Chapter 5
Value of Supply

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Statutory Provisions

15. Value of taxable supply

(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.

(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;

(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.

(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

(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.

(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.

(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.

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 recognized 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.

Extract of the CGST Rules 2017

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 a barter of 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 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 per cent. 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.

[1][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) [2][The value of supply of lottery 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 "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]

32. Determination of value in respect of certain supplies

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in

[1] Inserted vide Notf no. 03/2018 – CT dt. 23.01.2018
[2] Substituted vide Notf no.08/2020 – CT dt. 02.03.2020 w.e.f. 01.03.2020

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 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.

[3][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

[3] Inserted vide Notf no. 31/2019 – CT dt. 28.06.2019 w.e.f.01.07.2019 – Kerala Flood Cess was implemented w.e.f .01.08.2019 for 2 years by clause 14 of Kerala Finance Act, 2019 read with Kerala Flood Cess (Second Amendment) Rules, 2019

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]

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.

[4][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

[4] *Substituted vide Notf No. 17/2017-CT dt. 27.07.2017*

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.

Related provisions of the Statute:

Section or Rule (CGST / SGST)	Description
Section 2(1)	Definition of 'Actionable Claim'
Section 2(5)	Definition of 'Agent'
Section 2(17)	Definition of 'Business'
Section 2(31)	Definition of 'Consideration'
Section 2(52)	Definition of 'Goods'
Section 2(73)	Definition of 'Market value'
Section 2(93)	Definition of 'Recipient'
Section 7	Scope of 'Supply'
Section 9	Levy and Collection
Rule 27	Value of supply of goods or services where the consideration is not wholly in money

Rule 28	Value of supply of goods or services or both between distinct or related persons, other than through an agent
Rule 29	Value of supply of goods made or received through an agent
Rule 30	Value of supply of goods or services or both based on cost
Rule 31	Residual method for determination of value of supply of goods or services or both
Rule 31A	Value of supply in case of lottery, betting, gambling and horse racing
Rule 32	Determination of value in respect of certain supplies
Rule 32A	Value of supply in cases where Kerala Flood Cess is applicable
Rule 33	Value of supply of services in case of pure agent
Rule 34	Rate of exchange of currency, other than Indian rupees, for determination of value
Rule 35	Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

15.1. Introduction

Consideration is *quid pro quo* in a contract and price is the consideration expressed in money terms. Value is the price prevalent when a transaction takes place under controlled conditions or specified circumstances. Valuation is the study of all those circumstances and assessment of steps to reverse or rectify the effect of contractual or other arrangements that may suppress or understate the value of the transaction.

15.2. Analysis

This section applies to both goods and services supplied for purposes of valuation of the taxable supply.

Although contained in the CGST Act, the valuation method provided in this section applies to UTGST, SGST, CGST and IGST. Valuation must be as provided exclusively in this section.

Transaction value should be taken for the purpose of valuation under GST. "Transaction value" has been explained in the section as the price *actually paid* or *payable* **for the supply** of goods and/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. From the phrase "for the supply", it can be gathered that there should be a clear nexus between the supply of goods or services and the amount received by the supplier of goods or services. If no linkage can be established between the price paid or payable and the supply of goods/services, the inclusion of such price in the valuation of supplies may be called into question. For this, the contractual terms and obligations of the supplier and the recipient should be examined to evaluate whether nexus between the supply and the price paid/payable against it can be established. For instance, 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. This is because the contract involved the supply of services by job worker only against which the price is paid by the manufacturer. There is no supply of material involved which can be attributable to the price paid/payable.

Few pointers to mention about 'consideration':

- Is it an *"act or abstinence or forbearance"*, that is, reason for entering into the transaction. In section 2(31), the words *"in respect of, in response to, or for the inducement of"* is a very elaborate representation of *"act or abstinence or forbearance"* referred in section 2(d) of the Indian Contract Act,1872.
- If the said transaction would, anyway be entered into whether with or without such 'consideration', then such *"act or abstinence or forbearance"* would not be consideration.
- Without consideration, the transaction would be a void contract. Transaction without consideration is not supply except four cases listed in schedule I.
- It must be valuable consideration. Re.1/- is not valuable consideration. Nominal consideration is not valuable consideration. Valuable, is for parties to decide but parties cannot be seen accepting nominal consideration. Valuable, is what a reasonable person will accept as valuable consideration for entering into the transaction.
- Adequacy of consideration is not relevant. Parties to decide what is adequate when such decision is taken freely and without any adverse influence.
- It must be paid or promised 'before' the transaction and not 'after' the transaction. Paying (or promising to pay) after the transaction is not consideration, it could be a reward or something else but not consideration.
- It is enforceable in a court of law only if it is consideration and not when it is reward because there is no mutual promise to enforce payment of reward. Paying (or promising to pay) independent of the transaction cannot be treated as consideration. Please recollect that consideration is the reason for entering into the contract (except schedule I transactions).
- Anything valuable (in the eyes of Promisor) can be consideration even when it is not money. Non-monetary consideration is still valid consideration.
- It should not be imaginary to be valid consideration. Real consideration must be possible to deliver and perform.
- It is not only increase in cash or other assets to be consideration but also reduction in liability will also be consideration.
- It must be at the desire of Promisor (one who is to make the supply), that is, supplier must dictate the consideration. But it may flow from Promisee (one who will collect the supply) or any other person, that is, recipient or any other person may pay.

- It may flow from Promisee (one who will collect the supply) or from any other person. Stranger to a contract cannot sue on a contract (even if it is for his benefit). But a stranger to a contract can contribute consideration. But stranger contributing to consideration that was due from Promisee, must be explained as to the reasons for so doing – whether it is repayable back to such stranger (Payer) by beneficiary (Promisee) or it is non-repayable. If it is repayable, 'payment on behalf' will take the character of loan (between stranger who was actual Payer and Promisee who collected the supply). If it is non-repayable, there may be another 'side arrangement' between them which needs to be examined if there is yet another supply *inter se*, for making such 'payment on behalf'.
- Enforceability is the truest test of whether it is consideration or not. When consideration takes non-monetary form, reason for the transaction cannot be known (accounting rules do not permit recording transactions due to 'money measurement concept' whose consideration is in non-monetary form or even barter/exchange). Enforceability is very reliable basis to test whether there was a contract (and hence a supply) involved.

Note: One needs to bear in mind these pointers while considering examples discussed in this Chapter.

Price is consideration in money terms. Value, as stated earlier, is price that would be prevalent under controlled conditions. This 'three-test' formula prescribed:

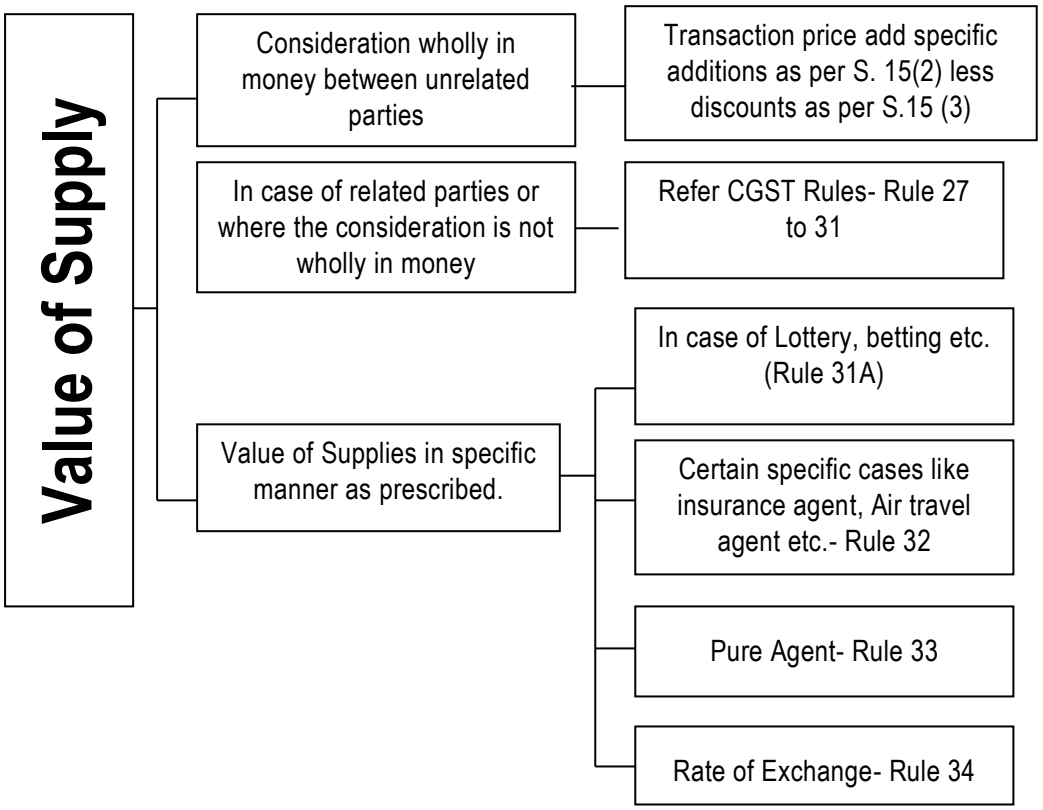
- Transaction having a price
- Between persons not related
- And price being the sole consideration.

In other words, the exercise of valuation is aimed to recreate the above conditions and take any given transaction through to see the result – price – that would emerge. It is popularly believed that transaction price and that price being the sole consideration, between 'unrelated persons' is incontestable. Thus, the two conditions where the transaction price shall not be taken as value (on which tax shall be levied):

- The parties are 'related parties'.
- Price (that is, monetary consideration) is the sole consideration

If either of the above two conditions are not met, the valuation shall be determined in terms of Section 15(4) read with the CGST Rules.

The above understanding is depicted graphically as under:



In addition to 'price' existing for a supply, there are two other conditions which must exist in a transaction for such price to be accepted as the transaction value. But, before we move to the Rules to determine the valuation, let's examine these two conditions hereunder:

a. Parties are not related:

Situations when the supplier and recipient will be considered as related have been enumerated in explanation to section 15(5) of the CGST Act. They are 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;

Further, it has been stated that the word 'person' will also be including legal persons as per the comprehensive definition given under section 2(84) of the CGST Act. Also, it has been stated that the persons who are associated with business of one another as sole agent or sole distributor or sole concessionaire will also be deemed to be related persons.

Where persons are related, price determined under section 15(1) is disqualified and is subject to verification under section 15(4) by reference to the rules applicable.

b. Price (that is, monetary consideration) is the sole consideration:

It is pertinent here that the term price is the sole consideration should be understood. If there is any consideration in non-monetary form, the monetary portion of price actually paid cannot be taken as the basis of valuation because the presence of non-monetary portion in the consideration, the price is disqualified and relegated to verification under section 15(4) by reference to the rules applicable. And in this situation, price cannot be called as the sole consideration. In fact, any additional consideration received apart from the monetary consideration should also be considered to arrive at the acceptable transaction value. The fact that the consideration can be both monetary and non-monetary can very well be seen in the definition of consideration given as per section 2(31) of the CGST Act. Further, the payment against the supply made either by the recipient directly or by another person will both be covered within the ambit of consideration and considered as part of the price for the purpose of valuation. This can be elaborated by an example:

Let's say the supplier supplies goods worth ` 5, 00,000 to the recipient. Against this supply, ` 3,00,000 is paid by the recipient directly and balance ` 2,00,000 is paid by the recipient's debtor. Both the payments will be included in the price for the purpose of valuation under GST.

It is important to understand some of the common instances when the supply is claimed to be of this nature, namely:

- Warranty supply of parts to end-customer through a dealership – the parts are supplied 'free' to the end customer. At first, it is important to determine whether the parts replaced are actually covered by warranty in the supply contract or whether there is any replacement request entertained for out-of-warranty equipment for brand building exercise. Then, the warranty obligation lies only with the original equipment manufacturer (OEM) but the actual replacement is carried out at the dealership. When a warranty claim is made with the dealership by the end customer, the dealer seeks approval from OEM. Only after 'in-warranty approval' is received from OEM does the dealer replace the part. Now, the warranty replacement between OEM to end customer is not liable to GST not because it is free but because the price for the replacement is built into the price of the equipment originally supplied and therefore tax has already

been paid by OEM. However, the dealer who replaces the part does not carry any role in the warranty fulfilment. In fact, the dealer 'delivers' the part to customer but 'supplies' it to OEM. Hence, there is another supply embedded here between dealer to OEM because dealer uses a tax-paid part from his inventory to replace it for the end customer. Alternatively, the OEM issues credit note to dealer for the part used in the warranty replacement. Reference may be had to *Mohd. Ekram Khan's* decision of SC in 144 STC 542. As such, warranty involves two supplies and neither of which are free from tax. One is tax pre-paid and another is currently taxed though not involving end customer.

- Physician's sample of drugs provided through sales representatives – These drugs are distributed by the physician during clinical consultation with patients. As such, the fee paid by patient to physician is one supply (whether taxable or exempt in GST) but the supply by pharmaceutical company to physician is another supply. To hold that cost of such free samples is included in the price of other units sold and therefore there is no requirement to again impose GST based on OMV on the samples, would go against the valuation methodology adopted in GST. In other words, GST law does not follow valuation based on 'assessable value' but follows valuation based on 'transaction value'. If the cost or the value of the goods sold were to be the basis of computation of tax payable then the argument of inclusion of cost of samples may have been tenable. But that is not the case in GST and each supply must stand on its own merit to be subjected to tax – if a price exists then tax would be computed on that price and if the price does not exist, then tax would be computed on its OMV. If it is established that there is a non-monetary consideration flowing to the supplier then, samples will be liable to GST as determined by rule 27.
- Stocks issued to discharge CSR obligations – without repeating the concept of non-monetary consideration, it is sufficient to mention that consideration is recognized in India even if it flows from a third-party to a contract. Stocks issued without any flow of consideration from a recognized and qualifying charitable institution would continue to be a supply 'for consideration' *albeit* in non-monetary form where the obligation under Companies Act stands satisfied/fulfilled. This in itself is the consideration for the supply and GST becomes payable based on the OMV. Continuing further, stocks issued in excess of the CSR obligation limit would also be a taxable supply. A legal entity is incapable of feeling the emotion necessary to make voluntary contributions towards needy causes. What in fact takes place is that the management of the legal entity will feel the necessary emotion, draw the stocks from inventory and then issue it for such voluntary/charitable purposes. As such, the drawal of stocks from inventory by the management itself is a supply under paragraph 4(a) of Schedule II and its subsequent issuance by the management does not alter the tax incidence. In fact, such charitable contributions by legal entity is disallowed as normal business expenditure for Income-tax purposes and enjoys deduction under a different provision of tax laws, that is, Chapter VI-A.

- Impairment of assets accounted in books – as per AS 28 (Ind AS 36) where impairment provision is to be made or reversed every time the assessment is done, the implication in GST needs to be kept in mind as to whether there is a supply and whether there is any corresponding impact of credit denial under section 17(5)(h) in respect of these assets. The usage of the words 'written off' can trigger extreme consequences and therefore caution must be exercised in the accounting treatment, disclosure of such treatment and implications of such treatment or disclosure under GST on a case-to-case basis. Generally, GST should not be applicable on 'write down' in the value of an asset that is neither permanent nor irreversible but the nature of the accounting treatment extended to the inquiry undertaken in relation to impairment may yield a different result if it is regarded to be a 'write-off'. No definitive view is being expressed here on the GST liability of impairment.
- Leased car provided by employer disclosed in Form 12BA as perquisite – The reporting of perquisites admits a personal element involved in the enjoyment of the company car and the supply that is excluded in schedule III is the service 'by' employee 'to' employer. But the present case is of supply of leased car 'by' employer 'to' employee which is not covered by schedule III. By this admission in Form 12BA, GST becomes applicable but the valuation will not be as adopted in Rule 3 of Income-tax Rules but by GST Valuation Rules. It is important to examine the purpose of leasing a car by the employer and the purpose of permitting the employee to use the car. If it is for the advancement of the ends of the employer then it would not be a supply but if the ends of the employee are advanced, the conclusion would be very different. If the leased car provided to the employee is as per the terms of the employment agreement, then such charges of leased car become a part of cost to company in respect of that employee. In that case, a reasonable argument may emerge that the leased car is a consideration against the supply of services by the employee to employer which is excluded from the ambit of supply as per Schedule III. However, care should be taken to examine all attendant facts, contracted obligations, established practices and other information that indicate the primary purpose of such leasing arrangements.
- Free-issue-material provided by client to contractor – It is admittedly not a supply in itself, but the question that arises is whether there is any consideration flowing from the client to the contractor vis-à-vis the free-issue-material (FIM). Care should be taken in drafting the contract whether the work was awarded for a full rate and then deductions are made towards FIM by reducing the running-account-bill of the contractor or whether the contract itself was awarded for the reduced rate. Reference may be had to *NM Goel's* decision [1989 AIR 285 (SC)] in relation to sales tax and *Bhayana Builders decision* [(2018) 51 GSTR 133 (SC)] in the context of service tax. The development of collective thought of experts with regard to taxability of FIM depends on whether there is any consideration flowing from the contractor to the client for having issued the said material or the material so issued is the object upon which the contractor is to carry out his supplies and fulfil his contracted obligations. If the contractor were merely required

to account for the entire quantity of FIM received by him with complete liberty to apply the FIM for the client's project or on any other project, without any restrictions or embargo only then would it be a case of supply of the FIM itself. For the issuance of FIM to be regarded as a 'transfer', it must be absolute and unhindered to constitute a supply in and of itself. Reference may be had to the characteristics of each of the 8 forms of supply under section 7(1)(a) and examine if issuance of FIM comes within the grasp of any of the said forms of supply. Fabric given by a customer to a tailor is not a case of supply of fabric by the customer to the tailor and a supply back by the tailor of the finished garment. An air conditioner given by a customer to an electrician called upon for its installation, is not a case of supply of the air conditioner itself to the electrician. If the air conditioner were not given by the customer there would be nothing for the electrician to install. The electrician is not at liberty to install the air conditioner in any other premises but the premises of the customer. However, in the construction of a plant wherein the contractor was liable to supply the entire materials, if steel is supplied by the recipient which results in a reduction of the price of the contract, then such giving of steel will definitely be a supply by customer to contractor within GST. Further such supply of the works contract service by the contractor should include the value of steel within it. As such, experience and understanding of the fiction in the valuation provisions under the earlier laws – where composition rate of tax was applicable or abatement valuation method was followed – must not be allowed to percolate into GST. It goes without saying that legal fiction in any law does not travel beyond the purpose for which that fiction was coined. The law of GST entertains no such fiction when it comes to valuation of each taxable supply.

- **Deposits and Advances**

  For determination of the taxable value, classification between deposits and advances should be interpreted diligently. Advances refer to payment as part of consideration of an agreement before the supplier performs his obligation under the said agreement. It is not provided with intent of refunding unlike deposit. Advance is treated to be part of the consideration to the contract and thereby includible within the taxable value. A deposit can be described as an amount given to the supplier with an obligation entrusted upon the supplier to keep it safely. The essence of the deposit is that there must be a liability to return it to the party by whom or on whose behalf it is made upon fulfilment of certain conditions or to apply it as consideration at a future date depending on the terms of the contract. Till the deposit is classifiable as such, it does not form part of the taxable value. As and when this deposit is applied as consideration under the contract against the supply made or agreed to be made, it forms part of the taxable value. Retention money is a classic example of deposit. To elaborate, the recipient may withhold a certain part of the consideration payable to a supplier and keeps a part of that amount as deposit with himself. Only when the given obligations are discharged by the supplier as per the terms of the contract, this retention money is released. This retention money is not included in the value if returned as such to the supplier. However, if the supplier

fails to fulfil the given obligations as per the contract, the recipient may charge the said retention money and apply it against the default. When applied, the said retention money becomes chargeable to tax. It may be pertinent to point out here that the money retained will not reduce the value of the original contract of supply. This means the principal supply will continue to be valued at the full amount without any deduction for the retention money.

Another example that can be taken here is that of a rent agreement. Let us assume that a tenant is required to pay a three-month deposit to the landlord in an eleven-month contract. Upon default of the rent of any one month, the deposit is partly deducted as the rental for that month. Only to the extent of such deduction towards the rent of that month, it will be considered as part of the taxable value. Further, deposit is not chargeable to tax under normal circumstances unless applied as consideration. So, there may be a tendency towards classification of the taxable advance as deposit. However, any such classification should not be made based on the nomenclature of the payment only. Based on the nature of business, frequency, application and intent of such payments etc., it may be susceptible to challenge by the Governmental authorities. The subtlety involved in classification of payments between 'advance' and 'deposit' should be carefully analysed in terms of the contract and as per customary practises to determine the correct nature of the payment. Reference may be had to decision in *Metal Box India Ltd. v. CCE, Madras 1995 [(75) ELT 449 (SC)]*.

Specific additions to be made to arrive at Taxable Value

In addition to the price, certain express checks to be carried out that can disqualify a price that is otherwise perfectly admissible, are provided as under:

"transaction value" which is the price actually paid or payable for the said supply of goods and/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.

- Taxes levied under any other law(s)- this clause provides for exclusion of GST from the value and therefore all other taxes charged must be included in the value before quantifying GST. Taxes other than GST will cause cascading effect and this is deliberate. For instance, on import of goods IGST is charged not only on the value of goods but the basic customs duty paid under the Customs law.
- Any amounts paid by recipient that are obligation of supplier to pay - this clause removes any doubt about the need to include costs paid by the recipient to a third party in the value of supply by the supplier. The prescription in this clause is to identify any occasion where costs – in respect of which the supplier is the principal creditor / obligor – are diverted away from the principal such that the recipient directly makes the payment resulting in lowering the rightful value of supply. At the same time, this clause does not authorize every payment where the recipient is the principal creditor / obligor and require these also to be included in the value of supply.

CBIC vide *Circular no. 47/21/2018-GST, dated 8-6-2018* has clarified that if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on free of cost (FOC) basis, the amortised cost of such moulds/dies shall be added to the value of the components.

This point may be illustrated by an example of – payment of commission to agent for facilitating the supply. If the payment is 'buying commission' which is paid by the recipient, then the obligation to pay the agent is always of the recipient and does not require to be included in the value of supply. But if the payment is 'selling commission' which happens to be paid by the recipient, then the obligation to pay the agent being that of the supplier is required to be included in the value of supply. In this case (of selling commission), the underlying obligation is that of the supplier because it is the supplier who engages the agent to identify customers to make a supply. And if, somehow, the supplier manages to pass this obligation to pay the agent (the amount towards selling commission) to the recipient, then the price paid to supplier is not the true value of supply. Had the recipient refused to pay this selling commission to the agent, then the supplier would have paid the agent and made a corresponding increase in the price of the supply. It is this objective that is being achieved by this clause.

Another example can be of a free on road contract wherein the payment of transportation charges is directly made by the recipient and the value to be paid to the supplier by the recipient is reduced to that extent. In this case, the transportation charges which was reduced from the price payable will be added back to the taxable value. There are several other examples that can be considered.

- Incidental expenses charged by the supplier- This clause addresses a completely different aspect compared to the previous clause. Here, costs that the supplier incurs 'at' or 'before' supply are liable to be included in the value of supply. For example, cost of packing and transportation has been debated under the VAT laws whether they are incurred before or after the 'transfer of property'. In GST, the point when title passes is irrelevant. To address the issues that had been so vigorously debated under VAT laws, this clause lays down that any cost that the supplier incurs including commission and packing which is charged to the recipient will be included in the value of supply. Incidental expenses like home delivery charges are includible in the value of supply when food is delivered by a restaurant to a customer's home. Another example can be the extra bed charges included by a hotel in the value in case of accommodation services provided by a hotel to a customer. Yet another example can be installation of new modular furniture at office wherein the installation expenses are recovered separately by the supplier. Special packing charges by a gift shop while selling a show piece can also be a pertinent illustration here. If it is a charge recovered from the recipient, then the same is includible in the value of supply provided it is not incurred 'after' the completion of supply. An example of cost incurred after date of supply yet not liable to be included in the value of supply could be amount of input tax credit, considered as eligible in pricing of supply, but denied to the supplier by (say) section

16(4). And an example of a cost incurred by the supplier after the date of supply but still includible could be cost of in-warranty parts (actual or scientifically estimated provision) supplied after the date of supply.

- Interest, late fee or penalty for delayed payment- This would also have been a charge recovered by the supplier 'after' the supply that would not be includible in the value of supply but due to the express words of this clause will be included. Please refer the detailed discussion regarding this clause under time of supply as 'special charges' under section 12(6) / 13(6) where characterization of these charges as well as their rate of tax (supply-dependent or independent) are addressed. For example, Mr. X enters into a contract for supply of goods worth ` 2,00,000 on 15th March 2023. As per the said contract, a payment of the said amount was required to be made within 2 months of the sale. If the complete payment is not made within this time period, a late penalty of ` 10,000 will be chargeable. Let us assume that the payment is not made within the said period. In this situation, ` 10,000 will be includible in the taxable value.

  It is not out of place here to mention the gist of clarifications regarding applicability of GST on additional/ penal interest by *CBIC vide Circular No. 102/ 21/ 2019-GST, dated 28.06.2019 read with C.B.I. & C. Corrigendum F. No. CBEC/20/16/4/2018-GST, dated 15-7-2019 and Circular No. 178/10/2022-GST, dated 3-8-2022*.

  - Applicability of GST on additional/penal interest on the overdue loan - Such transaction of levy of additional/penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional/penal interest satisfies the definition of "interest" as contained in *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017* and thus exempt from GST.
  - Any service fee/charge or any other charges that are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017*, and accordingly will not be exempt.
  - when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.
  - Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.
  - Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for

acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.

- To consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a "supply".

Inferred from above, penal charges imposed by the service provider to a service recipient for a breach of contract (e.g., for loss of parking ticket) attracts GST and it is a taxable supply.

- Subsidy realized by supplier on the supply- this clause expressly provides for the limited exclusion of subsidy from value of supply, that is, subsidy given by the Government alone is excluded from value of supply. This clause makes an interesting requirement that any transaction where there is any form of price-intervention that behaves like a 'subsidy' is liable to be included in the value of supply. In today's economy, there are many transactions that 'behave like subsidy'. For example, contribution of consideration by third party to contract, incentive to supplier given by brand holder linked to each supply, etc. Please note, extended credit terms to one customer and upfront payment terms to another customer cannot be interfered with by relying on this clause. There appears to be no room to include 'notional additions' by this clause because unlike Central Excise which relies upon 'assessable value' for quantifying the duty, GST relies upon 'transaction value' for quantification. Also, please note 'no cost EMI' and 'cash back' are a form of price-intervention by third party but not included in this clause because these forms of price-intervention is reaching the recipient of supply and not the supplier. The condition for inclusion is also that the subsidy should be directly linked to the price. If the subsidy is provided in a manner which cannot be directly linked to the price of the product in question, then that amount cannot be included for the determination of taxable value. For instance, subsidy against a capital asset does not affect the value of the product directly and hence not includible in the price. However, all subsidies directly linked to price will be added if the said subsidy is not provided by

the Government. For example, a cafeteria in X Ltd (a corporate office) provides lunch at ` 120 per plate to the employees of the company. However, the vendor in the cafeteria receives an amount of ` 70 per plate in the form of subsidy from X Ltd for providing the food at a lower rate. Here, value of ` 70 will be added to the taxable value of ` 120 for the purpose of charging GST. Had this subsidy been provided by the Government to the company against mid-day meals, such amount of ` 70 would not have been includible in the taxable value.

Discounts to be excluded from Taxable Value

Discount is another area that needs special mention. The emphasis to tax treatment of discounts is visible in the repeated mention of discounts in section 15(3) where the value of supply will not include discount, provided:

- It is allowed before supply.
- It is allowed after supply, provided that it is established in agreement linked to specific supplies and corresponding credit is reversed by recipient.

It would be helpful to discuss the various kinds of discounts and the GST act implication of each, namely:

- 'In-bill' discounts – are those that are allowed exactly at the point of supply so as to reduce the published product price as a result of negotiations. Generally, 'in-bill' discounts are admissible as the reduction in arriving at the transaction value. However, abnormal discounts cast a shadow of doubt as regards price being the 'sole consideration'. To reiterate some of the points mentioned earlier, firstly, no one gives anything in exchange for nothing, secondly, one cannot give more than what they would get, thirdly, sale under distress circumstances does not mean sale is under duress and lastly, discount must always be related to the present supply and no others. When discount on an invoice is abnormal, inquiry is necessary regarding the circumstances for such an abnormal discount. Abnormality of discount refers to discount greater than available margins. A supplier may be willing to give away all of his margin perhaps to clear away stocks and make room for new inventory. But, when the discount exceeds the margins and there are no distress circumstances, it appears highly suspicious that the supplier is receiving something in non-monetary form from the customer. Although it seems strange that the 'in-bill' discount needs to be dissected and evaluated to such an extent but the need for that arises by the remarkable words used in the definition of consideration in section 2(31), particularly clause (b). On a quick perusal, it will now become palatable that the dissection and evaluation discussed about is very much warranted. It is so because hardly anything can escape this sweeping language '*in relation to, in response to or for the inducement of*'. The supplier may be induced to offer more than his margins to conclude a supply and choose to designate it as 'discount'. The direction of the flow of supply is in the opposite direction of the flow of consideration, more on this a little later.

- 'Off-bill' discounts – are those that are allowed after supply through a credit note. Credit notes in the context of GST have been discussed in detail under section 34 which may be referred to identify whether in all cases of 'off-bill' discount, is credit note allowed to be issued. For such 'off-bill' discounts to qualify as the reduction from the transaction value adherence to the conditions specified in section 15(3) are sufficient. These conditions are very explicit and simple in their application. This simplicity is not to be equated with ease because these conditions specified are such that can cause great unease and result in many transactions where 'off-bill' discounts fail to satisfy these conditions. But when the conditions are satisfied, 'off bill' discounts can be reduced from the transaction value.
- Cash discounts – are those that are allowed to incentivize the customer for prompt payment. Merely because the policy of allowing cash discount is in existence before supply does not always make cash discounts eligible under section 15(3). In other words, the price at which a transaction of supply was negotiated and concluded is what is liable to GST and not the contingency linked to payment of the dues in respect of such supply. GST is not a tax on recovery of dues toward supplies but a tax on supply itself. Cash discounts, therefore, are unlikely to satisfy the requirements of section 15(3) in most cases. As remarkable as this implication appears to be, cash discounts, when looked at very dispassionately, are more akin to bad debts than a proper reduction in the value of supply. Any resistance to accept this view needs to be supported with nothing less than the high standards laid down in section 15(3). Bad debts are not always failure to recover the value of supply. Bad debts can also be abstinence from enforcing recovery of the full value of supply. Bad debts are not the state of helplessness but the decision of prudence in the interest of continued relationship with customers, cost of pursuing recovery measures and the quantum of dues lying unrecovered. It is not suggested that all cases of cash discounts are not available to be reduced from the transaction value. But the circumstances under which cash discounts have been allowed requires inquiry into the circumstances leading to this cash discount.
- Quantity discounts – are those that are aimed at reducing the price of each supply on the condition that a certain quantity of stocks need to be exhausted within a specified duration of time. Here again, inquiry is required into the terms and conditions applicable to this quantity discount. Where the stock supplied by a manufacturer to a dealer are at a specified 'dealer price', which is applied in respect of supplies to all dealers along with additional discount linked to conditions – quantity and time – that is contingent at the time of supply by the manufacturer, this would be an eligible discount under section 15(3). In this context CBIC *vide Circular No. 92/11/2019-GST, dated 7.03.2019 stipulated that :*

  *"**C. Discounts including 'Buy more, save more' offers :***

  - *Sometimes, the supplier offers staggered discount to his customers (increase in*

discount rate with increase in purchase volume). For example - Get 10% discount for purchases above Rs. 5000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-. Such discounts are shown on the invoice itself.

- *Some suppliers also offer periodic/year ending discounts to their stockists, etc. For example - Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.*
- *It is clarified that discounts offered by the suppliers to customers (including staggered discount* under 'Buy more, save more' scheme and post-supply/volume discounts established before or at the time of supply) shall be occluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, *including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document(s) issued by the supplier.*
- *It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts."*

Further, if such discounts which are not known at the time of supply or are offered after the supply is already over and are allowed in an invoice in respect of supplies made earlier are not discounts because transaction value can be reduced by discount allowed in respect of the present supply and not in respect of any other supplies. This is because one of the conditions for allowance of the reduction in value is that the discount should be specifically linked to the original invoices against which the discount is to be given. In this regard the *Circular No. 92/11/2019-GST, dated 07.03.2019* clarified that *:*

*"**D .Secondary Discounts***

i. These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s. A supplies 10000 packets of biscuits to M/s. B at Rs. 10/- per packet. Afterwards M/s. A re-values it at Rs. 9/- per packet. Subsequently, M /s. A issues credit note to M/s. B for Rs. 1/- per packet.

ii. ……..

iii. …….. It is hereby clarified that financial/commercial credit note(s) can be issued by the supplier even if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.

iv. It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied.

v. In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above in para 2(D)(iii) or by any other means, except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied.

……..”

- Special discounts in addition to discount as per the agreement between manufacturer and dealer – are those that are allowed by a supplier to incentivize aggressive marketing of inward supplies on special occasions or in special market conditions. In most cases, such incentives designated as special discounts are really acknowledgment of services of aggressive marketing and product promotion. The direction of flow of consideration is an indicator of the direction of receipt of supplies. In other words, the incentives flow from the manufacturer to the dealer, that are not related to the present supplies. In fact, it indicates an acknowledgment by the manufacturers of the services received from the dealer. The services so identified are from the dealer back to the manufacturers and this is a supply on its own. In fact, the rate of tax of the services supplied by the dealer to the manufacturer needs to be classified independently of the classification applicable to the supplies by the manufacturer to the dealer. Although it is true that between a manufacturer and a dealer all transactions are closely related by the common thread of the dealership agreement, GST travels deeper into this relationship and picks out individual transactions of supply to apply the right rate of tax on each of them.
- No Claim Bonus (NCB) - As per practice prevailing in the insurance sector, the insurance companies deduct NCB from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.

  It is, therefore, clarified by *Circular No. 186/18/2022 dated 27th December 2022* that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.

It has been further clarified in the above Circular that NCB is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of NCB mentioned on the invoice.

- Free stocks – are those that are similar to discounts 'in-kind' except that the articles given away are the items of inventory dealt with by the parties. In such a case, the stocks given away are taxable outward supply in exchange of non-monetary consideration flowing from the manufacturers to the dealer entitled to such free stocks. When the manufacturers give away stocks for free to a dealer, it is clear that this is not the case of charity by the manufacturer towards the dealer but a prudent business decision by the manufacturer to allow the dealer to realize the following proceeds from sale of such free stocks and retain them as his incentive without having to make any payment to the manufacturer towards the cost of such free stocks. It is important to note that cost of such free stocks in the hands of the manufacturer would be far lower than the value of the incentive realized and retained by the dealer which is the selling price of these stocks. Here is a case where a manufacturer incurs a small cost and delivers a far greater perceived value to the dealer. In hindi, the word consideration has been referred as 'Prathiphal' which seems to convey the meaning on 'quid pro quo' more clearly. Also note the word 'Uthprerna' for inducement for making the supply. A further implication of giving away free stocks is that, in the hands of the manufacturer it is a taxable outward supply without the benefit of input tax credit to the dealer as no payment is made in respect of the supply. Having paid tax once on the outward supply by the manufacturer, there is a further taxable outward supply in the hands of the dealer when the free stocks are sold to customers. Thus, transactions of issue of free stocks may be revisited .
- 'Buy one-take two' – are transactions where two units of stocks are supplied against payment of the price designated against only one of them. Under the method of transaction value-based assessment of tax under the GST law, each unit of stock is liable to determination of transaction value on its own merit. 'buy one-take two' is not the case where the two units of stocks are bundled together with a single price assigned to them but are individually priced with no differentiation in the quality of each of the units except that the present offer allows the customer to pay the published price of one and collect two units of the stock. The stock collected without making any payment could very well have been the one that was paid for and purchased or *vice versa*. It merits to mention here that multiple units of a product may be bundled together with a single price published for them such as 4-bars of soap or pack-of-5 socks. Therefore, unless bundled together with preselected units of stock and a single price

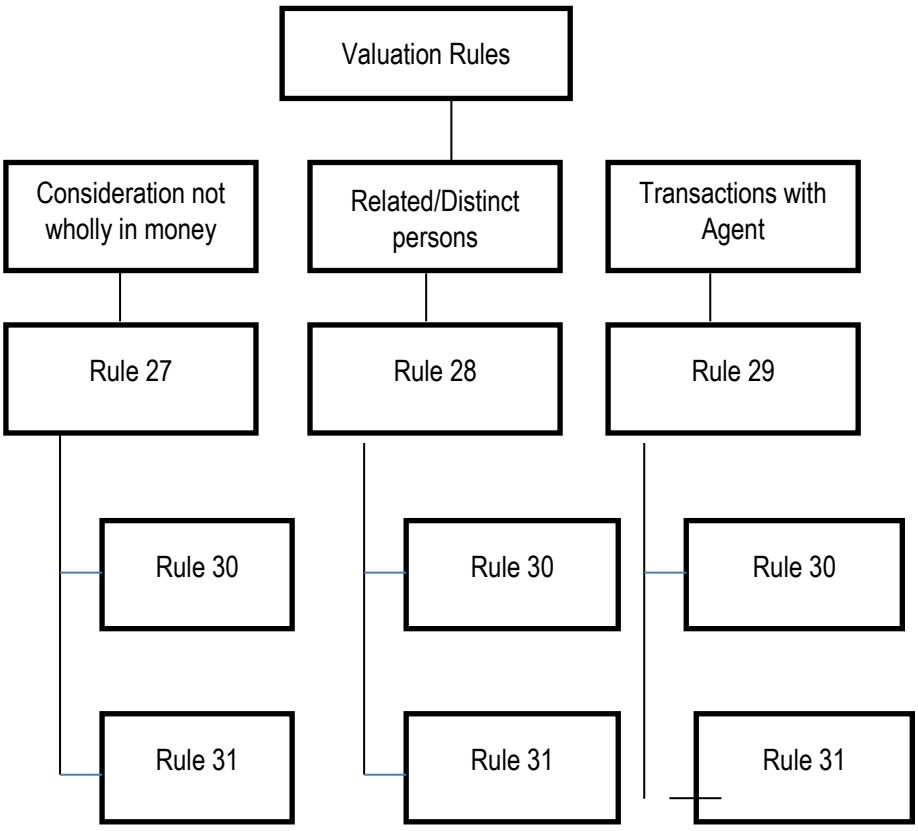
affixed, all other transactions of 'buy one-take two' are individually taxable – the paid unit at the price paid and the free unit at the price determined by the valuation rules.

Determination of Value as per CGST Rules

If and only if the transaction value cannot be determined as above, reference to CGST Rules related to valuation is permitted. These are cases where either the parties are related or the price is not the sole consideration. Government is free to notify tariff values in specific cases to determine the tax payable in such cases. This would prevail over the valuation provided for in sub-section 1. Valuation Rules are prescribed under Chapter IV of the CGST Rules from Rule 27 to Rule 35.

The value shall be determined in the sequence of Rules given. It is only when the earlier Rule is not applicable; the subsequent Rule may be resorted to. It is not open to the taxpayer to choose the valuation rule of his choice.

The Rules for determining the Valuation shall be followed in the following sequence:



The above Rules are explained below in points:

(a) Consideration not wholly in money - Rule 27

This rule comes into effect when the condition that price is the sole consideration gets violated. It is important to consider the difference between 'free' and 'no consideration'. It is probably common to consider that these two are synonymous. At the outset, there can be no contract without consideration. Experts in Contract Law will see the gross illegality if one were to say that there is a contract that has no consideration in it. If the contract is valid, then there must exist a consideration though in non-monetary terms which is erroneously stated to be a contract having 'no consideration'. It is impermissible that a contract exists but lacks consideration. It is just impossible. If price is not the sole consideration, there should be consideration in some other form as per the contract. Normally, upon analysing the terms of the contract, consideration in all forms can be found out. Now, if there is a contract with non-monetary consideration, rule 27 of the CGST Rules comes into operation. Although this rule states that it applies when 'consideration is not wholly in money', it applies even when the consideration is partly in money or wholly in non-monetary form. This rule provides that the value of supply "shall be" and not be "based on" or "guided by", so that mandatory nature of the prescription of this rule can be appreciated. Further, this rule comes into operation not only when the consideration paid is partly in money and partly in non-monetary form but also when the whole of the consideration is found to be in non-monetary form. Some of the transactions discussed earlier and found to be taxable supplies such as discounts, will rely on this rule to arrive at their value.

The following transactions of supply under section 7 straightaway arrive at this rule for the determination of the transaction value as they failed to qualify for application of section 15(1), namely:

- barter and exchange transactions
- transactions listed in schedule I
- transactions listed in schedule II but without consideration

The order of application of the methods prescribed under this rule cannot be deviated from merely because a later in the third is a more acceptable answer or is easier to apply. The value of supply shall therefore be determined in the *following sequence*:

(i) Open market value (OMV)– which is the full value in money payable by an unrelated person as its sole consideration at the same time as the supply under inquiry. OMV is a new phrase but not too far from its scope and covered from its explanation. Transaction value is price of the supply under inquiry and OMV is the price of the same supply but without the circumstances that impairs the use of transaction value for quantification of tax. OMV is not comparable price to unrelated customer. The definition of OMV does not allow comparison of supplies in comparable circumstances. It only requires supply 'at the same time'. So, OMV is not price in another 'comparable' supply at a close proximity in time. Bought-out goods given for non-monetary consideration has the

purchase price itself as the OMV for outward supply. This provision does not provide the manner of adjustments to be made to overcome the effect of those disqualifying circumstances present but simply states that OMV 'shall be' the value of the supply.

(ii) Sum total of monetary consideration and 'money-equivalent' to consideration not in money – here two aspects are involved – one, to establish that OMV is not available (a task that will be discussed shortly) and two, to arrive at the money value of the non-monetary consideration. Having identified that OMV is not very specific to be able to clearly be determined, it becomes more acute to establish that OMV is not available before proceeding to clause (ii). Onus lies on the one who asserts – the taxable person would have admitted that the circumstances of section 15(1) are not fulfilled and warrants recourse to the Rules but having arrived at the rules, the onus remains with the taxable person to establish that OMV is not available. OMV is not comparable alternate price. Supplies to unrelated persons are always taking place although in different 'commercial circumstances' which is not provided in the definition of OMV. As such, overcoming the first aspect – OMV not available – is a challenge which tax administration can be stubborn about. Then, arriving at money value of non-monetary consideration is not guided by requirement to use standards of Cost Accounting, etc. Rule of reasonableness is the only guide for arriving at the value which can be shot down by tactic of arbitrariness of the tax administration. Suitable guidance is much needed in this entire exercise.

For instance, an old antique art of work is sold against which consideration is partly in the form of money of ` 20,000 and partly in the form of a new furniture whose value known at the time of supply is ` 35,000. Then the value for the purpose of GST will be the monetary consideration combined with the equivalent money value of the new furniture i.e., ` 55,000.

(iii) Value of supply of 'like kind and quality' – The phrase "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 [Explanation to clause (b) of Rule 35 of CGST Rules]. This is a salutary method where there is much experience in Customs Valuation in successfully arriving at the comparable value. Subjectivity must be overcome which is possible by applying data that is reliably substantiated rather than arbitrary factors. The definition provides guidance on the manner of finding this 'likeness' for identifying whether the comparable are really comparable without being subject to any arbitrariness in tax compliance or tax administration.

As per the explanation of the term 'supply of goods or services or both of like kind and quality', the supply through which the comparison is taking place should be under similar circumstances in respect of the characteristics, quality, quantity, functional

components, materials and reputation of goods or services or both and should be same or closely/substantially resemble the subject supply. So, all the factors should be taken into account and the supply which is closest in terms of these factors should only be taken for the purpose of valuation. The factor may not be exactly replicated in the supply being valued but should be substantially resembling the supply being used for comparison. This rule should not be applied if the circumstances are vastly different between the supply being valued and the one being used for comparison. For instance, the value of a product in New Delhi and that in Sikkim may be vastly different due to non-similar circumstances. Further, it may be very difficult to compare the reputation and quality in respect of services as it involves subjectivity and arbitrariness. The nature of the services will depend on the facts and circumstances of each case.

Taking an example where this mechanism can be applied, a customised air conditioning unit whose OMV is not available is installed at an office wherein the consideration is paid in the form of money of ` 40,000 and an old air conditioning unit whose price is not available at the time of supply. A similar air conditioning unit in terms of characteristics, quality, quantity, functional components, materials and reputation etc. has been installed by the company at another client's premises for ` 60,000. Since, the value of goods of like kind and quality is available, the value of ` 60,000 will be taken under rule 27.

(iv) Sum total of monetary consideration and value determined by rule 30 or rule 31 in respect of consideration not in money – similar to the previous clause, the first of the two aspects – value is not determinable as above – is the one that presents the greatest difficulty. Expect that it is crude to import values from rule 30 or 31, the rest of this clause is simple in its application. Please note that rule 30 must be applied first and then rule 31, more on that in the discussion of those rules. Some illustrations are provided in rule 27 that may be referred for understanding its application.

These illustrations do not cover all possible scenarios but lay down some pointers that need to be considered while determining the valuation and GST impact of various transactions.

(b) Supply between related persons (Rule 28)

A supply between related persons or between distinct persons (with same PAN) is *prima facie* not fulfilling the requirements of section 15 to admit the transaction value for quantification of GST. In such cases, the value of supply will be:

(i) OMV – please refer to previous discussion;

For example, a trader in computers gifts one of the laptops worth ` 50,000 to his relative during Diwali. Since the OMV of this is available, it needs to be taken for the purpose of charging GST.

(ii) Value of supply of 'like kind and quality' – please refer to previous discussion;

For example, a Holding company provides a capital equipment whose OMV is not available to its subsidiary company which is not registered under GST. A similar capital

equipment in terms of characteristics, quality, reputation etc. is available in the market at ` 10,00,000. This value of ` 10,00,000 will be adopted for the purpose of valuation.

(iii) Value determined by rule 30 or rule 31 – please refer to subsequent discussion.

The proviso to this rule is of significance where it is the recipient, who is entitled to full credit, the value declared in the invoice is deemed to be OMV. In other words, in a case of supply eligible by this rule – related parties or distinct persons – the supplier is entitled to unquestioned admittance of 'any price' that may be charged. This provision appears to accommodate internal preferences of the parties where the tax paid is revenue neutral. However, caution is advised in taking recourse of this proviso and charging a price lower than cost.

Inter Branch supplies

In the case of inter-branch supply of services, valuation of these supplies will involve additional tax due to costs such as salary, amortization, etc. which do not involve any input tax credit. For example, if a Head Office (HO) incurs certain entity-level expenses that are common to all registered taxable persons in other States, it is not permissible for the HO to retain the whole of these common credits due to the limitation in the language of section 16(1) – used by him in his business – although a portion of this credit may still be available. Previously, such HOs were registered as ISD under service tax but this may not be the case in GST.

Please refer to discussion in section 20 for some analysis of these issues. Now, surely the HO is not 'merely an office receiving invoice for services' but is actually the 'seat of management and control' performing very significant services that are supplied to all branches. HOs ought not to continue as ISD but recognize the nature of the supply of services to all branches. And on this basis, apply these Rules for quantifying tax to be discharged. ISD is not to be substituted for inter-branch supply. Any location that is a 'fixed establishment' as per section 2(50) cannot be an ISD-location as per section 2(61). And if it is a fixed establishment, it would be an indicator of potential inter-branch supplies.

The proviso in this rule does not authorize payment of tax on cost because the value to be determined under this rule is OMV or else like-kind-and-quality or else rule 30 / 31 value. Hence, HO may be required to invoice for its services appropriately and not distribute credit as ISD. Valuation at nominal amount appears to be permissible by second proviso to this rule. The eagerness to value stock transfers at nominal value misleads one to rely on the condition – recipient eligible for full input tax credit – appears to play culprit. It must be recalled that a transaction of stock transfers from one branch to another being defined to be a taxable supply under section 7(1)(c) read with schedule I deserves to be subjected to the rightful amount of tax based on the rightful value of this supply. This rule cannot undo what was set out to be achieved by the section. In order to read this second proviso harmoniously with the definition of supply, it appears to be appropriate to construe 'the value declared in the invoice' under the

second proviso to be nothing short of the OMV of the stocks transferred between the branches inter se. This OMV could very well be the cost incurred by the supplier branch. But if the urge to apply nominal value to such supplies continues, by the words 'value declared in the invoice', the one declaring the value on the invoice cannot do so by affixing a nominal value which would be completely in disharmony between the rule and the section. A quick reference to rule 32 makes it clear that section 15 provides the boundaries within which every exercise of valuation must operate.

For example, an entity has four branches in Delhi, Mumbai, Kolkata and Bengaluru. There is a head office of that entity in Hyderabad. The HO in Hyderabad recruits certain key management personnel for its branches. Here, it will be considered as if the manpower recruitment services are provided by the HO to its branches. For the valuation purpose, one needs to go through the hierarchy provided in Rule 28. As mentioned above, a nominal value for the purpose of billing should not be taken. There should be a reasonably justifiable method of valuation as explained above.

Taxability of such Inter Branch (Distinct person) transaction has been upheld in the *Order No. KAR/AAAR/05/2018-19*, *dated 12-12-2018* in case of In Re:*Columbia Asia Hospitals Pvt. Ltd*. In this ruling, distinction between ISD and Cross charge has been brought out and consequently services rendered by one part of the legal entity to other parts of the entity, which are considered as distinct persons in the GST framework stands taxable and the valuation shall be as per the valuation rules. The relevant rule for such valuation shall be Rule 28.

While Taxability of such transaction has been upheld in *M/s. Specsmakers Opticians Private Limited TN/AAAR/09/2019(AR) dated 13-11-2019* but the due weightage for second proviso to Rule 28 has been given affirming that wherever full Input Tax Credit is available to the recipient, the value mentioned in the Invoice shall be the open market value.

(c) Supply through agent (Rule 29)

Every supply involving an agent is not a taxable supply. As discussed in Chapter III, supply by Principal and Agent *inter se,* all though merely a channel to supply to the end customer, is treated as a supply in schedule I where the goods are handled by the agent or principal. Please note that this rule is applicable only in case of 'supply of goods' and not 'supply of services' or 'supply involving goods treated as supply of services'. When this rule is applicable, the value of supply will be:

(i) OMV or 'at the option' of supplier 90% of the price charged for goods of 'like kind and quality' by the Agent– this rule provides for an ad hoc reduction of 10% from the price otherwise charged to accommodate the incentive or margin left for the Agent in pricing. Where margins are lower than 10%, this rule can cause great anguish. But discarding the use of this clause is not permitted freely.

(ii) value determined by rule 30 or rule 31 – please refer to subsequent discussion.

Transactions treated as supply by schedule I of the CGST Act, which need to be subjected to tax requires a valuation mechanism. Principal and Agent do not *ipso facto* become related persons for rule 28 to be applicable to them.

Please note that agency cannot be inferred but must be expressed or implied. Agency may be understood as 'delegated authority' and 'detached consequences'. Within the scope of agency, the principal will be obligated to third parties without any limit, by actions of the Agent. As such, the authority to the Agent to act is delegated by the Principal and the Agent is not obliged to the consequences arising from his actions, provided they are within the scope of the agency. Undisclosed Principal still obligates the principal because the lack of disclosure is to the third party and not that the principal is unaware of the possible obligations accruing.

It is important to note that not all transactions between a principal and agent attract para 3, schedule I. but it is only those transactions where the Agent 'handles' the goods of the principal. Only when it is identified that it is a transaction of such nature, will the valuation under this rule become applicable. Further, it is to be considered that recourse to this rule is not an option because every transaction between principal and agent are disqualified under section 15(1) and required to be examined with reference to these rules. Once having arrived at rule 29, there is only one method – price of supply of goods of like kind and quality – and no others. This rule applies only in respect of goods and not services.

There is a very interesting clue in a press release that permits advertisement agency to opt for either agency-model or resale-model as regards publishing of advertisements in media. Here, the press release appears to require an alternation in the contractual arrangement with the media (which may not be agreeable or not advisable), but it would be advantageous if, for limited purposes of GST, the agency were to apply agency-model or the resale-model.

(d) Cost based value (Rule 30)

Where cost is used as a base for determining the value of supply and when any of the more specific methods prescribed are unavailable for specific reasons, this rule may be applied. It provides that the value will be 'cost plus 10%'. Please note that this rule applies to both goods and services supplied.

Every supply claimed to be free but involving non-monetary consideration faces the threat of tax being determined on this method. Cost of acquiring the product is the cost incurred by the person for bringing the production in the condition and location for the purpose of selling. While price paid to purchase goods that are given away for non-monetary consideration, the OMV is this purchase price but when it not a readily bought-out supply (goods or services), the cost construction method may need to be applied. Cost Accounting Standards may be relied upon to determine cost for purposes of this rule. CAS-4 enumerates various costs to be included in determining the cost of raw materials. As per the said standard, cost of material shall consist of cost of material, duties, taxes, freight inward, insurance and other expenses directly attributable to the procurement. Trade discount, rebate and similar items will be deducted in determining the cost of material. Input tax credit in any form will also be deducted. Thus, cost of acquisition will include the cost of transportation, any local taxes, insurance,

other expenditure like commission etc. on procurement of goods. However, cost of determining provision of service is not that straightforward. In case of services, the major components are the cost of the employee and other administrative expenses,

Please refer to the few illustrations discussed in previous sections such as warranty replacement, physician's samples, etc. Tax administration may not dispute, if valuation is not lower than 'cost plus 10%'. Although this method appears simple, it is important to note that only when it is established that the other more specific rule and the specific methods under those rules are unable to yield an acceptable value for the supply under inquiry. Only where the other methods of valuation cannot be applied, will this rule be available to apply. Where margins are not as high as 10%, suppliers may justifiable move to Rule 31 but by satisfying that this rule does not provide a reasonable value.

In respect of supply of services (also transactions involving goods treated as supply of services), the supplier is permitted to apply rule 31 instead of rule 30, if that were more favourable.

(e) Residual valuation (Rule 31)

Where value cannot be determined by any other method, this rule authorizes the use of 'reasonable means to arrive at the value. It is important to consider that these reasonable means must be commensurate with the principles of section 15. This rule provides some crucial guidance on the manner of application of all other rules – any valuation method applied that is contrary to 'principle of section 15' – may not be accepted.

(f) Lottery, betting, gambling and horse racing (Rule 31A)

The debate on the taxable value of supply for betting, lottery, gambling and horse racing has been put to rest by introduction of Rule 31A to the CGST Rules vide *Notification No. 03/2018-Central Tax dated 23.01.2018*. The said rule overrides all the other provisions relating to Valuation Rules. The use of the word 'shall be' implies that the value has to be necessarily determined as per the said rule. According to this rule, the valuation in respect of the following services shall be determined as follows:-

Value of Lottery: Value shall 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. The expression "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 which is defined to mean any State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State.

As per rule 31A, the face value of the lottery ticket shall be taken as inclusive of applicable taxes which is *pari-materia* with the provisions specified under rule 35.

Betting, Gambling or Horse Racing – 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 to totalisator. This implies that the value on which GST has to be paid will be the amount of bet placed or the amount paid to the totalisator instead of the commission or share of revenue of the race club.

It is interesting here to refer to schedule III which states that actionable claim other than lottery, betting and gambling would qualify as an activity or transaction which shall be treated neither as supply of goods nor supply of services. This means that transaction in lottery, betting and gambling would for the purpose of GST law, qualify as supply. The terms 'goods' under section 2(52) includes actionable claims. Services under section 2(102) is defined to exclude goods. Accordingly, the actionable claim in the form of chance to win betting, gambling and horse racing with reference to the above definitions will be goods and not services. Business under section 2(17) is defined to include activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club. The tax rate notifications issued for goods *[i.e., Notification No. 1/2017-Central Tax (Rate), dated 28.06.2017 as amended]* states that 'actionable claim in the form of chance to win in betting, gambling, or horse racing in race club' is liable to tax at the rate of 28%. The rate notification issued for services *[i.e., Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017]* also specifies that the gambling as an activity involving services and accordingly, liable to tax at 28% [refer entry No. 34(v) of *Notification No. 11/2017 (Rate)]*).

It is also interesting to refer to the clarification issued by *TRU vide F. No. 354/107/2017-TRU dated 04.01.2018* wherein it is clarified that the actionable claim involving betting, gambling or horse racing would be a service. It is further clarified that the tax would be applicable at 28% on the total value of betting which exceeds the authority to tax since, only certain percentage of the total value of betting will be retained as commission in providing the services of betting / gambling and balance amount forms part of the prize money.

With the above ambiguities there may be some confusion whether to tax actionable claims as goods or services and the rate at which such supply should be taxed.

It is imperative to mention that that valuation of in respect of lottery was questioned along with legality of GST being levied on the same *vide* Writ Petition (Civil) No.961 of 2018 in case of *M/s Skill Lotto Solutions Pvt Ltd Skill Lotto Solutions Pvt. Ltd. vs. Union of India [[2020 (12) TMI 140 (Supreme Court)]* at Hon'ble Supreme Court of India. The abatement sought in lottery valuation was turned down in this order upholding the validity of valuation provisions of GST under section 15 read with Rule 31A.

(g) Specific supplies (Rule 32)

Before commencement of the discussion on the provisions of Rule 32, it may be pertinent to emphasize here that the determination of valuation as per the mechanism specified is only an option available to the supplier. If the supplier feels that the valuation mechanism specified under the rule 32 does not reflect the correct position or that the value adopted should be in accordance with section 15 and rules 27 to 31, he may choose to ignore the said rule 32. He may determine the value accordingly under section 15 and rules 27 to 31 as the case may be. Supplies which were previously under some form of abatement of value are found in this rule, namely:

(i) Supply of services involving sale/purchase of foreign currency, the value of supply will be:

(a) option (a) – difference between buying-selling rate and the reference rate

published by RBI. Where reference rate is not available, 1% of gross Indian Rupee value of the transaction. And where the conversion is not into Indian Rupees, then 1% of the lesser of the Indian Rupee equivalent of each currency exchanged;

(b) option (b) – 1% of gross amount upto `1 lac, 1/2% after `1 lac upto `10 lacs and 1/10% after `10 lacs. This option (b) once exercised cannot be withdrawn during the financial year.

(ii) Supply of services in relation to booking of tickets for air-travel by a travel agent - The value of such supply will be 5% of basic domestic fare or 10% of basic international fare of the air ticket. As per the rule, 'basic fare' means 'that part of airfare on which commission is normally paid by airline'; hence, air travel agents availing the valuation under this rule, has to pay tax only on that part of airfare on which commission is paid to them (i.e., basic fare X 5% / 10%). In this context, one needs to take a note that only those agents who receives commission from airline can opt for this method. In other words, this provision is applicable only in cases where airlines sell the tickets through their agents. Accordingly, the agent will be raising tax invoice as below:

Purpose	Address to	Value	Rate of Tax
Commission	Airline	5% of basic domestic fare	18%
		10% of basic international fare	

The passenger or the person booking the ticket, if registered, can claim the credit of GST charged by the airlines on the air passenger transportation service if the ticket is issued by the airlines in its name. The credit of GST paid by the air travel agent on the commission received by it from the airlines, the value of which is computed as per rule 32(3), can be claimed by the airlines basis the invoice issued by the air travel agent to the airlines.

(iii) Supply of services in relation to life insurance, the value of supply will be gross premium reduced by investment allocation, in the case of single premium policy will be 10% of premium and in all other cases will be 25% of first year's premium and 12.5% for other year's premium. This rule will not apply to premium related to coverage for risk-of-life.

(iv) Supply of services of person dealing in second-hand goods, the value of supply will be difference between purchase price and selling price. Please note 'second-hand goods' refers to goods used or otherwise employed in some process without causing any change in their nature. Used goods are not the same as pre-owned goods which need not have been put to use. For example, a motor car where mark of registration has been assigned by RTO, even if left unused for long time will not be able to satisfy that it has not been used. And similarly, the odometer reading showing '0 kms' but duly registered by RTO will not override the conclusion that it is used. Please note that most appropriate tests for identifying whether the goods have been used or not may be

examined. Also, this rule does not apply only to 'supply of second-hand goods' but to supply of services of person dealing in second-hand goods. In other words, disposal of leased car will also come within the operation of this rule

Intra-State supplies of second hand goods, by an unregistered supplier to a registered person, dealing in buying and selling of second hand goods and who pays the central tax and compensation cess on the value of outward supply of such second hand goods as determined under rule 32(5) of the CGST Rules, is exempted. This has been done to avoid double taxation on the outward supplies made by such registered person, since such person operating under the margin scheme cannot avail input tax credit on the purchase of second-hand goods. *(NN 10/ 2017-Central Tax (Rate) dated 28.06.2017 and NN 04/ 2017-Compensation cess (Rate) dated 20.07.201720)*

It is important to note that the registered taxable person disposing off used goods would not be able to avoid payment of tax on this outward supply. Facility under this 'margin method' is available only when the used good supply involving sale of used-goods is by an unregistered person to a registered taxable person dealing in used-goods. In the case of used-cars, the levy of tax on outward supply has completely taken the sheen off used-car business because registered sellers cannot avail this margin-method coupled with the visibly high rates of GST plus Cess applicable. However, the Government vide *Notification no. 8/2018-Central Tax (Rate) dated 25.01.2018* has reduced the rate of GST to 18% and 12% on the sale of old and used motor vehicles. Further, the Cess payable on sale of old and used motor vehicle has also been exempted vide *Notification no. 1/2018-Compensation Cess (Rate) dated 25.01.2018*. However, the major change as per the said notification was the valuation mechanism under GST. The said valuation was stated to be the margin involved i.e., the difference between the selling and purchase price. If the selling price is less than the purchase price/WDV (as the case may be), then this amount should be ignored for the purpose of GST. However, where the selling price is greater than the purchase price, only the differential margin will be taxable. In case of sale by a registered person, it has been stated that the value that needs to be taken in lieu of the purchase price will be the depreciated value of goods on the date of supply. So, the taxability arises in respect of the margin if the selling price is higher than the depreciated value of the motor vehicle,

Illustration: Mr. X, a registered person in GST had purchased a motor car on 1st June 2016 for ` 10,00,000. The said car was sold on 25th February 2018 by him for:

a) ` 9,00,000

b) ` 7,00,000

Determine the valuation under GST

Ans: The depreciated value of the car as on 1st April 2017 is ` 10,00,000 – 0.15*10,00,000 = ` 8,50,000 (as per income tax law). If the sale value of the car is Rs,9,00,000, ` 50,000 will be the value for charging GST. If the car is sold at ` 7,00,000, the margin will be negative and hence it should be ignored.

Repossession of goods in case of default by an unregistered borrower

Proviso to Rule 32(5) speaks about the repossession of goods in case of default by an unregistered borrower. In this scenario, the purchase price for the calculation of margin will be the purchase price of such goods by the defaulter. However, such purchase price will be subject to reduction of 5% every quarter or part thereof for the period between the date of purchase and the date of disposal.

Illustration: Mr. X took a car loan of ` 3,00,000 from ABC Bank Ltd. on 1st September 2022 which was entirely used for the purchase of car worth the same amount. Mr. X defaults on the loan balance and thereby his car is repossessed by the bank on 1st March 2023. This car is sold on 30th March 2023 by the bank for ` 2,50,000. Determine the valuation under GST.

Ans: The purchase value to be taken will be the purchase price in the hands of the borrower – 5% per quarter or part thereof (September – March) i.e., 3,00,000 – (5%*3*300,000) = ` 2,55,000. As the sale value of the car is below ` 2,55,000, the margin will be ignored for the charging of GST.

When such 'presumptive value' is opted for payment of tax, then it is NOT permissible for tax administers to attempt a 'second bite at the same cherry'. That is, once tax is paid on the presumptive value, then entire supply and consideration (from all sources) in respect of that same supply is NOT to be taxed. For e.g., travel agent who pays tax at 0.9% on domestic fare CANNOT be taxed again on the consideration received from (i) passenger called 'service charges' or (ii) airlines called 'commission' in monetary credits to agent's account or 'paid up tickets' at no charge to be sold for 'price' or (iii) 'share of commission' from CRS societies / companies where airlines list their inventory.

(v) Supply of voucher, the value will be the redemption value of the voucher. Please note voucher includes coupon, stamp, token, etc. Please refer to the discussion on vouchers under section 13 for the various forms that voucher can take including digital vouchers to which this rule will apply. Also, please note that those instruments that are approved by RBI and included in the definition of 'money' under the expression *"…..or any other instrument approved by RBI when used as a consideration to settle an obligation….."* should not be treated as vouchers merely because they are popularly referred as 'vouchers'. All vouchers are not vouchers attracting this rule. Reference may be had to the discussion under section 12(4)/13(4) to identify instruments that 'are' or 'are not' vouchers.

Illustration: Mr. X had purchased a voucher for ` 200 which was redeemable against purchase of a wallet worth ` 500 from Shopping stop. Here, the valuation that should be taken is the redemption value of ` 500 in respect of the voucher and not the purchase value of ` 200.

(vi) Supply of services between distinct persons, that are notified by Government and where input tax credit is available, the value of taxable services shall be deemed to be Nil. No notification in this regard has been issued as yet.

(h) Service of pure agent (Rule 33)

Agency supplies are different from 'pure agent' in relation to valuation. This rule applies only to supply of services. It provides for the exclusion from valuation of any supply of certain costs and expenses if and only if the following tests are satisfied:

(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; 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

(ii) the supplies procured by the pure agent from the third party as a pure agent of 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.

Illustrations:

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 Company 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.

Other such examples may be:

(a) Ticket in railways is booked by a travel agent on behalf of the customer and the charges for such ticket are recovered by the agent along with the commission by showing them separately

(b) Customs duty, dock dues, transportation, port clearance charges etc. are paid by the

customs broker on behalf of the importer and are recovered along with his commission from the importer

(c) Advertisement charges to the newspaper are paid by Advertising agency on behalf of the customer and are recovered separately along with commission

(d) In an ex-factory delivery contract, if the transportation charges are paid by the supplier on behalf of the recipient and are recovered separately from the recipient along with the price of the goods

To establish that the conditions of pure agent are getting satisfied, it is recommended that there should be a written contract between the supplier and the recipient. The clauses of the agreement should clearly point to compliance with all the conditions as discussed above with regard to pure agent. This will act as the most reasonable defence if any questions are raised by the Department later on. However, even if the contract is not in writing, it can be established by other available evidence that the conditions of pure agent are satisfied. However, any contract in writing may be considered as more persuasive in nature.

Further, in order to claim any amount as a deduction in the form of a pure agent, the dealer will have to demonstrate with substantial evidence that the liability to incur the cost was on the recipient and that the dealer has incurred such cost merely for convenience sake. Further, the dealer has to ensure that the invoice/ bill of supply/ receipt has been received in the name of the recipient, who is the ultimate beneficiary.

(i) Exchange rate to be used (Rule 34)

Transactions undertaken in foreign currency must be translated into Indian Rupees. The rate of exchange for the determination of the value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 and for the determination of the 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 in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act.

Few clarifications / special methods of Valuation:

1. Value undivided share of land involved in under-construction real estate transactions:

   As per paragraph 2 of the *Notification No. 11/2017-Central Tax (Rate) dated 23.06.2017*, in cases of construction contracts of residential/commercial apartments, complex, building, etc. involving element of land, the value of supply shall be total amount charged equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land. Where value of such transfer of land shall be deemed to be one third of the total amount charged for such supply. The relevant extract of aforesaid notification is as under :

   "In case of supply of service specified in column (3), in items (i), [(ia), (ib), (ic), (id), (ie) and (if)] against serial number 3 of the Table above, involving transfer of land or undivided share

of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of sugch transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation.—For the purposes of this paragraph [and paragraph 2A below, "total amount" means the sum

total of,—

(a) consideration charged for aforesaid service; and

*(b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sub-lease.***"**

In this context, in case of *Munjaal Manishbhai Bhatt vs. Union of India [2022-TIOL-663-HC-AHM-GST]*, the Honourable High Court held that: "*Paragraph 2 of the Notification No. 11/2017-Central Tax (Rate) and identical notification under the Gujarat Goods and Services Tax Act, 2017, which provide for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land is ultra-vires the provisions as well as the scheme of the GST Acts. Application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India. While maintaining the mandatory deduction of 1/3rd for value of land is not sustainable in cases where the value of land is clearly ascertainable or where the value of construction service can be derived with the aid of valuation rules, such deduction can be permitted at the option of a taxable person, particularly in cases where the value of land or undivided share of land is not ascertainable"*.

2. Value of supply of service by way of transfer of development rights

Generally, the developer (who is also called as "promoter") does not purchase land for a real estate project. A landowner enjoys various rights with respect to the land, such as cultivation rights, easement rights etc. One such rights is the right to develop the land into an agricultural, industrial, commercial, residential or for any other purpose. Hence, the promoter enters into an arrangement with the landowners, who transfers development right or permits activities on his land for consideration. The consideration can be in the form of constructed units on completion of the project or in monetary terms. When the landowner is given constructed units against the above referred right such agreement is popularly known as "area sharing agreement". On the other hand, when the landowner and the promoter agree to share the revenue earned from the sale of the constructed units, the same is called "a revenue sharing agreement". We can observe that in both the methods discussed above, the landowner transfers a right in favour of the promoter to secure all approvals for development and build an apartment on the landowner's property for sale.

Value of supply of such transfer of development rights by the landowner is determined under rule 27 of the CGST Rules.

More specifically, for value of supply of such transfer of development rights by the landowner we may refer to FAQ in *Circular F. No. 354/32/2019-TRU, dated 14.05.2019* stipulates as under:

Sl. No.	***Question***	***Answer***
6.	*In an area sharing model, a promoter has to handover constructed flats/apartments to the land owner who supplied TDR for the project. Value of TDR at the time when the landowner transferred it to the promoter is not known. How would the promoter determine GST on TDR?*	*Value of TDR, shall be equal to the amount charged by the promoter for similar apartments from the independent buyers booked on the date that is nearest to the date on which such development rights or FSI is transferred by the land owner to the promoter.*
7.	*In the formula prescribed under first proviso to Entry 41A of the Notification 12/2017-C.T. (R), as amended by Notification 4/2019-C.T. (R), what rate shall be taken to determine the value to be ascribed to the "GST Payable on TDR or FSI or both for construction of the residential apartments in the project but for exemption contained therein" as no specific rate has been prescribed in Notification 11/2017-C.T.-Rate or any other notification?* *What is the rate applicable to output supply of TDR or FSI?* *Whether the quantum of TDR or FSI (including additional FSI) or both shall be taken only in respect of unbooked apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula?*	*The GST on transfer of development rights or FSI (including additional FSI) is payable at the rate of 18% (9% + 9%) with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 (heading 9972).* *There is no exemption on TDR or FSI (Addl. FSI) for construction of commercial apartments. Therefore, GST shall be payable on TDR or FSI (including additional FSI) or both used in respect of: -* *(i) carpet area of commercial apartment and* *(ii) unbooked residential apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula.*

3. *Circular No. 163/19/2021-GST, dated 06.10.2021* has re-affirmed the 70:30 valuation principles in case of Solar power projects. In the circular, vide "*Para 13.1 Representations have been received seeking clarification regarding the GST rates applicable on Solar PV Power Projects on or before 1st January, 2019. The issue seems to have arisen in the context of Notification No. 24/2018-Central Tax (Rate), dated 31st December, 2018. An explanation was inserted vide the said notification that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1st January, 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1-1-2019."*

4. *Circular No. 115/34/2019-GST, dated 11.10.2019* has clarified a finer aspect of valuation in respect of airlines "*…….Passenger Service Fee Passenger Service Fee (PSF) is charged under rule 88 of Aircraft Rules, 1937. …….*

Further, Director General of Civil Aviation has clarified vide order No. AIC Sl. No. 5/2010, dated 13-9-2010 that in order to avoid inconvenience to passengers and for smooth and orderly air transport/airport operations, the User Development Fees (UDF) shall be collected from the passengers by the airlines at the time of issue of air ticket and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue

…….services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST…….

2.8 ……..the airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator."

Illustrations on Section 15 read with the CGST Rules:

Q1. Jaya purchases a Samsung television set costing ` 85,000 from an electronic shop, in exchange of her existing TV set. After an hour of bargaining, the shop manager agrees to accept `78,000 instead of his quote of `81,000, as he would still be in a profitable position (the old TV can be sold for `8,000).

Ans. Where the price is not the sole consideration for the supply, the 'OMV' would be the value of the supply. Therefore, ` 85,000 would be the value of the supply.

[Section 15(4) read with Rule 27(a) of the CGST Rules]

Q2. Mr. X located in Manipal purchases 10,000 Hero ink pens worth `4,00,000 from LMP Wholesalers located in Bhopal. Mr. X's wife is an employee in LMP Wholesalers. The price of each Hero pen in the open market is `52. The supplier additionally charges `5,000 for delivering the goods to the recipient's place of business.

Ans. Mr. X and LMP Wholesalers would not be treated as related persons merely because the spouse of the recipient is an employee of the supplier, although such spouse and the supplier would be treated as related persons. Therefore, the transaction value will be accepted as the value of the supply. The transaction value includes incidental expenses incurred by the supplier in respect of the supply up to the time of delivery of goods to the recipient. This means, the transaction value will be: `4,05,000 (i.e., 4,000,000 + 5,000).

[Section 15(1) r/w Section 15(2)]

Q3. Sriram Textiles is a registered person in Hyderabad. A particular variety of clothing has been categorised as non-moving stock, costing `5,00,000. None of the customers were willing to buy these clothes in spite of giving big discounts on them, for the reason that the design was too experimental. After months, Sriram Textiles was able to sell this stock on an online website to another retailer located in Meghalaya for `2,50,000, on the condition that the retailer would put up a poster of Sriram Textiles In all their retail outlets in the State.

Ans. The supplier and recipient are not related persons. Although a condition is imposed on the recipient on effecting the sale, such a condition has no bearing on the contract price. This is a case of distress sale, and in such a case, it cannot be said that the supply is lacking 'sole consideration'. Therefore, the price of `2,50,000 will be accepted as value of supply.

[Section 15(4) r/w Rule 27(d) read with Rule 31 of the CGST Rules]

Q4. Rajguru Industries transfer stock of 1,00,000 units (costing `10,00,000) requiring further processing before sale, from Bijapur in Karnataka to its Nagpur branch in Maharashtra. The Nagpur branch, apart from processing units of its own, engages in processing of similar units by other persons who supply the same variety of goods, and thereafter sells these processed goods to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of its Nagpur unit. Goods of the same kind and quality are supplied in lots of 1,00,000 units each time, by another manufacturer located in Nagpur. The price of such goods is `9,70,000.

Ans. In case of transfer of goods between two registered units of the same person (having the same PAN), the transaction will be treated as a supply even if the transfer is made without consideration, as such persons will be treated as 'distinct persons' under the GST law. The value of the supply would be the OMV of such supply. If this value cannot be determined, the value shall be the value of supply of goods of like kind and quality. In this case, although goods of like kind and quality are available, the same may not be accepted as the 'like goods' in this case would be less expensive given that the transportation costs would be lower. Therefore, the value of the supply would be taken at 110% of the cost, i.e., ` 11,00,000 (i.e., 110% * 10,00,000).

However, if the Nagpur branch is eligible for full input tax credit, the value declared in the invoice will be deemed to be the OMV of the goods in terms of 2nd proviso of Rule 28.

[Section 15(4) read with Rule 28(b) & (c) r/w Rule 30 of the CGST Rules]

Q5. M/s. Monalisa Painters owned by Ved is popularly known for painting the interiors of banquet halls. M/s. Starry Night Painters (also owned by Ved) is engaged in painting machinery equipment. A factory contacts M/s. Monalisa Painters for painting its machinery to keep it free from corrosion, for a fee of `1,50,000. M/s. Monalisa Painters sub-contracts the work to M/s. Starry Night Painters for `1,00,000, and ensures supervision of the work performed by them. Generally, M/s. Starry Night Painters charges a fixed sum of `1,000 per hour to its clients; it spends 120 hours on this project.

Ans. Since M/s. Monalisa Painters and M/s. Starry Night Painters are controlled by Mr. Ved, the two businesses will be treated as related persons. Therefore, `1,00,000 being the sub-contract price will not be accepted as transaction value. The value of the service would be OMV being ` 1,20,000 (i.e., ` 1,000 per hour * 120 hours)*.

Note: This view is based on the grounds that there are no comparable to this supply.

However, if M/s. Starry Nights is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the OMV of services i.e., ` 1,00,000/-

[Section 15(4) r/w Rule 28(a) of the CGST Rules]

Q6. Prestige Appliances Ltd. (Bengaluru) has 10 agents located across the State of Karnataka (except Bengaluru). The stock of chimneys is dispatched on just-in-time basis from Prestige Appliances Ltd. to the locations of the agents, based on receipt of orders from various dealers, on a weekly basis. Prestige Appliances Ltd. is also engaged in the wholesale supply of chimneys in Bengaluru. An agent places an order for dispatch of 30 chimneys on 22-Sep-2022. Prestige had sold 30 chimneys to a retailer in Bengaluru on 18-Sep-2022 for ` 2,80,000. The agent effects the sale of the 30 units to a dealer who would affect the sales on MRP basis (i.e., @ `10,000/unit).

Ans. The law deems the supplies between the principal and agent to be supplies for the purpose of GST. Therefore, the transfer of goods by the principal (Prestige) to its agent for him to effect sales on behalf of the principal would be deemed to be a supply although made without consideration. The value would be either the OMV, or 90% of the price charged by the recipient of the intended supply to its customers, at the option of the supplier. Thus, the value of the supply by Prestige to its agent would be either ` 2,80,000, or 2,70,000 (i.e., 90%*10,000 * 30), based on the option chosen by Prestige.

[Section 15(5) read with Rule 29(a) of the CGST Rules]

Q7. Mr. & Mrs. XYZ purchase 10 gift vouchers for ` 500 each from Crossword, and 5 vouchers from Four Fountains Spa costing ` 1,000 each and gives them as return gifts to children and their parents for their son's birthday party. The vouchers from Four

Fountains Spa had a special offer for couples – services for both persons at the price chargeable to one.

Ans. The value of the supply would be the money value of the goods redeemable against the voucher. Thus, in case of vouchers from Crossword, the value would be ` 5,000 (i.e., `500 * 10) and the value of vouchers in case of Four Fountains Spa would be ` 10,000 (i.e., ` 1,000 * 2 * 5).

[Section 15(5) r/w Rule 32(6) of the CGST Rules]

Q8. In a rent of company accommodation, the rent received by the landlord is ` 30,000 per month. As per the said contract, the building maintenance to the tune of ` 3,000 per month is required to be paid by the landlord. In the month of March 2023, the tenant directly pays the building maintenance to the residential society and deducts the said amount from the total consideration of ` 30,000 and paid ` 27,000 to the landlord. Further, the tenant discharge municipal taxes of ` 2,000 in March 2023. Find the taxable value in the month of April 2018?

Ans. ` 3,000 represents the amount liable to be discharged by the landlord which has been paid by the tenant. So, ` 3,000 will be added to the actual price paid or payable of ` 27000 for the purpose of valuation. ` 2,000 will also be added to the taxable value as it is in the form of taxes, duties, cesses, fees, and charges levied under the law. So, the total taxable value will be ` 32,000.

[Section 15(2)(a) and Section 15(2)(b)]

15.3. For Reference

Valuation Rules in Customs, Central Excise and Service Tax have been tested for applicability in various circumstances. All that experience and judicial interpretation may be brought to provide a good understanding of the words used in these Rules and the purpose for such usage. They are:

- Customs Valuation (Determination of Price of Imported Goods) Rules, 2007
- Customs Valuation (Determination of Price of Export Goods) Rules, 2007
- Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000
- Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008
- Service Tax (Determination of Value) Rules, 2006

15.4. Issues and concerns

1. There appears to be concerns over the taxability of actionable claims in form of betting, gambling and horse race as goods or services. The definition of goods specifically states that the actionable claims would qualify as goods for the purpose of GST law. When that being the case, seems appropriate to conclude that the actionable claim as goods and accordingly, the applicable rate of tax should be ascertained. This is based on the understanding that the notifications cannot overrule what is specified under the

law.

2. A taxable person should be cautious in case of supply of services where the consideration is in kind, by way of receipt of other services. In such cases, it may appear that the services are supplied without consideration. However, it could result in barter and would qualify as barter.

3. The common expenses incurred by a taxable person in relation to procurement of services used by the branches located in another States, the allocation of such expenses to respective branches may qualify as supply of services. There appears to be an ambiguity on ascertaining the time of supply – whether, at the end of each month such taxable person should arrive at the cost to be allocated to respective branches and remit the tax accordingly or shall arrive at the cost to be allocated at the end of the year and remit the tax on the expenses allocated to branch for the whole year.

4. The discount after effecting the taxable supplies should be issued by credit notes. Section 34(2) states that the discounts should be issued before thirtieth day of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier. This necessarily means that discount can be issued to the recipient after the supplies are effected but not after the lapse of time period specified under section 34(2).

5. Every transaction seems to be covered by 'consideration.' It is important to carefully understand benefits, rewards and gratuitous contributions that do not amount to consideration under Contract law (see section 25 and 70 of the Contract Act,1872).