

The saga of delinking debit notes with invoices

Background

Since the time GST was rolled out, taxpayers were fretting over linking of debit notes with invoices. This was due to the fact that while filing GSTR-1/GSTR-6, when taxpayers were reporting debit notes or credit notes, it was mandatory to draw a one-to-one correlation between such debit note or credit note and original invoices and report such invoice number in the return. This requirement was proving to be tedious for taxpayers because, it is very common in some industries to issue single debit note or credit note for price adjustments at the end of the year. In such cases, the debit notes or credit notes pertain to multiple invoices together and hence it becomes challenging to link them to original invoices.

Another issue that was being faced by the taxpayers was the loss of Input Tax Credit (ITC). Where a debit note was issued after the lapse of the due date for availing ITC prescribed under section 16(4) of the CGST Act, 2017 (i.e., due date of furnishing of the return for the month of September following the end of Financial Year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier), the taxpayers were losing ITC in case of price escalations. This was happening because in some cases the debit note along with GST was being issued after the due date of availing ITC as prescribed in erstwhile section 16(4).

The industry bodies and associations represented before the Government highlighting the practical issues surrounding this linkage of debit note with invoices. The Government heard the taxpayers and issued an advisory dated 17 September 2020, on delinking of credit note and debit note from an invoice, while reporting them in Form GSTR-1 / GSTR-6 or filing Refund. Thus now, the requirement to link each debit note/ credit note with invoice no longer exists for the purpose of filing GST returns.

Another amendment that the Government brought in vide the Union Finance Budget, 2020, was in Section 16(4) of the CGST Act, 2017. The amended Section 16(4) is as below (strikethrough to represent the section omitted):

16(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or ~~invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.~~

The explanatory notes to Finance Bill, 2020 explained this amendment as “*Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice **for purposes of availing input tax credit.***” (emphasis supplied). This amendment was notified and made effective from 1 January 2021.

Let’s take an example to explain the amendment better:

Original invoice was issued in 2018-19. Due to price adjustments, a debit note was issued in July 2019. The last date to avail ITC for such invoice and debit note would be 20 October 2019, as per the

old provision. However, as per the revised provision, the ITC pertaining to the debit note can be taken till 20 October 2020 as the debit note has been delinked with the original invoice, as far as the ITC is concerned.

It appears that the amendment is a prospective one and would not have effect from a retrospective date. Moreover, a simple reading of the provision divulges the fact that the amendment is directed towards changing the time limit to avail ITC in case of debit notes. The time limit to avail ITC pertaining to a debit note raised, as per the revised provision, would be due date of furnishing of return for September following end of the financial year (to which the debit note pertains) or date of furnishing annual return, whichever is earlier. The term '*to which the invoice or debit note pertains*' suggests that invoice and debit note could pertain to different financial years as well; meaning that the debit note can be raised later than the end of financial year in which the original invoice was raised. Further, the condition to avail ITC would also flow in the same manner. The due date to avail ITC would be connected with the date when the invoice or the debit note is raised. Therefore, respectfully, we beg to differ from the AAR's view that the debit note does not get disconnected from the invoice and subsequently the debit note does not gain independent existence.

Post these amendments, the taxpayers assumed that now all was well as their issues related to debit note/ credit note were resolved. However, the twist in the tale came when the Gujarat Authority for Advance Ruling (Guj. AAR) in the case of ***I-tech Plast India Private Limited*** [Advance Ruling No. GUJ/GAAR/R/10/2021] held otherwise.

Facts and submissions:

- I-tech Plast India P. Ltd or the Company is engaged in manufacturing of plastic toys. They approached the Guj. AAR to seek ruling to understand whether ITC can be claimed in relation to CGST and SGST separately in debit notes issued in current F.Y. towards the transactions for the period 2018-19?
- The supplier of the Company wanted to issue debit note in relation to price revisions for goods supplied to the Company in F.Y. 2018-19. Such price revision was on account an inadvertent error committed by the supplier that he wanted to rectify with the help of a debit note.
- The Company submitted that post Section 16(4) was amended vide Finance Budget, 2020, the condition of linking invoice to debit note has been removed. This amendment would enable taxpayers to avail ITC of past period where an error has been discovered in subsequent periods.

Held:

The Guj. AAR discussed the amendment in detail and held the following:

- The removal of words "invoice relating to" before "debit note" does not mean that the relation of the debit note with the invoice has been cut-off or that the year in which such debit note was issued will be considered as the financial year as per amended Section 16(4).
- A plain reading of the amended section does not give away an interpretation that the Government intends to disconnect debit note from the invoice so that the debit note gains an independent existence which shall entitle applicant to claim ITC of GST charged on debit note raised by the supplier in FY 2020-21 for FY 2018-19.

- The financial year to which the debit note pertains will always be considered to be the year when the original invoice was raised.
- The AAR noted that as per the CBIC flyer, a debit note should contain the serial no. and date of corresponding invoice. This is to enable a recipient to correlate the debit note with original invoice.
- It was held that the Company would be eligible to claim ITC only in respect of debit note issued in respect of transactions entered into in FY 2018-19, on or before the due date of furnishing of return for the month of September or furnishing of annual return for the particular year, whichever is earlier.

Conclusion

The question is that if the amendment does not aim to disconnect the debit note from the invoice, what exactly does it mean? Why amend a legal provision unnecessarily? The AAR noted that *‘just because the words “invoice relating to such” connected to “debit note pertains” was omitted, does not mean that the relation of the debit note with the invoice has been cut off or that omission of the above words means, that the year in which the debit note was issued will be considered as the ‘financial year’ as per amended sub-section(4) of Section 16.’* However, what the AAR did not delve into was what exactly this amendment meant; or what is the purpose of omitting *“invoice relating to such”*?

If one was to look at facts, the Company may actually be found to be ineligible to avail credit of the ITC pertaining to debit note, but this is not due to the interpretational issue of the amendment. The facts of the case mention that the invoice pertained to 2018-19 and the debit note is issued in 2020-21. Now, as long as the debit note was issued before January 2021, the question of availing ITC may be answered in the negative. This is because the amendment became effective only from 1 January, 2021. Any debit notes raised prior to this date may not enjoy the benefits of the amendment. It is noteworthy to mention here that there is another school of thought where renders this amendment to be clarificatory in nature and hence retrospectively applicable. However, the validity of this argument would only be tested once the matter reaches courts.

Another point to ponder here is that the GSTN no more requires a taxpayer to disclose the linking between debit note and invoice. Therefore, even if one was to agree with the Guj. AARs interpretation, how far would it be possible for authorities to track if the taxpayers are availing ITC pertaining to debit notes within the time specified (i.e. in sync with the invoice date)? The Government has itself disabled the machinery to link debit notes with invoices by changing the requirement on GSTN. Only at the stage of assessments or scrutiny can the officers now figure out if the ITC pertaining to debit note was taken at the right time. This is another reason why the Guj. AARs interpretation of Section 16(4) may not sustain.

The issue of linkage of debit note with invoices is as old as the GST regime. The industry has already suffered a lot of agony due to this provision. When the CBIC amended the underlying provision, the industry breathed a sigh of relief. Several tax consultants and experts have interpreted the amendment differently than the Gujarat AAR. However, this ruling could put the trade again in a whirl of confusions. Sometimes, even the best intended actions could backfire if not executed properly. The CBIC may have to clarify as to what is its intention with regards to the amendment and also

whether this amendment is clarificatory in nature. An early clarification could save the flood of litigation that this issue could instigate.

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