the terms and conditions of which are known and agreed prior to the point of sale. Such a discount may be offered either in relation to Transaction 1 from Castrol to the Appellant or in relation to Transaction 2 between the Appellant and the Dealers. Such a discount when offered would normally be reflected in the relevant sale invoice and the GST paid would be on the transaction value post deducting such discounts.

(ii) Discounts which are offered post the point of time of supply These discounts are discounts offered post the sale made to the Distributor. These discounts may be known at the point of time of supply but may not be quantified. Further, some discounts may not be even known at the time of supply. If some additional discount is agreed with Castrol and to be offered to dealers after the point of time of supply, the Appellant is obliged to give the additional discount to Appellant's customers/dealers and is in turn entitled to this post sale additional discount. Both type of post-sale discounts, whether known at the time of supply or not, are discounts evidenced by credit notes. In cases where the post

sale discounts were known at the time of supply but not relatable to invoices and even in cases where it was not known at the time of supply,Castrol issue a financial credit note. In relation to such credit notes, there is no reduction of the transaction value or of the tax paid sought under Section 15(3)(b) of the CGST Act.

The sample copies of the commercial credit note and corresponding supply invoice were submitted by them.

5.4. Further from facts as aforesaid, it is clear that:

(a) The Appellant is entitled to receive both prior or post sale discounts, from Castrol against the discounts given by Appellant to appellant's customer/dealers in terms of agreement entered between Castrol and Appellant customers/dealers. Castrol grants post sale discounts to its Distributors in such circumstances where it considers it commercially expedient to do so to increase the volume of its sales. In the ordinary course of trade, Castrol would seek to sell products at predetermined prices. All credit notes which emanate from Castrol in relation to a post-supply discount extended to a distributor are not tax credit notes in relation to which Castrol seeks any reduction of its "transaction value" or reduction of the GST already discharged on the relevant sale transaction under Section 15(3)(b) of the CGST Act. The amounts transacted under the credit notes (post-sale discounts) are an embedded and intrinsic cost of the transaction value of Castrol on which transaction value, GST has already been discharged at the point in time when Transaction 1 occurs as described in the preceding paragraph.

(b) Furthermore, in relation to any amounts as evidenced by a credit note issued by Castrol to the Distributor, the amount in question is meant to enable the distributor to give a discount or a lower sale value to the customer (dealer or the workshop) in terms of the distributor agreement with Castrol. The entirety of the amount as evidenced by a credit note practically works to secure a lower sale price for the customer. The distributor is obligated to ensure that the impact of any credit note issued is passed on to the customer. On account of the prescribed conditionalities of Section 15(3)(b) of the CGST Act, the post-sale discounts in the present case do not qualify as the eligible for being deducted from the transaction value. These post-sale discounts are therefore part of the transaction value on which GST is paid. On an analysis of actual price realization (post-discounts), both in Transaction 1 and Transaction 2, it is seen that the actual price realization in both these transactions (when post-sale discounts are given) are lower than the relevant transaction value on which GST is paid relevant to Transaction 1 and Transaction 2.

5.5. The Impugned Order at pages 3 and 4 relies verbatim on paragraph 4 of Circular no. 105 dated 28th June 2019 which Circular has been since withdrawn ab initio by a later Circular no.112 dated 3rd October 2019. Further, the Impugned Order is passed on wrong appreciation of facts. The Impugned Order is a non-speaking order. The Impugned Order is passed contrary to the statutory scheme of valuation prescribed under Section 15 of the CGST Act where under the levy is restricted to the transaction value viz. the price paid or payable for the relevant transaction of supply/ sale. The Impugned Order creates a basis of taxation which would result in double taxation as an element of the price which has already been taxed in respect of Transaction 1 is also sought to be taxed once again as part of the transaction value of Transaction 2.

The Impugned Order has failed to appreciate the legal significance and impact of the issuance of credit notes in terms of Section 15 and Section 34 of the CGST Act read with the Circular no. 92 dated 7th March 2019. Discount/ credit note cannot be construed as consideration as defined under Section 2(31) of CGST Act. Taxability cannot be determined by reading language or concepts allen to the statute into the statute Discount/ schemes/ rebate is in nature of pure financial credit notes only.

5.6. The detailed submissions of the Appellant on above grounds are as follows, which are without prejudice to each other:

a. It is submitted that in the present case, the discount is routed through the distribution chain. It is not a case where the additional benefit is given by the manufacturer to dealers directly bypassing the wholesalers/distributors and thus, the additional discount would not merit to be treated as additional consideration in the hands of the distributor. The Impugned AAR Ruling has been passed by the Respondent No.1 based on a misapplication of law. The Impugned AAR Ruling, which was passed on 16th September 2019, particularly has placed reliance (although not specifically referred to) on the Circular No. 105/24/2019-GST dated 28th June 2019 ("June Circular") issued by the Central Board of Indirect Taxes and Customs ("Board") on 'Clarification on various doubts related to treatment of secondary or post-sales discounts under GST – reg.' which is evident from the below table:

Circular dated 28th June 2019	Impugned AAR Ruling dated 16th September 2019
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	The additional discount/ schema discount is given by the applicant to the customer as directed by the supplier of goods/ principal company and is intended to augment the sales volume by the offer of special discounted price to particular category of customers as identified/ determined by the supplier of goods/ principal company. ... The discounts so offered as per instructions of the supplier of goods/ principal company are completely reimbursed by the supplier of goods/ principal company. In the facts of the instant case, the additional discount/ reimbursed amount represents the consideration flowing from the supplier of goods/ principal company to the applicant for the supply made by the applicant to the customers. The additional discount/ reimbursed amount, is therefore liable to be added to the consideration payable by the customer to the applicant for the purpose of arriving at the value of supply of the applicant to the customer as per

sub-section (2) of section 16 of the CGST Act.	provisions of Section 15 of the CGST/ SGST Act. Further, the customer, if registered, would only be eligible to claim ITC of the tax charged by the applicant only to the extent of the tax paid by the said customer to the applicant in view of second proviso to Section 16(2) of the CGST/ SGST Act. A.1

b. The said June Circular has since been withdrawn *ab-inito* by a Circular No.112/31/2019-GST dated 3rd October 2019 issued by the Board ("Withdrawal Circular"). A copy of the June Circular and Withdrawal Circular are hereto annexed and marked as ***Exhibit D***. The Withdrawal Circular was issued in exercise of its powers conferred by Section 168(1) of the CGST Act with a view to ensure uniformity in the implementation of the provisions of the law across field formations. As a corollary to the settled law that a Circular is binding upon the Revenue, it also follows that a Circular withdrawn is also equally binding on the Revenue. The Impugned Order which relies on paragraph 4 of the June Circular as the basis of its approach and findings is therefore clearly unsustainable and bad in law. The additions to the assessable value made under the Impugned Order are therefore without jurisdiction and without the authority of law. The Impugned Order is passed in breach of the principles of natural justice, as it is not a speaking order, *inter alia*, for the reasons that:

The issue raised before the authority was as to the appropriate basis of valuation of the transaction between the Appellant and its customers. Section 15 of the CGST Act prescribes various circumstances and statutory variations based on which the value of the levy of GST is to be determined. Value is therefore, determinable under various sub-sections and clauses of Section 15 of the CGST Act, each covering a different circumstance or nuance in law

c. The Impugned Order, without any reasoning whatsoever, merely states that:
Page 4: The additional discount/ reimbursement amount is therefore liable to be added to the consideration payable by the customer to the applicant for the purpose of arriving at the value of supply of the applicant to the customer as per provisions of Section 15 of the CGST/ SGST Act.
Para 2: In the case of the Appellant, the supplier of goods / Castrol is issuing Commercial Credit Notes for reimbursement of the scheme discount provided by the Appellant to the customer as per instruction of the supplier. Since the commercial credit notes issued by the supplier / Castrol do not satisfy the conditions prescribed in sub-section (3) of Section 15 of the CGST / SGST Act, the supplier is not eligible to reduce the original tax liability.

d. The Learned Respondent in the impugned order has just stated that 'since the commercial credit notes issued by the supplier / Castrol do not satisfy the conditions prescribed in subsection (3) of Section 15 of the CGST Act, thus, the supplier is not eligible to reduce the original tax liability'. It is nowhere elaborated/ commented as to why the said discount does not fulfil the criteria provided under Section 15 (3) of the CGST Act. In this regard, it is imperative to reference Section 15 (3) of the CGST Act and the fulfilment thereof in the present case.

e. The Appellant places reliance on the decision of the Apex Court in the case of ***Siemens Engineering Vs. UOI [1976 (63) AIR 1785 (SC)]*** wherein the Supreme Court has held as follows:

".....it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an Order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

f. The Appellant also invites attention to the Apex Court's decision in the case of ***Assistant Commercial Tax Officer Vs M/s Rijhumal Jeevandas [2010-TIOL-30-SC-CT]***, wherein it has held as follows:

"The administrative authority and tribunals are obliged to give reasons, absence whereof could render the Order liable to judicial chastise. Thus, it will not be far from absolute principle of law that the Courts should record reasons for its conclusions to enable the appellate or higher Courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose Order is impugned, is sustainable in law and whether it has adopted the correct legal approach."

g. The Appellant also refers to the decision of the Gujarat High Court in the case of ***The Commissioner of Central Excise and Customs Vs Chandubhau Shiroya [2009-TIOL-105-HC-AHM-CX]***. In this case, the Honourable High Court held as follows:

"13. It can also be said that the reasons are like the bricks with which the edifice of justice is built. If the bricks are not in place or are missing, the entire edifice comes crashing down. The conclusions arrived at by a judicial or quasi-judicial authority should rest upon the foundation or reasons and cannot be sustained if they are in the air. An Order passed by a quasi-judicial forum has to be supported by convincing and cogent reasons, howsoever brief they may be."

Therefore, in view of the aforesaid judicial precedents, the Appellant submits that the impugned non-speaking Order is not in accordance with the law and against the principles of natural justice and hence, should be set aside.

h. In terms of Section 15(1) of the CGST Act, the levy of GST is on the "transaction value" of the supply, which is the price actually paid of payable qua the supply provided the parties are unrelated and price is the sole consideration. The levy is therefore on the actual consideration, and, does not extend to any notional consideration. Moreover, in terms of Section 15(3) of the CGST Act, discounts (both pre-sale and post-sale) are deductible from the value of the supply, provided certain conditions are met. For post-sale discounts, the provisions envisage the issuance of a credit note within the prescribed time limit by which output tax liability of GST payable on the supply of goods can be reduced subject to conditions specified therein. It is a settled law that the existence of a machinery provision to measure or compute the levy is indispensable in a fiscal statute. The valuation mechanism under GST is entrenched in Section 15 of the

CGST Act. As per Sub-section (1) of the said Section 15 of the CGST Act, the levy of GST is on the "transaction value" of the supply, which is the price actually paid of payable qua the supply provided the parties are unrelated and price is the sole consideration. The levy is therefore on the actual consideration, and, does not extend to any notional consideration. Moreover, in terms of Section 15(3) of the CGST Act, discounts (both pre-sale and post-sale) are deductible from the value of the supply, provided certain conditions are met. For post-sale discounts, the provisions envisage the issuance of a credit note within the prescribed time limit by which output tax liability of GST payable on the supply of goods can be reduced.

i. On a reading of these provisions, there is a statutory prescription of what should be included in the value, and what is not to be included in the value. On a reading of Section 15(1) and 15(3) of the CGST Act, from the price actually paid or payable, the amount of any discount is required to be excluded from the value of the said supply if the conditions set out in Section 15(3)(a) and 15(3) (b) of the CGST Act are satisfied. Therefore, discount is a concept which by statute is intrinsically co-related to the value of the supply. In the present case, therefore, any discount given by the manufacturer to the distributor is intrinsically co-related to the value of the said supply, viz. Transaction 1. In the facts of the present case, the conditions for exclusion of discount from the value under Section 15(3) of the CGST Act are not satisfied. As a result, this discount cannot be excluded from the value. Tax is, therefore, paid on the full value absent any adjustment for discount. Factually this position is undisputed between the parties.

j. In the facts of the present case, it is undisputed and indisputable that transaction value of Transaction 1 has not been reduced by the post-sale discounts evidenced by the credit notes under consideration. The transaction value of Transaction 1 therefore treats the amounts covered by the credit notes as being part of the price actually paid or payable for Transaction 1. The impugned Order which holds that the amounts evidenced by the credit notes should be added in to the transaction value of Transaction 2 is wholly unsustainable for the reason that it seeks to tax an amount which is already been taxed as part of the transaction value of the Transaction 1, by also treating such amount as constituting a part of the price actually paid or payable for Transaction 2. This position is unsustainable in normal trade and commerce and also is unsustainable in terms of provisions of Section 15 of the CGST Act.

k. The definition of the term "consideration" under Section 2(31) of the CGST Act needs to be read consistently and harmoniously with the definition and concept of "transaction value" viz. the price actually paid or payable for the "said supply". When the transaction value for Transaction 1 is formulated and GST is levied, it is an accepted position that this transaction value is the price actually paid or payable for the said supply and that "the price" is the sole consideration for the supply". Relevant to Transaction 1, this "transaction value" which is the "sole consideration" for sale, also includes the amounts of discount as evidenced by the credit notes in question. Under the scheme of Section 15 of the CGST Act, it is impermissible in law to consider an element which is an intrinsic part of the "transaction value" and is the sole consideration for Transaction 1, to also be considered as being part of the "consideration" under Transaction 2.

l. It follows from the scheme of Section 15 of the CGST Act that if the term "consideration" as defined under Section 2(31) of the CGST Act is to be harmoniously read with the term "transaction value" and with the provisions of Section 15(1) and 15(3) of the CGST Act, then the term "consideration" can only refer to "payments", which have not already been subjected to GST in an antecedent transaction (in respect of the same goods) as being part of the transaction value and sole consideration of such antecedent transaction. In the present case, the definition of the term "consideration" under Section 2(31)(a) as applied to Transaction 2, cannot be applied so interpreted as to treat any amount (being the post-supply discounts evidenced by credit notes) which have already been taxed as part of the transaction value in Transaction 1.

m. The Impugned Order has been passed in a manner wholly contrary to the principles laid down in the binding decisions of the Hon'ble Supreme Court in ***Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam vs. M/s. Motor Industries Co., Ernakulam, [(1983) 2 SCC 108]***, and of the Hon'ble Kerala High Court in ***Kalpana Lamps and Components Ltd. v. State of Kerala, (2006) 143 STC 666***. These decisions specifically recognize that a discount given to promote further trade, irrespective of the nature for which it is given, when it is in terms of agreement or established practice between parties, is still in the nature of a 'trade discount'. The re-characterization of a discount given by a supplier in relation to a transaction of 'supply of goods' ("'Transaction 1' in the present facts") as part price being paid for a subsequent transaction of sale of goods ("'Transaction 2' in the present facts"), is wholly contrary to the principles laid down in such binding decisions. Insofar as the Impugned Order, has been passed wholly ignoring the binding decisions of the Hon'ble Supreme Court and this Hon'ble High Court on what constitutes a 'trade discount'.

n. The Impugned Order is legally unsustainable as it results in double taxation, which is impermissible in law as well settled by the Hon'ble Supreme Court in the cases of ***Union of India vs. Tata Iron and Steel Co. Ltd. [1977 (1) ELT J61 (SC)]; Govt. of India vs. Polisetthy Somasundaram Pvt. Ltd. [1999 (113) ELT 378 (SC)***.

o. It is submitted that not only is the Impugned Order contrary to the basic legal and commercial principle that the same amount cannot be a 'discount' in relation to one transaction, and, at the same time be a 'consideration' in relation to a subsequent sale transaction, but also incorrectly seeks to bring the same amount to tax twice over. In terms of the Impugned Order:

The additional discount provided by Castrol to the Appellant is not an eligible discount under section 15(3) of the CGST Act, 2017 and hence is not deducted from the price of supply of goods by Castrol to the Appellant. Therefore, Castrol has already paid tax on a value which includes the value of such trade discount, which fact is not disputed;

p. The Appellant submits that the impugned order itself clarifies that Castrol is issuing invoices at a price to its Appellant and the Appellant supplying the goods to the dealers based on the <u>various rate scheme pre-fixed by Castrol.</u>

The said para itself implies that the schemes/ discounts were first launched by Castrol and communicated to the Appellant. Thus, the consideration for the procurement of goods by the Appellant is reduced in the hands of the Appellant.

It is not the fact that the Appellant at its own first offers discounts to its customer and effect sale of goods to its customers at a reduced price but it is based on pre-existing scheme of Castrol.

It shall be noted that, had the fact of the case would have been as understood by the Authority for Advance Ruling (goods are sold at a lesser price by the Appellant at its own motion), then Appellant is not under commercial compulsion to pass on this credit note to its distributor.

The very fact that Castrol launches schemes and provides discounts from time to time to its distributors as per the contract executed between Castrol and Distributor makes the Appellant legally eligible for the above benefits and has the right to procure the goods at the respective prices from Castrol.

Thus, due to the above discounts/ schemes/ rebate etc., the cost of procurement of goods is reduced in the hands of the Appellant and thus, the Appellant is able to supply goods at a lesser/ discounted price to its customers.

In the present case, it is not the fact that the above discounts/ schemes/ rebate are qua specific buyer/ class of buyer of the Appellant and there is no such condition in the schemes/ discounts etc. but these are uniform practice in selling products through distributors with full consent and concurrence of the distributors.

It shall be noted that no one will effect the sale of goods in a systematic manner as pronounced by the Honourable Supreme Court in the case of FIAT decision. Thus, it evidences that the nature of the transaction is discount passed on by Castrol to its Distributor and not the consideration on account of sale of goods by Distributor to its retailor as held in the impugned decision.

Thus, the Appellant submits that in the present case, the entire advance ruling passed by the tax authority is bad in law as the same is in contravention of the principle of natural justice as specified by the Supreme Court.

q. In this regard, the Appellant relies on the decision of the Hon'ble Supreme Court in the case of ***Gian Mahtani v. State of Maharashtra AIR 1971 SC 1898*** in which it was held that *'the findings of revenue authorities based on pure assumption and conjecture and not on evidence should be quashed.'*

Similarly, the Hon'ble Tribunal in the case of ***M Square Chemicals vs. CCE [2002 (146) ELT 323 (Tri)]*** held that demands based on mere conjuncture without any evidence and those involving unwarranted assumptions were not sustainable. In this regard, the Appellant wishes to rely on the following decisions:

- Kothari Synthetics vs. CCE - 2002 (141) ELT 558 (Tri)
- Shram Shakti Polytex vs. CC 2002 (144) ELT 183 (Tri)

In the present case, the impugned order has been passed basis incorrect facts construing discounts as an additional consideration towards sale of goods from distributor to Retailor. This clearly indicates that the impugned order has been passed based on surmises and conjecture only and violates the principle of natural justice.

Considering these decisions, the Appellant submits that the Appeal filed by the Appellant should be accepted and impugned order should be quashed.

r. It is well settled law that the determination qua taxability of any transaction requires to be carried out on the basis of the true nature and character of the transaction in question as held by the Hon'ble Supreme Court in ***Union of India vs. Playworld Electronics Pvt. Ltd., [1989 (41) ELT 268 (SC)]***. In this regard, reliance is also placed on the decision in ***Philips India Ltd. vs. CCE, Pune, [1997 (91) ELT 540 (SC)]***, wherein the Hon'ble Supreme Court has categorically held that in determining the position qua taxability under an Indirect Tax levy such as Excise Duty, the "authorities would do well to keep in mind legitimate business considerations". In the specific context of discounts and promotions qua sales of goods, the Hon'ble Supreme Court has time and again held that such amounts are: (i) an integral part of the transaction of sale itself; and (ii) are to be treated as deductions that are admissible under the relevant statutes, from the sale price of the goods. Even if a discount is not an eligible deduction from the sale price/supply price under the relevant tax statute, it will still be in the nature of a discount, and, cannot be recategorized as part price paid for a subsequent transaction. Therefore, insofar as the Impugned Order seeks to recharacterize a discount transaction as part price/part consideration paid for a subsequent supply transaction, without any basis in fact or in law, it has been passed in a manner contrary to the binding law declared by the Hon'ble Supreme Court in the decisions cited above. The view taken in the Impugned Order is, therefore, wholly arbitrary and unfounded in law or commerce, and cannot be permitted to sustain.

s. That on a cumulative reading of the statutory provisions of section 15 and section 34 of the CGST Act, a discount post supply is intrinsically linked to that supply ('the said supply'), for the purposes of taxation, availment of ITC and compliance. In this context the aspect of discount would statutorily only be co-related to the 'said supply', which in this case is **'Transaction 1'**. Any interpretation which seeks to treat the discount in the said supply in 'Transaction 1' as having an impact on the said supply in 'Transaction 2', would clearly distort the statutory prescription that the discount of the nature under consideration is to be accounted for and treated relevant to the determination of value and credit in respect of 'Transaction 1'..

In para 2(D)(iii) of the Circular No. 92/11/2019 - GST, F. No. 20/16/04/2018-GST dated 7th March, 2019, it has been 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."*

The clarification supports the contention that the discount is not recharacterized as an additional consideration and remains a discount between the two contracting parties and cannot be imported to a transaction other than between the two contracting parties.

It is a well settled position of law that the Department cannot maintain a stance contrary to Board Circulars, as held by the Hon'ble Supreme Court in ***CCE v. Ratan Melting and Wire Industries, 2005 (181) ELT 364 (SC)***. Therefore, any action taken contrary to such Circular is unsustainable in law.

t. That section 34 of the CGST Act which deals with the issuance of credit notes and debit notes, specifically recognizes the principle that credit notes are issued

to reduce the value of the taxable supply in question/reduce the invoice price. Even if the credit note issued by Castrol is stricto sensu, not a credit note in terms of section 34 of the CGST Act, in terms of the principles set out in such section, it would still continue to be a credit note to reduce the invoice price of goods supplied, and, can never be treated as part price payment for a subsequent sale transaction. Therefore, the Impugned Order not only ignores the commercial realities of the transactions it examined, but also is contrary to the basic principles underlying section 34 of the CGST Act.

The Appellant refers to Circular bearing No. 92/11/2019-GST dated 7 March 2019 wherein various doubts related to treatment of sales promotion schemes under GST have been clarified by the Principal Commissioner, GST. In this regard, the Appellant refers to para 0 of the Circular wherein it has been provided as under:

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 to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.*

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.

On reading of the aforementioned circular and on considering the observation made by the Authority that the conditions under section 15(3) of the CGST Act are not satisfied, it is clarified that even if the conditions laid down in clause (b) of sub-section (3) of section 15 of the CGST Act are not satisfied i.e. 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.

However, the Authority fails in considering the same while passing the impugned order. The impugned order is liable to be quashed or set aside on this count alone.

u. The Appellant submits the definition of consideration is provided under Section 2(31) the CGST Act. The relevant extract of term consideration is reiterated below

"(31) 'Consideration' in relation to the supply of goods or services or both includes
- *any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
- *The monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*
- *PROVIDED that a deposit, given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies the deposit as consideration for the said supply;*

The definition states that 'consideration' should be in relation to the supply of goods or services or both.In the present case, the discount/ scheme/ rebate offered by Castrol to the Appellant is not towards any supply of goods by the Appellant to its customers. The scheme/ discounts are first circulated and communicated to the Distributor by Castrol and basis the above schemes etc., the Appellant effects supply of goods its customer at a lesser price.

v. The Appellant further submits that if the interpretation canvassed by the AAR is accepted then it will override the provision of Section 15 (valuation) and Section 34 (Credit Note) of the CGST Act, which specifically deals with and provides and acknowledge that credit notes are issued by the industry/ trade. The of the CGST Act then only stipulates the conditions under which credit note with GST can be issued by a Supplier. Thus, in the present case, it cannot be construed that credit note issued to the Appellant by Castrol is in nature of additional consideration for the supply of goods by the Appellant to its customer.

w. The Appellant further submits that the legislature has specifically stated the conditions under which the discounts can be deducted from the value of taxable supply. Clause (b) to Sub-section (3) to Section 15 of the CGST Act states that post supply the discount is allowed in case –
- 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
- Input tax credit as is attributable to the discount based on the document issued by the supplier has been reversed by the recipient of the supply.

In the present case, the Appellant states that the various schemes of Castrol, the agreement between Castrol and the Dealers and the Appellant and Castrol duly specifies the maximum price to be charged to the Dealers. The purpose of the agreement between Castrol and the Dealers and the Appellant and Castrol is that in respect of supplies to be made by the Appellant to its customers/ dealer, the Appellant shall not charge prices exceeding the prices recommended by Castrol.. The relevant extract of the said agreements is as follows.

Relevant extract from Castrol and the Dealer i.e. AVG Motors - agreement

Product offer: You will receive a special discount as mentioned below, which shall be paid in the form of CN (to be serviced by distributor) on quarterly basis. These discounts are applicable on our standard prices....*

Additional input: Castrol will earmark Rs 15000000.00(Fifteen lakhs) as target incentive

The same shall be reimbursed in following format
Upon completion of 20000 Litres volume, Rs 300000 will be disbursed. Upon completion of 80000 Litres volume, Rs 300000 will be disbursed. Upon completion of 120000 Litres volume, Rs 300000 will be disbursed. Upon completion of 160000 Litres volume, Rs 300000 will be disbursed. Upon completion of 210000 Litres volume, Rs 300000 will be disbursed

Product target incentive: Castrol will earmark an additional target incentive on following synthetic Products

Servicing : Through our authorised distributor within 7 to 15 days.

Relevant extracts from Agreement between Appellant and Castrol

The Distributor undertakes that in respect of supplies to be made by it to the Distributor's customers/dealers, it shall not charge prices exceeding the prices recommended by the Company.

Rebate:-In consideration of the obligations undertaken by the Distributor pursuant to the Agreement the Distributor will be entitled to the Distributor's rebate @4.3% of the basic price of the Products. For the said purpose basic price means the price at which the product is invoiced to the Distributor by the Company (including excise levy) but does not include any type of discounts, taxes and said commission/rebates. This rebate shall be deducted from the previous sales invoices itself. The VAT payable on the Distributor's rebate will be borne by the Company. In addition to the rebate the Distributor will be eligible to a quarterly incentive upto 0.5% based on the achievement of performance parameters as set by the Company from time to time.

x. The Appellant further submits, the case of pre GST regime, wherein the New Delhi CESTAT in the case of ***Petronet LNG Limited v. Principal Commissioner of Service Tax, Delhi-I [Service Tax Appeal No. 52946 of 2016]*** adjudicated that demand of service tax on the value of pre-determined quantum of LNG identified by the parties towards "allowed loss and consumption" is unjustified since such free of cost supplies of LNG by the customers cannot form part of the consideration received by the Appellant. The relevant extract of judgment follows –

"49. In this view of the matter, the Commissioner was not justified in confirming the demand of service tax on the value of pre-determined quantum of LNG identified by the parties towards "allowed loss and consumption" since such "free of cost" supplies of LNG by the customers cannot form part of the "consideration" received by the Appellant. The value of such LNG cannot, therefore, be included in the taxable value for payment of service tax."

In the present case, the discount is pre-fixed by Castrol itself before the supply of goods to the Appellant and the supply of goods effected at the transaction value net of discount. Thus, by no stretch of the imagination the rebate provided by Castrol can be treated as consideration in the hands of the Appellant.Considering the above, the Appellant would like to state that the impugned order is liable to be quashed or set aside.

It is well settled that taxability must be determined on a transaction strictly falling within the language used by Legislature. Taxability cannot be determined by reading language and concepts alien to the statute into the statute.

- **A.V. Fernandez v. The State of Kerala [1957] 8 STC 561 (SC)];**
- **Sneh Enterprises vs. CCE, Delhi [2006 (202) E.L.T. 7 (S.C.)]**

There is nothing under the CGST Act which states that trade discounts offered by the supplier and/or commercial credit notes issued by the supplier must be treated as an additional consideration in the hands of the distributor who supplies the said products to the dealers/ consumers. Section 15 of the CGST Act which provides for 'Value of supply' does not provide for such an interpretation. Therefore, the authorities, who are creature of statutes, cannot read an alien concept that discounts in the Transaction 1 will be treated as a part of the assessable value in the Transaction 2 into the statute. This is unsustainable, and hence, the impugned AAR Order is bad in law.

y. The Respondent has observed that the additional discount/reibursed amount represents the consideration flowing from Castrol to the Appellant for the supply made by the Appellant to the customers. The Appellant submits that the additional discount passed by Castrol to the Appellant is a purely financial transaction rather than being a new 'supply' by the Appellant. The supply of goods has already been taken place from Castrol to the Appellant, and the above discounts are not linked with the supply of goods by the distributor to its Retailor/ customers. The above discounts reduce the consideration payable to Castrol by its Distributors for the supply of goods from Castrol to its distributors. By offering an additional discount to sell the product, there is no additional supply which takes place from the Appellant to Castrol.

In this regard, the Appellant submits that the Respondent has not understood the transaction under context correctly. The amount that the Respondent is treating as consideration flowing from Castrol to the Appellant is in the real sense the additional discount provided by Castrol. The said fact has been agreed by the Respondent in the impugned order itself.Equating 'discounts' with consideration goes contrary to the essential of the Indian Contract Act, 1872. Thus, the said discount cannot be either construed as 'Consideration' nor can be included in the 'value of supply' in Transaction 2 as per GST laws.The Appellant submits that Castrol provides the said credit note as a part of pre-agreed schemes which in turn is a key for sale growth and same cannot be subjected to tax.

Further, considering the fact that the full amount of GST as applicable to the original transaction value remains paid to the government, there is no revenue loss to the exchequer. This view is also in line with the treatment prescribed under the pre-GST regime as well. The Appellant submits that the above view finds support from the many decisions issued in the context of various industry wherein the question raised was that as to whether the above discount/ rebate will be

construed as an additional income of the Distributor / Agent and whether the same will be subject to service tax or not? In the above context, the Appellant hereby refers to the decision of ***Toyota Lakozy Auto Pvt. Ltd Versus C.S.T., C. Ex., Mumbai-II & V 2017 (52) S.T.R. 299 (Tri. - Mumbai)*** in which it was held that "*the above discounts passed by the manufacturer to dealer will not be liable to Service tax* .We have provided below the relevant extract of the same for ease of reference:

Appellant contends that ` 81,35,813/- and ` 1,21,47,133/- for the two periods has been wrongly subjected to tax because the agreement between the appellant and M/s. Toyota Kirloskar Motor Limited is one of supply of vehicles by the latter on 'principal-to-principal' basis on which title and risk, as per Agreement, are passed on to appellant when the vehicles are excise cleared and placed on common carrier. Depending on order quantity, the manufacturer raises invoices after according discounts which are designated as commission/incentive merely as a management terminology. Learned Chartered Accountant for appellant places reliance in the decisions of the Tribunal in Jaybharat Automobiles Limited v. Commissioner of Service Tax, Mumbai [2015-TIOL-1570-CESTAT-MUM = 2016 (41) S.T.R. 311 (Tri.)], Sai Service Station Limited v. Commissioner of Service Tax, Mumbai [2013-TIOL-1436-CESTAT-MUM = 2014 (35) S.T.R. 625 (Tri.)], Tradex Polymers Private Limited v. Commissioner of Service Tax, Ahmedabad [2014 (34) S.T.R. 416 (Tri.-Ahmd.)] and Garrisson Polysacks Private Ltd. v. Commissioner of Service Tax, Vadodara [2015 (39) S.T.R. 487 (Tri.-Ahmd.)]. In re Jaybharat Automobiles Limited, the Tribunal held that, On the appeal by Revenue on the issue of incentives received by the appellant from the car dealer, we find that the relationship between the appellant and the dealer is on a principal to principal basis. Only because some incentives/discounts are received by the appellant under various schemes of the manufacturer cannot lead to the conclusion that the incentive is received for promotion and marketing of goods. It is not material under what head the incentives are shown in the ledgers, what is relevant is the nature of the transaction which is of sale. All manufacturers provide discount schemes to dealers. Such transactions cannot fall under the service category of Business Auxiliary Service when it is a normal market practice to offer discounts/institutions to the dealers. The issue is settled in the case of Sai Service Station (supra). Therefore, we reject the appeal of the department."and In re Sai Service Station Limited it was held that , In respect of the incentive on account of sales/target incentive, incentive on sale of vehicles and incentive on sale of spare parts for promoting and marketing the products of MUL, the contention is that these incentives are in the form of trade discount. The assessee respondent is the authorized dealer of car manufactured by MUL and are getting certain incentives in respect of sale target set out by the manufacturer. These targets are as per the circular issued by MUL. Hence these cannot be treated as business auxiliary service."

*Learned Authorized Representative reiterates the findings of the adjudicating authority. **However, in view of the settled position in the decisions of the Tribunal supra, we hold that the discounts received on procurement of vehicles from the manufacturer are not liable to tax as 'business auxiliary services' and set aside the demand on that head.*** Thus, applying the same analogy here, the discounts/ rebate offered to the Appellant by Castrol cannot be construed as an additional consideration towards sale of goods by Appellant to its retailer or customer.

7. It is an undisputed fact in all taxation schemes that the liability to pay tax is on the taxable turnover. Taxable turnover is arrived at after making permissible deductions from the total turnover which would inter alia include discounts by whatever name it is termed as per the regular trade practice duly supported by an agreement with buyer and seller. Under the pre-GST regime, the post-sale discounts would be treated as a deduction and would not be qualified as the consideration paid by the manufacturer to the distributor for sales made to the dealers

The Appellant refers to ***Maya Appliances (P) Ltd. v. Addl. Commissioner of Commercial Taxes [2018 (10) G.S.T.L. 6 (S.C.)]*** wherein the Hon'ble Supreme Court held that "*the liability to pay tax is on the taxable turnover and taxable turnover is the turnover net of deductions and all trade discounts are allowable as permissible deductions. Such a discount must, however, be in accord with the regular trade practice or the contract or agreement entered into between the seller and the buyer.*"Further, the Andhra Pradesh High Court in State of Andhra Pradesh v. T.V. Sundaram Iyengar & Sons Ltd. reported in MANU/AP/0146/1984 : [1987] 65 STC 41 has held as under in regard to discount:--"*The assessee's contention was that for allowing the discount as a deduction from out of the turnover, it was not necessary that the discount should be allowed as and when each bill is made out and that even where the discount is allowed at the end of year when the accounts are made out (at the end of the year) according to the normal trade practice.The Supreme Court has considered an identical rule in Deputy Commissioner of Sales Tax (law) v. Motor Industries Co. MANU/SC/0309/1983 : [1983] 53 STC 48 (SC). The Supreme Court was considering rule 9(1) of the Kerala General Sales Tax Rules, 1963, which corresponds to rule 6(a). The Supreme Court held that ordinarily any concession shown in the price of goods for any commercial reason would be a trade discount which can legitimately be claimed as a deduction from the turnover under clause (a) of rule 9 of the Kerala General Sales Tax Rules, 1963. It was observed that the fact that the discount was not allowed at the time of sale, but on a later date, <u>at the end of the month, did not make it any the less a trade discount. In our opinion, the principle is the same where the discount is paid at the end of the year as well. Following the said decision of the Supreme Court, we must hold that the Tribunal was right in holding that the amount paid to the stockists as discount at the end of the year, on making out of the accounts to the normal trade practice, was a permissible deduction from the turnover of the assessee</u>.*"Same principle has been laid down by the High Court of Karnataka in Belgaum Structural Engineering Pvt. Ltd. v. Additional Commissioner of Commercial Taxes reported in MANU/KA/0654/1998 : [1998] 111 STC 222.

Given the above, it is clear that the practice of post-sale discounts is carried out since Pre- GST regime and nowhere the said discount forms a part of the consideration paid by Castrol to the Appellant for sales made to the dealer.

5.7. On the facts and in the circumstances, the Appellant prays that:

- Impugned Order may please be set-aside.
- With respect to Question No.2 raised in the Application, that the discount provided by the Principal Company (Castrol) to their dealers through the applicant (Appellant) as shown in Annexure D to the Application does not attract any tax under the GST laws in the transaction of supply between the applicant (Appellant) and its dealers.
- With respect to Question No.4 raised in the Application, that the Applicant (Appellant) is not liable to pay GST on the amount received as discount through commercial credit notes from the Principal Company (Castrol) as the said discount/ schemes received by the Appellant from Castrol are not towards the consideration towards the supply of goods by the Appellant to its customer.

5.8. The appellant submits that the impugned advance ruling dated 16th Sept. 2019 passed by the Ld. AAR was communicated to the Appellant on 4th Oct. 2019. Accordingly, considering the time limit of 30 days for filing the appeal, appeal was to be filed by 3rd Nov., 2019. The appeal has been filed on 2/12/2019. The Appellant has requested to condone the Delay in filing of the appeal.

6. **PERSONAL HEARING**

A personal hearing was held on 31.12.2020 at the office of the Chief Commissioner, Customs and Central Excise, TVM Zone, Kochi which was attended by Sri Arvind Adithya Srinivasan, Authorised representative of the appellant. Sri Srinivasan explained the nature of transaction between the parties involved and reiterated the grounds of appeal. He submitted further that the Advance Ruling order is not speaking in nature as far as it relates to Section 15 of the Act; that AAR has relied upon the Circular dated 28.06.2019, which stands withdrawn vide Circular dated 03.10.2019; and that two separate transactions cannot be clubbed together for transaction value.

DISCUSSION & FINDINGS

7. We have meticulously examined the facts of the case, the relevant Advance Ruling passed by the Advance Ruling authority of Kerala state, the appeal memorandum and the grounds for appeal filed by the appellant before this authority and those submitted during the course of personal hearing, and other evidences on record. The issue for determination before this authority is listed as follows:-

1. Whether the discount provided by M/s Castrol to their dealers through the appellant attracts any tax under GST ?

2. Whether the amount shown in the commercial credit note issued to the appellant by M/s Castrol attracts proportionate reversal of input tax credit?

3. Is there any tax liability under GST laws on the appellant for the amount received as reimbursement of discount or rebate provided by M/s Castrol as per written agreement between the Principal and their distributors?

8. Before we examine the issues on merit, it is noticed that the appellant has filed the instant appeal with delay of about one month from the due date as the Advance Ruling order was communicated to the Appellant on 4th Oct 2019 and the last date for filing of appeal was 3rd Nov 2019, whereas the same has been filed on 2nd Dec 2019. In terms of proviso to Section 100(2) of CGST/SGST Act, 2017, the Appellate authority may condone the delay upto 30 days if the appellant was prevented by a sufficient cause from presenting the appeal within prescribed period of 30 days. Since the appeal has been filed within 30 days from the last date of filing of appeal as prescribed in section 100 (2), we condone the same in terms of proviso to Section 100(2) of the Act and proceed to decide the issues on merit.

9. Before we discuss the issues involved in the case, we would refer to the legal provisions relating to valuation of taxable supply, which are relevant to the case, as under:

9.1. The value of taxable supply is governed by the provisions of Section 15 of the CGST/SGST Act. This section specifies that

"(1) The value of a supply of goods or services or both shall be the transaction value, which 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.

(2) The value of supply shall include——

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(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—

(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.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—
For the purposes of this Act,—

(a) persons shall be deemed to be "related persons" if—

(i) such persons are officers or directors of one another's businesses;
(ii) such persons are legally recognised partners in business;
(iii) such persons are employer and employee;
(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the

outstanding voting stock or shares of both of them;
(v) one of them directly or indirectly controls the other;
(vi) both of them are directly or indirectly controlled by a third person;
(vii) together they directly or indirectly control a third person; or
(viii) they are members of the same family).

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related...."

9.2. Section 15 of the CGST Act states that the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of supply are not related and price is the sole consideration for the supply. Section 15(3) of the CGST Act states that the value of supply shall not include any discount which is given in ways as under:-

(a) Any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply.

(b) 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 documents issued by the supplier has been reversed by the recipient of the supply.

Thus we find that discount on the value of supply can be allowed only in the above two ways i.e. if the discount granted is in agreement with the provisions of Section 15(3) of the CGST Act, 2017.

10. From the factual position regarding nature of transaction etc. as stated by the appellant in the appeal memorandum, it is revealed that the appellant enters into an agreement (Distribution agreement) dated 25.09.2013 with the authorised dealers/stockists for distribution/supply of goods on a principal-to-principal basis. The agreement entered with the authorised dealers/stockists provides that the goods shall be supplied to the latter at the prices fixed by Castrol. As detailed by the appellant, in this case, the supplier of goods / principal company is issuing Commercial Credit Notes for reimbursement of the reduced price provided by the appellant to the customer as per instructions of the supplier. As emerge from the agreement and the submissions made by the appellant that two types of discounts are being offered by Castrol/appellant. First scheme of the discount is the one that is known at or prior to the point of time of supply, where the quantum of discount is indicated/reflected in the invoices and the GST is paid on the discounted amount of transaction value. Another scheme of discount offered is on post sale basis, wherein the amount of discount may be known at the point of supply but may not be quantified; or some discounts may not even be known at the time of supply of goods. In both these post sale discounts, discounts are extended through credit notes. These post sale discounts therefore are subjected to GST at the time of supply.

11. As detailed in Section 15(3) of the CGST /SGST Act, pre-supply discounts, recorded in the invoice have been allowed to be excluded while determining the taxable value, which is not in dispute in this case. The disputed area is post sale discounts, for which it is specified in Section 15(3) of the Act that post supply discounts, provided after the supply can be excluded while determining the taxable value, only on the satisfaction of the following two conditions:

(a) discount is established in terms of a pre supply agreement between the supplier & the recipient and such discount is linked to relevant invoices, and

(b) input tax credit attributable to the discounts is reversed by the recipient.

The discount that is given after the goods have been sold has to be established in terms of the agreement entered into at or before such supply i.e. the discount that is to be given afterwards has to be mentioned in the terms of the agreement or the criteria for arriving at the quantum or percentage of discount has to be given in the terms of the agreement which is entered into at or before such supply. The wordings of Section 15 (3) (b) (i) very clearly states that if the quantum of discount is given after the supply of goods 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 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 supply of the goods. Thus the bare word 'discount' mentioned in such an agreement without there being any parameters or criteria mentioned with it would not fulfill the requirement of Section 15 (3) (b)(i) of the CGST Act; as the word 'discount' if left open ended or without any quallfications or criteria attached can mean there can be any percentage of discount ranging from bare minimum to even 100% as per discretion of the supplier and certainly such abnormal discounts without any criteria or basis can in no way be considered as fair and no taxation statute can be construed to be having open ended discount.

12. Thus, we find that the amount paid to the Dealer towards "rate difference" and "special discount" as mentioned above, post the activity of supply are not complying with the requirements of section 15(3)(b)(i) of the CGST/SGST Act and therefore cannot be considered and allowed as discount for the purpose of arriving at the 'transaction value' in terms of Section 15 of the CGST/SGST Act.

In this regard the submissions made by the appellant are liable to be rejected including that AAR had relied upon the Circular dated 28.06.2019, which was withdrawn later vide Circular dated 03.10.2019 and therefore the order is not a speaking order. We find that the wordings of the statute are unambiguously clear in Section 15(3) of the Act, which lays down conditions for discounts to be allowed from the transaction value in case of post sale discounts. Irrespective of the Circular which clarified the statute existing on the date of decision does not change the legal position of the provisions of section 15 ibid. The facts which are undisputed here are that the said post sale discounts are not known or atleast not quantified at or before the time of supply or not predetermined in the agreement concerned. Hence, the conditions prescribed in section 15(3)(b) stand not satisfied for the said discounts get excluded from the transaction value. Further, the various case laws referred to by the appellant in their submissions are in different context and are therefore neither relevant nor helpful to the appellant in the instant proceedings before this authority.

13. We further observe that Circular No. 92/11/2019-GST dated 7th March, 2019 was issued providing clarification on various doubts related to treatment of sales promotion schemes under GST. As per para 2 D (iv) of this circular, it is clarified as under:

"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." The said Circular also

supports the view taken by us, which clearly specifies that for post supply discounts, the conditions specified in Section 15(3)(b) of the CGST/SGST Act are to be satisfied.

14. We further observe that the appellant have admitted that the credit notes issued by Castrol is in strict sense not a credit note in terms of section 34 of the Act, therefore reliance placed on section 34 and seeking benefit of it for exclusion of discount amount from transaction value under section 15(3) is misplaced. Moreover, since the commercial credit notes issued by the supplier / principal company do not satisfy the conditions prescribed in sub-section (3) of Section 15 of the CGST / SGST Act; that the proviso to section 34(2) clearly prescribes that no reduction in output liability of the supplier shall be permitted, if the incidence of tax has been passed on to any other person; that in the instant case, the incidence of the tax has already been passed on to the appellant by Castrol and therefore the credit notes would not be eligible for reduction in the tax liability; that therefore the supplier is not eligible to reduce the original tax liability. However, as the supplier of the goods is not reducing the original tax liability, the appellant will be eligible to avail the input tax credit as per the invoice of the supplier.

15. The additional discount / scheme discount is given by the appellant to the customers / dealers as directed by the supplier of goods / principal company and is intended to augment the sales volume by the offer of special discounted price. The appellant submits that *"The Appellant is entitled to discounts announced by Castrol to appellant's dealers in addition to discount rebate of 4.3%. The Appellant is obliged to give the discounts as announced by Castrol to appellant's dealers and in turn is entitled to receive these additional discount from Castrol"*.

This shows that the appellant has no control on the quantum of scheme discount to be offered. The discounts so offered as per instructions of the supplier of goods / principal company are completely reimbursed by the supplier of goods / principal company. Thus the additional discount given by M/s Castrol to the appellant is a consideration to offer the reduced price in order to augment the sales. This additional discount squarely falls under the definition of the term "consideration" as specified under Section 2(31) of the CGST/SGST Act.

16. We find that Sec 2(31) specifies as under:

"(31) "consideration" in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

17. Thereby additional discount in the form of reimbursement of discount or rebate, received from M/s Castrol over and above the invoice value is liable to be added to the consideration payable by the customer to the appellant for the purpose of arriving at the value of supply of the appellant to the customer as per provisions of Section 15 of the CGST / SGST Act. Further, the customer, if registered, would only be eligible to claim ITC of the tax charged by the appellant only to the extent of the tax paid by the said customer to the appellant in view of second proviso to section 16(2) of the CGST/SGST Act.

18. On the basis of the above stated law and facts, the following orders are passed:

ORDER No. AAR/10/20 DATED:01-03-2021

1. Whether the discount provided by the M/s Castrol to their dealers through the appellant attracts any tax under GST ?

Yes, the additional discount reimbursed by M/s Castrol, is liable to be added to the consideration payable by the customers or dealers to the appellant. The appellant is liable to pay GST at the applicable rate.

2. Whether the amount shown in the commercial credit note issued to the appellant by M/s Castrol attracts proportionate reversal of input tax credit?.

M/s Castrol is issuing commercial credit notes, hence are not eligible to reduce their original tax liability. Thereby the appellant will not be liable to reverse the ITC attributable to the commercial credit notes issued to them by M/s Castrol.

3. Is there any tax liability under GST laws on the appellant for the amount received as reimbursement of discount or rebate provided by M/s Castrol as per written agreement between the principal and distributors ?

The appellant is liable to pay GST at the applicable rate on the amount received as reimbursement of discount or rebate from M/s Castrol.

19. Accordingly, the Advance Ruling No. KER/60/2019 dated 16.09.2019 of the Authority of Advance Ruling, Kerala stands upheld.

Shyam Raj Prasad, IRS
Chief Commissioner,
Central Tax, Central Excise &
Customs, Kerala

Anand Singh, IAS
Commissioner,
State Goods & Service Tax Dept., Kerala

To

M/s. Santhosh Distibutors
XXIX / 325, Thiruvathukal
Karapuzha,
Kottayam – 686 003.