

GIB/AII/R.K/05.12.2018/HC-135**High Court Category :** Others**State :** Allahabad**Order No.:** GIB/AII/R.K/05.12.2018/HC-135**Name of Entry :**

R.K. Distributors

Date : 05-12-2018**Breif Issue :****Facts & Issue Of The Case :**

Assessee purchased SIM cards of value Rs. 3,57,379 was liable to pay tax Rs. 17,868.95. Tata Teleservices Ltd., Lucknow had charged tax @ 5% on the total invoice amount including the discount availed by the assessee on such purchase. The amount of discount is Rs. 17,99,385/-, the total sale price on which the tax @ 5% was charged by that seller came to Rs. 21,56,764/-. Thus, the assessee had been charged and he had paid tax of Rs. 1,07,838.41/. Assessee sold goods giving rise to a sale turnover of Rs. 4,83,815. In view of the fact that against 5% tax payable on the sale turnover of Rs. 4,83,815/- is Rs. 17,868.95/-, the assessee had claimed I.T.C. of Rs. 1,07,838.41/-, resulting in the refundable amount to the assessee. The amount of Rs. 1,07,838.41/- represents a 30% tax on the goods purchased by the assessee. The language of Section 13(1)(a) [table entry 1(1)] read with Section 2(p) of the Act, is sufficiently clear and provides that the input tax credit would be preferable to the entire amount of tax i.e. the aggregate amount of tax paid or payable, in respect of the purchase of goods. The reasoning offered by the authorities based solely on the excess realization of tax made by the seller cannot be sustained

Decision of Advance Ruling Authority :**Decision:**

Merely because the selling dealer may have acted with abundant caution in realizing the higher amount to avoid any litigation with the State authorities and in absence of any allegation of the assessee had passed on the liability of higher tax paid, the question of law raised in the present case is answered in favour of the assessee and against the revenue