

VALUATION UNDER GST

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This presentation covers-

- ✓ *Concept of Transaction Value*
- ✓ *Method of determination of value*

CONCEPT OF TRANSACTION VALUE

Concept of transaction value

- Under the Model GST Law (hereinafter referred to as the GST Law), value for payment of GST is the '*transaction value*' computed as per the provisions of Section 15 of the GST Law.
- As per Section 15(1) of the Act states, 'transaction value' refers to the price actually paid or payable for the said supply;
- This shall apply -
 - i. Where the supplier and the recipient of supply is not a related party, and
 - ii. Price is the sole consideration for the supply

Athena Comments

- The definition of '*transaction value*' in GST Law is borrowed from Section 4 of the Central Excise Act, 1944 with one change.
- Section 4 of the Central Excise Act states '*transaction value*' refers to:
 - (i) price actually paid or payable;
 - (ii) assessee and buyer of the goods are not related party;
 - (iii) price is the sole consideration;
 - (iv) *goods sold by the assessee, for delivery at the time and place of removal.***
- The reason for not including the term "*delivery at the time and place of removal*" in the definition of transaction value in Section 15 (1) of the GST: because that part is not relevant now

Transaction value shall include

- Transaction value is *not* restricted to price alone; Section 15(2) of the GST law provides that the ‘transaction value’ shall *inter alia* also include the following:
- Section 15 (2) (a): *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 and/or services;*

Athena Comments

- The concept of including amount incurred by recipient on behalf of supplier in the transaction value is borrowed from the definition of transaction value given in Section 4(3) (d) of the Central Excise Act which reads:
- “(d) “*transaction value*” means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to,”
- This principle is laid down in the case of **McDowell and Co. Ltd. Vs. Commercial Tax Officer [1985]59STC 277 (SC)**

Para 16: “..... As a fact, in the hands of the buyer the cost of liquor is what is charged by the appellant under its bill together with excise duty which the buyer has directly paid on seller's account, the consideration for the sale is thus the total amount and not what is reflected in the bill. We are, therefore, clearly of the opinion that excise duty though paid by the purchaser to meet the liability of the appellant, is a part of the consideration for the sale and is includible in the turnover of the appellant.”

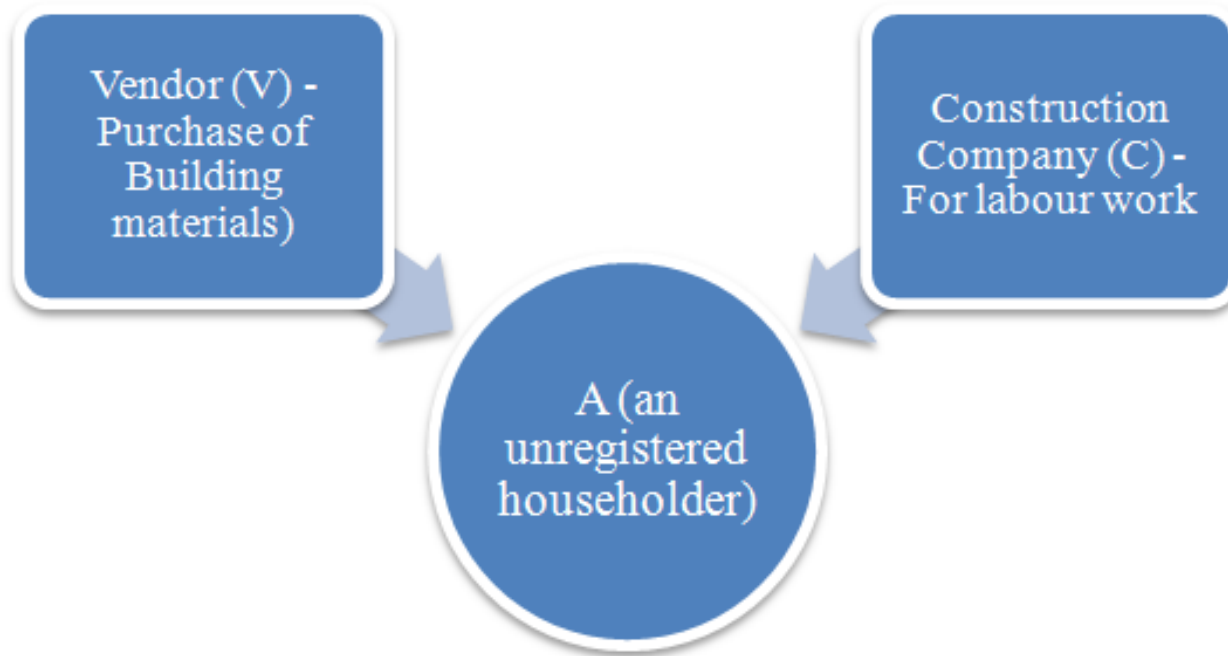
Transaction value shall include ..Contd

- Section 15 (2) (b) talks about value of goods/services provided *free of charge, by the recipient, in connection with the supply of goods / services;*
- Section 15 (2) (b) reads as under:
(b) the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent that such value has not been included in the price actually paid or payable;

Athena Comments

- Section 15(2) (b) is similar to the current provision given under Explanation 1 to Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.
- Explanation 1 lists out certain goods and services which buyer may supply, directly or indirectly, free or at reduced cost and value of such additional consideration needs to be apportioned as appropriate in the assessable value.
- In the landmark case of **Ujagar Prints, Etc. vs Union of India and Others 1987 (27) E.L.T. 567 (S.C.)** it was held that *the raw materials used by the job worker which goes into the manufacture of the processed fabric and the value of the processed fabric cannot be computed without including the value of the raw material that goes into its manufacture.*
- In the case of **Moriroku Ut India (P) Ltd. vs State of U.P. 2008 (224) E.L.T. 365 (S.C.)** it was explained that the value under Central excise is a notional value which includes the value of free issue materials/ services, as against value for sales tax/ VAT which only concerns itself with the real value/ consideration. Para 19 states: “*excise duty is a duty on manufacture. The provisions relating to measure (Section 4 of 1944 Act read with Excise Valuation Rules, 2000) aim at taking into consideration all items of costs of manufacture and all expenses which lead to value addition to be taken into account and for that purpose Rule 6 makes a deeming provision by providing for notional additions.*”

Illustration



Contd...

- In the above illustration, 'A' places an order with the Vendor (V), to supply building materials for a price of: Rs. 100 (say)
- 'A' places order with a Construction Co. (C), to do the labour work for a consideration of: Rs. 20 (say)
- In the aforementioned example, for the purpose of valuation of supply of services by 'C', the value of building materials provided by 'A', free of charge, to 'C', in relation to supply of service by 'C', would also be added, as per the provisions of Section 15(2)(b) of the GST Law.
- *The value on which 'C' is required to pay GST =*
Rs.100 (Value of building materials provided by 'A', free of charge)
+
Rs.20 (Value of labour work, as charged by 'C')

=Rs. 120
- In such circumstances, **building materials are being taxed twice**, by reason of the application of the provision of Section 15(2)(b), which provides for addition of the value of goods / services provided free of charge by the recipient, in relation to the supply of goods / services.

Contd...

- ❑ Further, in the above mentioned illustration, if ‘A’ engages Architects / Engineers for the purpose of designing & advising in relation to the construction work, the value of supply of such service provided by the Architects / Engineers would also form part of the valuation, on which ‘C’ would be required to pay GST.
- ❑ Further, if (say ‘A’) decides to also carry out the supervisory or such other activity of the construction work himself (let’s say, curing), then such services would be required to be valued, and tax would also be charged on such activity, while valuing the services provided by ‘C’.

Transaction value shall include ..Contd

- Section 15(2) (c): Royalties & license fees related to supply of goods / services, payable by the recipient, to the extent the same are not included in the price actually paid or payable;

Athena Comments

- Section 15(2) (c) is exactly similar to Rule 10 (1) (c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- Royalty and licence fee includable in assessable value as per current:
 - Royalty and licence fee for process is to be added even if the goods may be subjected to such process after importation of the goods. [Explanation to Rule 10 (1) – incorporated to invalidate *CC vs J K Corporation Ltd (2007) 208 ELT 485 (SC)*]
 - Post-importation charges are to be included in assessable value only if they are a ‘*condition for import*’. If payment of royalty is not a pre-requisite to sale of imported goods, it is not includible in assessable value of imported goods.

Athena Comments ...Contd

- In the case of ***Oracle India Private Limited case 2015-TIOL-1766-CESTAT-DEL*** it was held that license fee of the software is includible in the assessable value of the imported media packs in terms of Rule 10(1)(c) of the Customs Valuation Rules, 1988/2007 on the ground that such licence fee was a condition of sale.

Transaction value shall include ..Contd

- Section 15 (2) (d) states that any taxes, duties, fees and charges levied under any statute other than the SGST Act or the CGST Act or the IGST Act shall be included in the transaction value.

Athena Comments

- Section 15(2) (d) find its roots in the case of ***George Oakes (Private) Ltd. v. State of Madras [1961] 12 S.T.C. 476*** it was held that:
“Under the definition of turnover the aggregate amount for which goods are bought or sold is taxable. This aggregate amount includes the tax as part of the price paid by the buyer. The amount goes into the common till of the dealer till he pays the tax. It is money which he keeps using for his business till he pays it over to Government. Indeed, he may turn it over again and again till he finally hands it to Government. There is thus nothing anomalous in the law treating it as part of the amount on which tax must be paid by him. This conception of a turnover is not new. It is found in England and America and there is no reason to think that when the Legislatures in India denned 'turnover' to include tax also, they were striking out into something quite unknown and unheard of before.”
- This principle was again reiterated in ***George Oakes (Private) Ltd. v. State of Madras [1962] 13 S.T.C. 98*** where it was held that “....in calculating the total turnover, there is nothing wrong in treating the tax as part of the turnover, because 'turnover' means the amount of money which is turned over in the business.”

Transaction value shall include ..Contd

- Section 15(2) (e): incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services;

Athena Comments

- As per the current provisions ‘Incidental expenses’ is included in the transaction value in cases where price is not the sole consideration; in terms of Rule 6 of Central Excise (Valuation) Rules, 2000.
- Explanation 1 to Rule 6 includes certain services and goods whose value is to be apportioned in the value, if their cost is incurred by buyer. These goods and services are as follows:
 - value of materials, components;
 - value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used;
 - value of material consumed, including packaging materials;
 - value of engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production.

Transaction value shall include ..Contd

- Section 15 (2) (f): subsidies provided in any form or manner, linked to the supply;

Athena Comments

- In current law; any additional consideration flowing from buyer to manufacturer is includible in the transaction value.
- In ***Circular No. 983/7/2014-CX., dated 10-7-2014***, CBEC clarified that in respect of fertilizers for which subsidy is provided by the Government, the excise duty will be chargeable on the MRP and not on the subsidy component provided by the Government; as the subsidy is not a consideration flowing from buyer to manufacturer.
- In ***Maruti Suzuki India Ltd. case 2014 (307) E.L.T. 625 (S.C.)*** and ***Super Synotex (India) Ltd. 2014 (301) E.L.T. 273 (S.C.)*** the Apex Court held that subsidy received by manufacturer in form of retention of sales tax is includible in the transaction value and chargeable to excise duty.

Transaction value shall include ..Contd

- Section 15(2) (g) states:
 - any reimbursable expenditure, *and*
 - charged in relation to the supply of goods and/or services will be included in transaction value.
- Section 15 (2) (h) talks about post supply discounts to be included in transaction value.
 - Provided if there is a 'before hand agreement' or 'scheme document' to show that that the post supply discount was known at or before the time of supply then it is excluded from transaction value.

Concept of transaction value ...Contd

- As per Section 15(3): *the transaction value under sub-section (1) shall not include any discount allowed before or at the time of supply provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice issued in respect of the supply.*
- Athena Comments:
 - This provision talks about exclusion of any discount which is allowed ‘*in the course of normal trade*’.
 - Thus it is anti thesis to the concept of ‘*price actually paid or payable*’ for the supply of goods and/or services.

Concept of transaction value ...Contd

- Section 15(4) talks about the situations [illustrated from (i) to (iv)] when value cannot be determined as per Section 15(1) then Rules of valuation should be referred.
 - i. consideration is not money;
 - ii. Supplier and recipient is related;
 - iii. Reason to doubt the accuracy of the transaction value;
 - iv. Business transaction undertaken by a pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery.
- Section 15(4) (v) talks about supplies notified by SG or CG on recommendation of GST Council in which Rules of valuation is to be referred.

Athena Comments

- When value cannot be determined under Section 15(1) [this also includes Section 15(2) as it is like a proviso to sub-section 1] then rules needs to be referred.
- Section 15(4) (i) to (iv) does not talk about such supply which is without consideration.
- Rule 3(6) of GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 (hereinafter referred to as ‘GST Valuation Rules’) says that in order to determine the value of situations specified in Section 15(4), proceeds sequentially from Rule 4 to 6 of the GST Valuation Rules.

METHOD OF DETERMINATION OF VALUE under the GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016

Method of Determination of Value

- Rule 3 of the GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 gives the method of determination of value.
 - 1) Subject to Rule 7, the value of goods and/or services shall be the transaction value.
 - 2) The “transaction value” shall be the value determined in monetary terms.
 - 3) Where the supply consists of both taxable and non-taxable supply, the taxable supply shall be deemed to be for such part of the monetary consideration as is attributable thereto.
 - 4) The transaction value shall be accepted even where the supplier and recipient of supply are related, provided that the relationship has not influenced the price.
 - 5) Where goods are transferred from—
 - a) one place of business to another place of the same business,
 - b) The principal to an agent or from an agent to the principal, whether or not situated in the same State, the value of such supply shall be the transaction value.
 - 6) The value of supplies specified in sub-section (4) of section 15 of the Act shall be determined by proceeding sequentially through rules 4 to 6.

Athena Comments

- Rule 3(4) talks about related party which is defined in Section 4 of the Central Excise Act and section 2(82) of MGL defines “related persons” as well.
- Rule 3(4) says transaction value between related party is to be accepted if the relationship has not influenced the price but the rules are silent for the situation when there is an influence in transaction value due to related party transaction.

Athena Comments ...Contd

- In Customs Law, Special Valuation Branch exists to evaluate if related party transaction has influenced the assessable value or not.
- Rule 3(5) (a), says value shall be the transaction value of transfer of goods from one place to another place of the same business. This provision is not in line with Schedule I Sr. No. 5 of the GST Law.

Determination of value of supply by comparison

- Rule 4 of the GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 gives that:
 - where the value of a supply cannot be determined under rule 3, the value shall be determined on the basis of the transaction value of goods and/or services of like kind and quality supplied at or about the same time to other customers, adjusted in accordance with the provisions of sub-rule (2).
 - In determining the value of goods and/or services under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-
 - (a) difference in the dates of supply,
 - (b) difference in commercial levels and quantity levels,
 - (c) difference in composition, quality and design between the goods and/or services being valued and the goods and/or services with which they are compared,
 - (d) difference in freight and insurance charges depending on the place of supply.

Athena Comments

- Rule 4 (1) talks about value to be determined on the basis of the transaction value of goods and services of '*like kind and quality*'.
- Rule 4 of GST Valuation is in principle similar to Rule 4 of Customs Valuation (Import) Rules, 2007 which talks about determination of value of imported goods on the basis of the transaction value of '*identical goods*' imported/exported '*at or about the same time*'.
- Rule 4(3) of the Customs Valuation (Import) Rules provides a safeguard that if there are more than one transaction value of identical goods then the '*lowest of such value*' shall be taken. No such safeguard is extended in GST Valuation.

Determination of value of supply by computed value

- Rule 5 of GST Valuation says that:
 - If the value cannot be determined under Rule 4, it shall be based on a computed value which shall include the following:-
 - the cost of production, manufacture or processing of the goods or, the cost of provision of the services;
 - charges, if any, for the design or brand;
 - an amount towards profit and general expenses equal to that usually reflected in supply of goods and/or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.

Athena Comments

- Under Rule 5 gives unlimited powers to the assessing officer to compute the transaction value on the basis of '*profit and general expenses of other suppliers*' supplying '*same class or kind*' of goods and services.
- Further, unlike Customs Valuation (Import) Rules, there is no '*deductive method*' in GST Valuation.

Determination of value of supply by residual method

- Rule 6 of the GST Valuation says:
 - Where the value of the goods and/or services cannot be determined under the provisions of rule 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules.
- Athena Comments:
 - This Rule 6 is in principle similar to the residual method given under Rule 9 of the Customs Valuation (Import) Rules. However, Rule 9 of Customs Valuation provides certain situations on the basis of which Rule 9 could not have been invoked. Such a safeguard is missing in Rule 6 of GST Valuation.

Rejection of Declared Value

- Rule 7 of the GST Valuations says that:
 - Rule 7 (1) (a): If proper officer has '**reason to doubt**' the accuracy of the declared value, he may seek documents and evidence from the supplier and after submission of documents or in absence of any submission of documents, the proper officer has '**reasonable doubt**' as to the accuracy of the declared value, he may reject the value.
 - Rule 7 (1) (b): The '**reasons to doubt**' the accuracy of the declared value of the supply shall include, but not be limited to the following:
 - ✓ significantly higher value at which goods and/or services of like kind or quality supplied at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
 - ✓ significantly lower or higher value of the supply of goods and/or services compared to the market value of goods and/or services of like kind and quality at the time of supply; or
 - ✓ any mis-declaration of goods and/or services in parameters such as description, quality, quantity, year of manufacture or production.

Athena Comments

- The provision regarding rejection of declared value exists in the current Customs Valuation (Import) Rules as well.
- Rule 7 (1) (b) has list out the incidences which may construe as reasons to doubt the accuracy of the declared value which seems to be very arbitrary and gives wide powers to the proper officer which can be used as a mode of harassment.

Questions??

THANK YOU

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