

SEMINAR ON GST

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VENUE : ICAI TOWER, PLOT NO. C-40, 'G' BLOCK, BANDRA

TOPIC : IMPORTANCE OF CLASSIFICATION AND VALUATION IN GST WITH SOME SPECIFIC ISSUES

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A. IMPORTANCE OF CLASSIFICATION

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- (1).** The GST Council has approved four rates in addition to cess. These are 5%, 12%, 18% and 28%. Appropriate classification of the product determines the rate of tax. The rate of tax on goods are specified in notification No 1/2017-CT (Rate) dated 28-6-2017. Schedule I to Schedule IV specify the rate of tax for different type of goods. Rates for services are notified in notification No. 11/2017-CT (Rate) dated 28-6-2017. It specifies rate for different services. Every registered person must determine the appropriate classification of the product/service supplied by him to determine the appropriate of tax. In case subsequently the rate differs, demand for tax will be made for differential rate of tax.

(2). As an example -

(a) Sr. No. 62 of Schedule II specifies 12% rate for following products:

Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale, including Ayurvedic, Unani, Siddha, homoeopathic or Bio-chemic systems medicaments

(b) Sr. No. 27 of Schedule IV specifies 28% rate for following products:

All goods, i.e. preparations for use on the hair such as Shampoos; Preparations for permanent waving or straightening; Hair lacquers; Brilliantines (spirituous); Hair cream, Hair dyes (natural, herbal or synthetic) [other than Hair oil]

(c) Sr. No. 59 of Schedule III specifies 18% for following products:

Hair oil

Dispute can arise whether hair oil with medicaments which are used for treatment of diseases like migraine should be classified as hair oil in Schedule III or as medicament under Schedule II. Similarly all shampoos shall be classified under schedule II or medicated shampoos can be classified as medicament.

The Hon. Supreme Court in the case of B.P.L. Pharmaceuticals Ltd 1995 (77) ELT 485 (SC) has held that Selsun shampoo is a medicament.

(3). Explanation (iv) given at the end of notification 1/2017-CT (Rate) dated 28-6-2017 reads as follows:

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

➤ **The rules for interpretation given in Customs Tariff Act are –**

Classification of goods in this Schedule shall be governed by the following principles:

- 1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

2. (a) *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*
 - (b) *Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.*
3. *When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*
 - (a) *The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.
 - (c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.
4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.
5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:
- (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

(4). Further, section 2(30) and 2(74)) of GST Act defines ‘composite supply’, & ‘mix supply’ as follows:

(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;*

(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;*

‘Works contract’ is defined in section 2(119) as follows:

(119) “works contract” means a contract for building, construction, fabrication completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

(5). There will be lot of dispute whether particular work order should be classified as works contract or composite supply. In case of composite and mix supply, rate of tax as per section 8 shall be determined as follows:

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.*

(6). Following are the broad principle of classification:

The principles of classification have been laid out in different judgments rendered under Central Excise Act, Customs Act and various other Acts. The different principles of classification are-

(i) Commercial/Trade Parlance

The observation of the Supreme Court in paras 29 & 34 in the case of *Dunlop India v. UOI* 1983 (13) ELT 1566 (SC) substantiate this principle. The Supreme Court has observed as follows :

“29. It is well established that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the trade and its popular meaning should commend itself to the authority.”

“34. We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.”

(ii) Definition given in statute or chapter note/section note etc.

The Hon. Supreme Court in the case of *Akbar Baharuddin v. Collector of Central Excise*, 1990 (47) ELT 161 (SC) has held that there is no general principle of interpretation of tariff entry is based on trade parlance and understanding between the person in the trade. However, the said doctrine of commercial understanding should be departed where the statute either in the act or chapter note, in schedule or anywhere else define the product in the particular manner. The definition in the statute will take precedence over the commercial understanding of the product in the trade.

(iii) Description in HSN has persuasive value

The Hon. Supreme Court in the case of *Wood Crafts Products Ltd.*, 1995 (77) ELT 23 (SC) has held that the description in HSN Explanatory Note has persuasive value.

(iv) Most specific description to be preferred over general description

In the case of *Dunlop India Ltd. v. Union of India* 1983 (13) ELT 1566 in para 37, the Supreme Court has observed 'when an article has by all standard a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to the orphanage of the residuary clause.'

In the case of *Moorco (India) Ltd. v. CCE (supra)*, the Supreme Court has observed 'in either situation, the classification which is most specific has to be preferred over the one which is not specific or is general in nature. In other words, between the two competing entries one nearer to the description should be preferred. Where the class of goods manufactured by the assessee falls, say, in more than one heading, of which one may be specific, other more specific, 3rd most specific and 4th general, the rule requires the authorities to classify the goods in the heading which gives most specific description.'

(v) Functional use of the product

The Hon. Supreme Court in the case of *Atul Glass Industries v. Collector of Central Excise, 1986 (25) ELT 473* has held that the goods are to be classified on the basis of their primary function.

(vi) Essential characteristic

The principles for determining the essential characteristic are –

(a) Cost of components of the product.

The Hon'ble Supreme Court in the case of *Xerox India Ltd. v. CC 2010 (260) ELT 161* has determined the classification of multifunctional printing machines on this basis.

(b) Functionality of the product.

CCE, Hyderabad v. Bakelite Hylam Ltd. 1997 (91) ELT 13 (SC)

(vii) Importance of expert opinion and other evidentiary value

Guest Keen William 1987 (29) ELT 68

(viii) Importance of ISI specification

(ix) Importance of Finance Ministers speech

ECHJAY Industries v. UOI 1988 (34) ELT 42 (Guj)

(x) Importance of trade notice, circulars etc.

(xi) Chemical examination only provide content and not classification

Stadfast Paper Mills v. Dr. Kohli, Former Collector of Central Excise, Baroda and others 1983 (12) ELT 744 (Guj)

(xii) Provision of relevant time

(xiii) Burden to prove classification on department

(xiv) Exemption notification cannot interpret tariff heading or subheading

Mechanical Packing Industries v. UOI 1987 (32) ELT 35 (Bom)

(xv) Beneficial classification

Garware Nylons Ltd. v. UOI 1980 (6) ELT 249 (Guj)

(xvi) Jurisdiction to decide classification

Sarvesh Refractories, 2007 (218) ELT 488 (SC)

B. CONSIDERATION

- Section 3 of GST Act, defines 'supply' Clause (a) of Section 3 provides that supply of goods or services shall be made or agreed to be made for a consideration. Clause (c) specifies certain transaction which are considered as supply even when there are made without consideration. The consideration is defined in Section 2(31) as follows:

(31) "consideration" in relation to the supply of goods or services or both includes–

- (a) any payment made or to be made, whether in money or otherwise, 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;
- (b) the monetary value of any act or forbearance, 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:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

It will be observed from above that the section do not use the word 'transaction value' which is defined in Section 15. But the harmonious construction of the various provision would require that transaction value and consideration shall mean one and the same.

C. VALUATION PROVISIONS

Section 15 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 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 transaction value shall be accepted even if the supplier and recipient of supply are related provided relationship has not influenced the price. Thus it is essential to establish the relationship has influenced the price in order to reject the transaction value.

The following point shall be noted :

- i. The price shall be sole consideration of sale. It means no other benefit either in cash or in kind shall accrue to the supplier of goods or services.
- ii. The terms related person is not defined in VAT and in Service Tax. The 'related person' is defined under Central Excise Act. The scope of related person is very limited.
- iii. The taxable event is supply of goods or service. Therefore the amount received must have nexus to the supply of taxable goods or services in order include the said amount in transaction value.
- iv. The value shall be determined at the time of supply. Subsequent increase or decrease in the price has no relevance to the determination of value.

A) Related Person

'Related person' has been defined in section 15(5) as follows:

(a) persons shall be deemed to be "related persons" if only -

- (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 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.

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 Central Excise Act is very much restricted in view of various interpretations provided by Hon. Courts in various judgments. There is no concept of related person in service tax. However, the definition of related person which appears to be borrowed from Customs Act is very wide. Therefore, the transaction with many customers which was not considered as related party will now be considered as related party transaction. It will therefore be essential to establish that the relationship has not influenced and the transaction value shall be accepted. Once of the way to establish that price has not been influenced is to submit information that the goods have been sold at the same price to other persons who are not related person. This will establish that relationship has not influenced the price.

B) Transaction Value

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

- (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.

C) Discount

The discount is allowed as deduction as provided under Rule 15(3)

(3) The value of the supply shall not include any discount that 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.

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 will not include subsidies received from Government.

It is essential to look at the contract between the supplier and recipient to determine the various charges which will be payable by the recipient of supply. These charges will form part of transaction value. It is specifically provided in sub section (3) that any discount allowed before or at the time of supply in the normal course of trade will not form part of value. Thus if any discount is reflected in the invoice, it will not form part of value.

The Section 4A of Central Excise Act provides for determination of value based on MRP printed on the package. The provision relating to determination of value based on MRP will not be applicable to GST.

Section 15(4) reads as follows:

(4) 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.

Section 15(5) reads as follows:

(5) 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.

Valuation Rule –

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

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.

Illustration:

- (1) 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.
- (2) 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.

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

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.

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

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.

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.

(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.

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 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.

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 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.

32. Determination of value in respect of certain supplies.-

- (1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.
- (2) The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:-

- (a) for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and 19 the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one per cent. of the gross amount of Indian Rupees provided or received by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one per cent. 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 the Reserve Bank of India.

Provided also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

(b) at the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be-

- (i) one per cent. of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;
- (ii) one thousand rupees and half of a per cent. of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and
- (iii) five thousand and five hundred 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 amount of sixty thousand rupees.

(3) The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of 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 airlines.

- (4) 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 an 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 the 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.

(5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

(6) 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.

(7) The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

33. Value of supply of services in case of pure agent.-

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation.- For the purposes of this rule, the expression “pure agent” means a person who-

- (a) 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;

- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

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 the Registrar of Companies. The fees charged by the Registrar of Companies for the 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.

34. Rate of exchange of currency, other than Indian rupees, for determination of value.-

- (1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.
- (2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.]

35. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax.-

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,-

Tax amount= (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100+ sum of tax rates, as applicable, in %)

Explanation.- For the purposes of the provisions of this Chapter, the expressions-

- (a) “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;
- (b) “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.

THANK YOU

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BALANCED VIEW

PRESENTED BY

S.S.GUPTA

Chartered Accountant