

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id	27AAACL6442L1ZA
Legal Name of Applicant	M/s. Ultratech Cement Limited
Registered Address/Address provided while obtaining user id	UltraTech Cement Limited (Unit: Awarpur Cement Works) Taluka: Korpana, District: Chandrapur, Maharashtra - 442 917
Details of application	GST-ARA, Application No. 34 Dated 06.03.2018
Concerned officer	D.C.CGST & CE, Divion - Chandrapur
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Factory/Manufacturing
B Description (in brief)	That applicant is engaged in the manufacture and supply of cement and Clinker.
Issue/s on which advance ruling required	(v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/s. Ultratech Cement Limited, the applicant, seeking an advance ruling in respect of the following question :

Whether the amount paid to dealer towards "rate difference" post supply can be considered for the purpose of arriving at the 'transaction value' in terms of Section 15 of the Central Goods and Service Tax Act ("CGST Act").

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus -

STATEMENT OF RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED.



1. M/s. UltraTech Cement Limited (hereinafter referred to as "the applicant") having its corporate head office at "B" Wing, 2nd Floor, Ahura Center, Mahakali Caves Road, Andheri (East), Mumbai-400093 is, *inter-alia* engaged in the manufacture and supply of cement and allied products (hereinafter referred to as "goods") which are taxable under GST law.
2. The applicant has obtained registration and holding valid registration certificate issued under Central Goods and Services Tax Act, 2017 ("CGST Act").
3. The applicant is manufacturing goods at its manufacturing units located at, Taluka: Korpana, District Chandrapur, Hotgi- District Solapur, Mouda District. Nagpur, Ratanagari, Post-JNPT-Nava Seva- Navi Mumbai and Pune in the State of Maharashtra. Besides this there are plants situated in other States also.
4. The goods manufactured at the aforesaid units are supplied by the applicant to various authorised dealer/stockists located in state where the above registration certificate is obtained and also to authorised dealer/stockists situated in different states. Apart from the same, the goods received from other States are also supplied to customers/dealers in the State.
5. The applicant enters into an agreement with the authorised dealers/stockists for 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 the applicant. Copies of agreement entered into between the applicant and authorised dealers / stockists are enclosed as (**Annexure-1**) collectively.
6. Further, the agreement also provides that the applicant shall provide various discounts to the authorised dealers/stockists at the rates as may be decided by the applicant alone, from time to time, by the authorised dealers/stockists in a particular month.
7. The applicant clears the goods to the authorised dealers/stockists under the cover of tax invoice after discharging applicable rate of GST on the said goods.
8. The authorised dealers/stockists further supply the goods manufactured by the applicant in the regional markets to the ultimate customers or retailers.
9. In certain cases, due to the highly competitive and dynamic market conditions, the authorised dealers/stockists of the applicants have to sell the goods purchased from the applicant, at a price lower than their purchase price i.e. the price at which the goods are sold by the applicant to continue in business for the reason that the market for cement is very dynamic and the prices keep changing – not only on daily basis but on real time basis. Hence, it sometimes happens that the authorised dealers/stockists of the applicants have to sell the goods purchased from the applicant, at a price lower than their original purchase price to continue in business i.e. the price at which the goods are originally billed by the applicant. For eg. the dealer has to sell a 50 kg bag of cement to ultimate customer at Rs.295/- based on then prevailing market conditions even though the said dealer purchased the said bag of cement from the applicant at Rs.300/-. The dealer is aware that there will be compensation in form of "rate difference" as per past practice. However, the dealers/stockists are not aware of the exact amount of compensation to be received from the applicant.
10. Based on the trade practice and past history, the dealer is aware that there will be compensation in form of rate difference in case of significant correction of prices
11. In order to provide relief to the authorised dealers/stockists in such scenario, the applicant pays a certain amount to the authorised dealers/stockists as 'rate difference' (Commonly known as 'Trade Discount' also). The aforesaid payment of rate difference by the applicant to the authorised dealers/stockists is made by way of issuance of a credit note, which is linked to the sales/supplies made to the authorised dealers/stockists in a particular month.
12. The term trade discount is not defined in GST Act, but is defined in *Corpus Juris Secundum*, vol 26A page 974 as follows:

"The term trade discount means the difference between the seller list price and the price at which he actually sells goods to the trade a percentage deduction from the regular list or catalogue price of goods."
13. Therefore, the trade discount is the difference between the regular list or catalogue price and the actual price at which the goods are sold by the trader. At this stage, we refer and rely on the CBEC's *excise manual of supplementary instruction, 2005 in Chapter 3, Part - III of Para 2.5(iv)* has clarified as follows with regard to deduction of trade discount.

(iv) discount of any type or description given on any normal price payable for any transaction will not form part of the transaction value for the goods, e.g. quantity discount for goods purchased or cash discount for the prompt payment etc. will therefore not form part of the transaction value. However it is important to establish that the discount has actually been passed on the buyer of the goods. The differential discount extended as per commercial consideration on different transactions to unrelated buyers is also permissible and different actual prices paid or payable for various transactions are to be accepted. Where the assessee claims that the discount of any description for a transactions is not readily known but would be known only subsequently –as for example year end discount – the assessment for such transactions may be made on a provisional basis. However the assessee has to disclose the intention of allowing such discount to the department and make a request for provisional assessment.
14. From the above, it is clear that the trade discount is allowed as deduction from the transaction value even if it is not separately specified.
15. At this point, it is important to emphasize that the applicant pays GST on the full value of invoice raised by them on the authorised dealers/stockists at the time of original supply of goods to the said authorised



dealers/stockists. However, by issuance of credit note for rate difference, the sale price of goods sold by the applicant to the authorised dealers/stockists is reduced effectively to that extent. At this stage, we are enclosing the invoices issued by the applicant on the authorised dealers/stockists for supply of cement at full value and subsequent credit notes issued to the authorised dealers/stockists for reduction of sale price on account of rate difference as (**Annexure-2**) & (**Annexure-3**) collectively.

16. It is submitted that the transaction of compensating the authorised dealers/stockists on account of 'rate difference' is generally followed in the entire Cement Industry.
17. Section 15(1) of the CGST Act states that the value of supply for purpose of GST would be the "transaction value", which is the price *actually paid or actually payable* for such supply between unrelated parties, and where the price is sole consideration for supply.
18. Further, Section 15(3)(b) of the CGST Act states that, the discount provided after the supply has been effected shall be **excluded** from the value of supply subject to fulfilment of following **conditions**:
 - such discount is established in terms of an agreement entered into at or before the original supply;
 - such discount is specifically linked to the relevant supply;
 - input tax credit attributable to such discount has been reversed by the recipient.
19. Further, Section 34(1) of the CGST Act, *inter alia*, provides for issuance of credit note in respect of a supply of goods in case where the **taxable value mentioned in the tax invoice** is found to exceed the taxable value in respect of the supply. Section 34(1) of the CGST Act is reproduced as under -

"34.(1) Where a tax invoice has 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 a credit note containing such particulars as may be prescribed."
20. Even though the sale price of the goods sold by the applicant to the authorised dealers/stockists gets reduced subsequently due to rate difference, the applicant ends up paying GST on the total value mentioned in the original invoice issued to the authorised dealers/stockists as compared to the realization received from the customer/dealer.
21. Under the aforesaid circumstances, the amount paid to the authorised dealers/stockists towards rate difference, without taking the adjustment of same in the output tax liability of the applicant, is becoming cost to the applicant. In other words, once the benefit of rate difference is passed on to the dealers/stockists, the effective value of original supply gets reduced and this results in charging of higher tax than what is mandated by law. Due to absence of clarity in law, the applicant seeks the applicability of Section 34(1) of the CGST Act in case of amount paid by the applicant to the authorised dealers/stockists by way of "rate difference".
22. Under such circumstances, we request you to expedite the resolution of the matter at hand and issue a ruling regarding the applicability of Section 34(1) of the CGST Act to category of amount paid to the dealer by way of "rate difference" and also grant us with a personal meeting to represent our case in detail.

Statement containing the Applicant's interpretation of admissibility of input tax credit in respect of the aforementioned activities

A. APPLICANT'S ELIGIBILITY TO FILE PRESENT ADVANCE RULING APPLICATION.

- A.1 That the sub-Section (c) of Section 95 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "**CGST Act**"), defines the term 'applicant' as under:-

"applicant" means any person registered or desirous of obtaining registration under this Act"

*... **Emphasis Supplied***

- A.2 A perusal of the above clarifies that scope of the term 'applicant', as defined under sub-Section (c) of Section 95 of the CGST Act shall include both, the person registered under the CGST Act and also the person who is not registered as on date of applying for the advance ruling, but is desirous of seeking registration under the CGST Act, in the state where advance ruling is sought.

- A.3 Further, Section 22 of the CGST Act, specifies the person liable for registration and reads as under:-

"22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

....."

*... **Emphasis Supplied***

- A.4 The above referred Section can be vivisected into following essentials: -

- a. A supplier shall be liable to be registered under CGST Act in the State or Union Territory, from where he makes taxable supply of goods or services or both;
- b. If the aggregate turnover in the financial year exceeds rupees twenty lakh.

- A.5 The Applicant submits that as on date, it is registered in Maharashtra and also making taxable supplies of goods from the same to its customers located in State of Maharashtra. Further, the turnover of the Applicant exceeds rupees twenty lakhs in the financial year. Given this, it is submitted that Applicant clearly satisfies to be 'applicant' in terms of sub-Section (c) of the Section 95 of the CGST Act.

That sub-Section (1) of the Section 95 of the CGST Act defines the term 'advance ruling' as under:-

"(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-Section (2) of Section 97 or sub-Section (1) of Section 100, in



relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;”

... **Emphasis Supplied**

A.6 Perusal of the above clarifies that the advance ruling can only be sought on the issues, as are specified under Section 97(2) of the CGST Act, which reads as under:-

“97. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,-

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) **determination of time and value of supply of goods or services or both;**

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) **determination of the liability to pay tax on any goods or services or both;**

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.”

... **Emphasis Supplied**

A.7 In view of the above, it is submitted that advance ruling may be sought by the Applicant on the questions concerning determination value of supply of goods or services or both and determination of liability to pay tax on any goods or services or both. The Applicant submits that the questions for determination in the instant advance ruling application concern both - (1) the determination of value of supply of goods by the applicant; and (2) what is the correct tax liability for goods supplied by the Applicant.

A.8 Further, Section 96 of the CGST Act provides for appointment of advance ruling authority and reads as under:-

“96. Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.”

... **Emphasis Supplied**

A.9 Hence, an Advance Ruling Authority appointed by the concerned State or Union Authority Government under concerned State or Union Territory Goods and Service Tax Act, shall be the deemed to be the Advance Ruling Authority for the purpose of CGST Act. The Section 96 of the Maharashtra Goods and Service Tax Act, 2017, reads as under:-

“SECTION 96

(1) The Government shall, by notification, constitute an Authority to be known as the Maharashtra Authority for Advance Ruling:

Provided that the Government may, on the recommendation of the Council, notify any Authority located in another State to act as the Authority for the State.

(2) The Authority shall consist of-

(i) one member from amongst the officers of central tax; and

(ii) one member from amongst the officers of State tax,

to be appointed by the Central Government and the State Government respectively.

(3) The qualifications, the method of appointment of the members and the terms and conditions of their services shall be such as may be prescribed.

A.10 The Applicant submits that in terms of the above referred Section 96 of the Maharashtra Goods and Service Tax Act, 2017, the Government of Maharashtra has issued a Notification No. MGST-1017/CR 193/Taxation dated 24.10.2017, which constitutes this authority as Maharashtra Authority for Advance Ruling. The Applicant submits that by virtue of Section 96 of the Maharashtra Goods and Service Tax Act, 2017, the questions for determination in advance ruling lie before the Maharashtra Authority for Advance Ruling.

A.11 In view of the foregoing, the Applicant submits that it is eligible to file the present advance ruling application before the Maharashtra Authority for Advance Ruling, Mumbai, appointed vide Notification No. MGST-1017/CR 193/Taxation, dated 24.10.2017 read with Section 99 of Maharashtra Goods and Service Tax Act, 2017.

QUESTIONS REQUIRING ADVANCE RULING

B. The question on which Advance Ruling is sought by the Applicant is as under:-

- Whether the amount paid to authorized dealers towards “rate difference” after effecting the supply of goods by the applicant to aforesaid dealers can be considered for the purpose of arriving at the ‘transaction value’ in terms of Section 15 of the CGST Act.
- Whether the amount paid to authorized dealers towards “rate difference” after effecting the supply of goods would be allowed under Section 15(1) read with Section 34(1) of the CGST Act or under Section 15(3) read with Section 34(1) ibid.

APPLICANT’S INTERPRETATION

C. **Applicants understanding**

C.1 The applicants understanding is that Section 15(3) of the CGST Act has been enacted to allow deduction from the taxable value, of any discount or incentive or any other relief that may be given by the supplier to the recipient, in respect of the goods or services supplied. On the other hand, 34(1) of the CGST Act provides a



- mechanism for reduction in the GST liability of the supplier by issuance of credit note in case where the value mentioned in invoice is found to exceed the taxable values of such supplies.
- C.2 According to the applicant, Section 34(1) shall be read along with Section 15(1) of the CGST Act. The amount paid by the applicant to the authorised dealers/stockists' post supply of goods, effectively reduces the taxable value of the goods supplied by the applicant to such authorised dealers/stockists. Thus, the mechanism provided under Section 34(1) of the CGST Act shall also apply to the rate difference provided by the applicants to dealer's post supply.
- C.3 The applicant submits that the Section 15(1) of the CGST Act covers transaction value which is nothing but the price *actually paid or actually payable* for the supply of taxable goods. It is submitted that the concept of 'actually paid' or 'actually payable' of price to be received from the customer is to be determined at time of removal of goods from the factory of the assessee. In the case of the applicant, the consideration received from the authorised dealers/stockists after giving the effect of rate difference shall be treated as price "actually payable" by the authorised dealers/stockists for the supply of taxable goods in terms of Section 15(1) of the CGST Act. The value received by the applicant after giving the treatment of rate difference would be considered as price for arriving at the "transaction value" for the purpose of payment of GST in terms of Section 15(1) of the CGST Act.
- C.4 In such situation, the applicant submit that the Section 15(1) read with Section 34(1) of the CGST Act, it can assess the duty liability by reducing the amount equal to rate difference mentioned in the credit note given to the authorised dealers/stockists towards rate difference.
- C.5 The interpretation that the operation of Section 34(1) is limited only to the amounts which qualify as "discount" under Section 15(3) of the CGST Act, would make Section 34(1) redundant. Therefore, the credit note to be issued under Section 34(1) shall be allowed in case of the rate difference provided by the applicant to the authorised dealers/stockists.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-
Comments in regard to ARA application bearing No. 34 dated 06.03.2018

In the present case the taxpayer represented before the authority that the amount paid to the authorized dealers/ stockists towards rate difference without taking the adjustment of same in the output tax liability of the applicant is becoming cost to the applicant due to absence of clarity in law.

In this regard, it is observed that there is no any ambiguity in law as section 34(2) of the Central Goods and Service tax, 2017 provides the necessary legal provisions for adjustment of tax liability in case of issue of credit notes, after fulfilling the procedure as may be prescribed.

In this regards, the relevant portion of the Section 34 of CGST Act is reproduced below,

"34. Credit and debit notes. - (1) Where a tax invoice has 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 a credit note containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return of the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed :

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person."

The two things to be noted are that the rate difference mentioned by the taxpayer by no means can be considered as 'discount' under Section 15 of CGST Act, 2017 as same is neither declared nor known prior to supply of goods.

Further in the event of revision of taxable value, taxable person can issue credit/debit note under Section 34 of CGST Act, 2017 read with Rules 53 of CGST Rule, 2017.

4. HEARING

The case was taken up for Preliminary hearing on dated 04.04.2018 with respect to admission or rejection of present application, when Sh. Nirav Karia, Advocate, duly authorized appeared and was orally requested to submit copies of current agreements. No person was present from the side of Jurisdictional Officer.



The application was admitted and called for final hearing on 15.05.2018, Sh. Nirav Karia, Advocate, appeared and stated that they were making submissions in respect of details as asked for during preliminary hearing. However, he requested that since his senior was not available today, an adjournment in respect of final hearing be granted to them. Jurisdictional Officer Sh. Shivkumar Salunkhe, Dy. Commissioner CGST & Central Excise Division, Chandrapur appeared and made written submissions and stated that they do not want any further hearing. It is communicated to Sh. Nirav Karia, that adjournment would be considered subject to availability of new dates as found convenient in schedule of ARA and to this he agreed to.

The final hearing in the matter was held on 06.06.2018. Shri Nirav Karia, Advocate, appeared made written and oral submissions as per ARA application. He was requested to give documentary evidence in respect of Para 24 of his agreements with authorized stockists in respect of discounts given by the company from time to time in respect of sales to the authorized stockists in particular months during the period of F.Y. 2015, 2016 and 2017. A brief hearing was to be given for explanation of above submissions as per request of applicant on 26.06.2018. Nobody was present from side of Jurisdictional Officer as they had sought exemption during last hearing.

As per request on 06.06.2018 a brief hearing was again given on 26.06.2018. Sh. Nirav Karia, Advocate made contentions and submitted a copy of decision of Delhi Tribunal 2004 (177) ELT 816 Tri-Delhi) in case of Bee Pee Coating Ltd v. Collector of Central Excise, Vadodara.

05. OBSERVATIONS AND FINDINGS

We have gone through the facts and various written submissions made by the Applicant and the Jurisdictional Officer during the course of the proceedings before us.

We find that M/s Ultratech Cement Ltd. is registered under the GST Act and is engaged in the manufacture and supply of cement and allied products which are taxable under the GST law. The goods manufactured at the applicant's various units are supplied by them to various authorized dealers/ stockists located in the State of Maharashtra and also to authorized dealers/stockists situated in various other states.

Further factual position as stated by the applicant in his application is as under:-

“

5. *The applicant enters into an agreement with the authorised dealers/stockists for 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 the applicant. Copies of agreement entered into between the applicant and authorised dealers / stockists are enclosed as (Annexure-1) collectively.*



6. Further, the agreement also provides that the applicant shall provide various discounts to the authorised dealers/stockists at the rates as may be decided by the applicant alone, from time to time, by the authorised dealers/stockists in a particular month.
7. The applicant clears the goods to the authorised dealers/stockists under the cover of tax invoice after discharging applicable rate of GST on the said goods.
8. The authorised dealers/stockists further supply the goods manufactured by the applicant in the regional markets to the ultimate customers or retailers.
9. In certain cases, due to the highly competitive and dynamic market conditions, the authorised dealers/stockists of the applicants have to sell the goods purchased from the applicant, at a price lower than their purchase price i.e. the price at which the goods are sold by the applicant to continue in business for the reason that the market for cement is very dynamic and the prices keep changing – not only on daily basis but on real time basis. Hence, it sometimes happens that the authorised dealers/stockists of the applicants have to sell the goods purchased from the applicant, at a price lower than their original purchase price to continue in business i.e. the price at which the goods are originally billed by the applicant. For eg. the dealer has to sell a 50 kg bag of cement to ultimate customer at Rs.295/- based on then prevailing market conditions even though the said dealer purchased the said bag of cement from the applicant at Rs.300/-. The dealer is aware that there will be compensation in form of “rate difference” as per past practice. However, the dealers/stockists are not aware of the exact amount of compensation to be received from the applicant.
10. Based on the trade practice and past history, the dealer is aware that there will be compensation in form of rate difference in case of significant correction of prices.
11. In order to provide relief to the authorised dealers/stockists in such scenario, the applicant pays a certain amount to the authorised dealers/stockists as ‘rate difference’ (Commonly known as ‘Trade Discount’ also). The aforesaid payment of rate difference by the applicant to the authorised dealers/stockists is made by way of issuance of a credit note, which is linked to the sales/supplies made to the authorised dealers/stockists in a particular month. “

In view of the above factual position, we find that the applicant has raised two questions in their Advance Ruling application which are as under:-

Q. 1 Whether the amount paid to authorized dealers towards “rate difference” after effecting the supply of goods by the applicant to aforesaid dealers can be considered for the purpose of arriving at the ‘transaction value’ in terms of Section 15 of the CGST Act.

Q. 2 Whether the amount paid to authorized dealers towards “rate difference” after effecting the supply of goods would be allowed under Section 15(1) read with Section 34(1) of the CGST Act or under Section 15(3) read with Section 34(1) *ibid*.



In respect of the above two questions, we find that the applicant as per their interpretation and understanding which are reproduced in their submissions part have opined and claimed that the answer to both the questions that has been raised in their application are in the affirmative and the transactions as per facts stated in the application are allowable under Section 15 and Section 34 of the GST Act.

In view of the above facts of the case and to examine the claims made by the applicant we find that Section 15 of the CGST Act reads as under:-

Section 15:- (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.

Here we find that Section 15(1) and Section 15(3) of the CGST Act are of specific relevance in the present case before us.

We find that 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.

We further find that 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 from the value of supply can be allowed only in the above two ways i.e. if discount is in compliance of the provisions of Section 15(3) of the CGST Act, 2017.



In the present case we find that the discount given by the applicant is not as per Section 15(3)(a) of the CGST Act as reproduced above and therefore this Section is not required to be discussed. We find that the applicant is claiming that the discount being given by them is in compliance with Section 15(3)(b) of the CGST Act and therefore the claim of the applicant needs to be examined as per Section 15 (3) (b) of the CGST Act.

We find that the applicant has submitted, being representative samples, copies of agreements with authorized stockists in three cases being between:

- (i) Ultratech Cement Ltd and Mr. Hariram Jangid entered into at Mumbai on dated 20 June, 2012;
- (ii) Ultratech Cement Ltd and Mr. Kailash M Motani entered into at Mumbai on dated 20 June, 2012;
- (iii) Ultratech Cement Ltd and Mr. Raju K Shah entered into at Mumbai on dated 20 June, 2012;

In respect of all the three agreements which are representative samples, we find that para 21, 22, 23 and 24 which are exactly the same in all the three agreements and gives sale procedure and discount as under:-

"Para 21:- In respect of the sales made by the authorized stockiest it will maintain proper records and shall submit copies thereof from time to time as may be required by the Company. The Company through itself or its representatives shall have the right to inspect the premises and records maintained by the Authorized Stockist and ask for any clarification in respect of the same from the Authorized Stockist. The Authorized Stockist shall also furnish to the Company any information, statistical or general, concerning demand, supply and prices of product in general.

Para 22 :-The Company shall sell and supply the Authorized Stockist the products at the prices fixed by the Company from time to time. All payments against supplies will be made by the Authorized Stockist to the office of the Company by way of a demand draft or by crossed A/C payee cheque.

Para 23 :- The Authorized Stockist is fully responsible to make due payments to the Company on due dates, as per agreed payment terms. In case of delay by the Authorized Stockist, interest at the rate 18% shall be imposed on the dues. And on a default of a period exceeding 90 days the Company may adjust the amount from the security deposit.

Para 24 :- The Company will pay Discounts at such rates as may be decided by the Company from time to time on the quantity sold to the Authorized Stockist in a particular month."

We find that para 24 is in respect of discounts which states that the company will pay discount at such rates as may be decided by the company from time to time on the quantity sold to the authorized stockist



in a particular month.

Thus para 24 states that the company will further decide and pay discount at such rate after the quantity is already sold to the stockists. That the discounts are decided after the goods are already sold to the stockists, was confirmed by their representatives as well, at the time of the Personal Hearing.

In view of this we find that the discount/rate difference being given by the applicant will have to be examined for eligibility or otherwise, as per the terms and conditions given in Section 15 (3) (b) of the CGST Act referred above.

We find that 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 quantum of discount is given after the supply of goods has taken place has to be there in the terms of such agreement i.e. it cannot be open ended not based on any criteria. Thus this discount quantum 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 qualifications 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 at arm's length business transactions and no taxation statute can be construed to be having open ended discount with legislative intent.

In view of the detailed discussions above now when we have a relook at para 24 of the Applicant's agreement with authorized stockists which states that the company will pay discount at such rate as may be decided by the company from time to time on the quantity sold to the authorized stockists in a particular month, we find that there is no basis or criteria or parameter (which may even be of personal relations nature between the parties to the agreement)



mentioned in the agreement on the basis of which the quantum of discount to be given on the goods which have already been supplied is mentioned.

Further the Applicant during the course of proceedings stated that they are further submitting copies of amendment No. 1 to the dealership agreements dated 20 June, 2012 which are effective with effect from 1st July, 2017 under GST regime and these amendments are executed in June 2017.

We find that vide the above amendment to their agreements with their authorized stockists dated 20th June , 2012 as referred above, now vide their above referred amendment no. 1 they have put additional obligations on their authorized stockists/dealers which are reproduced as under:-

“

2. The Parties to this Amendment No.1 agree and confirm that the following terms shall stand incorporated under the Said Agreement from the Effective date:

A. Additional Obligations of the Dealer

2.1 The Dealer shall file the monthly returns as required under the provisions of the GST Act.

2.2 The Dealer confirms and agrees that UltraTech at its sole discretion may operationalize various discount/incentive schemes (“Said Incentive Schemes”) during the term of the said agreement.

2.3 In the event the Dealer is eligible for the said Incentive Schemes the Dealer shall be credited with the entitled discount/incentive, online.

2.4 UltraTech shall issue credit notes for discounts and the same shall be linked with the respective Tax invoices of UltraTech.

2.5 The Dealer agrees to reverse the corresponding input tax credit in his books in the same month during which the Discount is given by UltraTech to the Dealer by way of aforesaid credit note.

2.6 The Dealer shall effectuate the reversal of credit in the monthly GST returns and shall fully comply with the provisions of the GST Act.

2.7 The Dealer accepts and agrees to indemnify and compensate UltraTech for the losses incurred by UltraTech in the event UltraTech is not able to take input tax reversal of credit notes within 60 days of issuance of credit note due to non-reversal by the dealer. The Dealer agrees to indemnify and make good the loss to UltraTech including any interest, penalty and all other legal costs and expenses.




3. The Parties to this Amendment No.1 agree and confirm that the rest of the terms of the Said Agreement is alive, valid, subsisting, binding and enforceable against the other Party to this Agreement.”

In addition to the above we find that vide their letter dated 01.07.2017 issued by the applicant company through Shri Sandeep Grover, Zonal Head, Sales and Marketing to all stockists, the applicant company has enclosed a GST Annexure for Mumbai region with their letter wherein they have mentioned what discounts they would be offering and on what basis these discounts are to be worked out is mentioned.

The scanned copy of the same annexure is reproduced below:-

GST Annexure
Mumbai Region

Sr. No.	Nature of Discount	Amount Rs. Per Bag		CDRs Per Bag	Remarks
		Slab	Period (Excluding Bank Holidays)		
1	Cash Discount	1	Payment within 2 days (including advance)	4.50	Will be credited in next month
		2	Payment within 3 to 5 days	3.00	
		3	Payment within 6 to 7 days	2.00	
		4	Payment after 7 days	1.00	
2	Price Equalization	As fixed along with Selling Price.			Credit notes are normally given within a month
3	Shoppee Discount	Rs. 3.00 per bag			Discount notes are issued quarterly
4	Quantity Discount	Quantity Slab-wise and / or Target based			Credit notes are normally given within a month
5	Annual Discount	At. 1.50 per bag			Will be credited at year end normally
6	Special Discount	Special support discount from time to time on market to market basis			At the frequency as decided by company on time to time basis
7	Rate Difference	As decided from time to time to address the price volatility in the market			At the frequency as decided by company on time to time basis


SHREE DISTRIBUTIONS
 Shop No. 3, Agarwal Arcade VII
 Plot No. 32, Sector-1, P. U. of
 WAW BOMBAY-400 107

On verification of the terms of Additional obligations of the dealer as incorporated vide amendment no. 1 and GST Annexure for Mumbai region referred above, it can clearly be seen that the cash discount, price equalization, shoppee discount, quantity discount and annual discount as mentioned in the GST Annexure for Mumbai region at Sr. No. 1, 2, 3, 4, and 5 respectively are clearly complying with the requirements of the CGST Act and the criteria or conditions for availing discount as per Section 15(3)(b)(i) and (ii) of the CGST Act and the criteria or conditions for availing discount as per Section 15(3)(b)(i) are specifically mentioned as per agreement beforehand.



However we find that in respect of special discount and rate difference as mentioned at Sr. No. 6 and 7 of the above referred GST Annexure for Mumbai region, there is no pre fixed criteria, basis or rationale for arriving at the quantum of these discounts neither as per basis mentioned in GST Annexure for Mumbai region nor as per amendments incorporated in agreements with authorized stockists as referred above.

Thus we find that the amount paid to the Dealer towards "rate difference" and "special discount" as mentioned above, post supply are not complying with the requirements of section 15(3)(b)(i) of the CGST 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 Act.

As the applicant's facts and case are not in compliance of the provisions of Section 15(3)(b)(i) itself, their procedural compliance in other respects is immaterial and not relevant.

Various case laws referred to by the applicant in their submissions are in different context and are therefore not relevant in the present proceedings before this authority.

06. In view of the deliberations as held hereinabove, we pass the order as under :

ORDER

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-34/2017-18/B-56

Mumbai, dt. 27/06/2018

For reasons as discussed in the body of the order, the question is answered thus -

Question. 1. Whether the amount paid to authorized dealers towards "rate difference" after effecting the supply of goods by the applicant to aforesaid dealers can be considered for the purpose of arriving at the 'transaction value' in terms of Section 15 of the CGST Act.

Answer. Answered in the negative.



Question. 2. Whether the amount paid to authorized dealers towards “rate difference” after effecting the supply of goods would be allowed under Section 15(1) read with Section 34(1) of the CGST Act or under Section 15(3) read with Section 34(1) ibid.

Answer. Answered in the negative.



— sd —
B. V. BORHADE
(MEMBER)

— sd —
PANKAJ KUMAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai.
5. The Jurisdictional Commissioner of Central Tax,

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :-

Appeal against this order would lie to The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021