



# NATIONAL CONFERENCE ON GST

## INTRICACIES in REFUND & VALUATION

Organized by: GST & Indirect Tax Committee  
Hosted by: Navi Mumbai Branch (WIRC)

ADV. KEVAL SHAH



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## REFUNDS

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# BACKGROUND – REFUND | EXPORT

- **Sec 54. – CGST Act, 2017** (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.....
  - **Sec 54(3) – CGST Act, 2017** Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:  
Provided that no refund of unutilised input tax credit shall be allowed in cases other than—
    - (i) zero-rated supplies made without payment of tax;
    - (ii) .....
- **Sec 16. – IGST Act, 2017** (1) "**Zero rated supply**" means any of the following supplies of goods or services or both, namely:—
    - (a) export of goods or services or both
    - (b) .....

# EXPORT OF GOODS | EXPORT OF SERVICES

- **Sec 2(5) - IGST Act, 2017** "**export of goods**" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India
- **Sec 2(6) - IGST Act, 2017** "**export of services**" means the supply of any service when,—
  - (i) the supplier of service is located in India;
  - (ii) the recipient of service is located outside India;
  - (iii) the place of supply of service is outside India;
  - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
  - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

## BACKGROUND – OPTIONS FOR ZERO-RATED SUPPLY

- **Sec 16 (3) – IGST Act, 2017** – A registered person making zero rated supply shall be eligible to claim *refund of unutilised input tax credit* on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.
- **Sec 16 (4) – IGST Act, 2017** – The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify –
  - (i) a class of persons who may make zero rated supply on *payment of integrated tax and claim refund* of the tax so paid
  - (ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid

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## NOTIFICATION FOR REFUND

- **Notification No. 01/2023 – Integrated Tax dated 31.07.2023**  
*hereby notifies all goods or services (except the goods specified in column (3) of the TABLE below) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid*
- Tobacco & Guthka Products specified under respective Chapters as mentioned in the Notification

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# ISSUE: INTEREST ON GST REFUND

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## INTEREST

### Interest on delayed refunds.

- Section 56 – If tax refund not made within 60 days from application, interest @ 6% is payable
- **Provided** that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within *sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent* as may be notified by the Government
- **Explanation.**—For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5)

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## INTEREST

### **Bawa International (2024) 24 Centax 8 (Del.)**

- If an application for refund is not processed within a period of sixty days of filing refund application, assessee would be entitled to interest at rate of 9 per cent per annum as per section 56 of CGST Act - *However, this does not mean that interest at rate of 6 per cent per annum was not payable for period commencing from date immediately after expiry of sixty days from his first application till sixty days after filing of his second application pursuant to appellate orders* - Accordingly, assessee was to be allowed refund along

### **Bansal International (2023) 13 Centax 210 (Del.)**

- As per Section 56 ibid, interest at rate of 6 per cent was to be payable for period commencing from a date immediately after expiry of sixty days from date of an application under Section 54(1) ibid and interest at rate of 9 per cent per annum would be payable from date immediately after expiry of sixty days from receipt of an application, which was filed as a consequent to an order passed by appellate authority, Adjudicating Authority, Appellate Tribunal or a Court that had attained finality

## INTEREST

- **Sec 73. – CGST Act, 2017** ~ (1) Where it appears to the proper officer that any tax has not been paid or short paid or *erroneously refunded*, ..... *he shall serve notice on the person chargeable with tax* which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, ....., requiring him to show cause as to why he should not pay the amount specified in the notice *along with interest payable thereon under section 50* and a penalty leviable under the provisions of this Act or the rules made thereunder.

## INTEREST

- **Section 50 – CGST Act, 2017** is the only section that speaks about the Interest payable in a few situations.

*Section 50(1) – Tax Short Paid or Not Paid*

*Section 50(3) – Input Tax Credit wrongly availed and Utilized*

- As held by the Apex Court in the matter of BIRLA CEMENT WORKS & JK. SYNTHETICS LTD. - 1994 (5) TMI 233 -SUPREME COURT, any provision made in a statute for charging or levying interest on delayed payment of tax must be *construed as substantive law and not adjectival law*
- The Gujarat High Court in UKAI PRADESH SAHAKARI KHANDUDYOG MANDLI LTD. - 2010 (12) TMI 996 - GUJARAT HIGH COURT, while dealing with the provisions of the Central Excise Act read with the Sugar Export Promotion Act, 1958, also held that interest can be levied and charged on delayed payment of tax only if the *statute that levies and charges the tax makes a substantive provision in this behalf*.

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## ISSUE: EXPORT with PAYMENT OF IGST

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# OPTIONS FOR ZERO-RATED SUPPLY

- **Sec 16 (3) – IGST Act, 2017** – A registered person making zero rated supply shall be eligible to claim *refund of unutilised input tax credit* on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.
- **Sec 16 (4) – IGST Act, 2017** – The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify –
  - (i) a class of persons who may make zero rated supply on *payment of integrated tax and claim refund* of the tax so paid
  - (ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid

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# RULE 96(10)

- (10) The persons claiming refund of integrated tax paid on exports of goods or services should not have—
  - (a) .....received supplies on which the benefit .....of Notification No. *40/2017-Central Tax (Rate), dated 23rd October, 2017*, .....or Notification No. *41/2017-Integrated Tax (Rate), dated the 23rd October, 2017* .....has been availed

Caselaw	Gist
ZAVERI & CO ~ [2018] 99 taxmann.com 8 (Gujarat)	Assessee filed a writ petition challenging vires of rule 96(10)(b) as being ultra vires CGST Act and Constitution of India; in particular, it was aggrieved by subordinate legislation giving retrospective effect to amended provision by virtue of which, upon export of goods, duty which was already refunded, would have to be paid back to Government

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## RULE 86(4B)

- Rule 86 (4B) – CGST Rules, 2017 ~ Where a registered person deposits the amount of erroneous refund sanctioned to him,—
  - (a) under sub-section (3) of section 54 of the Act, or
  - (b) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.
- *Circular No. 174/06/2022-GST dated 06.07.2022 ~ Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A*

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## OMMISSION OF RULE 96(10)

### Issue 2: Review of the provisions of rule 96 (10) & rule 89 (4A) and rule 89 (4B) of CGST Rules:

The Law Committee observed that operation of rule 96(10) is leading to unnecessary complications without any intended benefit being served and therefore recommended that rule 96(10), rule 89(4A) & rule 89(4B) of the CGST Rules, 2017 may be omitted with prospective effect and that consequential amendments in clause (b) of sub-rule (4B) of rule 86, clause B, clause C and clause E of sub-rule (4) of rule 89 and Explanation (a) to sub-rule (5) of rule 89 of CGST Rules may be made.

The Law Committee also recommended that after the proposed deletion of rule 89(4A) and 89(4B) of CGST Rules, 2017, in the cases where the benefit of concessional/exemption notifications which were specified in rule 96 (10) or rule 89 (4A) or (4B) had been availed on inputs imported or procured domestically, the refund on account of exports can be claimed through the IGST refund route under rule 96 of the CGST Rules, 2017 or as refund of accumulated Input Tax Credit (ITC) under rule 89(4) of CGST Rules.

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# ISSUE: **FIRC's ~ Payment Advices**

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## EXPORT OF SERVICE

- **Sec 2(6) - IGST Act, 2017 "export of services"** means the supply of any service when,—
  - (i) the supplier of service is located in India;
  - (ii) the recipient of service is located outside India;
  - (iii) the place of supply of service is outside India;
  - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
  - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

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# DOCUMENTARY EVIDENCE

- **Rule 89 – CGST Rules, 2017** ~ (2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in FORM GST RFD-01, as applicable, to establish that a refund is due to the applicant, *namely:* -

.....

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services

- Circular No. 125/44/2019 – GST dated 18.11.2019

48. It is clarified that the realization of consideration in convertible foreign exchange, or in Indian rupees wherever permitted by Reserve Bank of India, is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89 (2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realization Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices is required to be submitted along with the claim for refund. *It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.*



# DOCUMENTARY EVIDENCE

2	Refund of tax paid on export of services made with payment of tax	Declaration under second and third proviso to section 54(3)	<u>BRC/FIRC /any other document indicating the receipt of sale proceeds of services</u>
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Copy of GSTR-2A of the relevant period
		Statement 2 under rule 89(2)(c)	Statement of invoices (Annexure-B)
			Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
			Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund



# PAST JUDICIAL PRECEDENTS

Caselaw	Gist
LOGIN RADIUS LLP ~ 2019 (12) TMI 1342 - COMMISSIONER (APPEALS) CENTRAL GOODS AND SERVICE TAX, JAIPUR	The appellant vide their letter dated 04.02.19 has submitted to this office the unsigned three inward payment customer advice dated 24.01.2019 issued by Standard Chartered - On perusal of these advices, it is found that no references in respect of invoice no. are available. Besides it, in all these advices, in the Column of Remittance Amount, USD 100.00 only are mentioned whereas as per statement of invoice submitted by the appellant, invoice amount in USD 23250 is in one invoice and invoice amount USD 31850 is in the another invoice. Therefore, these inward payment customer advice dated 24.01.2019 issued by Standard Chartered cannot be accepted as Bank Realisation Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC)
SUN-AREA REAL ESTATE PVT. LTD ~ APPEAL NO: ST/88549/2014	in view of my above discussion and the statutory provisions of the Foreign Exchange Management Act and Hon'ble Supreme Court's judgment, I am of the considered view that even though the appellant received the payment in Indian rupees but the same is deemed to be convertible foreign exchange and accordingly the condition as provided under Rule 3(ii) of Export of Service Rules, 2005 stand complied with



# ISSUE 5: FOB vs CIF ~ With Payment of Duty

## TRANSACTION VALUE

- **Sec 15. – CGST Act, 2017** ~ (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.

- **Sec 2 (30) – CGST Act, 2017** ~ "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

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

## TRANSACTION VALUE

- **Circular no. 37/11/2018-GST dated 15/Mar/2018**

Discrepancy between values of GST invoice and shipping bill/bill of export: It has been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero-rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export

## EXPLANATION – 05.07.2022

- **Rule 89(4) – CGST Rules, 2017** ~ In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula

Explanation. — *For the purposes of this sub-rule*, the value of goods exported out of India shall be taken as —

- (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or
  - (ii) the value declared in tax invoice or bill of supply,
- whichever is less

## ISSUE: UNJUST ENRICHMENT

## CONCEPT OF UNJUST ENRICHMENT

- **Sec 54(4) – CGST Act, 2017** ~ The application shall be accompanied by—
  - (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and
  - (b) *such documentary or other evidence* (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the *incidence of such tax and interest had not been passed on to any other person*:
- **Sec 54(5) – CGST Act, 2017** ~ If, on receipt of any such application, the proper officer is satisfied that the whole or part of the *amount claimed as refund is refundable*, he may make an order accordingly and the amount so determined shall be *credited to the Fund*

## CONCEPT OF UNJUST ENRICHMENT

- **Sec 54(8) – CGST Act, 2017** ~ Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—
  - (a) refund of tax paid on [export]\*\* of goods or services or both or on inputs or input services used in making such [exports]\*\*

\*\* Substituted for "zero-rated supplies" by the Central Goods and Services Tax (Amendment) Act, 2018, w.e.f. 1-2-2019

## CONCEPT OF UNJUST ENRICHMENT

- Explanation.—For the purposes of this rule—  
(i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression "invoice" means invoice conforming to the provisions contained in section 31;

*(ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.*

- **Q 95. What is unjust enrichment. Does the concept apply in GST? – GST FAQ's**

The concept is inbuilt in Section 54(5) read with 54(8) of the CGST Act, 2017. Every claim of refund sanctioned will be credited to the Consumer Welfare Fund in terms of section 54(5) of CGST Act, 2017. It will, instead of being credited to the fund, be paid to the claimant in situations mentioned in Section 54(8). Thus, the principle will not apply to refund claims arising on account of zero rated supply.....

## CONCEPT OF UNJUST ENRICHMENT

- **Rule 89 – CGST Rules, 2017** ~ (2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in FORM GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely: -

(i) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

*Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54;*

(m) a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

*Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54:*

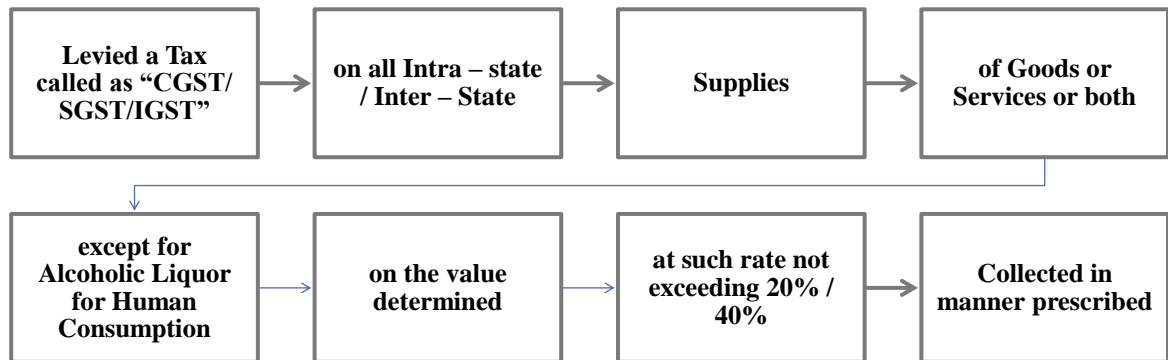
# PAST JUDICIAL PRECEDENTS

Caselaw	Gist
JAR PRODUCTIONS PRIVATE LIMITED ~ Writ petition No. 1143 of 2021 dated 9 June 2022	The HC stated that the petitioner is entitled to the refund of the amount if the incidence of tax has not been passed on to the recipient of the services. It is evident from the agreement that no incidence of tax has been passed
INDO – NIPPON CHEMICAL COMPANY LTD ~ 2005 (185) E.L.T. 19 (Guj.) dated 22 February 2002	There was no question of passing the burden of excise duty to the transferee, i.e., foreign buyer since it is undisputed position that credit was taken on inputs used in manufacture of goods for export
Sai Creation ~ 2013 (294) E.L.T. 637 (Tri. - Mumbai), 2017 (49)	Provisions of unjust enrichment does not apply if the refund pertains to credit of duty on excisable goods used as inputs in the manufacture of exported goods
Motilal Oswal Securities Limited ~ Appeal No.ST/189/2011 dated 16 November 2016	Since the services are rendered abroad, the principle of unjust enrichment does not apply in case of export of service



# VALUATION

## Dissection of Charge... CGST/SGST & IGST Act

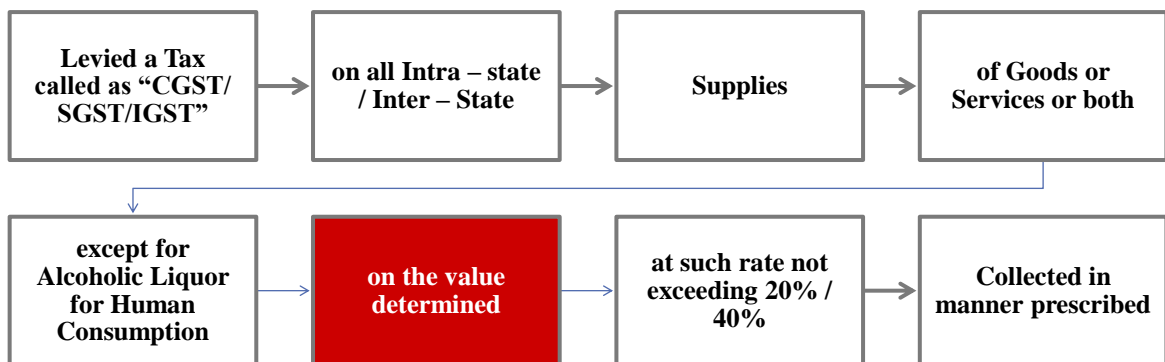


*Tax becomes payable only when liability to pay tax arises and liability to pay tax arises by the happening of the "Taxable Event" – Kalwa Devadallain Vs UOI (1963) 49 ITR 165 (SC)*

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## Dissection of Charge... CGST/SGST & IGST Act

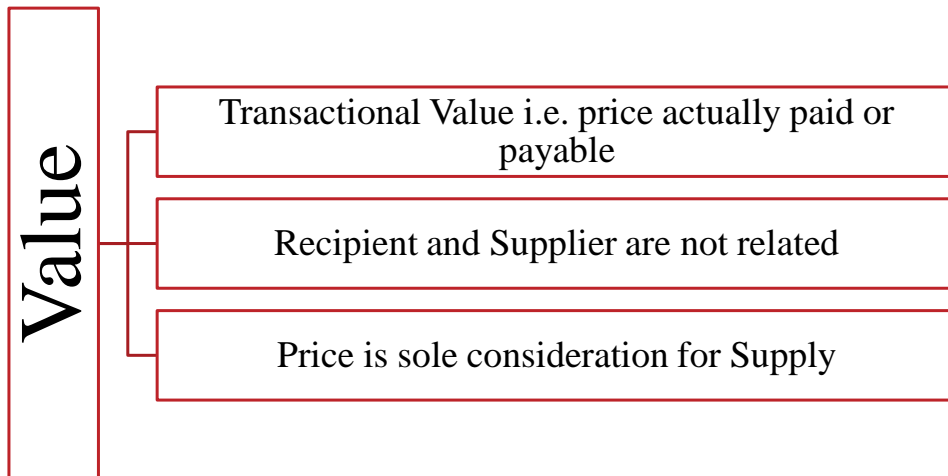


*Difference between Value and Consideration?*

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## Transaction Value of Supply



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## Related Persons

Persons shall be deemed to be “related persons” if —

- such persons are **officers or directors** of one another’s businesses;
- such persons are legally recognised **partners** in business;
- such persons are **employer and employee**;
- 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;
- one of them **directly or indirectly controls** the other;
- both of them are directly or indirectly **controlled by a third person**;
- together they directly or indirectly **control a third person**; or;
- they are **members of the same family**;
- 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

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## Price is Sole Consideration

- What does sole consideration mean?
- Whether sale of product less than current market prevailing price will make a difference?
  - Fiat India Private Limited
- Job worker retaining certain scrap after processing, whether job charges can be said to be sole consideration?
  - CCE. Nagpur v. Lloyds Steels Industries Limited - 2007 (213) E.L.T. 339 (S.C.)

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## Inclusions into the Value of Supply

Inclusion

**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

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

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## Inclusions into the Value of Supply

### Inclusion

**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;

**interest or late fee** or penalty for delayed payment of any consideration for any supply

**subsidies** directly linked to the price excluding subsidies provided by the Central Government and State Governments

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## Issues in Inclusions

- In case of sale of car/scrap TCS (Income Tax) is applicable, whether GST has to be paid on the value of TCS
  - Circular No. 76/50/2018-GST, dated 31-12-2018.
- In a works contract, free issue material is provided by the recipient of service, whether the value of such free issue material to be included
  - Bhayana Builders Private Limited
  - Tools provided for Manufacturing: Nash Industries India Private Limited 2018 (19) GSTL 162 (AAR – GST)
  - Whether it can be contended that Price is not the sole consideration?

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## Issues in Inclusions

- In case of foreign payments, there are various cases, where Income Tax is grossed up u/s 195 of the Income Tax Act, 1961
  - Magarpatta Township Dev & Construction Co Ltd

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## Exclusions to the Value of Supply

### Exclusion

any discount allowed before or at the time of supply and has been duly recorded in the invoice

After Sale discount – provided it is known at the time of supply

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## Issues - Exclusions

- A Mobile dealer has to sell a mobile to ultimate customer at Rs. 29,500/- based on then prevailing market conditions even though the said dealer purchased the said mobile at Rs. 30,000/-. The dealer is aware that there will be compensation in form of “rate difference” as per past practice. However, the dealers/stockists are not aware of the exact amount of compensation to be received. The agreement between the dealer and manufacturing company provides for a clause that various discounts shall be provided by manufacturing company from time to time basis and solely decided by Manufacturing Company.

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## Rule 27 - Value in case where consideration is not wholly in money

- **Open market value of such supply;**
- **If the open market value is not available, amount in money as is equivalent**
- **Supply of goods or services or both of like kind and quality;**
- **Rule 30 or rule 31 in that order.**

“Open market value” of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made

“supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both

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## Issues – Consideration not in Money

- Barter/Exchange Transactions:
  - Developers and Landowners
  - Hotels and Display Counters
  - Retail Shops and Advertisement Material
  - Restaurant and Promotional Material
  - Exchange Offers – Give Old and Buy New
- Whether both the transactions need to be independently valued or should be considered as revenue neutral transactions?

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## Rule 28 - Value in case where consideration in case of Related Party other than Agent

- **Open market value of such supply;**
- **Supply of goods or services or both of like kind and quality;**
- **Rule 30 or rule 31 in that order.**
- *If recipient is entitled for full credit then invoice value deemed to be open market value*

“Open market value” of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made

“supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both

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## Issues – Related Party

- Services provided to employees at free/concessional rates?
  - D-Mart allows employees purchase of goods at a price which is lower by 25% as compared to price offered to general buyers.
  - Employees working in a Hotel/Restaurant are provided with free meals as a part and parcel of their employment contracts.
- Whether one can consider giving a discount under 15(3) of CGST Act, 2017
  - (3) *The value of the supply shall not include any discount which is given —*

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## Issues – Corporate Guarantee

- Concept of Corporate Guarantee – Whether or not a supply?
- Valuation Mechanism introduced from October 2023 – 1% per annum of the value of guarantee offered?
- Whether the same rate be applicable prior to October 2023 or any other method can be adopted.
- Benefit of proviso to Rule 28(2) to be explored

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## ISSUE: DEEMED VALUATION – AIR TRAVEL

- Rule 32(3) has provided for an option to pay GST considering the Basic Fare.
- The travel agent having opted for such an option also receives commission from the airline or the IATA agent. Further, the travel agent charges processing fees to the customer.
- Whether such Processing Fees and Commission are separately liable for GST?
- *The travel agent is providing services in relation to booking of tickets for which Rule 32(3) of CGST Rules, 2017 provides for a deemed value determined based on percentage of the basic fare and accordingly, there is no need to separately pay GST on the commission income and processing fees. Having deemed a value, the legislature in its wisdom has already factored in the probable GST liability on the entire transaction.*

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## Issues – Inclusive Contracts

- Cases where agreements were entered before GST law, where specific exemptions were available and now made taxable under GST law
- Cases where nothing is mentioned in contract and tax is not charged under the bona-fide belief that tax is not payable
- Cases where contract is inclusive of all taxes

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**CONSULTINGEDGE**

**Thank You 😊**

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Opp. Johnson & Johnson Ltd.,  
Mulund West, Mumbai 400 080.



**Q & A**