#### **GST Valuation**

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# Coverage Today

- GST Today- Relevant to Valuation
- Valuation Principles in Customs, Central Excise and Service Tax
- Valuation in GST
- Valuation Alternatives
- Issues with Relevant Landmark Judgments Customs/ CE/ ST
- Q/A 15 Minutes +\_.

## **GST Status - Valuation**

- Much more complicated than VAT
- More complicated than Customs, CE/ ST
- Self assessment- trust in tax payer Revenue Officers not aware / trained in valuation aspects – reinventing wheel
- IT to force compliance ( being done- but not follow thru) Reduced interaction with Revenue Officers [ 80% less]
- Corruption down by 70% most notices and replies to be automated

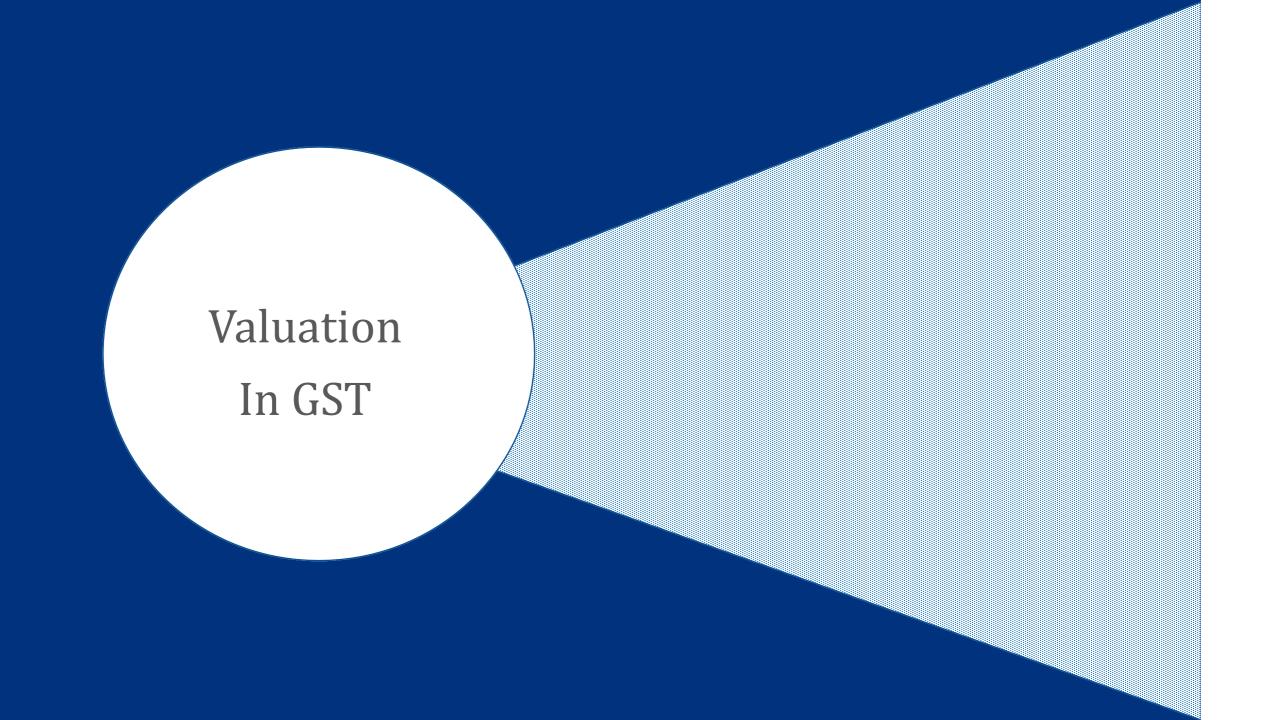
## Valuation Alternatives- Customs/ Central Excise

- CUSTOMS: Invoice price adjusted for pre import costs
- Comparable imports at same time, similar quantity, same/ equivalent make Open market Value
- Cost incurred by importer directly before import- certification, taxes for dismantling, shifting, movement prior to export
- Related party Special Valuation Bench Clearance
- CENTRAL EXCISE: Transaction value or adjusted TV
- Sole Consideration Advance, FOC supply, Amortisation
- Related party Comparable removal to unrelated party
- Expenses incurred by buyer- to be incurred by buyer

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## Valuation Alternatives- ST Valuation Rules 2006

- Non monetary Consideration added its valuation
- Not determinable:
- Comparable arms length price sole consideration Almost impossible – Disputes plenty
- 2. Inclusion of cost or expenditure recovered directly or indirectly
- 3. Specific inclusions- commission, demurrage, reimbursement ( unless pure agent)
- 4. Specific exclusions interest on delayed payments
- Immovable property gross less value of property ( land / ready/ part building)



## Levy and collection

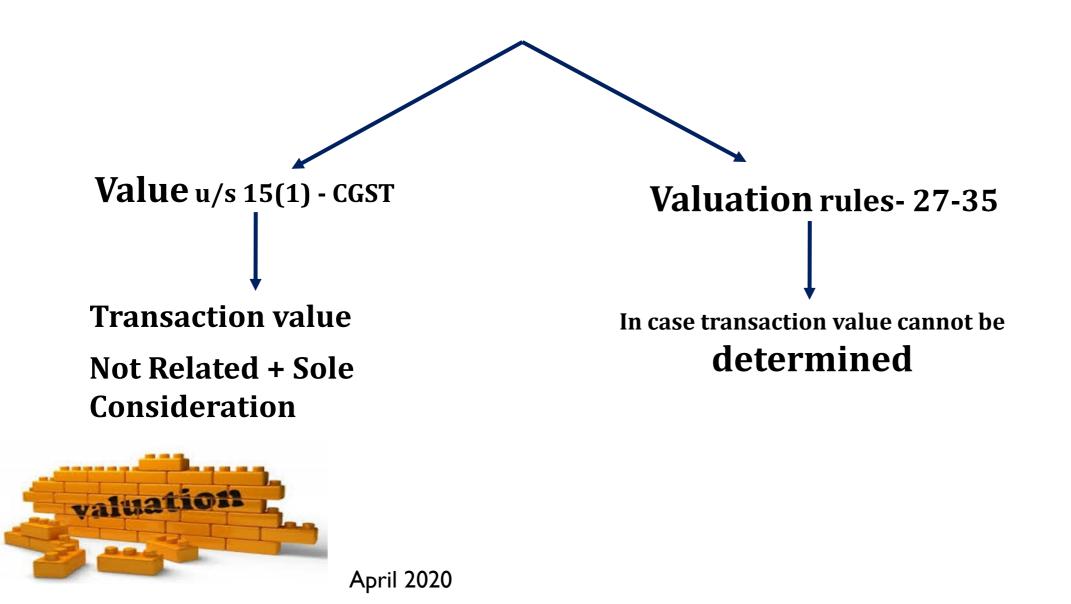
• **SECTION 9.** Levy and collection. — (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, **on the value** determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

## Section 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.

Relevance of (i) cost , (ii) consideration

## Valuation of Taxable Supply



## **Related Parties**

- (a) persons shall be deemed to be "related persons" if —
- (i) such persons are officers or directors of one another's businesses;
- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of **both of them**;
- (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. *(in all cases??)* 

#### Inclusion - 15(2)

- Taxes, other than GST specifically charged by supplier TCS?
- Liable [ Obligation) for some amt- supplier, incurred by recipient, not included in price (condition of supply *viz a viz* consideration for supply)
- Incidental expenses like commission and packing charges till the time of supply
- Interest or late fee or penalty for delayed payment of any consideration for any supply
- Subsidies linked to the supply excluding subsidies issued by CG or SG, April 2020

#### Exclusion -15 (3)

- Any discount which is given
  - Before or at the time of supply- to be recorded in invoice
  - After supply has been effected (i) discount is established in terms of agreement into and specifically linked (ii) ITC has been reversed by recipient.

• <u>Is there a need to exclude the discount from value for payment of GST is the moot</u> <u>question?</u> • 15(4) - Value of supply of goods or service cannot be determined under sub-sec (1), shall be determined in such manner as prescribed.

 15(5) – Notwithstanding anything 15(1) or 15(4) the value of such supplies may be notified by Govt on the recommendation of council determined in such manner.

## TRANSACTION VALUE

Supplier & recipient are Related Non-monetary consideration Consideration is not wholly in money **⊀**Transaction Value Reasons to doubt the truth/accuracy of Valuation Rules trans. Pure agent, money changer, insurer, airtravel agent, lottery distributor/selling agent Notified by CG/SG

#### <u>STEPS</u>

- I. Open Market Value Any buyer can buy- not restricted Old Law-Comparable price: timing, quantity, state of stocks, marketing strategy
- II. Money \_+ equivalent money for supply ( service, goods etc) New TV at 20,000 for used TV- Without TV fixed at 21000/-. GST payable on 21k
- III. Like Kind and quality- for goods possible ( reasonable differences) services not possible?

IV. Money + Determination u/r 30/31

## Open Market value? Intangible???

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#### <u>STEPS</u>

- I. Open Market Value Any buyer can buy- not restricted Old Law-Comparable price: timing, quantity, state of stocks, marketing strategy
- II. Like Kind and quality- for goods possible ( reasonable differences) services not possible?

III. Apply u/r 30/31

- Exception: Goods for further sale- 90% of recipient's sale price to independent buyer
- If related/ distinct person able to avail 100% ITC then invoice price accepted.[ supply of nil rated, exempt, non taxable- not appl.]

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#### <u>STEPS</u>

- I. 90% of recipient's sale price to independent buyer or Open Market Value
- II. Apply u/r 30/31

## Valuation Rules- R-30- Cost of Supply

#### <u>STEPS</u>

110% of:

- 1. Cost of manufacture
- 2. Cost of acquisition
- 3. Cost of provision of service

CAS-4 preferable

Builders service to Landlord – better method?

Residual – R-31- Residual- Consistent with Gen principles u/s 15

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- TV to be accepted unless sole consideration violated Basant Ind- SC [ 1996]
- Open Market Value Unrelated quotations/ bills whether basis?
- Holding to Subsidiary Price to independent comparable Prodelin- SC [ 2006]
- Market penetration is an additional consideration? FIAT India ++
- Reimbursements "such services *viz a viz* said supply" International Consultants
- Liquidated damages whether separate supply or adjustment to original consideration

## Issues in Valuation- Free of Cost

- Designs Drawings provided to contract Manufacturers
   Associated Cement Companies Ltd –SC Tech known how not linked to
   imports (Drawings and Designs)
- Supply goods for Services- Bayana Builder No [ 2013]
- Supply of material / Moulds/ dies FOC Goods yes in many SC in Central Excise - Circular 38/18 – Whose scope [Obligation] + supplied to market/ OEM- decides?
- Provide Essential Goods manufactured by self Free of cost to COVID stranded citizens



- Ad hoc deduction 75% deduction for land in ST Suresh Kumar Bansal-2016- In GST 66% deemed to be construction??
- Royalty paid to brand name owner no nexus to import- Feroda 2008-Not includible
- Notional interest on advances VST Security deposit from dealers
- Notional interest on advances Metal Box huge advance depresses the value.
- Interest on customised machinery Not liable as taken to secure against order cancellation

## Discount

- Primary discount deduction in the invoice
- Secondary discount : Quantity /Price / Rate /Time /Target qty/value / Seasonal discount
- Valuation in case of Buy 10 get 1 free terminology implication of mixed supply
- Buy more save more 92/11/2019
- Secondary discount post supply
- Discount cannot be called Marketing services

## Issues in Valuation- Discounts & Schemes

- Discount to clear stock; introduction of new model/ change in model- not questionable- Eicher Tractors-SC -2000
- Gold coin free to distributor/ retailer in one season- in package
- Hawai trip for A target category dealers
- Price drop compensation

# THANK YOU



For any clarification

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# **Classification in GST**

#### **CA Ashish Chaudhary**



## Coverage Today

**Genesis & Impact of Error in Classification- Importance to establish bona fide** 

- How to Prove Bona fide

Meaning of Classification, Goods and/or Services

**Composite, Non Composite, Mixed Supply** 

**Goods Classification - Method** 

**Service Classification – Method** 

**Direction from Judicial Precedents** 

## Situation Today

**Differentiation b/n Goods & Services** 

**Keeping 5 petroleum products outside GST** 

Multiple rates within chapter/ heading/ sub headings

**Concession without ITC- breaking chain- evasion encouragement** 

**Tweets, Circulars, Advance Ruling – revenue bias** 

No knowledge training with evaluation for powerful officers

AARs provided for classification should not be relied upon by others....

**Earlier Judicial Precedents – Reinventing the wheel .....** 

## How/ Why Errors in Classification?

- **1.** Not competitive unless follows customary practice inc: evasion
- 2. Illogical rates prescribed- fitment incorrect
- 3. Practice due to lack of education as per neighbor's in market
- 4. Continue what was there under VAT/ Service Tax Some change
- **5.** Customer direction non acceptance of higher rate
- **6.** Lower rate with change in nomenclature- market auto spares,
- 7. To get concession/ exemption coverage Supply to Govt. Auth

# How/ Why Errors in Classification?..

8. Confusion- chose lower/ higher rate – both can lead to demand

**Under GST addl:** 

- **1.** Unable to decide whether goods/services Computer s/w in pen drive/ net
- 2. Circulars tweets have expressed opinion- Brochures/Pamflets contrary
- **3.** Advance Ruling has decided- Printing Industry -
- **4.** In response to Notice by revenue- revenue biased
- **5.** Confusion on land related Development rights from Landlord

## Impact of Error

1. Higher rate- customer may deduct and pay only proper rate (MNC/ Compliant)

-Refund may get barred- 2 years + cost of opportunity , actual cost

- **2.** Lower rate Demand with 18% interest + penalty
  - Not recoverable from customer margin may be less that difference
  - Credibility with customer
  - More scrutiny/ audit depth/ frequency

Importance of establishing bona fide: 17-18 (Feb -2025)- 5 yrs from Annual Return; No ITC for customer- not possible to pass on, rate validation difficult in GST

## Meaning of Classification

•<u>Goods.</u> Classification means ascertaining the tariff heading/sub-heading under which product is categorized.

Important to determine duty structure & also examining exemptions available.
 Essential for classification – As per schedules in GST - expected to be as per Customs
 Tariff which is fairly developed in terms of judicial precedents. Conflict GST schedule
 will prevail.

•HSN persuasive value- more in detail – if aligned to GST schedule [99% would be]

**<u>Services.</u>** As per Service Accounting Code- Ch. 99 + 5 digit CPC (central product cl.)

**Read with Scheme of Classification** 

In line with international comparability.

Whether Supply? [With or w/o consideration – Sch-I]

Whether goods or services? – Sch- II [ No deemed supply]

Whether neither supply or goods or services? – Sch- III

Single supply? Multiple Supply- Composite, mixed, individual?

**Applicable HSN for the supply** 

# Scheme of classification for goods under GST

### >Specific provisions under Customs Tariff Act

>No separate Act or section under GST

### ≻Notification No. 1/2017 & 2/2017-CT (R) – explanation:

- (iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
- (iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

# Scheme of classification for goods

#### Customs Tariff

- Indian Customs Tariff consists 21 Sections and 98 Chapters.
- Section is a group consisting of a number of Chapters which codify a particular class of goods.
- The Section notes explain the scope of chapters/headings, etc.
- The Chapters consist of chapter notes, brief description of commodities arranged at four digits, six digits and eight digits levels.
- Every four-digit code is called a "heading" and every six digits code is called a "subheading" and 8-digit code is called a "Tariff Item".

➢Interpretative rules - for classification in CTA/ HSN - General Interpretative Rules.

> CTA provides a similar set of six rules - instrument for classification.

>Used to determine applicable tax rate & coverage in exemption.

>Relevance of section note, chapter note – may be anywhere in the schedule

>Order - Rule 1 and if it is not possible, recourse is taken to rule 2, 3 and 4 in that same order in which the rules are set out.

Titles of sections, chapters and sub- chapters - ease of reference. Classification - on relevant section and chapter notes contained in tariff. ٠ Sections. chapters • When Chapter does not contain any guide to classify particular product - rule 2, 3, 4 & 5 and subchapters have to be resorted The heading of Chapter 84 refer to nuclear reactors, machinery etc but even a hand • Example pump falls under chapter 84. Salora International Ltd Vs CCE 2012 (284) E.L.T. 3 (S.C.) -• Tariff entries along with relevant Section and Chapter Notes, have to be resorted to Case Law first to see whether clear picture emerges. Only in absence of such a picture emerging, Interpretative Rules can be resorted to.

- Incomplete or unfinished goods if such goods has essential character of complete or finished goods classified in same heading as that of complete goods.
   Rule 2(a)
  - Complete or finished goods would covers unassembled or disassembled form.

 cycle removed in CKD condition is a 'cycle' or railway coaches removed Example without seats would still be railway coaches.

- any reference in a heading to a substance include mixtures or combinations of that material with other materials.
- Rule 2(b) i.e. article of golds include article which is partly made of gold
  - More than one material classification as per Rule 3

## Rule 3

a

b

С

- Adopt specific description (not general description) in heading
- Ex. Steering wheel of a car is part of motor vehicle as it is more specific India Ltd. v. CC, 1994 (74) E.L.T. 003 (S.C).

 If not classifiable under 3 (a) – classify under heading which gives essential characteristics (composite goods or goods put up in sets) – mosquito liquid with electro thermic apparatus -

• If not classifiable under (a) or (b) – to be classifiable as latter the better

Rule 4 – Akin rule: Goods cannot be classified in above principles -

classified under head appropriate to goods - most akin

**Rule 5-** Packing material - specially designed/fitted to contain a specific article + given with article for which they are intended- classification of items which are packed

NA- packing material itself gives essential character as whole

Eg- camera cases, mobile cases.

Packing materials & containers cleared / presented along with goods - classifiable with goods

NA when such packing material are intended for its repetitive use.

Ex: Glass bottles meant for repetitive use & cannot be classified along with soft drink

#### Rule 6-

>Only sub-headings at the same level are comparable.

➤The relative Chapter and Section Notes apply, unless the context otherwise requires a different interpretation. Ideally 1<sup>st</sup> Section then Chapter- In case of conflict Court may go for Chapter heading importance if more specific.

# Other principles

- Trade Parlance theory
- Functions or use
- Constituent Materials

## **Classification of Services**

- Chapter 99 deals with the HSN classification of services
- (ii) Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter, "Section" and "Heading" in the annexed scheme of classification of services (Annexure).
- Relevance of UNCPC?
- Coding system for the exemption notification –

(ii) Chapter, Section, Heading, Group, or Service Code mentioned in Column (2) of the Table are only indicative.

## Issues in service classification

- Same description of service with and without condition what if condition violated
- Classification adopted by supplier applicable for recipient for availement of ITC?
- Issues in job work services
- Agricultural related services
- Residual entry -9997

## Service Classification

#### **Terms of agreement**

#### Classification of independent service- SAC + scheme

Bifurcation of combined service

#### **Essential character**

Study carefully and independently

Take detailed written Expert Opinion – no one pager

Confirm with old settled case laws in excise/ customs & service tax

If Customer can avail credit- choose higher rate- Not when exmpt.

Compare with competitors- if lower then go for AR- Appeal- SC.

Pay differential under protest....

# THANK YOU



For any clarification ashish@hiregange.com