Hiregange Academy

#### **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 +\_.

- 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

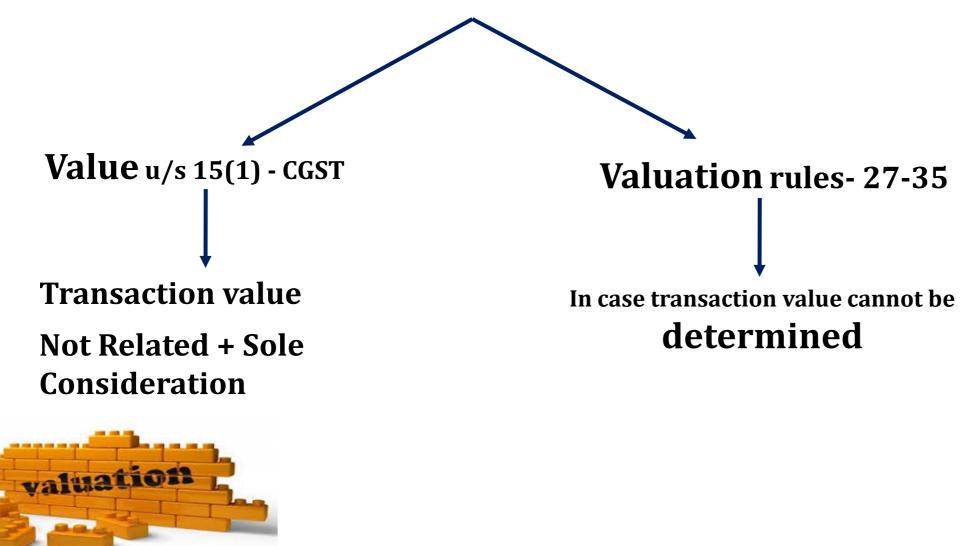
- CUSTOMS: Invoice price adjusted for pre import costs
- Comparable imports at same time, similar quantity, same/ equivalent make Open market Value
- Cost incurred by importer directly before import- certification, taxes for dismantling, shifting, movement prior to export
- Related party Special Valuation 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

# 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)



# Valuation of Taxable Supply



#### Section 15(1)

- **Supply** of goods and/or services
- Price actually paid or payable
- Supplier & recipient not related
- Price **sole** consideration

#### **Related Parties**

 Officer/ Dir of one another; partners; employer/ employee; directly/ indirectly owns, controls 25% voting; controls; both controlled by another; members of family & sole agent/ concessionaire/ distributor

#### 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>

#### Inclusion - 15(2)

- Taxes, other than GST
- Liable [ Obligation) for some amt- supplier, incurred by recipient, not included in price
- Incidental expenses like commission and packing charges.
- 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,

# Inclusions (Contd.)

- Taxes specifically charged and recovered only
- TDS- not to be included as it is not tax paid- only a collection mechanism
- Amt. incurred by recipient- whose obligation. If supplier then include. If not in his scope do not include.
- All amounts incurred by supplier and recovered from recipient upto point of supply [maybe by debit note etc.]
- Interest on delayed payment on recovery basis- if not paid not liable.

• 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

#### **Basic Issues in Valuation**

- Liquidated damages deducted from Invoice as per contract Can deduction be claimed? Yes
- LD as per contract imposed by way of Debit Note Is it a supply? Yes
- Contract for 2 cr. With specs that customer will provide 10 tonnes of cement and 2 tonnes of steel
- Contract for 4 crores with deduction of 2 cr for supply by customer.
- Whose Obligation remains important

# Valuation Rules- R-27- not wholly in money

#### <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

#### <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.]

#### <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

- Corporate Guarantee Commission as part of the investment in new markets/ regions/ products within group. Comparable value or reasonable method.
- Provide Essential Goods manufactured by self Free of cost to COVID stranded citizens- Thru RK Ashram – Comparable value – Rs. 5 cr. Not a supply for a consideration – not liable at all. However ITC reversal of approx.- 60 lakhs needed.
- Same item supplied at 5 lakhs Value would be Rs.5 Lakhs. ITC would be available.

- TV to be accepted unless sole consideration violated Basant Ind- SC [ 1996]
- Open Market Value Unrelated quotations/ bills cannot be basis
- Scrap sold by Job worker adjusted in price- General Engg [ 2007]
- Holding to Subsidiary Price to independent comparable Prodelin- SC [ 2006]
- Del credere agent interest extended to buyer not addl consideration

## **Issues in Valuation**

- Market penetration is an additional consideration? FIAT India ++
- Consideration from OEM in slow down also a consideration Cars + White Goods

- Discount cannot be called Marketing services Accounted as discount in book –special discount to TVS MICO- 1983- SC
- Pure Agent- reimbursements Not Liable International Consultants

### Issues in Valuation- Discounts & Schemes

- Discount to clear stock; introduction of new model/ change in model- not questionable- Eicher Tractors-SC -2000
- Madras Rubber Factory (Discounts).
- Schemes 1 free for 1, tooth brush with paste free, ( combination of taxable at different rates, non taxable also)
- Gold coin free to distributor/ retailer in one season- in package
- Hawai trip for A target category dealers available
- Jaguar Car for target of 200 cr sale to distributor available

# 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?



- 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

#### RESOURCES

- >cbic.gov.in, hiregange.com; hiregangeacademy.com & <u>idtc@icai.in</u>;
- Books: GST Dr. S Anil Kumar & CA Mahadev R; Background Material on GST for Commerce Students – ICAI – Free download, Beginners Guide to GST- Sep 2019 – CA Madhukar N Hiregange & Adv. Naveen Kumar KS – Wolter Kluver....
- >Online professional sites Linkedin, Tax Guru, Caclub ...

# THANK YOU



For any clarification

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