

# **BEGINNERS COURSE ON GST**

**DATE :** 26th SEPTEMBER 2016

**VENUE :** ICAI TOWER, BANDRA (E)

**BY S. S. GUPTA**

**CHARTERED ACCOUNTANT**

## **1. Time of Supply of Goods**

A) Currently, excise duty is payable on removal of goods from factory. Point of taxation in case of service is determined as per the provisions of Point of Taxation Rules, 2011. Sales Tax is payable when property in goods have been transferred to the customer. In GST liability to pay tax arise on the date of time of supply of goods or services. Therefore it is essential to determine the time of supply for each of the transaction.

B) The time of supply of goods shall be the

(b) the date on which the supplier issues the invoice with respect to the supply; or

(c) the date on which the supplier receives the payment with respect to the supply; or

(d) the date on which the recipient shows the receipt of the goods in his books of account.

Explanation 1.- The provisions of sub-clause (ii) of clause (a) shall apply in cases where the goods

(a) are physically not capable of being moved; or

(b) are supplied in assembled or installed form,<sup>3</sup> or

Explanation 4.- For the purpose of clause (c) of sub-section (2), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

Currently, excise duty is not payable on receipt of advance. The excise duty or sales tax is not payable on receipt of advance from the customer.

## 12. Tax liability of amount received n advance against a supply to be made in future

GSTIN/ UID/GDI/ Name of the customer	State Code	HSN/ SAC* of supply to be made	Amount of advance received without raising a bill	TAX							
				IGST		CGST		SGST		Addl Tax #	
				Rate	Tax	Rate	Tax	Rata	Tax	Rate	Tax
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

\*As per para 3.1 (4)(iii) of return report

#Not applicable to services and inter-state & specified inter-state supplies of goods.

# 13. Tax already paid (on advance receipt) on invoices issued in the current period

Invoice No.	Transaction id (A number assigned by the system when tax was paid)	TAX Paid on receipt of advance								
		IGST		CGST		SGST		Addl Tax #		
		Rate	Tax	Rate	Tax	Rata	Tax	Rate	Tax	
(1)	(2)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	

#Not applicable to services and intra-state & specified inter-state supplies of goods

C) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the time of supply shall be the date of expiry of the period to which such successive statements of accounts or successive payments relate. If there are no successive statements of account, the date of issue of the invoice (or any other document) or the date of receipt of payment, whichever is earlier, shall be the time of supply.

‘Continuous supply of goods’ is defined in section 2(3) as follows:

(30) “*continuous supply of goods*”<sup>7</sup> means a supply

D) For the purposes of sub section (3) above, the Central or a State Government may, on the recommendation of the Council, specify, by notification, the supply of goods that shall be treated as continuous supply of goods;

E) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely—

(a) the date of the receipt of goods, or

(b) the date on which the payment is made, or



- Table 5 of GSTR-1 format of which is given below also requires the supplier to specify whether tax

GSTIN / UIN	Invoice					IGST		CGST		SGST		Addl Tax#		POS (only if different from the location of recipien t)	Indicat e if supply attract s revers e charge \$
	No	Date	Value	HSN / SAC *	Taxabl e value	Rate	Amount	Rate	Amount	Rate	Amount	Rate	Amount		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

F) If the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, the time of supply shall be at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier.

G) In case it is not possible to determine the time of supply under the provisions of subsection (2), (3), (5) or (6), the time of supply shall

(a) in a case where a periodical return<sup>10</sup> has to be

## ❖ Time of Supply of Services

A) The liability to pay CGST/SGST on services shall arise at the time of supply. Currently the liability to pay service tax is determined as per the provisions contained in Point of Taxation Rules, 2011. However, after the appointed day, the liability will be determined on the basis of time of supply of service.

B) The time of supply of services shall be:-

(a) the date of issue of invoice or the date of receipt of payment, whichever is earlier, if the

Explanation 1.- For the purposes of clauses (a) and (b), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.- For the purpose of clause (a) and (b) of sub-section (2), “the date of receipt of payment” shall be the date on<sub>12</sub> which the

The clarification given with regard to completion of service vide circular No. 144/13/2011-ST dated 18-7-2011 will still be applicable in GST Law also. The relevant portion of circular is reproduced below:

*2. These representations have been examined. The Service Tax Rules, 1994 require that invoice should be issued within a period of 14 days from the completion of the taxable service. The invoice needs to indicate inter alia the value of service so completed. Thus it is important to identify the service so completed. This would include not only the physical part of providing the service but also*

C) In case of continuous supply of services, the time of supply shall be -

- (a) where the due date of payment is ascertainable from the contract, the date on which the payment is liable to be made by the recipient of service, whether or not any invoice has been issued or any payment has been received by the supplier of service;
- (b) where the due date of payment is not ascertainable from the contract, each such time when the supplier of service receives the

Continuous supply of service is defined in section 2(31) as follows:

*(31) “**continuous supply of services**” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such service as the Central or a State Government may, whether or not subject to any condition, by notification, specify;*

D) For the purposes of sub section (3) above, the Central or a State Government may, or the

Explanation.- For the purpose of clause (b) of sub-section (5), “the date on which the payment is made” shall be the date on which the payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.

Point of taxation in case of reverse charge is



F) In a case where the supply of services ceases under a contract before the completion of the supply, such services shall be deemed to have been provided at the time when the supply ceases.

G) Where it is not possible to determine the time of supply of services in the manner

## 2. Valuation Provisions

### A. Introduction

Section 15 read with GST Valuation Rules 2016 makes provision for determination of value of supply of goods or services. These provisions are very much different than the provisions of Valuation Rules contained in Central Excise Act or Service Tax. The provisions of section 15 with our comments are as follows:

### Transaction value

Section 15(1) reads as follows:

*(1) The value of a supply of goods and/or services<sup>18</sup>*

It will be observed that words 'time and place of removal' is not used in the section. Time of supply of goods or service is determined by section 12 of Model GST Law. The place of removal is not important in the proposed context as GST is payable on the value realized by the manufacturer and subsequent traders till it is sold by the trader/retailer for consumption. Thus it is payable even by the retailers.

## B. Related Person

‘Related person’ has been defined in section 2(82) as follows:

(82) persons shall be deemed to be “**related persons**” if only -

(a) they are officers or directors of one another's businesses;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) any person directly or indirectly owns, controls or holds five per cent or more of the

*Explanation I. - The term "person" also includes legal persons.*

*Explanation II. - 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.*

It will be observed that the definition of 'related person' is entirely different than the definition of related person provided under Central Excise Act. The definition of related person in the current law

## C. Transaction Value

Sub section (2) of section 15 provides that the transaction value shall include the following:

- (a) 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 and/or services.
  
- (b) the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free

- (d) any taxes, duties, fees and charges levied under any statute other than the SGST Act or the CGST Act or the IGST Act;
- (e) incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services;
- (f) subsidies provided in any form or manner, linked to the supply;

(g) any reimbursable expenditure or cost incurred

It is specifically provided that discount or incentive which have been provided subsequent to sale of goods will not be permitted unless it is established as per agreement and is known at or before the time of supply and specifically linked to the relevant invoice. Thus all the 3 conditions must be satisfied. If these 3 conditions are satisfied, value will not include discount. It is specifically now provided that the transaction value<sup>24</sup> will include



#### D. Valuation as per Prescribed Method

Sub section (4) which reads as follows, provides that the value shall be determined on the basis in such manner as may be prescribed in the rules.

*(4) The value of the supply of goods and/or services in the following situations which cannot be valued under sub-section (1), shall be determined in such manner as may be prescribed in the rules.*

- (i) the consideration, whether paid or payable, is not money, wholly or partly;*
- (ii) the supplier and the recipient of the supply are*

## E. Branch Transfer

The value when goods are transferred to other location of same business shall be determined as per rule 3(5). These are discussed below:

Sub rule (5) of rule 3 reads as follows:

*(5) Where goods are transferred from—*

*(a) one place of business to another place of the same business,*

*(b) the principal to an agent or from an agent to the principal,*

*whether or not situated in the same State, the value of such supply shall be the transaction value*

The value will have to be determined under Valuation Rules

## F. Value by Comparison

The value in case of circumstances specified in subsection (4), reproduced above, shall be determined based on rule 4, 5 and 6 of Valuation Rules.

The phrase ‘goods or services of like kind and quality supplied’ have been defined in rule 2(b) and 2(c) as follows:

*(b) “goods of like kind and quality” means goods which are identical or similar <sup>27</sup>in physical*

Rule 4 of GST Valuation Rules reads as follows:

*(1) Where the value of a supply cannot be determined under rule 3, the value shall be determined on the basis of the transaction value of goods and/or services of like kind and quality supplied at or about the same time to other customers, adjusted in accordance with the provisions of sub-rule (2).*

*(2) In determining the value of goods and/or services under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-*

*(a) difference in the dates of supply,*

*(b) difference in commercial levels and quantity levels,*

The Customs Valuation Rules also make similar provision and it has been the experience that it is very difficult to adopt transaction value of goods of like kind and quality. The rule itself indicate that various factors like date of supply, difference in commercial levels and quantity levels, composition, quality and design, freight and insurance charges etc. shall be compared before this rule can be adopted. In case of Customs, the courts have consistently held that the same product is supplied from America or say China, price can differ as country of supply is different.

Therefore, normally rule 5 can be applied which

This rule is based on cost of production + profit. Currently, 8 rule specify adhoc percentage of 10% added towards profit. However, as per clause (c) profit which usually is earned on supply of goods or services of the same class or kind of goods being valued is required to be added. It may be mentioned that earlier (prior to 1-7-2000) sub clause of rule 6(b)(ii) of Valuation Rules, 1975 reads as follows:

## G. Residual Value

In case value cannot be determined under rule 4 and 5 value will be determined under rule 6 consistent with the principle and general provisions of these rules.

## H. Rejection of Value

Rule 7 lays down the manner in which value shall be rejected. Rule 7 reads as follows:

*(1)(a) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any goods and/or services, he may ask the supplier to furnish further information, including documents or other evidence and if, after receiving such further information, or in the absence of any response from such supplier, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such goods and/or services*



*(iii) any mis-declaration of goods and/or services in parameters such as description, quality, quantity, year of manufacture or production.*

*(2) The proper officer shall intimate the supplier in writing the grounds for doubting the truth or accuracy of the value declared in relation to the supply of goods and/or services by such supplier and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*

I. Expenses Incurred as Pure Agent to be Excluded.

It is specifically provided that expenditure incurred as pure agent will not form part of value. The conditions which are specified under rule 5(2) are provided in rule 8 of Valuation Rules.

CBEC has issued circular No. 119/13/2009-ST dated 21-12-2009 in case of services provided by Customs House Agents the expenditure incurred in the nature of pure agent. Relevant portion of the circular is reproduced below:

2. *While the principal job of a CHA<sub>3</sub> is to get the*

*6. With a view to resolve the disputes and to bring it clarity, the issue has been examined. The divergent practices followed at different places and lack of consistency in the manner of maintaining records and issuance of documents by the CHAs, make it impossible to lay down any specific guidelines or issue any specific directions. In the circumstances, it is clarified that essentially, the exclusion should be allowed to such charges from the taxable value of CHA services, where all the following conditions are satisfied, -*

- (a) The activity/service for which a charge is made, should be in addition to provision of<sup>5</sup>CHA service*

### 3. Job work

A. Job work has been defined in section 2(62) as follows:

*(62) “job work” means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression “job worker” shall be construed accordingly;*

The definition of job work is similar to<sup>36</sup> definition

B. Section 43A of Model GST Law reads as follows:

43A. Special procedure for removal of goods for certain purposes

(1) The Commissioner may, by special order and subject to conditions as may be specified by him, permit a registered taxable person (hereinafter referred to in this section as the “principal”) to send taxable goods, without payment of tax, to a job worker for job-work and from there subsequently send to another job worker and likewise, and may, after completion of job-work allow to

Provided that the goods shall not be permitted to be supplied from the place of business of a job worker in terms of clause (b) unless the “principal” declares the place of business of the job-worker as his additional place of business except in a case-

- (i) where the job worker is registered under section 19; or
- (ii) where the “principal” is engaged in the supply of such goods as may be notified in this behalf.

- a) return the goods to any of his place of business (not necessarily the place where the goods have been supplied) for supply there-from on payment of duty or for export. The goods will be cleared by job worker without payment of duty, or
- b) Clear the goods on payment duty from the place of business of the job worker. In case principal intends to follow the procedure laid down under (b) above, he shall declare the place of business of job worker as additional place of business except in case where –

C. Section 16A of Model GST Act provides for availment of credit of input tax. Section 16A is reproduced below:

16A. Taking input tax credit in respect of inputs sent for job work

(1) The “principal” referred to in section 43 A shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax on inputs sent to a job-worker for job-work if the said inputs, after completion of job-work, are received back by him within one hundred and eighty days of their being sent out:

Provided that the “principal” shall be entitled to



(2) The “principal” shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax on capital goods sent to a job-worker for job-work if the said capital goods, after completion of job-work, are received back by him within two years of their being sent out: Provided that the “principal” shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job-work without their being first brought to his place of business, and in such a case, the period of two years shall be counted from the date of

## D. Transition provision in respect of job-work.

GST is likely to be implemented from 1-4-2017. There will always be some stock lying at the premises of job worker as on 31-3-2017. These goods may have been cleared either under rule 4(5)(a) of Cenvat Credit Rules, Rule 16B or 16C of Central Excise Rules. Section 150, section 151 & section 152 makes transition provision exempting job worker from payment of GST when –

- a) Principal has declared the goods in stock with the job worker as on 31-3-2017.

Section 150. Inputs removed for job work and returned on or after the appointed day

(1) Where any inputs received in a factory had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of earlier law prior to the appointed day and such inputs, after completion of the job work, are returned to the said factory on or after the appointed day, no tax shall be payable if such inputs are returned to the said factory within six months from the appointed day:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

Provided further that tax shall be payable by the job worker if such inputs are liable to tax under this Act, and are returned after a period of six months or the extended period, as the case may be, from the appointed day:

Provided also that tax shall be payable by the manufacturer if such inputs

Section 151. Semi-finished goods removed for job work and returned on or after the appointed day [Earlier Section 16B]

(1) Where any semi-finished goods had been removed from the factory to any other premises for carrying out certain manufacturing processes in accordance with the provisions of earlier law prior to the appointed day and such goods after undergoing manufacturing processes (herein after referred to as “the said goods”) are returned to the said factory on or after the appointed day, no tax shall be payable if the said goods are returned<sup>44</sup> to the said factory within six months from the

Provided also that the manufacturer may, in accordance with the provisions of the earlier law, transfer the said goods to the premises of any registered taxable person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

Section 152. Finished goods removed for carrying out certain processes and returned on or after the appointed day [Earlier Section 16C]

Where any excisable goods manufactured in a factory had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of earlier law prior to the appointed day and such goods, after undergoing tests or any other process (herein after referred to as the “said goods”) are returned to the said factory on or after the appointed day, no tax shall be payable if the

## 4. Related Transitional Provisions

### 160. Progressive or periodic supply of goods or services

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made on or after the appointed day if the consideration for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law.

**(CGST Law)**

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made on or after the appointed day if the consideration for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law.

**(SGST Law)**

## **161. Treatment of retention payments**

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made before the appointed day where a part consideration for the said supply is received on or after the appointed day, but the full duty or tax payable on such supply has already been paid under the earlier law.

**(CGST Law)**

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made before the appointed day where a part consideration for the said supply is received on or after the appointed day, but the full duty or tax payable on such supply has already been paid under the earlier law.

**(SGST Law)**



### **31. Import of services or inter-state supply of goods and/or services made on or after the appointed day**

Notwithstanding anything contained in section 12 and 13 of the CGST Act, import of services or inter-state supply of goods and/or services made after the appointed day shall be liable to tax under the provisions of this Act regardless of whether the transactions for such import of services or inter-state supply had been initiated before the appointed day:

Provided that if the tax on such import or inter-state supply had been paid in full under the earlier law, no tax shall be payable on such import or inter-state supply under this Act:

Provided further that if the tax on such import of services had been paid in part under the earlier law, balance amount of tax shall be payable on such import or inter state supply under this Act

**BALANCED VIEW** **THANK YOU**

**PRESENTED BY**

**S.S.GUPTA**

**Chartered Accountant**