

# VALUATION UNDER GST

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# COVERAGE TODAY

- General Challenges for Trade/ Industry
- Role of Article Assistance in GST
- Section 15 – Definition
- Rules
- Old Case Laws as Relevant
- Q/A

# CHALLENGES FOR TRADE / INDUSTRY

- Continuation of business over period
- Safeguard their margins
- Safeguard / enhance their business by being GST ready
- Not lose/ plan for advantages available
- C/f of credit & credit on stocks
- Comply with the complex electronic returns
- Limit exposure under the earlier laws

# MAJOR IMPACT OF VALUATION

- Value for 20 Lakhs Threshold or Composition – 2 Cr – would like to continue or extend.
- Grey Economy – brakes. Continuing old practices of reducing billed amount - risk is high. Those who compete in same market are at times forced?
- B2C – Consumer does not want credit – Just a bit above the material cost on which credit claimed.
- B2B – Unorganised Customer may also be undervaluing -
- Average Rate of Tax 18% - Impact Disastrous if lower value

# Role of Articles Assistant - GST

- Pillars for the organisations in SMPs and Big 4.
- Knows GST law & Procedures
- Know how to prepare Documents
- Knows how to maintenance of records
- Filing of Returns
- Knows how to verify using excel + other tools

# CAPABILITY OF ASSISTANT

- Professional Capability –being built
- Experiential Capability – being gained client after ..
- Support Staff – Juniors in audit/ office
- Supporting Management – Pro actively
- Supporting Colleagues

Basic Training, updation regularly, IT  
savvy

# VALUATION - DISCUSSION

- ❖ Introduction - Taxable event, Measure and rate
- ❖ Valuation of supply – Concept of Transaction value
- ❖ Transaction value – Inclusions and exclusions
- ❖ Resort to valuation rules – Related person concept
- ❖ Valuation Rules – Discussion
- ❖ Notified method of valuation
- ❖ Schedule of supplies without consideration attracting GST

# THREE IMPORTANT FACETS OF ANY TAX LEGISLATION

Taxable event

Measure of Tax

Rate of Tax.



# TAXABLE EVENT

## Before GST – Levy was on:

- Central excise duty was on manufacture of goods
- Service tax was on service rendered
- Customs duty was on import
- VAT/sales tax was on sale- transfer of goods
- Entry tax was on entry to a state or a union territory

## After GST – Levy is on:

- Supply of goods and/or services – covers all earlier entries- maybe more

# MEASURE OF TAX

## Before GST

- Tax could be levied on advalorem basis or on the basis of quantity, volume etc

## After GST

- Measure of tax is value **determined** under section 15 of CGST Act. Applicable for SGST, IGST, UTGST and State compensation cess also.

## RATE OF TAX

Rate of tax will be as notified by the Government on the recommendation of the GST Council. Presently there are seven rates viz. 0.25%, 3%, 5%, 12%, 18% and 28% and zero rate. In addition Compensation Cess.

Value of supply of goods and/or services or both shall be the transaction value. Transaction value is the price actually paid or payable for the supply of goods or services or both. It has three limbs:

The **price** actually paid or payable

The supplier and the recipient are **not related to each other**

Price is the **sole consideration.**

Concept of transaction value has been taken from Central Excise Act and Customs Act but the two limbs of the value, viz. time and place of removal have been left out.

GST law has separate sections for determination of time and place of supply.

# COMMENTS

When it can be said  
that there is no supply  
of goods or services?

Can GST be levied if  
goods are sold at a  
price below the cost of  
manufacture?

## Section 15(2) Specific inclusions in TV

- All statutory levies other than CGST,SGST and Compensation levy.
- Supplier's liability borne by recipient.
- Incidental expenses of supplier.
- Interest, late fee or penalty for delayed payment.
- Subsidies other than government subsidies.

## Section 15(3) Specific exclusions in TV

- Discount duly recorded in the invoice.
- Post supply discounts subject to conditions

# VALUATION RULES

- When the value of supplies cannot be determined because
- the supplier and the recipient are related
- Price is not the sole consideration
- Supply is without consideration but attracts GST



- It has to be determined applying the provisions of Valuation Rules.



# RELATED PERSONS

- Such persons are officers or directors of one another's businesses;
- Such persons are legally recognised partners in business;
- Such persons are employer and employee;
- Any person directly or indirectly owns, controls or holds twenty-five percent or more of the outstanding voting stock or shares of both of them;
- One of them directly or indirectly controls the other;
- Both of them are directly or indirectly controlled by a third person;
- Together they directly or indirectly control a third person;
- They are members of the same family. Family means the spouse and children of the person and wholly or mainly dependent parents, grandparents, brothers and sisters of the person.
- Sole agent or sole distributor or sole concessionaire, however described, of a person and the person with whom he is associated in such a position.

The most important change from the central excise law is omission of the words “mutuality of interest”. Department invariably could not prove mutuality of interest and consequently the cases failed. Now in any of the above nine situations, the transaction has to be taken as between the related persons. The removal of the term ‘mutuality of interest’ has **reduced** the areas of dispute and at the same time has **increased** the number of transactions which can be said to be between related persons.

cases

# ALTERNATIVE METHODS OF VALUATION

Section 15(5) empowers the government to notify determination of the value by a different method in respect of notified Supplies on the recommendation of GST Council. Such determination will be notwithstanding the provisions relating to transaction value and the valuation rules in the section.

**Comments:** By incorporating this provision government has kept the option of levying GST on the basis of MRP and Tariff Values (term used in the Customs Act and Central Excise Act).

# 1. VALUATION RULES

**Rule 27- Value of supply of goods or services where the consideration is not wholly in money**

**Rule 28 - Value of supply of goods or services or both between distinct or related persons, other than through an agent.**

**Rule 29- Value of supply of goods made or received through an agent.**

## 2. VALUATION RULES

- When value cannot be determined by applying rules 27, 28 and 29,



Proceed to rule 30 which provides for determination of value of supply of goods or services or both based on cost.

### 3. VALUATION RULES

- Where the value of supply of goods or services or both cannot be determined under rules 27 to 30,



- Rule 31 which is residual method for determination of value of supply of goods or services or both has to be applied.

## 4. VALUATION RULES

- Rule 32 deals with valuation in case of certain specific services.
- Rule 33 deals with value of supply of services in case of pure agent.
- Rule 34 deals with situation when the transactions are not in Indian currency.

## 4.1 VALUATION RULES – RULE 27

**Rule applies when consideration is not wholly in money. The value of the supply shall,**

- a) be the open market value of such supply;  
“open market value” of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.
- b) if open market value is not available, be the sum total of consideration in money and monetary equivalent to non-monetary consideration if known;



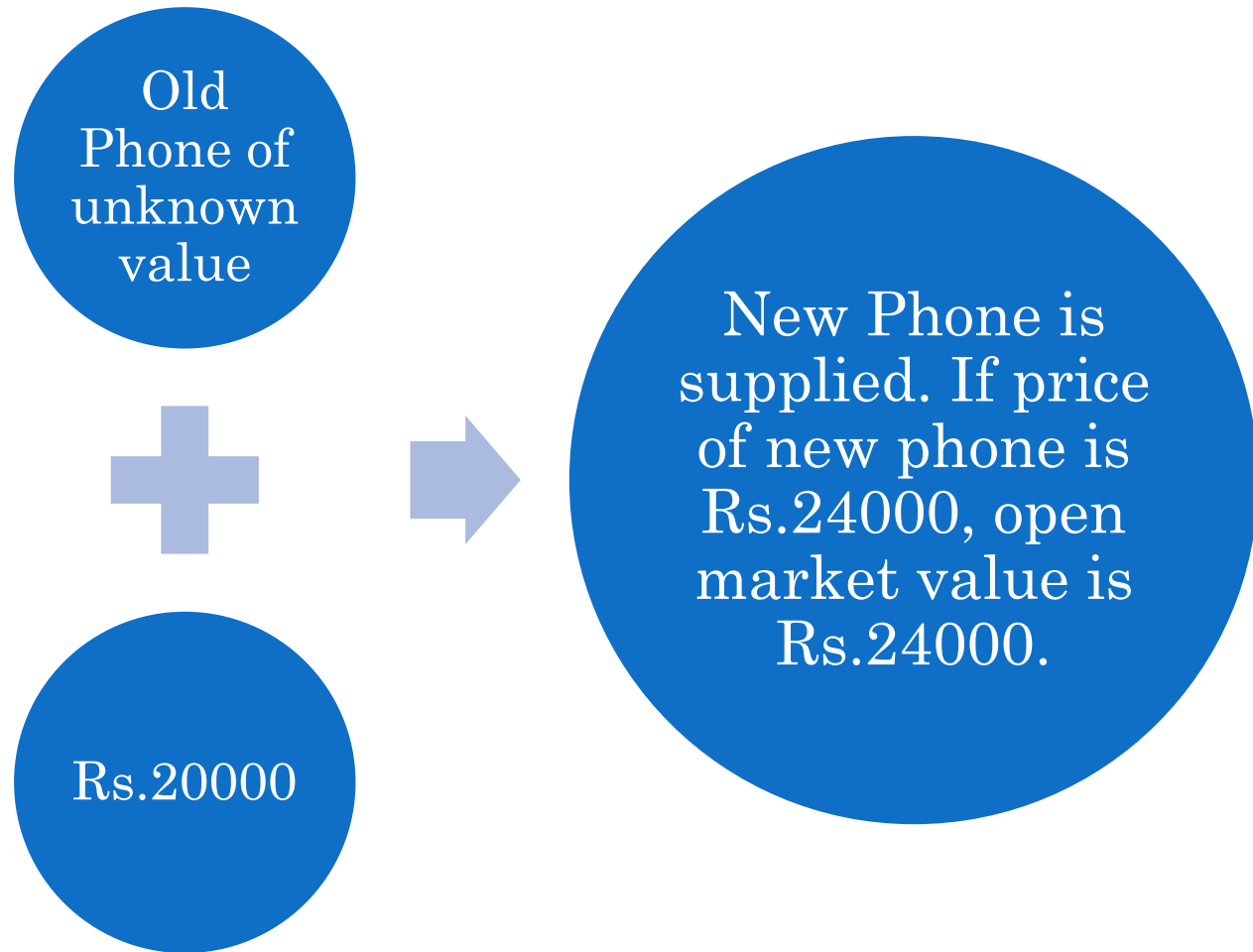
## 4.1 VALUATION RULES – RULE 27

- c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

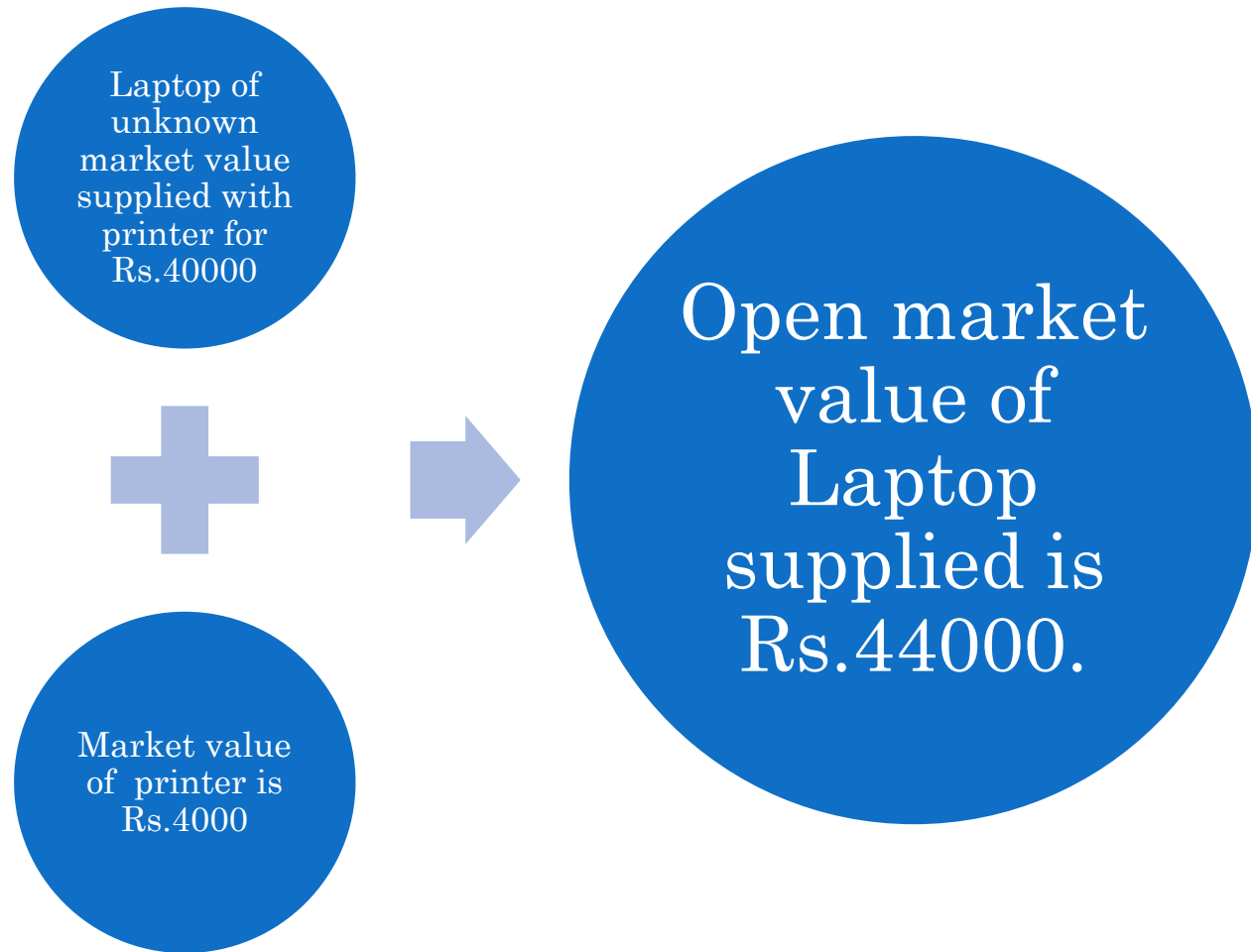
“supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

- d) If value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by application of rule 4 or rule 5 in that order.

## ILLUSTRATION - 1



## ILLUSTRATION 2



## 4.2 VALUATION RULES – RULE 28

**This rule is for determination of value of supply of goods or services or both between distinct or related persons, other than through an agent.**

- a) open market value
- b) if open market value is not available, be the value of supply of goods or services of like kind and quality.
- c) When a) and b) are not applicable, be the value as determined by application of rule 4 or rule 5, in that order.

**Provided where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services.**

## 4.3 VALUATION RULES – RULE 29

- **Value of supply of goods made or received through an agent shall -**
  - be the open market value of the goods
  - or at the option of the supplier, be ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person;
  - where the value of a supply is not determinable as above, the same shall be determined by application of rule 4 or rule 5 in that order.
- *Illustration: Where a principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of Rs.5000 per quintal on the day of supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of Rs.4550 per quintal. The value of the supply made by the principal shall be Rs.4550 per quintal or where he exercises the option the value shall be 90% of the Rs.5000 i.e. is Rs.4500 per quintal.*

## 4.4 VALUATION RULES – RULE 30

### **Value of supply of goods or services or both based on cost.**

- Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be one hundred and ten percent of
  - a) the cost of production or manufacture
  - b) or cost of acquisition of such goods
  - c) or cost of provision of such services.
- **Comments:** In Central Excise law, provision was there requiring that cost of production has to be arrived at by following CAS 4. It would be safe to follow the same procedure in respect of manufactured goods or provision of services. In the case of sale, cost of acquisition should not be difficult to arrive.

## 4.5 VALUATION RULES – RULE 31

### **Residual method for determination of value of supply of goods or services or both**

- Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and general provisions of section 15 and these rules.
- Provided that in case of supply of services, the supplier may opt for this rule, disregarding rule 30.

## 4.7 VALUATION RULES – RULE 33

- For the purposes of this rule, “pure agent” means a person who –
  - enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
  - neither intends to hold nor holds any title to the goods or services or both so procured or provided as pure agent of the recipient of supply;
  - does not use for his own interest such goods or services so procured; and
  - receives only the actual amount incurred to procure such goods or services.
- 
- **Illustration.** Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the companies registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A’s recovery of such expenses is a disbursement and not part of the value of supply made by A to B.



# Rule 33 – Pure Agent

- Pure agent= contractual agreement to be pure agent
- Does not hold title to goods or services
- Does not use for his own interest &
- Receives on actual amount + amount for his services on own a/c.
- Conditions:
  - Supplier authorised to make payment to 3rd party
  - Separately indicated in Invoice
  - Are in addition to own service.

Not Only a reimbursement  
Transaction

## 4.7 VALUATION RULES – RULE 33

### **Value of supply of services in case of pure agent**

Notwithstanding anything contained in these rules, the expenditure or costs incurred by the supplier as a pure agent of the recipient of supply of services shall be excluded from the value of supply, if the following eight conditions are satisfied, namely:-

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party for the services procured as the contract for supply made by third party is between third party and the recipient of supply;
- (ii) the recipient of supply uses the services so procured by the supplier service provider in his capacity as pure agent of the recipient of supply;
- (iii) the recipient of supply is liable to make payment to the third party;

## 4.7 VALUATION RULES – RULE 33

- (iv) the recipient of supply authorises the supplier to make payment on his behalf;
- (v) the recipient of supply knows that the services for which payment has been made by the supplier shall be provided by the third party;
- (vi) the payment made by the supplier on behalf of the recipient of supply has been separately indicated in the invoice issued by the supplier to the recipient of service;
- (vii) the supplier recovers from the recipient of supply only such amount as has been paid by him to the third party; and
- (viii) the services procured by the supplier from the third party as a pure agent of the recipient of supply are in addition to the supply he provides on his own account.

## 4.7 VALUATION RULES – RULE 34

### **Rate of exchange of currency, other than Indian rupees, for determination of value**

The rate of exchange for determination of value of taxable goods or services or both shall be the RBI reference rate for that currency on the date of supply as per section 12 or, as the case may be, section 13 of the Act.

# SOME SUPPLIES WITHOUT CONSIDERATION BUT LIABLE TO GST

Schedule I to the CGST Act lists activities which are to be treated as supply even if made without consideration.

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

**Comments:** Need for proviso is because the employer and the employee are related persons as has been seen when section 15 of CGST Act was discussed above.

# SOME SUPPLIES WITHOUT CONSIDERATION BUT LIABLE TO GST

- 3. Supply of goods—
  - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
  - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- 4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

## 4.6.1 VALUATION RULES – RULE 32

Rule 32 contains provisions for determination of value in respect of some specific supplies.

### 1. **Currency exchange or money changing.**

- i. For currency, when exchanged from or to, Indian rupees, the value shall be difference between buying/selling rate and the RBI reference rate for that currency multiplied by total units of currency.
- **Illustration:** US \$ 1000 are sold by a customer at the rate of Rs.65 per US\$. RBI reference rate is Rs.65.5 that day.
  - Value of taxable service = (RBI reference rate – selling rate) x Total units.
  - =  $65.5 - 65 \times 1000 = \text{Rs.}500$ .

## 4.6.1 VALUATION RULES – RULE 32

ii) Where RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian rupees provided or received.

In the above illustration, if RBI reference rate is not available, value will be 1% of Rs.65000 or Rs.650/-.

iii) Where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

- **Illustration:** 1200 US\$ are exchanged to 960 British pounds. RBI reference rate for US\$ is Rs.60 and RBI reference rate for British pounds is Rs.80. The value will be 1% of lower of Rs.72000 and Rs.76800 i.e. Rs.720/-.



## 4.6.1 VALUATION RULES – RULE 32

- iv) The rule also gives an alternative option which has to be opted for a financial year and cannot be withdrawn once opted during the same financial year. In such a case value will be
- Up to Rs. One lakh, one percent of the gross amount of currency exchanged subject to a minimum of Rs.250/-.
  - Rs.1000 + half of a per cent of the gross amount of currency exchanged for an amount exceeding Rs. One lakh and up to Rs. Ten lakh.
  - Five thousand rupees and one tenth of a per cent of the gross amount of currency exchanged for an amount exceeding ten lakh rupees subject to a maximum of Rs. 60000/-.

## 4.6.2 VALUATION RULES – RULE 32

2. The value of supply of services in relation to booking of tickets for travel by air would be five per cent of the basic fare in the case of domestic bookings, and at the rate of ten per cent. of the basic fare in the case of international bookings of passage for travel by air.

*Explanation* - For the purposes of this sub-rule, the expression “basic fare” means, that part of the air fare on which commission is normally paid to the air travel agent by the airline.

## 4.6.3 VALUATION RULES – RULE 32

3. The value of supply of services in relation to life insurance business shall be:
- a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such amount is intimated to the policy holder at the time of supply of service;
  - b) in case of single premium annuity policies other than (a), ten per cent of single premium charged from the policy holder; or
  - c) in all other cases, twenty five per cent of the premium charged from the policy holder in the first year and twelve and a half per cent of the premium charged from policy holder in subsequent years:

*Provided* that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

## 4.6.4 VALUATION RULES – RULE 32

- 4. In case of second hand goods trade, the difference between the selling price and the purchase price would be the value. This is subject to the condition that second hand goods are sold without processing or after processing without changing its nature and no input credit has been availed after purchase.

## 4.6.5 VALUATION RULES – RULE 32

- 5. The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

## 4.6.6 VALUATION RULES – RULE

6. The rule provides for issue of notification declaring the value of supply to be nil in respect of taxable services on the recommendation of the GST council in transaction between related parties or separately registered units of a single person where input credit is available under section 17(5) of CGST Act.

## ISSUES- INTER-BRANCH SERVICE'S

- To what extent like kind & quality be stretched
  - First internal comparable of like kind and quality, if such comparable not available then go to external comparable of like kind and quality.
  - While external comparable of like kind & quality – brand value.
  - Eg: Can services of Blue Dart be compared with Hand to Hand Delivery Courier Company
  - Eg : Can services of Blue Dart be compared with Fedex

## ISSUES- INTER-BRANCH SERVICE'S

- A & CO Cas in Blore, has its branch at Chennai AB & CO, AB & Co at Chennai gets an audit assignment in Chennai, for which AB & Co called for 2 of A & Co's employees for 10 days to complete audit assignment.
- Value to be billed by A & Co to AB & Co =
  - OMV = Rs 2500 per man day
  - Value of like kind & quality = Rs 3000 per man day
  - Actual amount billed = 1500 per man day.



# ISSUES IN VALUATION

- Is stock transfer to your branch an actual sale?
  - Reconciliation : Supply Vs sale
- What is the value of stock transfer, from A in Karnataka to B its branch in TN, in respect of stock transfer?
  - OMV= 10,000
  - Like kind or quality = 10,500
  - COP +10% = 12,000
  - 90% of value of S.P by the recipient, to unrelated party.
  - Value ???

# REMOVAL OF GOODS AS FREEBIES

Buy one get one  
free is only a  
marketing  
gimmick

- Consideration paid for such transaction is the value on which GST to be paid.
- No ITC reversal required. (Could be litigated)
- Only a marketing strategy and not actual free supply, as advertised.

Free sample  
distribution

- Not a supply, as no consideration.
- ITC reversal required.
- Can it fall under schedule I or II-Supply
- If supply, then no ITC reversal required.

# REMOVAL OF GOODS AS DONATIONS

- In GST, supply includes all types of supplies
- Few matters to be treated as supply though there is no consideration
- Disposal of assets is supply. Ex: Donation of computers. Whether inputs are business assets?
- Valuation for Mechanism for supply?
- Reversal of credit on such computers required?

# REMOVAL OF GOODS AS DONATIONS, SAMPLES

- Section 17 – Input restriction if goods issued as samples or disposed as gifts. For finished goods is Section 17 applicable?? If yes, valuation? Or is it supply as per Schedule II?
- Transfer of business assets which would no longer form part of asset for consideration or not is supply of Service - Schedule II sl.no.4.

# FREE SUPPLY

- Should value of free supply be included for the purpose of valuation?
- If yes what should be the value?
- Is free supply of material a **supply**?
- Can it fit into the Section 7- Levy Supply?
- Can the recipient of free supply of material avail ITC?

## WARRANTY

- Original invoice value would have factored warranty cost. Therefore, no GST.
- No credit reversal needed. Section 17 does not contain any restriction.
- Supply in extended warranty, to such extent it is liable for GST.

## DEALER OF SECOND HAND GOODS

- Taxable supply by person dealing with second hand goods.
- No ITC credit availed
- Value shall be difference between SP-PP, where value is negative, it shall be ignored for GST.
- Non dealer but registered who has not availed ITC till 2020 – on 65% of rate applicable.

# SOME RELEVANT CASE LAWS UNDER EARLIER LAWS

- Section 15 Vs GST Valuation Rules - *Ispat Industries Ltd Vs CC 2006 (202) ELT 561 (SC)*
- FOC material by customer – *Burn Standard Company Ltd Vs UOI – AIR 1991 SC 1784*
- Independent factory price available = same material captively consumed- same price – *CCE Vs Scan Synthetics – 2008 TIOL 34 SC*



- Price of identical goods to be compared at same commercial level/ activity - *Elite Packaging Industries Vs CC 1992 (60) ELT 311 (SC)*
- Cash ,Trade & Volume discount known at time of supply – *Purolator India Ltd Vs CCE – 2015 (332) ELT 227 SC*
- Post delivery exp – *CCE Vs Ispat Industries Ltd – 2015 (324) ELT 670 SC*

- Supplementary Invoice – Interest? – *Steel Authority of India Vs CCE, Raipur – 2015 (326) ELT 450 (SC)*
- 50% Sales Tax retention no payable in future – *Maruti Suzuki Ind Ltd – 2014 (307) ELT 626 (SC)*
- Supply below cost – *CCE Vs FIAT India Pvt Ltd – 2012 (283) ELT 161 (SC)*

- Huge advances along with order - *CCE Vs Hindustan National Glass and Industries Ltd – 2016 (332) ELT 193 SC*
- Amortisation of tools/ moulds – *Moriroku UT India Vs State of UP – 2008 (224) ELT 365 (SC)*
- Piercing of corporate veil - *CC Vs East African Traders 2000 (115) ELT 613 (SC)*

- Demurrage after import - *not includible* - *CCE Vs Mangalore Refinery 2015 325 ELT 214 (SC)*
- Subsidy from Govt as Policy - *not includible* - *CCE Vs Mazagon Dock Ltd 2005 (187) ELT 3 (SC)*
- Interest on receivables – *not includible* - *CCE VS Hero Honda Motors 326 ELT 8 (SC)*



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