



By CA Nitin Bhuta Mumbai

Mobile Number :9820295319

E-mail: [nitin.bhuta@gmail.com](mailto:nitin.bhuta@gmail.com)

## **Lock Stock and Barrel - of Debit and Credit Notes with Tax Invoices under GST**

### **Parable of Not a Penny More and Not a Penny Less**

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In this article, an attempt has been made to correlate two popular maxims - "lock stock and barrel" meaning "entirely, from top to bottom" with that of "Not A Penny More and Not A Penny Less" in the context of Debit and Credit Notes with Tax Invoices under the provisions of GST Act, 2017

### **Origin of Debit and Credit Notes**

#### **Debit Notes**

A 'debit note' or 'debit memorandum' (memo) is a commercial document issued by a buyer to a seller as a means of formally requesting a credit note. Debit note acts as the Source document to the Purchase returns journal. In other words, it acts as an evidence for the occurrence of a reduction in expenses. The seller might also issue a Debit Note instead of an invoice in order to adjust upwards the amount of an invoice already issued (particularly if the invoice is recorded at an incorrect value). Debit Notes are generally used in business-to-business transactions. Such transactions often involve an extension of credit, meaning that a vendor would send a shipment of goods to a company before

the goods have been paid for. Although real goods are changing hands, until an actual invoice is issued, real money is not. Rather, debits and credits are being logged in an accounting system to keep track of inventories shipped and payments.

When a price is included on a **debit note**, it is the price which the customer was actually charged for those goods. (The price after the deduction of trade discount)

(Source: Wikipedia)

### **Credit Notes**

A credit note or credit memo is a commercial document issued by a seller to a buyer. Credit notes act as a source document for the sales return journal. In other words, the credit note acts as evidence of the reduction in sales. A credit memo, a contraction of the term "credit memorandum", is evidence of a reduction in the amount that a buyer owes a seller under the terms of an earlier invoice.

It can also be a document from a bank to a depositor to indicate that the depositor's balance is being adjusted in respect of an event other than a deposit, such as the collection by the bank of the depositor's note receivable.

A credit note lists the products, quantities and agreed prices for products or services the seller has provided to the buyer, but the buyer has returned in whole or part or did not receive it in the first place. It may also be issued in the case of damaged goods, errors or allowances. In respect of the previously issued invoice, a Credit Memo will reduce or eliminate the amount the buyer has to pay. *Note:* A Credit Memo is not to be substituted as a formal document. The Credit Memo rarely contains: PO #, Date, Billing Address, Shipping Address, Terms of Payment, List of products with quantities and prices. Usually it references the original Invoice and sometimes states the reason for issue.

The words debit and credit can sometimes be confusing because they depend on the point of view from which a transaction is observed.

(Source: Wikipedia)

## **Objective of Introducing Debit and Credit Notes in Accounting**

**As I understand, the origins of introducing Debit and Credit Notes in accounting systems germinated out of two legal precedents viz. Law of Undue Enrichment and Law of Restitution.**

### **Law of Undue Enrichment**

#### **Meaning of “Unjust”:**

Unjust can be termed as something which is not in accordance with the accepted standards of fairness or justice and which is also unfair.

#### **Meaning of “Enrichment”:**

When a person gains something from another, then it is said that the person is enriched. This enrichment can be both just and unjust.

#### **Meaning of “unjust enrichment”:**

When a person wrongfully uses other’s property at the expense of other, then it is called “unjust enrichment”.

#### **According to Encyclopaedic Law Dictionary:**

“Unjust enrichment is where a person unjustly obtains a benefit at the expense of another. In certain cases where money is obtained by mistake or through fraud or for a consideration which has wholly failed, the law implies a promise to repay it.

#### **According to Black’s Law Dictionary:**

“Unjust enrichment is the:

a) The retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected.

b) A benefit obtained from another, not intended as a gift and not legally justifiable for which the beneficiary must make restitution or recompense.

c) The area of law dealing with unjustifiable benefits of this kind.

### **Law of Restitution**

The law of **restitution** is the law of gains-based recovery. It is to be contrasted with the law of compensation, which is the law of loss-based recovery. When a court orders restitution it orders the defendant to give up his/her gains to the claimant. When a court orders compensation it orders the defendant to pay the claimant for his or her loss.

**Restitution** in moral theology signifies an act of commutative justice by which exact reparation as far as possible is made for an injury that has been done to another

In my understanding of the fundamental concepts of accounting, I feel that the instruments of Debit and Credit Notes were formulated to minimise/settle the trade disputes arising between affected parties to the contract of trade, commerce and industry - arising due to invoking the Law of Undue enrichment and the Law of Restitution. The objective was to serve the interests of business enterprises by enabling the parties settle their financial transactions in an amicable manner so that no one pays more and no one receives more than is required to meet their respective trade obligations (viz. **Not A Penny More and Not A Penny Less**)

In view of above judicial background, essentially Debit and Credit Notes are issued between parties in the following scenarios: -

- for supply of any goods or services or both
- in respect of taxable value of supply
- if the tax charged in the tax invoice is found to exceed the taxable value or tax payable in respect of such supply
- where the goods supplied are returned by the recipient
- where the supplied goods or services are found to be deficient

## **Relevant provisions of Debit and Notes under GST with prescribed time limits reproduced below:**

### **SECTION 34 of CGST Act 2017. Credit and debit notes. —**

(1) [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.

(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 for 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.

(3) [Where one or more tax invoices have] been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient [one or more debit notes for supplies made in a financial year] containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

**Explanation.** — For the purposes of this Act, the expression “debit note” shall include a supplementary invoice.

### **RULE 53 under CGST Rules 2017. Revised tax invoice and credit or debit notes. —**

(1) A revised tax invoice referred to in section 31 [\* \* \*] shall contain the following particulars, namely: -

(a) the word “Revised Invoice”, wherever applicable, indicated prominently;

(b) name, address and Goods and Services Tax Identification Number of the supplier;

[(c) \* \* \* \* \*]

(d) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;

(e) date of issue of the document;

(f) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(g) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is unregistered;

(h) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;

[(i) \* \* \* \* \*]

(j) signature or digital signature of the supplier or his authorised representative.

[(1A) A credit or debit note referred to in section 34 shall contain the following particulars, namely: -

(a) name, address and Goods and Services Tax Identification Number of the supplier;

(b) nature of the document;

(c) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;

(d) date of issue of the document;

(e) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;

(g) serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply;

(h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and

(i) signature or digital signature of the supplier or his authorised representative.]

(2) Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue revised tax invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of the issuance of the certificate of registration:

**Provided** that the registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the Act during such period:

**Provided** further that in the case of inter-State supplies, where the value of a supply does not exceed two lakh and fifty thousand rupees, a consolidated revised invoice may be issued separately in respect of all the recipients located in a State, who are not registered under the Act.

(3) Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words “INPUT TAX CREDIT NOT ADMISSIBLE”.

***Our Comment: -***

*In view of above judicial background, essentially Debit and Credit Notes are issued amongst the parties in the following scenarios: -*

- *for supply of any goods or services or both*
- *in respect of taxable value of supply*
- *if the tax charged in the tax invoice is found to exceed the taxable value or tax payable in respect of such supply*
- *where the goods supplied are returned by the recipient*
- *where goods or services or both supplied are found to be deficient*
- *The Supplier may issue to the Recipient one or more credit notes for supplies made in a financial year, containing such particulars as may be prescribed.*

## CHAPTER V

### INPUT TAX CREDIT

***SECTION 16 of CGST Act, 2017-Eligibility and conditions for taking input tax credit.***

- (1) .....
- (2) .....
- (3) .....

***(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 [\* \* \*] debit note pertains or furnishing of the relevant annual return, whichever is earlier :***

***Our Comment: -***

***Section 16(4) imposes a time limit for claim of Input Tax credit arising from Tax Invoices, Supplementary Invoices, Revised Invoices , Debit and/or Credit Notes in respect of any previous financial year for supply of goods or services or both – the time limit is the due date of furnishing of the return u/s 39 for the month of September following the end of the***

*financial year to which such invoice or debit note pertains or furnishing of the relevant annual return whichever is earlier. Thus, in respect of Financial Year 2019-20, Input Tax Credit pertaining to FY 1920 can be claimed only up to September 2020 when the GSTR 3B Return is filed on or before the due date notified in the manner stated under the provisions of GST Act, 2017 viz. 20<sup>th</sup> /22<sup>nd</sup> /24<sup>th</sup> of October 2020.*

[**Provided** that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

It must be noted that the Govt. has discussed genuine business issues relating to Debit and Credit Notes which earlier were required to be mapped to the individual tax invoices, and the same was done away by delinking of Credit/Debit Notes from Individual Tax Invoices thereby acceding to the prayers of the business stakeholders. These were discussed and deliberated in the 28<sup>th</sup> GST Council meeting held on 21<sup>st</sup> July 2018 - which details were published in the Official Gazette of India on 30<sup>th</sup> August 2018 after receiving the President's assent on 29<sup>th</sup> August 2018. Consequently, CGST Amendment Act, 2018, IGST Amendment Act 2018, UT GST Amendment Act 2018 and GST (Compensation to States) Amendment Act, 2018 and Notification No 03/2019 – Central Tax were issued on February 1, 2019. The provisions were finally uploaded on the Portal on 14<sup>th</sup> September 2020 - conspicuous by the time gap of nearly two years two months from 21<sup>st</sup> July 2018 to 14<sup>th</sup> September 2020.

With E- Invoicing (includes Tax Invoices, Debit and Credit Notes etc.) becoming compulsory vide today Notification No 88/2020 from 01.01.2021 for every taxpayer (other than SEZ unit) whose

aggregate Turnover as per GST Act in any of the Financial Year from 17-18 exceeds 100 Crores will completely see the manifestation of sea change in doing businesses and in future it would be mandatory even for other RTPs too.

**Pain Areas of Debit and Credit Note mechanism under GST Law.**

In the light of the above, let us discuss an interesting scenario by way of an illustration which draws from the provisions of the GST Sections and Rules. The objective is to explain the pain areas faced by the business fraternity, which I have tried to understand and deal with in the lines below:

1. A is Buyer/Purchaser/ Service Recipient located in India;
2. B is Seller/ Supplier/Service Provider located in India;
3. I have considered both parties necessarily located in India - as in respect of Cross Border Trade, Taxes are not exported as they are meant to be consumed by the end user by consuming such supply of goods or services or both;
4. Both A & B charge appropriate levies in their respective Tax Invoices followed by timely filing of GSTR 1 as well as GSTR 3B as per the provisions of GST Act, 2017;
5. As long as compliance by both the parties is timely, efficient and effective, there would be no issue/s while claiming Input Tax Credits as per the provisions of Section 16 & Section 34 of CGST Act, 2017 and this would result in free flow of entitled Input Tax credits;
6. Now let us assume that a Trade Dispute arises between A & B in respect of value, quantity or price difference and/or deficiency of services etc. which has been supplied in the Financial Year 2019-2020; and in order to settle the trade

dispute they decide to exchange Debit and Credit Notes with adjusting levies as applicable during the month of November 2020;

7. Considering the extension of time limits for filing of Income Tax Returns under the provisions of Income Tax Act 1961, both the parties decide to issue Debit and Credit Notes with levies as applicable which is dated back to 31<sup>st</sup> March 2020, as such trade dispute pertains to such financial year and they want their financial statements to portray a true and fair view of the Revenues, Earnings, Assets and Liabilities as an honest tax payer of this country;
8. GSTN Portal due to delinking of Debit and Credit Notes with Tax Invoices will allow entries of such Debit and Credit Notes on the portal. Party who raises the Debit Note will pay levies as applicable along with interest payable into the Government Treasury and it would be appropriately reflected in GSTR 1 as well as GSTR 3B during the month of November 2020;
9. Whereas the receiving Party will treat such note as a Credit Note and would proceed to claim the same eligible Input Tax Credit and adjust its tax payable while filing their GST Returns as per the provisions of GSTR 3B of the GST Act, 2017 during the month of November 2020;
10. As Businesspersons, let us presume that both are not aware about the time limits specified u/s 16(4) of the CGST Act 2017 and being unaware about such timelines, they issue such debit and credit notes respectively;
11. Now the issue flares up - when their advisors notify them about such timelines and advise the Receiving party to

reverse the Input Tax Credit along with interest as applicable, because claim of their input tax credit is legally incorrect, which could trigger being slapped with Show Cause notices issued u/s 73 & 74 of the GST Act, 2017;

**12. Receiving party reluctantly agrees to pay on account of such incorrect claim of Input Tax Credit due to time limits specified u/s 16(4) of the CGST Act 2017. It is probable that Receiver may not agree to the principles of restitution to compensate his business vendors towards their loss of Input Tax Credit.**

13. Such unfair economic outflow in the hands of the Payer leaves a bitter taste in the mouth of the Tax Payer who has to bear the brunt when doing the business genuinely, honestly and without resorting to unscrupulous business practices;

**14. Principally, the above situation raises a valid question in the minds of everyone that the Revenue Department is collecting the taxes twice viz. first from the Supplier when he raises a Debit Note and second, when payment is made for incorrect claim of Input Tax Credit, if both the parties had issued Debit and Credit Notes without levies ( popularly known Financial Debit and Credit notes in the ordinary course of business);**

The Government must be commended in ushering in the biggest business and tax reform which the country has seen in the form of Goods and Services Act, 2017,

Considering the aforementioned genuine possibility of an unintended and unfair business situation, the Government needs to amend the relevant legal provisions to address the above

anomaly, thereby extending the benefit of claim of Input Tax Credits on account of Debit and Credit Notes without any period of limitation. This stands to reason especially when the Govt. is not losing any revenue and such enabling provisions would be termed as genuinely free and seamless flow of input tax credits. This would necessitate appropriately amending the law by way of change in proviso, circulars and/or notifications etc. so as to pre-empt potential dispute/s that could arise if one were to invoke the beneficial provisions enshrined under the Law of Undue Enrichment, and Law of Restitution. Such remedial measures would contribute to the formulation of a complete and self-contained code which would represent the maxim - Lock, Stock and “two” barrels of Debit and Credit Notes, resulting in a seamless flow of input tax credit to promote efficiency and effectiveness in doing business. At the same time, it will promote the feeling that as a law-abiding citizen of the country, while doing business in India, they get that resolute feeling, that innate belief that they won't unfairly lose - “Not A Penny More and Not A Penny Less”.

With this I end my article on “Lock, Stock, and Two Smoking Barrels of Debit and Credit Notes” in conjunction with the parable of “Not a Penny More and Not a Penny Less.”

(Note: Views expressed are my personal views and they may not be accepted by the Government. All readers are requested to take their considered views based on their own study to reach any suitable conclusions. There can be many other situations under the law but I have tried to establish the seed of thought by way of this article in the minds of readers. Suggestions to improve the article is always welcome with folded hands).