

Value of Supply

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- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields. The firm has provided a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. The firm focuses on providing tailor-made solutions to challenging problems of our clients, and performs with high quality and timely service.
- Rajput Jain & Associates, a professional firm, offers its clients a full range of services. To serve better and to bring a bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms, a pioneer in diversified fields.
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional backgrounds with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market, we are constantly looking forward for a team of associates comprising of highly skilled professionals to cater to the needs of ever-increasing clientele.

Section 15 of CGST
Act, 2017 value of
taxable supply under GST

VALUATION UNDER GST

PURPOSE OF THE TOPIC

Principle of quid pro quo

**Valuation is the study of-
All those contractual
circumstances having
impact on the value of a
transaction**

VALUATION UNDER GST

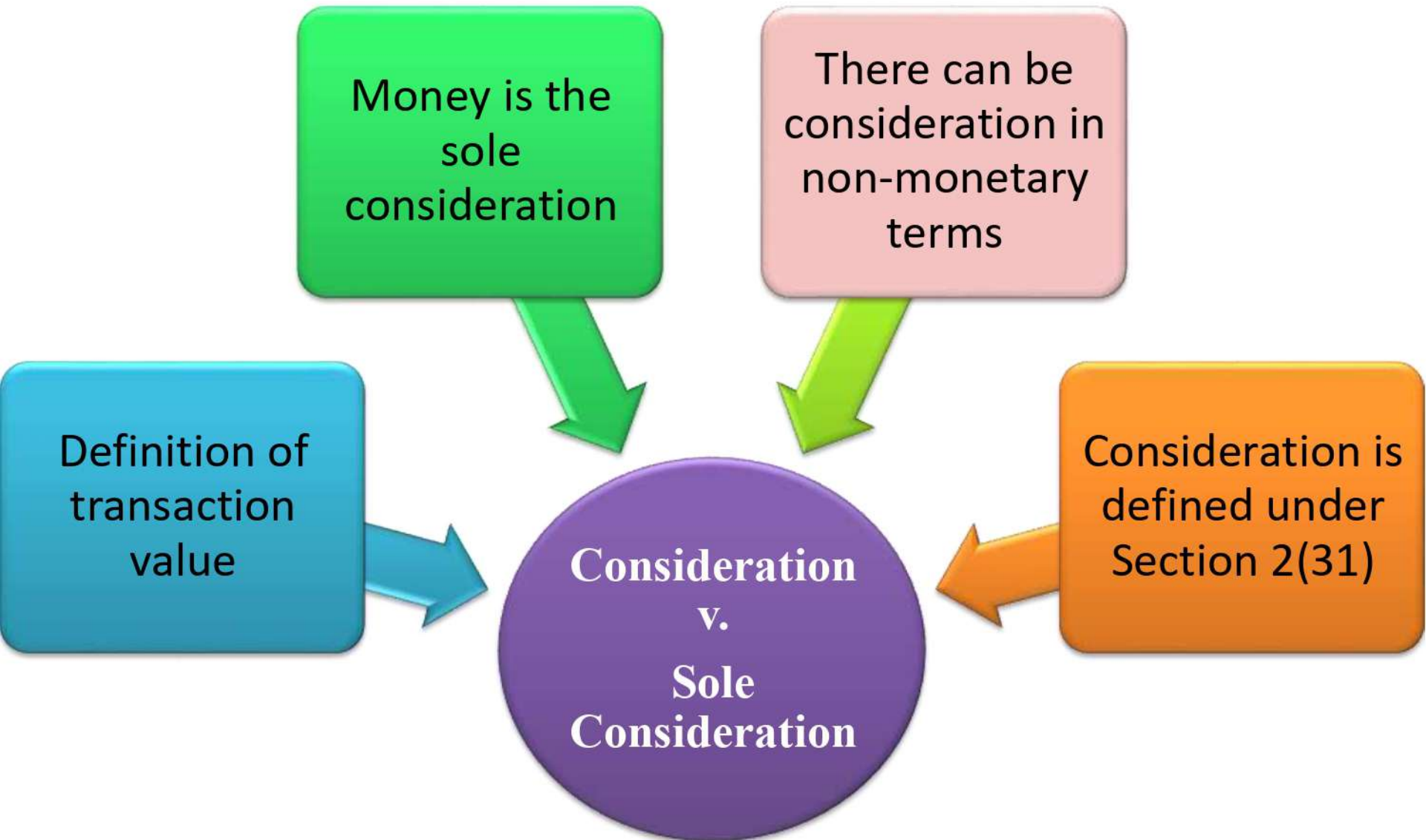
Section 15(1) Value of taxable supply

The value of a supply of goods and services shall be the transaction value,
(Price actually paid or payable)

Where the supplier and the recipient of the supply are not related

The price is the sole consideration for the supply

VALUATION UNDER GST



VALUATION UNDER GST

Section 2(31): “Consideration” in relation to the supply of goods or services or both includes–

- (a) any **payment made** or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the CG/ SG;**
- (b) the monetary value of any **act or forbearance**, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the CG/ SG**

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

VALUATION UNDER GST

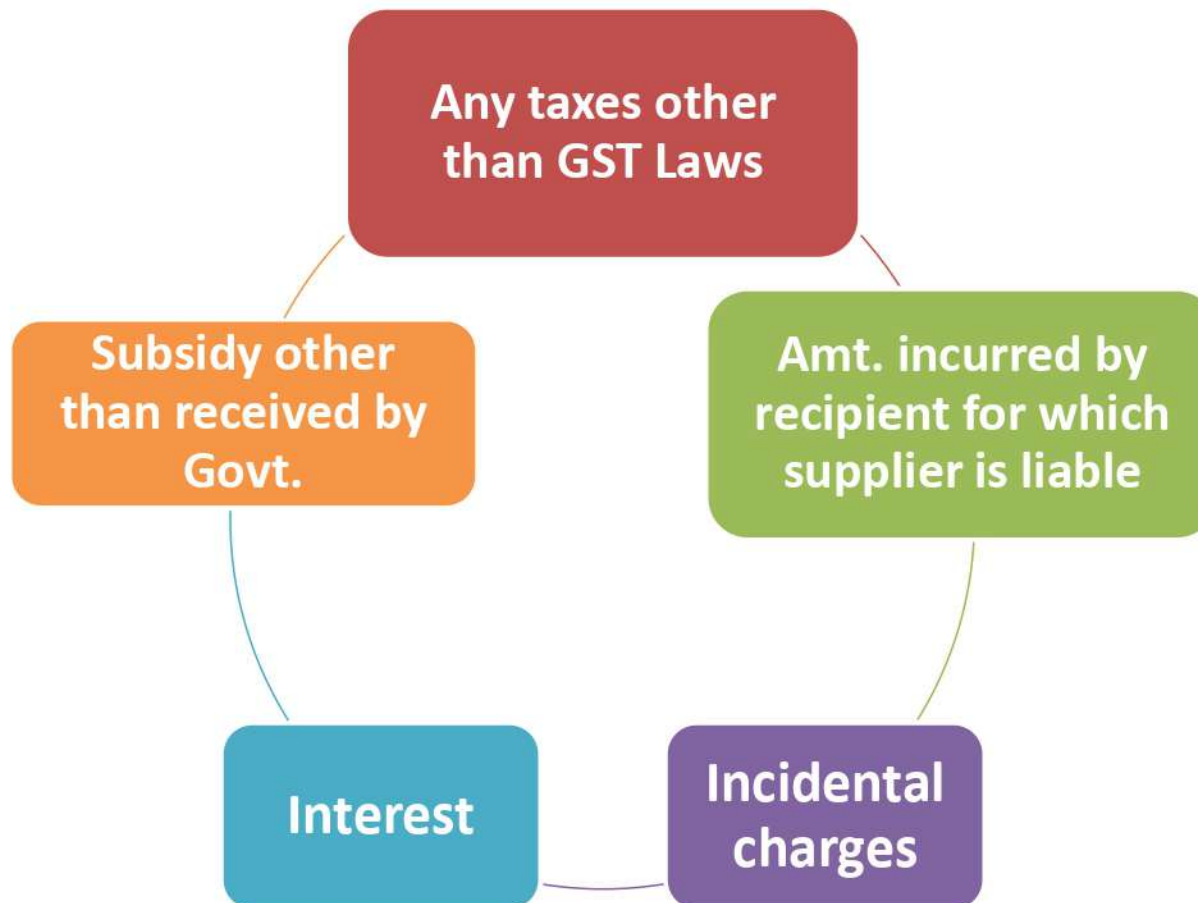
**Absence of
consideration
v.**

**Presence of
non-monetary
consideration**

- **Moulds & dies supplied by the OEM free of cost-indirect consideration [Circular No. 47/21/2018-GST, dated 8-June-2018]**

VALUATION UNDER GST

Section 15(2): Transaction value to include



VALUATION UNDER GST

Section 15(2): Transaction value to include

Section 15(2)(a): Taxes & Duties

- Any taxes, duties, fees and charges levied under any statute
- Other than GST laws

Ex.1. Any municipal taxes not subsumed in GST

Ex.2. Excise duty on Tobacco

Ex.3. Passenger service fees and User development fees

VALUATION UNDER GST

Section 15(2): Transaction value to include

S.15(2)(b): Amount incurred by recipient

- 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 for the goods /services

Ex.1 Demurrage charges paid by the purchaser on behalf of supplier

Ex.2 Freight/ insurance paid by the purchaser in case of CIF supply

VALUATION UNDER GST

Section 15(2): Transaction value to include

S.15(2)(c): Incidental expenses

- ✓ 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 supply
- ✓ at the time of, or before delivery of goods or supply of services

VALUATION UNDER GST

Section 15(2): Transaction value to include

S.15(2)(c): Incidental expenses

Ex.1 Car seller providing services like number plate, registration, handling charges etc. before the delivery of the car

Ex.2 Packing charges, commission, freight, insurance, handling charges like loading and unloading, demurrage charges, C&F expenses, bailment charges, local levies like municipal taxes etc.

Ex.3 Home delivery charges of food, if any

Ex. 4 Packing charges of a show piece at a gift shop

VALUATION UNDER GST

Section 15(2): Transaction value to include

Reimbursement of expenses

- S.2(31) GST
- Explanation 1 of S.67 of Finance Act, 1994 w.e.f. 14-5-2015
- Rule 5(1) of Determination of Value Rules, 2006-All expenditure shall be treated as consideration
- Rule 5(2) of Determination of Value Rules, 2006-Pure Agent
- *Inter-continental Consultants and Technocrats Ltd. v. Union of India (2013) 29 STR 9 (Delhi)*-Rule 5(1) held ultra-virus
- Matter pending before SC
- As such there is ambiguity about taxability of reimbursement expenses

VALUATION UNDER GST

S.15(2): Transaction value to include

S.15(2)(d): Interest on delayed payment of supply

- Interest or late fee or penalty
- For delayed payment of any consideration for any supply

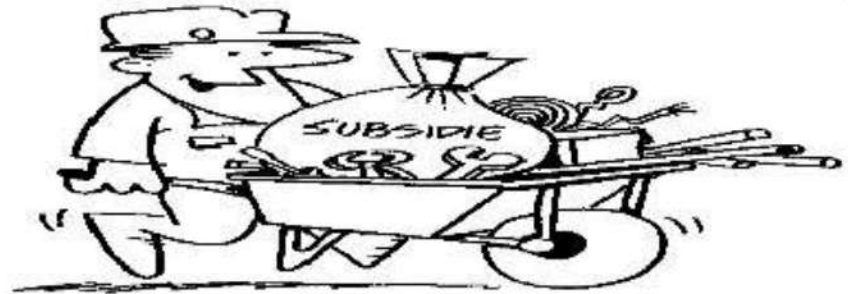


VALUATION UNDER GST

S.15(2): Transaction value to include

S.15(2)(e): Subsidies

- ✓ Subsidies
- ✓ directly linked to the price
- ✓ excluding subsidies provided by Govts.



The amount of subsidy shall be included in the value of supply
of the supplier who receives subsidy

VALUATION UNDER GST

Subsidy realized by the supplier on the supply-



Price intervention that behaves like a subsidy payment made by third party

No cost EMI/ Cash-back is outside the preview of this clause-since it goes to the consumer

Capital subsidy if not having impact on the price is outside

Low cost food in a cafeteria of a company- subsidy given by the company is inclusive

VALUATION UNDER GST

S.15(3): Transaction value not to include

S.15(3): Discount

The value of the supply shall not include any discount that is given-

- (a) before or at the time of the supply if such discount has been duly recorded in the invoice, 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 recipient.

VALUATION UNDER GST

Various Kinds of Discounts

- (1) 'In-bill' discounts:** Normally allowed
- (2) 'Off-bill' discounts:** Through CN; S. 15(3) conditions must be fulfilled
- (3) Cash discounts:** GST is not a tax on recovery of dues towards supplies
- (4) Quantity discounts:** Allowed subject to S.15(3)
- (5) Special Discounts:**
 - Aggressive Marketing [Fiat India Ltd. (SC)][2012 (8) TMI 791]
 - Difficult to fulfill S. 15(3) conditions
 - Reverse case: Supply of services by the dealer to manufacturer

VALUATION UNDER GST

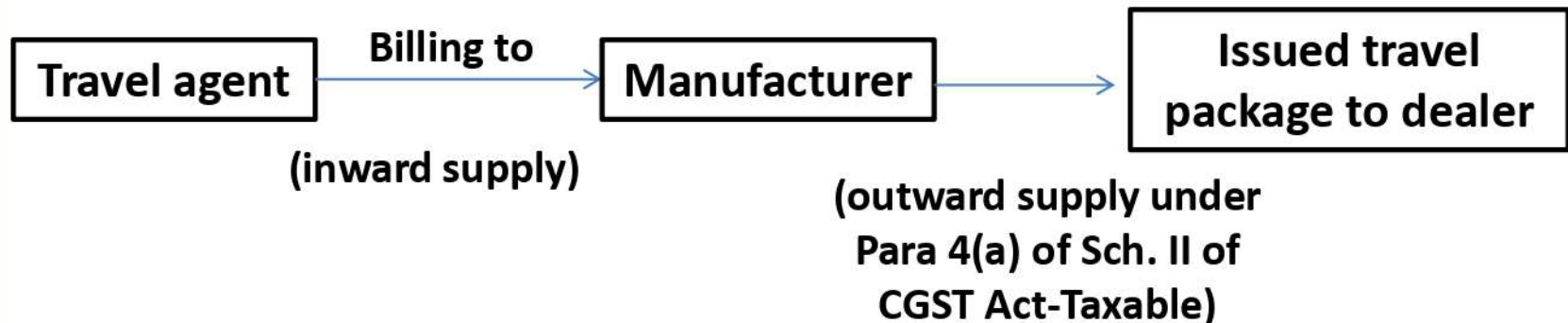
Various Kinds of Discounts

(6) Discounts 'in-kind':

- Holiday packages
 - Gold coins
 - Motor Vehicle
 - Difficult to fulfill S. 15(3) conditions
- These are incentives to the owners/ managers and not the recipient of supplies

Example: Holiday package by manufacturer to a dealer

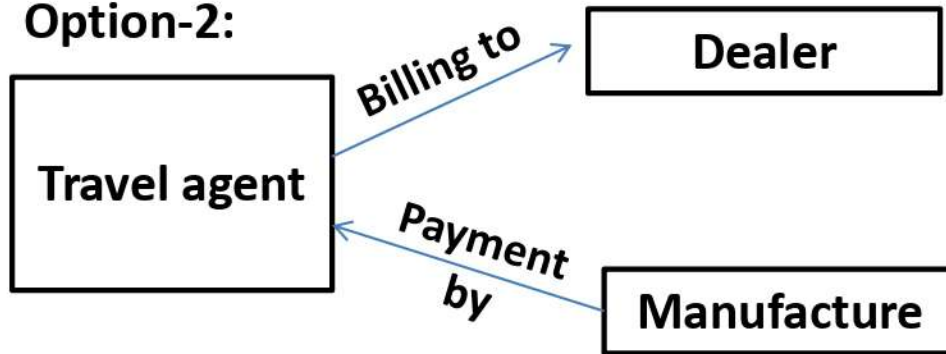
Option-1:



VALUATION UNDER GST

Various Kinds of Discounts

Option-2:



This falls back at point (5)-special discounts i.e. services received by the manufacturer from the dealer liable for tax in the hands of the dealer

(7) Free Stocks: Similar to discount 'in-kind'. These free supplies are not only taxable in the hands of manufacturer but ITC is also not available to the dealers. So, it is tax inefficient transaction.

VALUATION UNDER GST

Various Kinds of Discounts

(8) 'Buy one-take two': It is not the case where the two units of stocks are bundled together with a single price assigned to them. Therefore, unless bundled together (e.g. 4 bars of soap) 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.

VALUATION UNDER GST

Various Kinds of Discounts

(9) 'Nominal value supplies': The value as per Rule 27. Second proviso to R. 28 may fail while passing through the test of “sole consideration”.

(10) Liquidated damages: Upon analysing the definition of supply under GST law, it will result in a conclusion that there are actually two supplies which are taking place here: -

- Main supply say, 'works contract' from contractor to the contractee
- Liquidated Damages: Contractee also provides services to contractor in the form of agreeing to the obligation to tolerate an act in terms of 5(e) of Sch. II for which he receives consideration in the form of LD

VALUATION UNDER GST

Various Kinds of Discounts

(11) 'Cashback coupons in product packaging': The product being supplied to a customer contains a cashback coupons. It will not reduce the output tax liability. Cashback may represent the marketing expenses.

(12) 'Cashback coupons provided by person other than supplier': Like benefits given by e-com operators. These are only marketing expenses of the e-com operators.

VALUATION UNDER GST

Various Kinds of Discounts

(13) 'Gift vouchers valid for subsequent supplies': The customer is given credit points to avail on subsequent purchases. Subsequent sales value can be reduced.

(14) 'Free ancillary articles': Free bag with laptop. No tax on bag. No ITC reversal. These are only marketing expenses.

VALUATION UNDER GST

S.15(4)

Where the value of the supply cannot be determined under S.15(1), the same shall be determined as per valuation rules.

S.15(5)

The value of supplies as may be notified by the Govt. on the recommendation of the Council shall be determined in the manner prescribed.

VALUATION UNDER GST

Explanation to S.15

(a) Person shall be deemed to be “related person” if-

(i) Such persons are officers or directors of one another’s business;

(ii) such persons are legally recognized partners in business;

(iii) such persons are employer and employee;

(iv) one of them directly or indirectly controls the other;

VALUATION UNDER GST

Explanation to S.15

(a) Person shall be deemed to be “related person” if-

(v) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;

(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;

VALUATION UNDER GST

Explanation to S.15

(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.**

VALUATION RULES

R. 27: Value of supply of goods or services where consideration is not wholly in money

The value of supply shall be-

- a) The open market value of such supply**
- b) If open market value not available,
be the sum total of consideration in money and such further amount in money as is equivalent to consideration not in money if such amount is not known at time of supply**

VALUATION RULES

R. 27: Value of supply of goods or services where consideration is not wholly in money

The value of supply shall be-

- c) If value is not determinable under (a) or (b), the value of supply of goods/ services of like kind and quality,
- d) If value not determinable under (a), (b) or (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by application of rule 30 or 31 in that order.

VALUATION RULES

R. 27: Value of supply of goods or services where consideration is not wholly in money

Note:

- ✓ **Free supplies**
- ✓ **No consideration**



Are not synonymous

There cannot be a contract without consideration

Consideration may be partly in money and partly in non-monetary terms but may also wholly in non-monetary terms

Example: Barter & exchange,

Schedule-I without consideration

VALUATION RULES

R. 27: Value of supply of goods or services where consideration is not wholly in money

Contract having non-monetary consideration-

- **Warranty supply** of parts to end customer through a dealership- the parts are supplied 'without consideration' to end customer. The warranty obligation lies only with the OEM but the actual replacement is carried out at the dealership. OEM issues CN to dealer for the part used in the warranty replacement. Reference may be made to *Mohd. Ekram Khan (SC) in 144 STC 542*. As such, warranty involves supplies which are not free from tax.

VALUATION RULES

R. 27: Value of supply of goods or services where consideration is not wholly in money

Contract having non-monetary consideration-

- **Physician's sample** of drugs provided through sales representatives-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. 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.

VALUATION RULES

R. 27: Value of supply of goods or services where consideration is not wholly in money

Contract having non-monetary consideration-

- Stocks issued to discharge **CSR obligations**-Stocks issued without any flow of consideration from charitable institution would continue to be a supply 'for consideration' *albeit* in non-monetary form where the obligation under Companies Act stands satisfied. GST becomes payable based on the OMV. The withdrawal of stocks from inventory by the management itself is a supply under Para 4(a), Sch. II and its subsequent issuance by the management does not alter the tax incidence.

VALUATION RULES

R. 27: Value of supply of goods or services where consideration is not wholly in money

Contract having non-monetary consideration-

- **Impairment of assets** accounted in books-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 S. 17(5)(h) in respect of these assets. The usage of the words 'written off' can trigger extreme consequences.

VALUATION RULES

R. 27: Value of supply of goods or services where consideration is not wholly in money

Contract having non-monetary consideration-

- **Free-issue material** provided by client to contractor-is admittedly not a supply in itself. Care should be taken in drafting the contract whether the work was awarded for a full rate and then deductions are made towards free-issue-material by reducing the running-account-bill of the contractor or whether the contract itself was awarded for the reduced rate. Reference may be made to *NM Goel 1989 AIR 285 (SC)* [sales tax] and *Bhayana Builders (2018) 51 GSTR 133 (SC)* [service tax].

VALUATION RULES

R. 27: Value of supply of goods or services where consideration is not wholly in money

Contract having non-monetary consideration-

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.

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.

VALUATION RULES

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

(a) The open market value of such supply

(b) If open market value is not available

Value of supply of goods or services of like kind and quality

(c) If value of supply is not determinable under clause (a) or (b)

Value as determined by application of Rule 30 or Rule 31, in that order

Provided where recipient is eligible for full ITC, value declared in the invoice shall be deemed to be the open market value [Second proviso to R.28]

VALUATION RULES

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

- **Where the goods are intended for further supply as such**
- **by the recipient,**
- **the value shall,**
- **at the option of the supplier,**
- **be an amount equivalent to 90% of the price** charged for the supply of goods of like kind and quality
- **by the recipient to his customer not being a related person**

[First proviso to R.28]

VALUATION RULES

R.31A-Value of supply in case of lottery, betting, gambling and horse racing—

The value of supply of lottery run by SG shall be deemed to be $100/112$ of the face value of ticket or of the price as notified in the Official Gazette by the organizing State, whichever is higher.

The value of supply of lottery authorized by SG 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 organizing State, whichever is higher.

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.

VALUATION RULES

[R.32(3)]-Air travel agent

- **Domestic bookings: 5% of Basic Fare**
- **International bookings: 10% of Basic Fare**

“Basic fare” means that part of the air fare on which commission is normally paid to the air travel agent by the airline.



VALUATION RULES

[R.32(4)]- Life insurance business

- a) gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such amount is intimated to the policy holder at the time of supply of service;
- b) in case of single premium annuity policies other than (a) - 10% of single premium charged from the policy holder; or



VALUATION RULES

[R.32(4)]- Life insurance business

- c) in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from policy holder in subsequent years

This shall not apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.



VALUATION RULES

[R.32(5)]- Buying and Selling of Second Hand Goods

- Supply of used goods as such or after such minor processing which does not change the nature of the goods and
- where no ITC has been availed on purchase of such goods,
- the value of supply shall be the difference between the selling price and purchase price and
- where the value of such supply is negative it shall be ignored.

VALUATION RULES

[R.32(5)]- Buying and Selling of Second Hand Goods

- **Proviso to R. 32(5)- For purpose of recovery of loan,**

Purchase value of goods repossessed from an unregistered defaulting borrower

Shall be deemed to be

Purchase price of such goods reduced by 5% points for every quarter or part thereof, between the date of purchase & date of disposal by person making such repossession

VALUATION RULES

[R.32(5)]- Buying and Selling of Second Hand Goods

Relevant Notifications-

- Exemption from central tax in case of intra-State supplies of second hand goods by unregistered supplier to registered person dealing in buying and selling of second hand goods who pays the central tax on the value of outward supply as per rule 32(5) [Margin Scheme] of CGST Rules. [**NN-10/2017-Central Tax (Rate)**, dated **28-Jun-2017**]

VALUATION RULES

[R.32(5)]- Buying and Selling of Second Hand Goods

Relevant Notifications-

- **NN-8/ 2018-Central Tax (Rate), dated 25-Jan-2018**



**18% or 12% as
the case may be**

**No compensation cess on old and used motor vehicle
[NN-1/2018-Compensation Cess (Rate), dated 25-Jan-2018]**

VALUATION RULES

[R.32(5)]- Buying and Selling of Second Hand Goods

- In case of a registered person who has claimed depreciation under S.32 of the Income-Tax Act, 1961, the value that represents the margin of the supplier shall be the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply, and where the margin of such supply is negative, it shall be ignored; and
- in any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.

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