

WEBINAR ORGANISED BY AIFTP-CZ

**VALUE OF SUPPLY
IN GST**

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Section 15. Value of taxable supply

Supplier And The Recipient Are Not Related

- (1) The **value** of a supply of goods or services or both shall be the **transaction value** (word used in **Central Excise Act 1944**),
- which is the **price** (not defined) actually paid or payable (by recipient directly or by any other person – say his debtor etc.)
 - for the said supply of goods or services or both (nexus to be established)
 - where the **supplier** (Next Slide) and the **recipient** (Next Slide) of the supply are **not related** and
 - the price is the **sole consideration** for the supply (deposits & advances should be interpreted diligently)

Explanation — (Related Persons)

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;

Contd...

- (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.

Sec 2 (105) “supplier” in relation to any goods or services or both, shall mean

- *The person supplying the said goods or services or both and*
- *shall include an **agent** acting as such on behalf of such supplier in relation to the goods or services or both supplied;*

Sec 2(93) “recipient” of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both,*
- **the person who is liable to pay that consideration;**

Contd...

(b) *where no consideration is payable for the supply of goods,*

- **the person** to whom the goods are delivered or made available, or
- to whom **possession or use of the goods is given** or made available; and

(c) *where no consideration is payable for the supply of a service,*

- **the person to whom the service is rendered**, and
- any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply
- and shall include **an agent** acting as such on behalf of the recipient in relation to the goods or services or both supplied;

Sec. 2(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;***

Contd...

- (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; (e.g. retention money and deposit against rent agreement)

Transaction (dictionary meaning) – An instance of buying or selling something.

Price - not defined in the Act.

Price (dictionary meaning) – The amount of money expected, required or given in payment for something.

There should be **nexus** between the **supply** and the **amount** received – *e.g. in a contract of job work value of material given by the manufacturer to the job worker will not be considered for the purpose of GST as the contract is for services by job worker.*

INCLUSIONS

Section 15(2): 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;

Example – Customs Duty paid on import of goods to be added in price of goods and thereafter GST to be charged.

Contd...

Supplier is liable to pay but incurred by the recipient

- (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;

Example – if selling commission is paid to agent by the recipient which was liability of the supplier, the same will be included in value of supply.

INCIDENTAL EXPENSES

- (c) **incidental expenses** (like home delivery charges by restaurants, extra bed charges by hotels), including **commission** and **packing**, (packing & transportation debated under VAT law)
- 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;**

Interest Or Late Fee Or Penalty

- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; but time of supply shall be the date on which supplier receives the payment u/s 12(6) / 13(6).

Subsidies

- (e) subsidies **directly linked** to the price excluding subsidies provided by the Central Government and State Governments; (contribution of consideration by third party, incentive to supplier given by brand holder, subsidy against a capital asset not directly linked – hence not to be included, cafeteria providing lunch at 120/- per plate to employees & receiving 70/- from the employer to be included in the prices)

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.

EXCLUSIONS

Discounts in the invoice

(3) 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

- This discount is allowed from published product price as a result of negotiations,
- If discount given is abnormal i.e. more than the margin, it will cast shadow of doubt of some non-monetary consideration & may be inquired by proper officer in audit assessment.

Discounts After The Supply has been effected

- (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**

Reversal of ITC

- (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.**

- Such discounts are allowed through a credit note u/s 34,
- Conditions specified above need to be strictly followed.
- Conditions look to be simple but difficult to fulfill.
- Preferably, agreement should be in writing prior to supply.

Different types of Discounts

Cash Discount – Normally given for prompt payment. But not always eligible for exclusion as GST is not on recoveries but on supply.

To get deduction, high standard laid down in section 15(3) is to be followed. And requires inquiry at the time of audit assessment.

Contd...

Quantity Discount – This is normally given to dealers after their purchases over a certain quantity as per agreement. This should not be given through an invoice of current supplies as it is to be linked to the original supplies. This is an eligible discount u/s 15(3) but may be subject to inquiry during audit assessment.

Special Discount – Such discounts are allowed to increase the turnover on special occasions or in special market conditions.

It indicates an acknowledgement by the manufacturer of services received from the dealer.

Such discounts by their nature appear to be outside section 15(3)

Discount in kind – such as holiday packages, gold coin, motor vehicle and other objects.

These items are not the stock of supplier.

These are given to proprietor, director, marketing executive but not to the recipient of supplies in normal course.

Hence, these discounts do not satisfy requirements of section 15(3).

Free Stocks – these are similar to above but out of the stock of the supplier. Doesn't satisfy section 15(3).

These are given in exchange of non-monetary consideration.

This not a charity by the supplier but a prudent decision.¹⁸

Buy one take two – in such a case two units are sold against price of one.

In GST each unit of stock is liable to determination of transaction value on its own merit.

In such a scheme, price is published on each unit and these are bundled fixing a single price and, therefore, free unit has to be valued separately.

Nominal Value Supplies – Charging of nominal value is an indication that the price is not the sole consideration and, therefore, doesn't satisfy condition of section 15(3) and Rule 27 should be taken for calculation of liability of tax.

Liquidated Damages – if contract is not completed in a given time the contractee charges LD for the delay. In such cases, there are two supplies – one from contractor to the contractee towards contract and the other from the contractee to contractor in the form of agreeing to the obligation to tolerate an act as per item 5(e) of Schedule II.

Prescribed Manner

(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**.

Supplies as may be notified

(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.

RULES

Determination of Value of Supply

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

(barter & exchange transactions, transactions listed in Schedule I & II without consideration are covered here)

- Where the supply of goods or services is for a **consideration not wholly in money**, (includes total non-monetary consideration also)
- the **value** of the supply shall be,
 - (a) the **open market value of such supply**; (Next Slide)
 - (b) if **open market value** is not available under clause (a), (onus on taxpayer to establish)
- 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; (no guidance to use cost accounting standards)
- (Illustrations – Slide No.27 & 28)

Explanation - For the purposes of this chapter -

- (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 price is the sole consideration,**
 - to obtain such supply at the same time when the supply being valued is made.

Contd on Slide 26...

- (c) if the value of supply is **not determinable** under clause (a) or clause (b), (onus on taxpayer to establish)
- be **the value of supply of goods or services or both of like kind and quality**; (Slide 26) (onus on taxpayer to identify) (Ex – Slide 27) (the rule can't be applied if circumstances are vastly different – product in New Delhi & Sikkim) (Difficult to compare services for reputation & quality)
- (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 30 or rule 31 in that order.

Explanation (Contd...)

(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**
- **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.

Illustrations:

- (1) Where a **new phone** is supplied for **Rs.20,000/-** along **with the exchange** of an old phone and
- if the price of the **new phone without exchange** is **Rs.24,000/-**,
 - the **open market value** of the new phone is **Rs 24,000/-**.
- (2) Where a laptop is supplied for **Rs.40,000/-** along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is **Rs.4,000/-**
- but the **open market value** of the laptop is **not known**,
 - the **value of the supply** of laptop is **Rs.44,000/-**.

Contd...

Illustrations: (Contd...)

(3) For instance, an old antique art of work is sold against which consideration is partly in the form of money Rs.20,000/- and partly in the form of new furniture whose value known at the time of supply is Rs.35,000/-. Then the value for the purpose of GST will be Rs.55,000/-.

Rule 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 be,-**
 - (a) the **open market value of such supply;**

Ex – Trader in computers gifts laptop worth Rs.50,000/- to his relative during Diwali. Since the open market value is available, it will be taken for GST.

(b) if **open market value** is not available,

- be the **value of supply of goods or services of like kind and quality**; (example on next slide)

(c) if value is **not determinable** under clause (a) or (b),

- be the value as determined by 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 90% 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 goods or services. (However, charging a price lower than cost is not advisable to branches etc.)

Example –

A holding company provides a capital equipment whose open market value is not available to its subsidiary company. A similar capital equipment in terms of like kind and quality is available in the market at Rs.5,00,000/-.

Therefore, the value to be adopted for the purpose of valuation will be Rs.5,00,000/-

Rule 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 Rs.5,000/- 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.4,550/- per quintal.*
- The **value of the supply** made by the principal shall be Rs.4,550/- per quintal or where he exercises the option the value shall be 90% of the Rs.5,000/- i.e. is Rs.4,500/- per quintal.*

- (b) where the value of a supply is **not determinable** under clause (a),
- the same shall be determined by application of rule 30 or rule 31 in that order.

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 the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services.**

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 the provisions of this chapter:
- **Provided** that in case of supply of services, the supplier may opt for this rule, ignoring Rule 30.

Rule 31A: Value of supply in case of lottery, betting, gambling and horse racing -

- (1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.
- (2) (a) The value of supply of lottery run by State Governments shall be deemed to be $100/112$ of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.
(b) The value of supply of lottery authorised by State Governments shall be deemed to be $100/128$ of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher

- Explanation:**— For the purposes of this sub-rule, the expressions
- (a) “lottery run by State Governments” means a lottery not allowed to be sold in any State other than the organizing State;
 - (b) “lottery authorised by State Governments” means a lottery which is authorised to be sold in State(s) other than the organising State also; and
 - (c) “Organising State” has the same meaning as assigned to it in clause (f) of sub rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.
- (3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

Rule 32: Determination of value in respect of certain supplies.

- (1) Notwithstanding anything contained in the Act or in these rules,
- the value in respect of supplies **specified below** shall be determined in the manner provided hereinafter.

Sale Of Foreign Currency

- (2) The value of supply of services in relation to **purchase or sale of foreign currency, including money changing,**
- shall be determined by the supplier of service in the **following manner:-**

- (a) For a currency, when exchanged from, or to, Indian Rupees (INR),
- the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and
 - the Reserve Bank of India (RBI) reference rate for that currency at that time,
 - multiplied by the total units of currency:
-
- *Provided that in case where the RBI reference rate for a currency is not available,*
 - *the value shall be 1% 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 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.
- ***Provided*** also that a person supplying the services may exercise option to ascertain 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 supplier of services**,
- the value in relation to **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 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 maximum amount of sixty thousand rupees.**

Booking Of Tickets For Travel By Air

- (3) The value of 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 percent. 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.***

Life Insurance Business

- (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 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.***

buying and selling of second hand goods

- (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 purchase of such goods,
 - the **value of supply** shall be the **difference between the selling price and purchase price** and
 - where the **value of such supply is negative it shall be ignored.**

- (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 Entry 2 of Schedule I between distinct persons as referred to in section 25,
- **other than those where input tax credit is not available** under sub-section (5) of section 17,
 - **shall be deemed to be NIL.**

Rule 32A: Value of supply in cases where Kerala Flood Cess is applicable –

The value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of section 15 of the Act, but shall not include the said cess.

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 all the following 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 on authorization 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, “**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 provided 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.

- **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 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 **applicable reference rate for that currency as determined by the Reserve Bank of India**
- on the date when point of taxation arises in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act.

Rule 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,

- **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 %)

Thank You

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