

GST

VALUATION, TIME AND PLACE OF SUPPLY, FORWARD CHARGE & REVERSE CHARGE

K. VAITHEESWARAN
ADVOCATE
CHENNAI
vaithilegal@gmail.com

VALUATION

VALUATION – PRE-GST LAWS

TAX LAW	VALUATION PROVISIONS
Central Excise	<ul style="list-style-type: none">• Transaction value• Price at which goods are sold for delivery• Price must be the sole consideration• Seller and buyer must not be related.• Well designed Valuation Rules for different scenarios
VAT	<ul style="list-style-type: none">• Sale price• Price as a consideration• No reference to related party transactions• No reference to sole consideration• No complex valuation rules

VALUATION

TAX LAW	VALUATION PROVISIONS
Customs	<ul style="list-style-type: none">• Based on WTO Valuation Rules• Transaction value• Sequential method of valuation• Adoption of transaction value of identical goods or similar goods where transaction value conditions are not met• Procedure for related party transactions
Service Tax	<ul style="list-style-type: none">• Gross amount charged for service provided or to be provided

VALUE OF TAXABLE SUPPLY – SECTION 15(1)

- Transaction value
 - price actually paid or payable for the said supply of goods or services or both
 - supplier and the recipient are not related
 - price is the sole consideration for the supply
- *Whatever is not there in the VAT and Service Tax Law now find place in GST*
- *Concept of sole consideration*
 - *CCE Vs. Fiat India Pvt. Ltd. (2012) 283 ELT 161 (SC)*
 - *CCE Vs. IFGL Refractories Ltd. (2005) 186 ELT 529 (SC)*

VALUE OF TAXABLE SUPPLY – SECTION 15(2) - INCLUSIONS

- The value of supply shall include
 - Taxes, duties, etc. other than GST and compensation cess if charged separately
 - Amounts that the supplier is liable to pay in relation to the supply but has been incurred by the recipient of supply and not included in the price
 - *Incidental expenses such as commission and packing charged by supplier on recipient **including anything done at the time of or before delivery of the goods or as the case may be supply of the services***
 - *Interest or late fee or penalty for delayed payment of any consideration*
 - Subsidies directly linked to the price excluding subsidies provided by the Central and State Governments

VALUE OF TAXABLE SUPPLY – SECTION 15(3) - EXCLUSIONS

- Discount before or at the time of supply
- Discount after supply provided
 - 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
 - Input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier
- Practical Challenges
 - Credit note issued in accordance with law and as per Agreement
 - Supplier uploads the credit note with all other details
 - Seller obtains confirmation that buyer has reversed credit
 - Supplier has no means to verify this
 - This can be verified from the portal by the Department but not done
 - Appellate Authority not keen to do the work of Assessing authority

RELATED PERSON

- Persons shall be deemed to be related person if only
 - they are officers or directors of one another's business.
 - they are legally recognized partners in business
 - they are employer and employee
 - ***any person directly or indirectly owns, controls or holds 25% 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
 - they are members of the same family
- Person includes legal person
- Sole agents, sole distributors, sole concessionaires shall be deemed to be related

VALUATION – TRANSACTIONS BETWEEN RELATED PERSONS AND DISTINCT PERSONS

- Rule 28 of CGST Rules, 2017
 - Open Market Value (OMV)
 - If OMV not available, value of supply of goods or services of 'like kind and quality'
 - If value cannot be determined under (a) or (b), value as determined by application of Rule 30 or 31
- OMV means value in a transaction where the supplier and recipient are not related and price is the sole consideration to obtain such supply at the same time when the supply being valued is made
- Supply of like kind and quality means supply under similar circumstances that in respect of 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

VALUATION – TRANSACTIONS BETWEEN RELATED PERSONS AND DISTINCT PERSONS

- Rule 30 – Where value is not determinable, by any of the preceding Rules, value shall be 110% of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services
- Rule 31 – Reasonable means consistent with principles and general provisions of Section 15 and the provisions of this Chapter

VALUATION – TRANSACTIONS BETWEEN RELATED PERSONS AND DISTINCT PERSONS

- **First Proviso to Rule 28** provides that, 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 equal to ninety percent 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
 - Option available to goods
 - May not be relevant to import of goods since customs valuation is adopted.
- **Second Proviso** provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services

RELATED PARTY TRANSACTIONS

- Valuation
 - Second proviso to Rule 28
- Practical Challenges
 - Recipient is eligible for full ITC
 - Exempt industry?
 - Businesses falling under 5% category without ITC as per notification?
 - What is the philosophy behind related party valuation mechanism?

BRANDS

- **Brand owned by one entity and used by group entities**
 - Logos and Brands
 - When a related party is selling the goods with the brand, can it be said that there is a separate brand promotion service?
 - ***Mohit Mineral (SC)***
 - Decisions in Income Tax in the context of AMP and transfer pricing
 - The Delhi High Court in the case of ***Maruti Suzuki India Ltd. Vs. CIT (2015) 381 ITR 717***, has held that AMP expenses incurred by the Indian subsidiary cannot be categorised as an international transaction warranting a transfer pricing adjustment
- License agreements
- Usage without agreements
- Valuation
- Availability of ITC
- Revenue neutral exercise

CORPORATE GUARANTEE

- Parent company provides corporate guarantee on behalf of subsidiaries to
 - Banks and financial institutions
 - Customers
- No charges or commission or fees levied
- IndAS requirements
- Whether there is a supply of service for levy of GST?
- Whether mere relationship is enough sans supply?
- Whether has a bearing on profits, income, losses or assets of the enterprise?
- Shareholder activity?

CORPORATE GUARANTEE

- Board Circular No. 199, dated 17.07.2023
 - If HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules
 - Same analogy is equally applicable to related persons since valuation under Rule 28 is the same for both related and distinct persons
- **52nd GST Council Meeting** – What is on the cards?
 - Circular to be issued to clarify that if no consideration is paid to a director for providing personal guarantee, OMV shall be taken as zero and no GST
 - Insert Rule 28(2) – 1% of the amount of guarantee or actual consideration, whichever is higher would be the taxable value of supply of corporate guarantee
 - Issue a Circular to clarify that valuation would be governed by Rule 28(2) irrespective of whether full ITC is available to the recipient of services or not

FORWARD CHARGE & REVERSE CHARGE

CONCEPT OF FORWARD CHARGE AND REVERSE CHARGE

- Section 9(1) of the CGST Act, 2017 provides for the levy on intra-State supply.
 - GST to be paid by the taxable person
 - Popularly known as Forward Charge
- Section 9(3) empowers the Government to notify categories of supplies where tax shall be paid on reverse charge basis by the recipient
 - All the provisions of the Act to apply to such recipient as if he is the person liable to pay tax
 - Legal Services, Goods Transport Agency, Sponsorship Services, Government Services, etc.
 - Ocean freight and decision of the Supreme Court in ***Mohit Minerals***
- Section 9(4) empowers the Government to specify **class of registered persons** who receive supplies from unregistered suppliers to pay GST on reverse charge basis
 - All the provisions of the Act to apply to such recipient as if he is the person liable to pay tax
 - Construction services

TIME & PLACE OF SUPPLY

A solid blue horizontal bar spanning the width of the slide, located at the bottom.

PLACE OF SUPPLY

- Goods
- Services
- Inter-State Supply
- Intra-State Supply
- Place of supply for goods
- Place of supply for services
- Section 12 of the IGST Act
- Section 13 of the IGST Act
- Export
- Import

INTEGRATED GST (IGST)

- Inter-State Supply of Goods
 - Location of Supplier in State A
 - Place of Supply in State B
 - IGST
- Inter-State Supply of Services
 - Location of Supplier in State A
 - Place of Supply in State B
 - IGST
- Goods imported into India
 - Place of Supply in India
 - IGST
- Goods exported from India
 - Place of Supply outside India
 - Zero rated supply

PLACE OF SUPPLY OF GOODS

PARTICULARS	PLACE OF SUPPLY
Where supply involves movement of goods, whether by the supplier or the recipient or by any other person	<u>Location of the goods</u> at the time at which the <u>movement</u> of goods <u>terminates</u> for <u>delivery to the recipient</u>
Where goods are delivered by the supplier <ul style="list-style-type: none"> • to a recipient or • any other person on the direction of a third person, • whether acting as an agent or otherwise, • before or during movement of goods, • either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods – 10(1)(b)	The principal place of business of <u>such person</u>
Where supply <u>does not involve movement</u> of goods, whether by the supplier or the recipient	Location of such goods at the time of the <u>delivery to the recipient</u>
Where goods are assembled or installed at site	The place of such installation or assembly
Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle,	Location at which such goods are taken on board.

SECTION 10 - EXAMPLES

TRANSACTION	APPLICABLE GST
A Ltd. Chennai supplies valves to B Ltd. Chennai	CGST + SGST – Section 10(1)(a)
B Ltd. Chennai places a PO on A Ltd. Chennai to deliver valves to its factory in Hyderabad	CGST + SGST – Section 10(1)(b)
B Ltd. Hyderabad places a PO on A Ltd. Chennai to deliver valves to its factory in Chennai	IGST – Section 10(1)(b)
A Ltd. Chennai stock transfers goods to its branch in Delhi	IGST – Section 10(1)(a)
M Ltd., Mumbai supplies television sets to M/s. Star Liners at the time of docking in Mumbai Port	CGST + SGST – Section 10(1)(e)

PLACE OF SUPPLY OF GOODS – IMPORT AND EXPORT

- Section 11 of the IGST Act, 2017

PARTICULARS	PLACE OF SUPPLY
Goods imported into India	Location of the Importer
Goods exported from India	Location outside India

PLACE OF SUPPLY - SERVICES

SECTION	CONDITIONS
Section 12 of the IGST Act	Where location of the supplier of services AND the location of the recipient of services is in India
Section 13 of the IGST Act	Where location of the supplier of services OR the location of the recipient of services is outside India

LOCATION OF SUPPLIER OF SERVICES

PARTICULARS	PLACE OF SUPPLY
Where supply is made from place of business for which the registration has been obtained	Location of such place of business
Where supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere)	Location of such fixed establishment
Where supply is made from more than one establishment, whether the place of business or fixed establishment	Location of the establishment most directly concerned with the provision of the supply
In the absence of such places	Usual place of residence of the supplier

LOCATION OF RECIPIENT OF SERVICES

PARTICULARS	PLACE OF SUPPLY
Where supply is received at a place of business for which registration has been obtained	Location of such place of business
Where supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere)	Location of such fixed establishment
Where supply is received at more than one establishment, whether the place of business or fixed establishment	Location of the establishment most directly concerned with the receipt of the supply
In the absence of such places	Usual place of residence of the recipient

KEY TERMS

- Fixed Establishment means a place (other than the registered place of business) which is characterised by sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs
- Place of business includes
 - a place from where business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
 - A place where a taxable person maintains his books of account; or
 - A place where a taxable person is engaged in business through an agent, by whatever name called.
- Usual place of residence means
 - In the case of an individual, the place where he ordinarily resides.
 - In other cases, the place where the person is incorporated or otherwise legally constituted.

PLACE OF SUPPLY - SERVICES – SECTION 12 – SOME SCENARIOS

PARTICULARS	PLACE OF SUPPLY
<p>(i) Services directly in relation to an <u>immovable property</u> including services of architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service of grant of <u>rights to use immovable property, carrying out or co-ordination of construction work</u></p> <p>(ii) By way of <u>lodging accommodation</u> by a hotel, inn, guest house, homestay, club or campsite including house boat or any vessel</p> <p>(iii) By way of <u>accommodation in any immovable property</u> for <u>organizing</u> any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services in relation to such function in such property</p> <p>(iv) Ancillary services to the above</p>	<p><u>Location at which immovable property or boat or vessel is located or intended to be located</u></p> <p><i>Provided where the immovable property or boat or vessel is located <u>outside India</u> the place of supply shall be the location of the recipient</i></p> <p><i>Explanation.- Where immovable property etc. is located in more than one State or UT, supply of services shall be treated as made in each of the respective States or UTs, in <u>proportion to the value</u> for services separately collected or determined in terms of the contract or agreement entered into in this regard or in the absence of contract or agreement, on such other basis as may be prescribed</i></p>

PLACE OF SUPPLY - SERVICES – SECTION 12 – SOME SCENARIOS

PARTICULARS	PLACE OF SUPPLY
Services of <u>restaurant</u> and <u>catering</u> , personal <u>grooming</u> , <u>fitness</u> , <u>beauty</u> treatment, <u>health</u> service including cosmetic and plastic surgery	Location where services are <u>actually performed</u>
Services in relation to <u>training and performance appraisal</u> to: (i) A registered person (ii) Person other than a registered person	Location of such person Location where services are performed
<u>Admission</u> to a cultural, artistic, sporting, scientific, educational or entertainment event or amusement park or any other place and services ancillary	Location where the <u>event is held</u> or where the <u>park</u> or such <u>other place is located</u>

PLACE OF SUPPLY - SERVICES – SECTION 12 – SOME SCENARIOS

PARTICULARS	PLACE OF SUPPLY
Place of supply of services on <u>board a conveyance</u> including a vessel, aircraft, train or motor vehicle	Location of the <u>first scheduled point of departure</u> of that conveyance for the journey
The place of supply of <u>banking</u> and other <u>financial services</u> including stock broking services to any person	<p>Shall be the <u>location of the recipient of services</u> on the records of the supplier of services</p> <p>If the location of the recipient of services is not on the records of the supplier, the place of supply shall be location of the supplier of services.</p>

SECTION 12 – DEFAULT PROVISION – SECTION 12(2)

PARTICULARS	PLACE OF SUPPLY
Services except services specified above provided to a registered person	Location of such person
Services except services specified above provided to a person other than registered person	Location of the recipient if the address on record exists and the location of the supplier of services in other cases.

- Consultancy
- Advisory
- Audit
- Security
- General Services

PLACE OF SUPPLY OF SERVICES WHERE THE LOCATION OF THE SUPPLIER OR THE RECIPIENT OF SERVICES ARE OUTSIDE INDIA

– SECTION 13 – SOME SCENARIOS

PARTICULARS	PLACE OF SUPPLY
Services supplied in respect of <u>goods</u> which are required to be made <u>physically available</u> by the recipient of service to the supplier of service, or to a person acting on behalf of the supplier of service in order to provide the services	<p>Location where the services are <u>actually performed</u></p> <p>Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of service</p> <p>Provided further that this clause shall not apply in the case of a service supplied in respect of goods that are temporarily imported into India for repairs or for any other treatment or process and are exported after such repair, treatment or process without being put to any use in India, other than that which is required for such repairs etc.;</p>

PLACE OF SUPPLY OF SERVICES WHERE THE LOCATION OF THE SUPPLIER OR THE RECIPIENT OF SERVICES ARE OUTSIDE INDIA

– SECTION 13 – SOME SCENARIOS

PARTICULARS	PLACE OF SUPPLY
(i) Services supplied by a banking company, or a financial institution, or a non-banking financial company, <u>to account holders</u> ;	Location of the supplier of service
(ii) Intermediary services ;	
(iii) Services consisting of hiring of means of transport other than aircrafts and vessels except yachts, upto a period of one month.	

PLACE OF SUPPLY OF SERVICES WHERE THE LOCATION OF THE SUPPLIER OR THE RECIPIENT OF SERVICES ARE OUTSIDE INDIA
– SECTION 13(2) – DEFAULT PROVISION

PARTICULARS	PLACE OF SUPPLY
Other services other than the services mentioned above	Location of the service receiver Provided if the location of the service receiver is not available in the ordinary course of business the place of supply is the location of the service supplier

CONSULTANCY

- Software consultancy services contract between US Company and US client
- Entire work outsourced to Indian subsidiary
- Subsidiary provides consultancy services to US holding company
- Invoice raised by Indian company on US Company
- Invoice raised by US company on overseas client
- Convertible foreign exchange received by Indian Company

EXPORT

- Supplier of service – India
- Recipient of service – located outside India
- Place of Supply – located outside India – Section 13(2) of IGST Act, 2017
- Convertible foreign exchange
- Export of Service

INTERMEDIARY

- ABC & Co., Ahmedabad operates as an intermediary
- ABC facilitates supply of goods between XYZ, Singapore and LKM, Turkey
- 5% commission is received in convertible foreign exchange from XYZ, Singapore
- Location of Supplier – India
- Location of recipient – Outside India
- Convertible foreign exchange
- Parties not mere establishments
- *Place of Supply – location of the supplier of service in terms of Section 13(8) of the IGST Act, 2017*
- Constitutional validity of Section 13(8)(b) of the IGST Act was challenged before the Bombay High Court in the case of **ATE Enterprises Pvt Ltd. Vs. UOI and Ors [TS-258-HC(BOM)-2021-GST]** – The Division Bench differed on validity and the matter was referred to a third judge. The third judge ultimately held that
 - The provisions of Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional, provided that the provisions of Section 13(8)(b) and Section 8(2) are confined in their operation to the provisions of IGST Act only and the same cannot be made applicable for levy of tax on services under the CGST and MGST Acts

THANK YOU

K. VAITHEESWARAN
ADVOCATE
CHENNAI
vaithilegal@gmail.com