

# ISSUES IN SUPPLY AND VALUATION UNDER GST

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SUPPLY

# Scope of Supply [S. 7]

- » For the purposes of this Act, the expression 'supply' includes—
  - a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,
  - b) import of services for a consideration whether or not in the course or furtherance of business; and
  - c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
  - ~~d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.~~
  
- » (1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

# Composite and Mixed Supplies

- » 2(30) “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply

*Illustration.*— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply

- » 2(74) “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply

*Illustration.*— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately

- » 2(90) “principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary

# Tax Liability on Composite and Mixed Supplies [S. 8]

- » The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—
  - a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
  - b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

# Activities to be treated as Supply even if made without Consideration

[Sch. I]

- » Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- » Supply of goods and/or services between [related persons](#) or between distinct persons, when made in the course or furtherance of business. [Gifts not exceeding Rs. 50,000 in a financial year by an employer to an employee shall not be treated as supply of goods and/or services]
- » 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.
- » 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

# Activities or Transactions which shall be Treated Neither as a Supply of Goods Nor a Supply of Services [Sch. III]

- » 7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India
  
- » 8.
  - a) Supply of warehoused goods to any person before clearance for home consumption;
  - b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home Consumption
  
- » *Explanation:* For the purposes of paragraph 8, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962.

VALUATION



# Correlation in Definitions of Consideration with Valuation

Section 2(3): Consideration	Section 15(1): Valuation
<p>“consideration” in relation to the supply of goods or services or both includes—</p> <p>(a) any payment made or to be made, whether in money</p> <p style="padding-left: 40px;">or otherwise...</p> <p>(b) the monetary value of any act or forbearance...</p> <p>...in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;</p> <p>» Definition of consideration refers to the money terms</p>	<p>The value of a supply of goods or services or both shall be the transaction value, which is</p> <p>the price actually paid or payable for the said supply of goods or services or both</p> <p>where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.</p> <p>the reciprocal promise, which is reduced to</p>

» The inclusions for the purpose of valuation go beyond the concept of consideration

# Value of Taxable Supply ... [S. 15]

- » 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
  
- » 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

# ... Value of Taxable Supply ... [S. 15]

- » 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
- » 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
- » 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

# ... Value of Taxable Supply [S. 15]

» *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

# Application of provisions of CGST Act to IGST Act [S. 20]

- » Section 20 of the IGST Act: Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to-
  - i. ...
  - ii. ...
  - iii. time and value of supply
  - iv. ...
  
- » Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier

Rules 27, 28, 29, 30 and 31

# Value of Supply of Goods or Services where the Consideration is Not Wholly in Money ... [R.

27]

- » Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,-
  - a) be the open market value of such supply;
  - b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
  - 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;
  - d) if the 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 the application of rule 30 or rule 31 in that order
  
- » “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 the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;
  
- » “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 the 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.

# ... Value of Supply of Goods or Services where the Consideration is Not Wholly in Money [R. 27]

» Illustration:

- Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand rupees, the open market value of the new phone is twenty four thousand rupees.
- Where a laptop is supplied for forty thousand rupees along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of the laptop is forty four thousand rupees.



# Value of Supply of Goods or Services or Both between Distinct or Related Persons, other than through an Agent [R. 28]

- » The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-
  - a) be the open market value of such supply;
  - b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
  - c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

**Provided** that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 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:

**Provided** further that 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 the goods or services

# Value of Supply of Goods Made or Received through an Agent ... [R. 29]

- » The value of supply of goods between the principal and his agent shall-
  - a) be the open market value of the goods being supplied, 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 goods are intended for further supply by the said recipient.
  - b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order
- » S. 2(88): “principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;
- » S. 2(5): “agent” means a person, including a factor, broker, commission agent, *arhatia*, *del credere* agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

# ... Value of Supply of Goods Made or Received through an Agent [R. 29]

- » Illustration: 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 five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 per cent. of five thousand rupees i.e., four thousand five hundred rupees per quintal.

# Value of Supply of Goods or Services or Both based on Cost [R. 30]

- » Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services

# Residual Method for Determination of Value of Supply of Goods or Services or Both [R. 31]

- » 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 the general provisions of section 15 and the provisions of this Chapter:

**Provided** that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30