

Importance of Classification and Valuation in GST

(with some specific issues)

A presentation by:
Mr. V Lakshmikumaran, Managing Partner,
Lakshmikumaran & Sridharan

Classification

Principles and
Issues



Basic Features of GST



- ⇒ Tax on supply of goods or services
- ⇒ Applicable to entire value chain
- ⇒ Destination-based Taxation
- ⇒ Dual tax, levied by Center & States

Basic Features of GST



- ⇒ Sharing of powers between Center & States
- ⇒ Appropriate amendment to the Constitution of India
- ⇒ Distinction between inter-state (IGST) & intra-state (CGST+SGST) supplies

Basic Features of GST



- ⇒ Levy of IGST on import of goods or services
- ⇒ Credit flow across the value chain (with few exceptions)
- ⇒ Export of goods and services are zero-rated.

IGST paid in one state is available as credit in another state!

Cause for celebration!!!



Taxes subsumed under GST

Central Levies

- Central excise duty
- Central Sales Tax (CST)
- Additional excise duties
- Excise duty levied under the Medicinal and Toiletries Preparation Act
- Service tax
- Additional customs duty (CVD)
- Special additional duty (SAD)
- Surcharges and cesses relating to supply of goods and services.



State Levies

- VAT/Sales tax
- Entertainment tax (other than levied by local bodies)
- Octroi and Entry tax
- Purchase tax
- Luxury tax
- Taxes on lottery, betting and gambling
- State surcharges and cesses relating to supply of goods and services

Five Basic Question to Master GST

If you want to master GST, answer the following:

⇒ Who should pay?

⇒ Whom to pay?

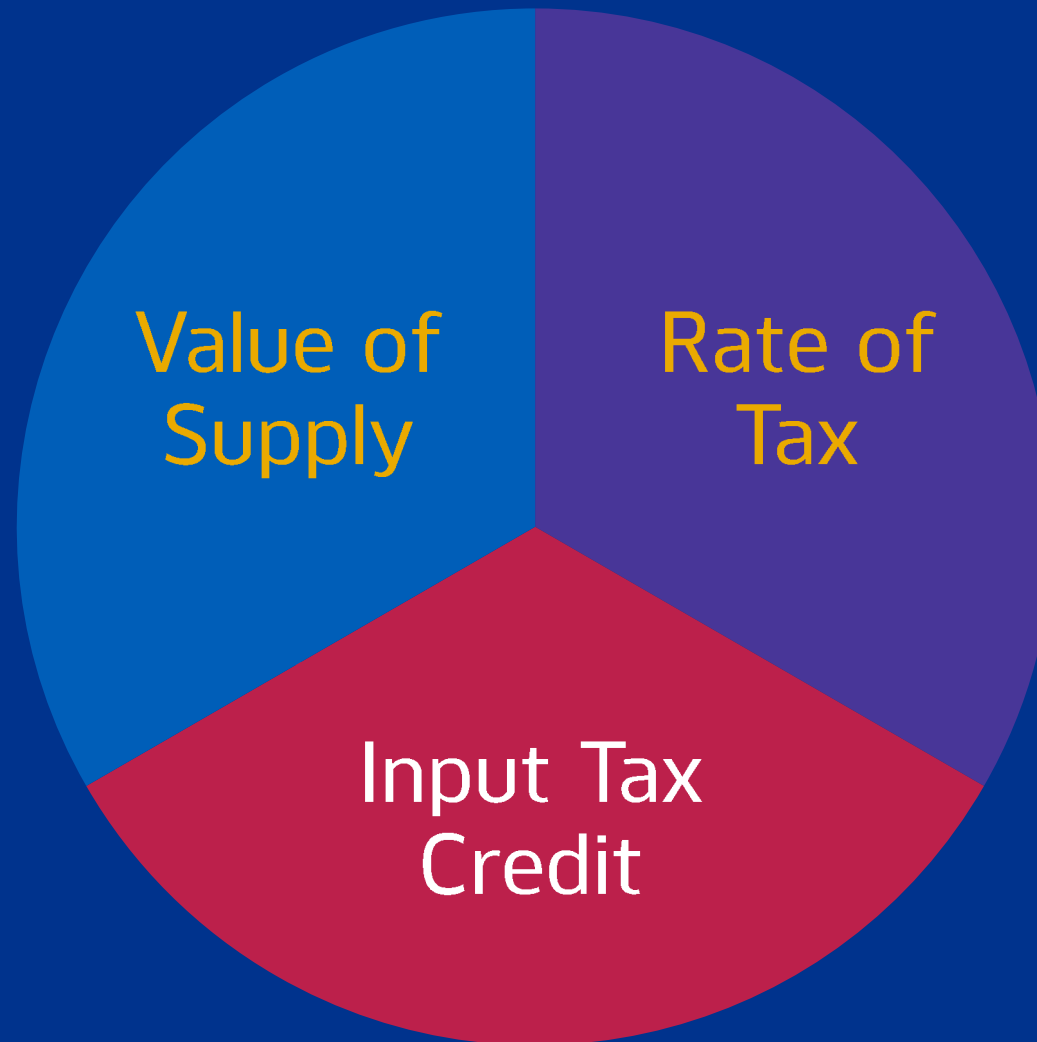
⇒ How much to pay?

Topic of today's discussion

⇒ How to pay?

⇒ When to pay?

Quantum of Taxes



Principles behind fixing the rates

**Center and States
should not lose
existing revenue**



**Principles
of
Equalization**



**Taxpayer should
not face increased
tax burden**



GST Rates



- ➔ Multiple rates of tax for goods and services
- ➔ Exemptions with restriction on availment of ITC
- ➔ Six schedules for goods and one for services
- ➔ Compensation cess for few goods

GST Tariff Schedule

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)

Notification No.1/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the central tax of-

- (i) 2.5 per cent. in respect of goods specified in Schedule I,
- (ii) 6 per cent. in respect of goods specified in Schedule II,
- (iii) 9 per cent. in respect of goods specified in Schedule III,
- (iv) 14 per cent. in respect of goods specified in Schedule IV,
- (v) 1.5 per cent. in respect of goods specified in Schedule V, and
- (vi) 0.125 per cent. in respect of goods specified in Schedule VI

appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on intra-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules.

GST Tariff Schedule

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
		specified or included [8419 89 30], Cooling towers and similar plants for direct cooling (without a separating wall) by means of recirculated water [8419 89 40], Plant growth chambers and rooms and tissue culture chambers and rooms having temperature, humidity or light control [8419 89 60], Apparatus for rapid heating of semi-conductor devices, apparatus for chemical or physical vapour deposition on semiconductor wafers; apparatus for chemical vapour deposition on LCD substratus [8419 89 70]; parts [8419 90]
122.	8422	Dish washing machines, household [8422 11 00] and other [8422 19 00]
123.	8423	Electric or electronic weighing machinery (excluding balances of a sensitivity of 5 centigrams or better), including weight operated counting or checking machines; weighing machine weights of all kinds
124.	8424	Fire extinguishers
125.	8427	Fork-lift trucks; other works trucks fitted with lifting or handling equipment
126.	8428	Other lifting, handling, loading or unloading machinery (for example, lifts, escalators, conveyors, teleferics)
127.	8429	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers
128.	8430	Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers
129.	8443	Printers which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or to a network printers; copying machines, facsimile machines; ink cartridges with or without print head assembly and ink spray nozzle

GST Tariff Schedule

Explanation. – For the purposes of this notification,-

(i) The phrase “unit container” means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a pre-determined quantity or number, which is indicated on such package.

(ii) The phrase “registered brand name” means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act, 1999.

(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.

2. This notification shall come into force with effect from the 1st day of July, 2017.

[F.No.354/117/2017-TRU]

GST Tariff Schedule

- ➔ Tariff item, sub-heading, heading or chapter specified in column (2)
- ➔ Description specified in column (3)
- ➔ Explanation (iv) to the notification–

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.

General Rules of Interpretation of HSN

Rule 2(a) –

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article.

General Rules of Interpretation of HSN

Rule 2(a) continued...

It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this rule) presented unassembled or dis-assembled.

General Rules of Interpretation of HSN

Rule 3(a) –

The heading which provides the most specific description shall be preferred to headings providing a more general description.

General Rules of Interpretation of HSN

Rule 3(b) –

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Composite vs. Mixed Supply

Composite Supply

Any supply comprising of two or more taxable supplies which are naturally bundled and are supplied in conjunction with each other, one of which is a principal supply, shall be treated as a supply of such principal supply



Composite vs. Mixed Supply

Principal Supply

The supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary



Composite vs. Mixed Supply

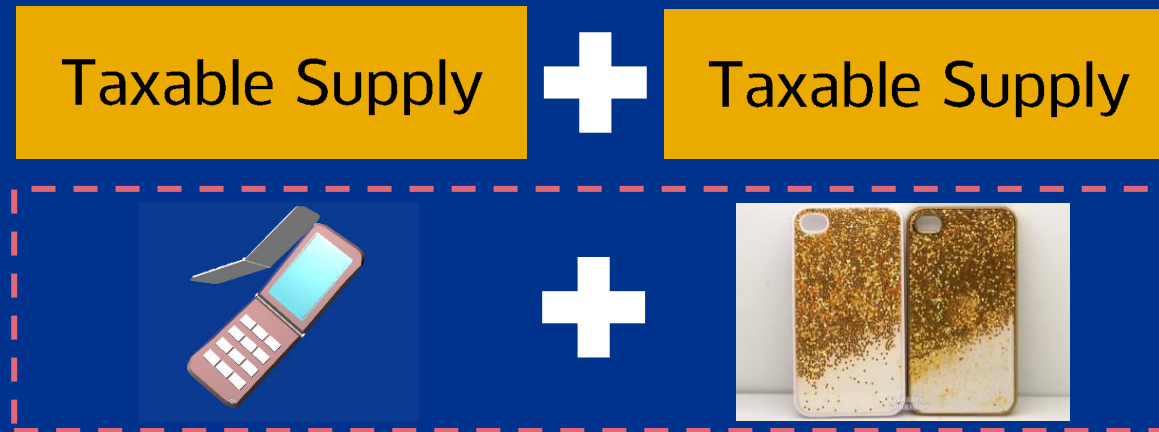
Mixed Supply

Any supply comprising of two or more individual supplies made in conjunction with each other for a single price, not being a composite supply. It shall be treated as supply of that particular supply which attracts the highest rate of tax



Composite or Mixed Supply - Issues

Case 1



Supply of taxable mobile phones along with mobile case

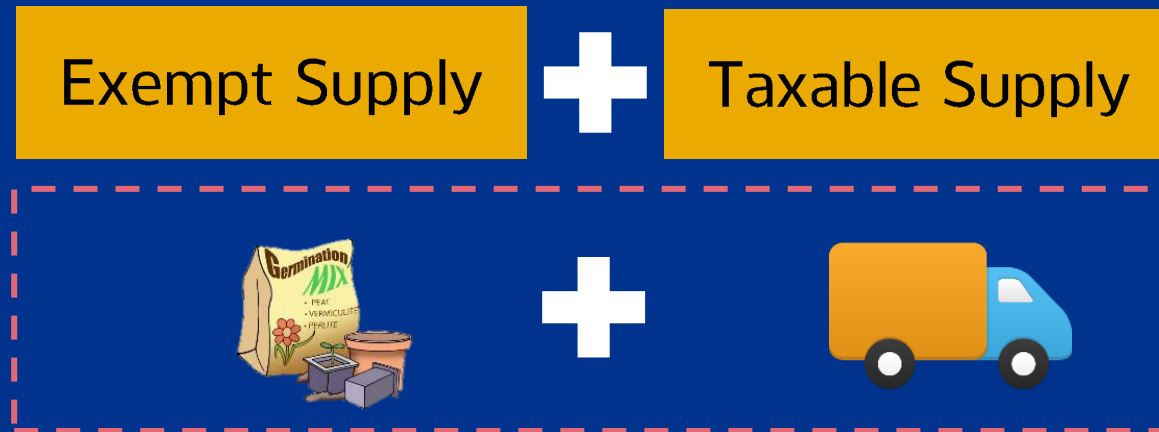
Principal Supply is that of mobile phones



Tax rate applicable on mobile phones
applicable to whole transaction

Composite or Mixed Supply - Issues

Case 2



Supply of exempted goods such as organic fertilizers along with transportation

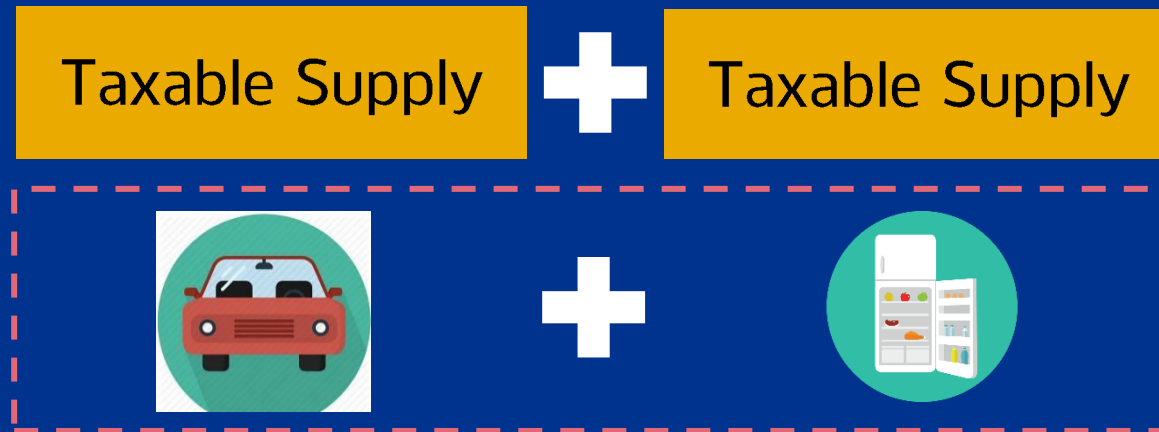
Principal Supply is that of exempt goods



No tax on the whole transaction

Composite or Mixed Supply - Issues

Case 3



Supply of car along with refrigerator for a single price

Mixed Supply as both are predominant supplies and neither is incidental to the other



Tax rate applicable will be the rate of tax applicable on that particular supply which attracts highest rate of tax

Issues in classification

Parts of equipment

- Section Note 2 to Section XVI relating to parts
- Description in Notification No. 1/2017-CGST or IGST refers only to main equipment
- E.g. Sewing Machines, Printers



Issues in classification

FOC / Free Gifts

- Pins provided free with stapler (stapler – 18%, pins – 28%)
- Battery provided free with torch (torch – 12%, battery – 28%)



Issues in classification

Renting / Leasing

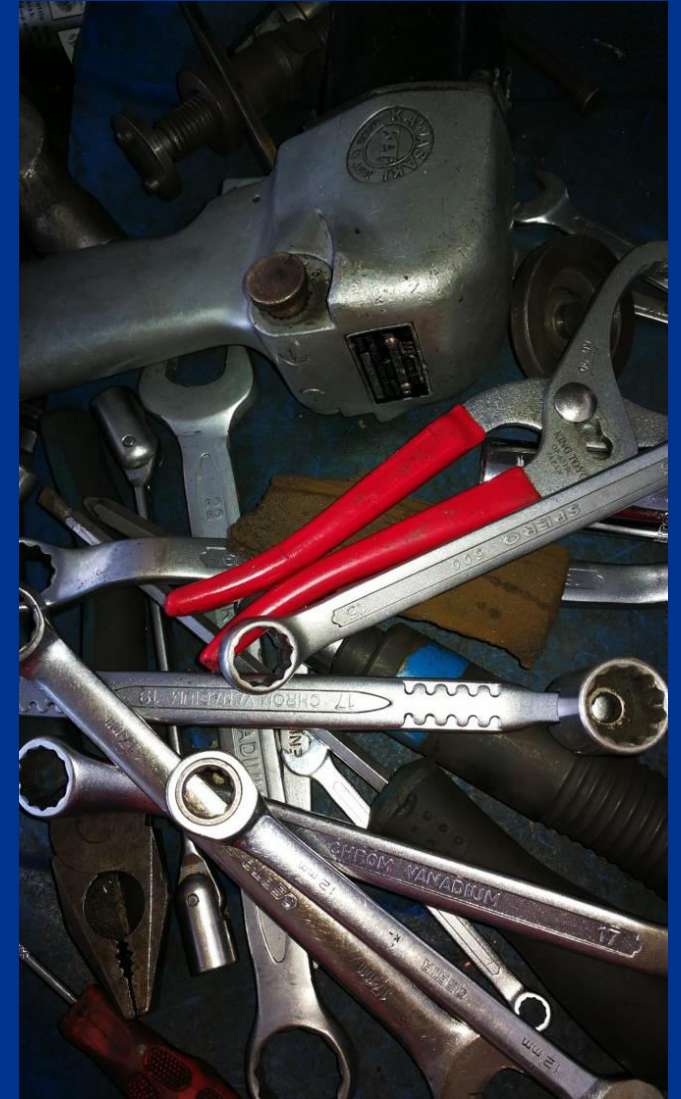
- Renting of motor-cab (5%)
- Leasing or rental services (same rate of tax applicable on supply of like goods involving transfer of titles in goods)



Issues in classification

Import of repaired goods

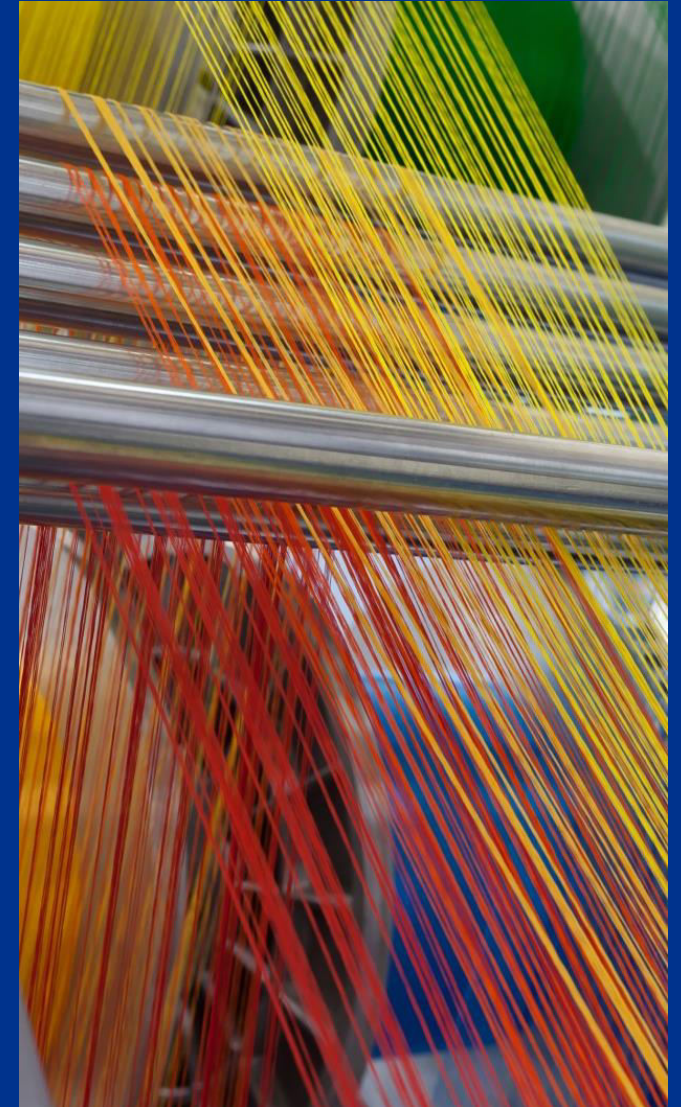
- IGST as imported goods.
- Repairing Service performed outside India



Issues in classification

Job-work for textile products

- Job-work services in respect of textiles & textile products – 5%
- Manufacturing Service – 12%



Anomalies in fixing rates

Increase in tax rates

- Pre-GST rate lower; Post-GST rate higher
- E.g. Plastic footmats, handicraft goods



Anomalies in fixing rates

Different Rates

- Air travel in Economy Class – 5% without credit on inputs, 18% with credit on inputs
- Air travel in Business Class – 12% with credit on inputs



Anomalies in fixing rates

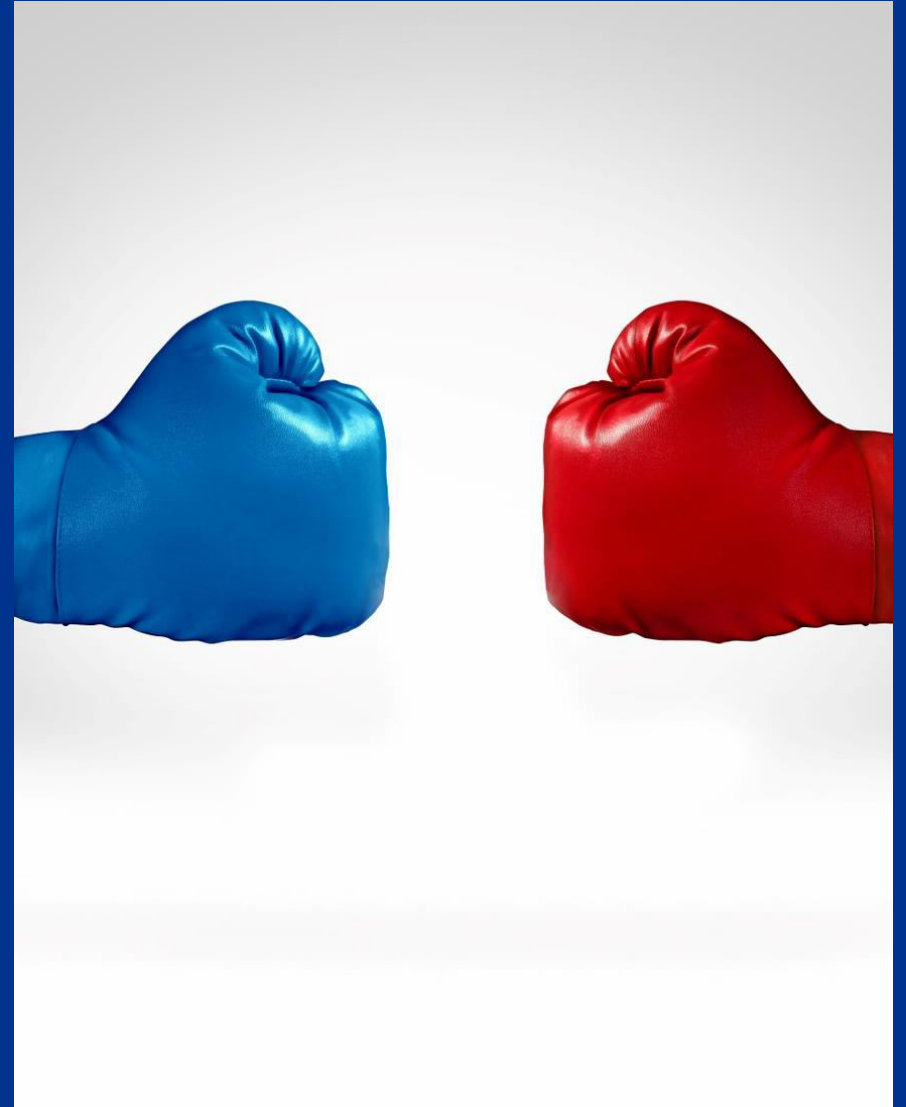
Difference in Rates within industry

- Members of the industry follow different rates
- Non-woven fabric carry bags – whether shopping bags or bags for packing goods?



Trade vs Government

- ➔ Trade wants lower rates while Department wants higher rates
- ➔ To avoid disputes, trade may be advised to adopt classification at higher rate.
- ➔ However, competitive edge could be lost.



Trade vs Government



- ➔ What should business do?
(Seek Advance Rulings)
- ➔ Principle to be adopted by
business for tax

***NOT A PENNY MORE,
NOT A PENNY LESS!***

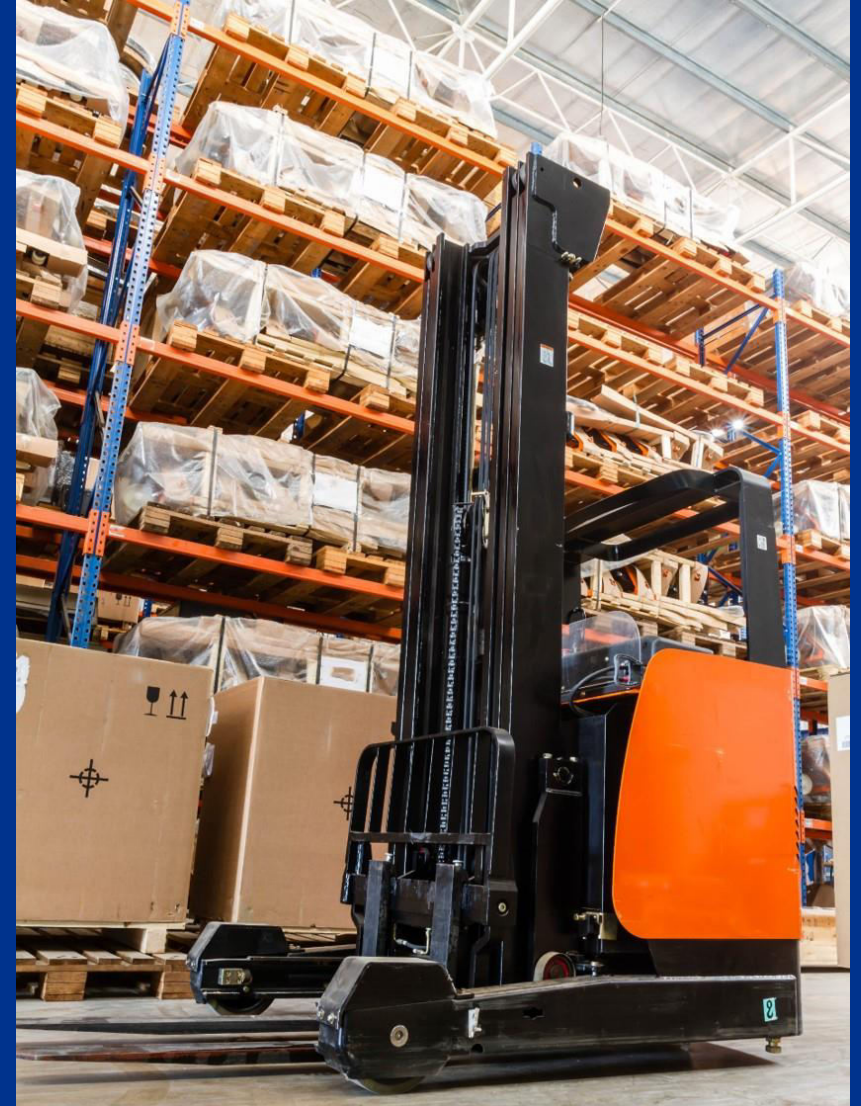


Valuation

Principles and Issues

Valuation principle – “Transaction Value”

- ➔ **Value of taxable supply**
 - Transaction Value
 - Price actually paid or payable
 - Supplier and recipient of supply are not related
 - Price is the sole consideration for supply



Rule 2: Valuation of supplies to distinct or related person

Value of supply shall be :

Where full credit is available -- ✓

Any Invoice value (proviso Rule 2)

Where full credit is not available -- ✗

OMV – Open Market Value

Where OMV is not available -- ✗

Value of supply of like kind and quality

Where such value is not determinable -- ✗

110% of cost of production /acquisition/manufacture (Rule 4)

Where such value is not determinable -- ✗

Residual Value (Rule 5)

• Rule 4 can be bypassed in case of services

Valuation of Specific Transactions

- ➔ **Valuation between Distinct/
Related persons**
 - Stock transfer / Shared services
 - Undervalue in receiving state
 - Overvalue in originating state

- ➔ **Vouchers**
 - Money-off coupons,
 - Face Value



Valuation of Specific Transactions

- ➔ Discounts
- ➔ Reimbursements
- ➔ Free issue material/
amortization
- ➔ Includability of anti-dumping
duty for calculating IGST



Anti- profiteering



Anti Profiteering Measure

1) **Section 171 (1)**

Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.



Anti Profiteering Measure

- ⇒ **Consequences of violation, APA authority may order:**
 - Reduction in prices
 - Return to recipient, equivalent of amount not passed on
 - Imposition of penalty as specified under the act
 - Cancellation of registration under the act



Anti Profiteering Measure

- ⇒ **Cases of increase in tax or denial of ITC**
 - Absence of criteria for determination of this reduction
 - Absence of reciprocal obligation on buyer



Section 171 and similar existing provisions

- ➔ **Absence of non-obstante clause**
 - *Case I:* Contracts already entered into but price not paid.
 - *Case II:* Contracts already entered into and price paid



Section 171 and similar existing provisions

⇒ Section 64A of Sale of Goods Act, 1930

- Subject to parties intention
- Statutory obligation as a safeguard measure



???



Thank You