

GST- ISSUES IN VALUATION

SECTOR-WISE STUDY GROUP

AT WIRC OF ICAI

ON 22TH AUGUST 2018 BY

CA RAJAT TALATI

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2 AGENDA

- Sector specific Study on valuation issues like
 - Type of supply – where required
 - Typical business model followed
 - Relationship between supplier and recipient
- Sectors covered
 - Builders and Developers
 - Entertainment
 - FMCG/ Manufacture
 - Hospitality

Why Valuation?

To determine the value of the
for charging GST.



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Valuation – Sec.15(1)

- Value of supply of goods or services = **Transaction value**
(i.e. price actually paid or payable for the said supply)

Where,

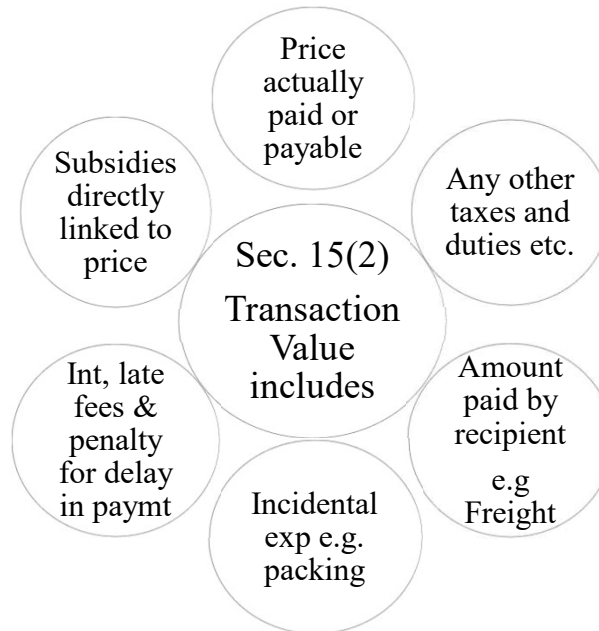
- ✓ price is the sole consideration and;
- ✓ Supplier & recipient are not related

E.g. Scrap sales, Uniform material sold to Entremonde
Polycoaters ltd for coating, etc...

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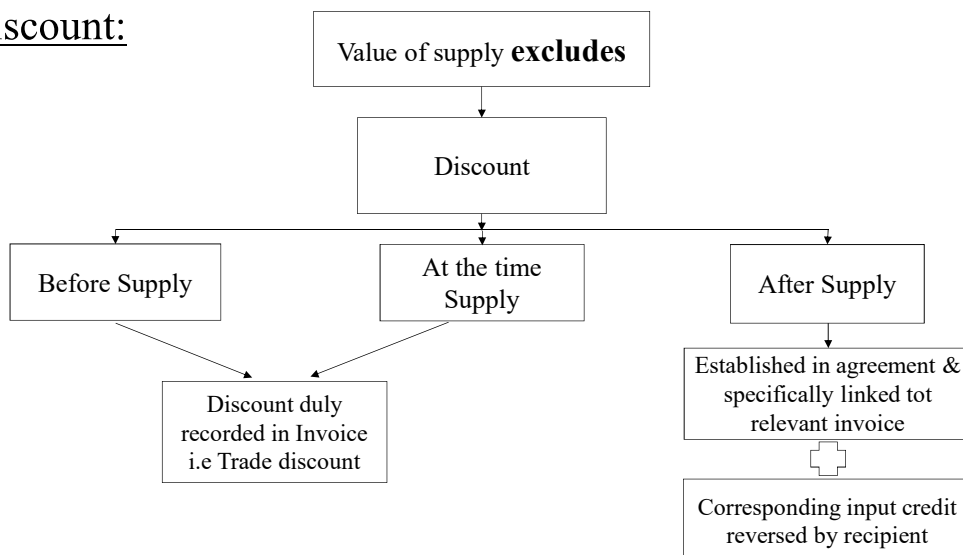
Transaction Value



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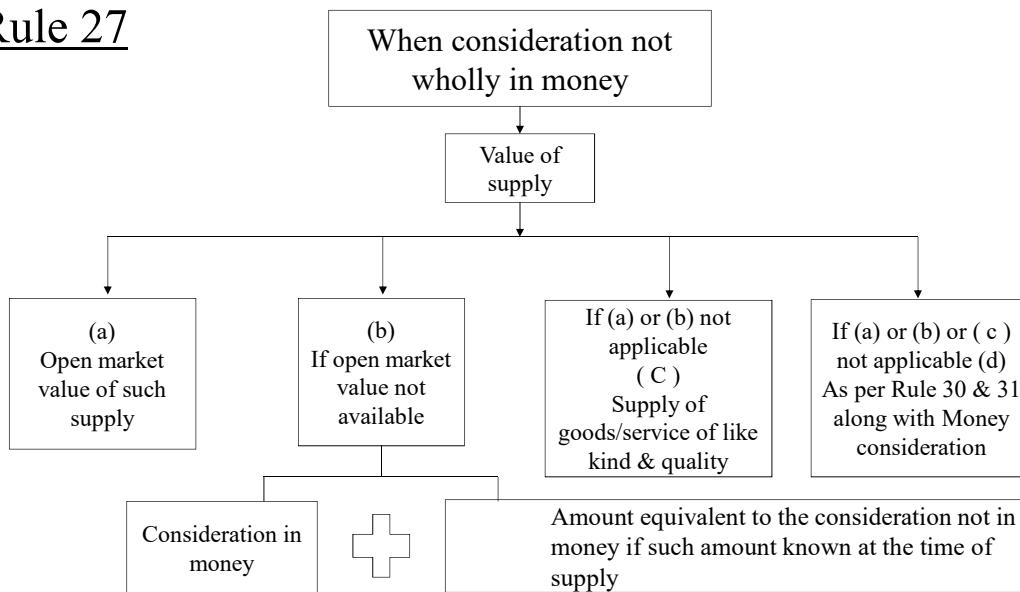
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Discount:



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Rule 27

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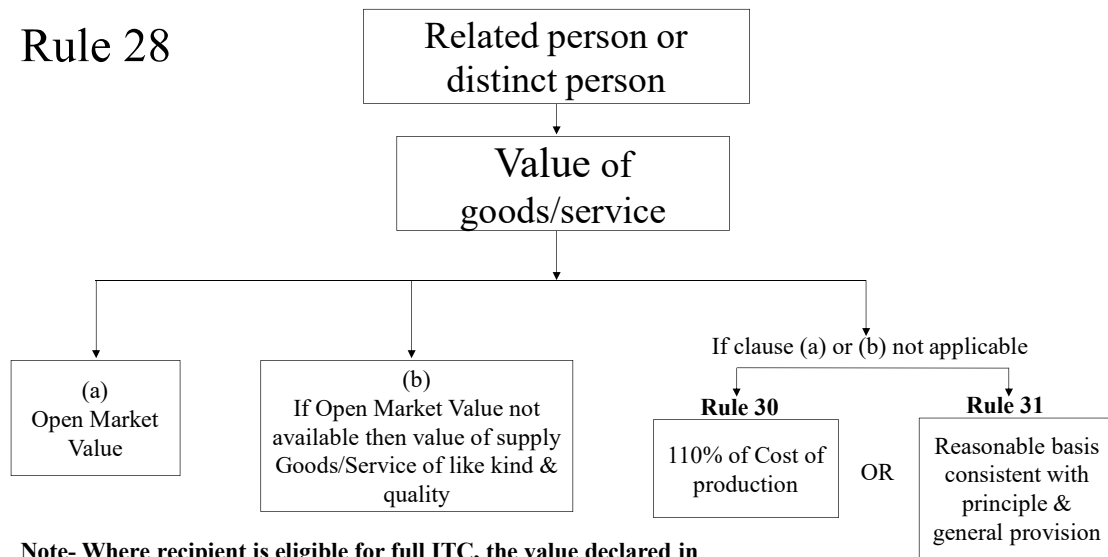
‘Open mkt value’ & ‘of like kind quality’

- **Open market value means-** full value of money excluding IGST/C& SGST/UTGST - and the cess payable by a person - are not related and price is **sole consideration**
- **Like kind and quality means-** supply made in a similar circumstances , characteristics, quality, quantity, functional components, materials, and reputation of the goods/services or both –is the same or closely or substantially resembles

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Rule 28

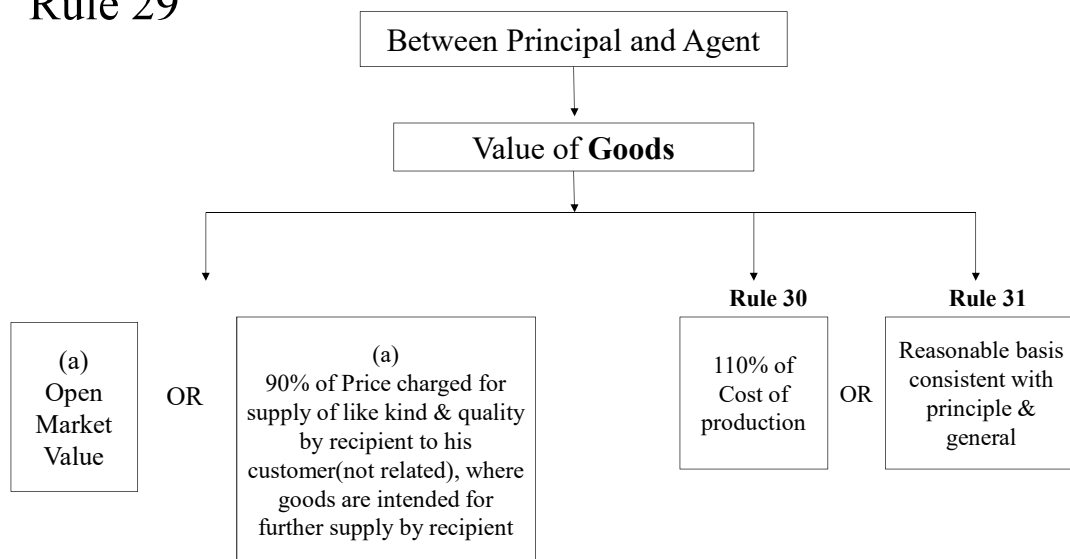


Note- Where recipient is eligible for full ITC, the value declared in invoice shall be open market value of Goods/Service

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Rule 29

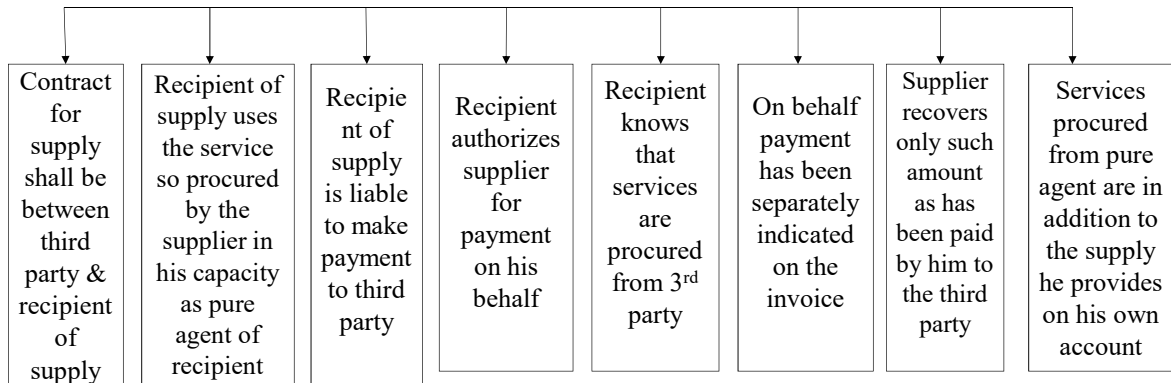


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Rule 33 – Value of supply of service in case of Pure Agent

Expenditure Incurred by supplier as **Pure Agent of recipient of supply** of service shall be **excluded** from value of Supply **subject to following conditions**



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BUILDERS/DEVELOPERS & WORKS CONTRACTORS

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13 BUILDERS, DEVELOPERS & WORKS CONTRACTORS

- Services provided by Builders/Developers as well as Works Contractors involve Goods as well as services.
- Entry 5(b) of Schedule II of the CGST Act, 2017 says that services provided by Builders/Developers to be considered as **Supply of Services**.
- Also, Entry 6 Sch II says the “Composite Supply” is a Supply of Services which includes Works Contract Services.
- What value must be adopted in case of Developer & Builders?
 - As per Sec.15 of the CGST Act, 2017, “**Transaction Value**” is to be taken where price is the **sole consideration** and parties are **not related**.

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- Q] In case of Builders/Developers, what is to be included in Transaction Value in case of sale of flats?
 - Development charges
 - Society charges
 - Legal charges
 - Water/ electric meter charges
 - Advance maintenance charges
- A] The '**Agreement Value**' is the value at which the particular flat is sold.
 - What is Agreement value?
 - Are there any amounts treated as 'pure agent' kind of receipt?
 - If not as 'pure agent' - all such **incidental charges** are also to be included while calculation Transaction Value.
- Q] Sale of flats constitutes a considerable portion of Land which is not taxable under GST, hence a deduction of 1/3rd value is allowed on sale of flats, but on what value is this deduction to be taken? Only on Agreement value?
- A] **Paragraph 2** given below the table in **Notification No. 11/2017 dated 28th June, 2017** allows a 1/3rd deduction on the **consideration charged** and amount charged for transfer of land or undivided share of land.

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- Q] Are Other Incidental Charges also eligible for 1/3rd Deduction?
- A] Agreement value + Other charges together constitute the total consideration charged as they are a part of the same supply, hence even these charges are **eligible** for claiming this deduction
- Q] Interest charged by Developer for late payment by the Buyer, does this
- A] interest form part of Total Consideration? Is GST leviable on the same?
Delay in payments from the customer as per the milestones provided in the agreement lead to interest charges - Sec.15(2)(d) of the CGST Act, 2017.
- Q] How to determine the Value of Supply in the above mentioned services?
- A] Builders/Developers & Works Contract services are examples of **Continuous Supply**. Hence, tax liability is to be discharged as and when Supply is made, i.e. **Demand Letter** is raised against the **Architects Certificate** regarding % completion of the project and tax is accordingly collected and paid on **proportionate basis**.

DEVELOPMENT RIGHTS V/S TRANSFERABLE DEVELOPMENT RIGHTS

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Sec.2(gA) of MRTP Act, 1966 defines "Development Right" as:

right to carry out development or to develop the land or building or both and shall include the transferable development right in the form of right to utilise the Floor Space Index of land utilisable either on the remainder of the land partially reserved for a public purpose or elsewhere, as the final Development Control Regulations in this behalf provide

Regulation 34 of DCR, 1991 defines "Transfer of Development Right" as:

In certain circumstances, the development potential of a plot of land may be separated from the land itself and may be made available to the owner of the land in the form of Transferable Development Rights (TDR). These Rights may be made available and be subject to the Regulations in Appendix VII hereto.

- **Transfer of Development Rights** is the right given by the owner of the land to the developer to construct property upon the land, whereas **Transferable Development Rights (TDR)** has to be purchased from the open market for purpose of constructing additional area on the land.

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- Q] Is Transfer of Development Rights taxable?
- Example : Lets take an example of a Land Owner & Developer who enter into an agreement for construction of a building on the land. The Land Owner will “**transfer his rights on the land**” to the developer to enable him to develop in exchange of certain flats in the new building.

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18 BARTER

- Two transactions involved
 - Transfer of DR by land owner to developer
 - Transfer of constructed premises by developer to the land owner
- Q] Can there be two prices? Different for both suppliers in case of barter?
- A] No. only when both agree to the same intrinsic value that the deal is struct.

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19 BARTER [CONT..]

- Q] Should it be construed from supplier or recipient point of view?
- A] Valuation is for the transaction, not from anyone's point of view.
- Q] How to value such a transaction?
- A] There is no monetary consideration. Sec 15 r/w **Rule 27** cannot be followed as it is not possible to find the **Open Market Value or value of like kind and quality**.

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20 BARTER [CONT..]

- What is the nature of Service rendered by builder?
- DA – Is it not services of construction of complex by builder?
- Can it be said to be construction of complex where land is part of the consideration?
- What could be considered as 'intrinsic value of the contract to understand the value underlying the same?

- Q] Whether 1/3rd Land Dedn. is permissible for Barter also? Yes/No

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21 REDEVELOPMENT PROJECT –BARTER- DEVELOPER SIDE

- Q] On New Flat (For Existing Area free of cost) –What value to be considered?
- A] Open market value
 - On the construction cost? Or 110% of Construction cost
 - Stamp duty valuation
- Q] On New Flat (For Additional Area free of cost) - What value to be considered?
- a. Is it part of the DA?
- b. Should also be valued as per 'existing free Area'?
- Q] On additional area purchased by existing member?
- A] Same as any other sale of under construction flat.
- Q] Can there be different/ discounted price for the original occupants?
- A]. Original occupant constitute special category/ group of buyers – hence possible
- T.O.S. for Barter is when possession/rights is transferred through allotment letter/ conveyance deed.
[Notification No.4/2018 – CT rate 25..1.2018]

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22 REDEVELOPMENT PROJECT –BARTER- DEVELOPER SIDE

Q] In case of Slum Rehabilitation (SRA) Projects, the slum dwellers being illegal occupants of the area are not owners/tenants, neither are they entitled to any rights on the land. Will these slum dwellers be liable to pay GST? What would be the valuation in this case?

A] For barter to take place, there should be 2 way transfer. In the given case, slum dwellers do not possess any ownership rights and hence do not transfer anything to the developer. Besides, slum dweller is not in 'business'. For developer, although, valuation will be at 110% of CoC as per Rule 30 of CGST Rules. (Is this correct??)

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23 REDEVELOPMENT PROJECT –BARTER- DEVELOPER SIDE

Q] Developer sold units to his employees. Will the valuation for this be any different from regular sales to outside buyers?

A] Employees are 'Related Parties'. Rule 28 of the CGST Act, 2017 lays down conditions for the same.

Q] Is Transfer of Tenancy Rights taxable? If yes, at what value?

A] Tenancy Premium paid against Tenancy Rights is taxable under GST [Ref Circular No.44/18/2018-CGST dated 02.05.2018]. However, "renting of residential dwelling for use as residence" is Exempt [Sl. No. 12 of N. No.12/2017 Central Tax (Rate)]. Therefore, Tenancy Rights are taxable at the premium amount paid or the periodic rents, as the case may be for commercial property.

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24 REDEVELOPMENT PROJECT –BARTER- DEVELOPER SIDE

Q] Is recovery of Liquidated Damages chargeable to GST? If Yes, at what value?

A] Liquidated Damages are supply of services provided by the principal to the contractor in the form of **Tolerating an Act of Delay**. Hence, it is taxable at the values agreed between the parties in their contract, i.e. on % basis or ad-hoc basis.

FMCG & Manufacturing Sector

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Various Discounts and Schemes

- Quantity Discount
 - Scenario 1: Option to purchase additional quantity of same product.
 - Scenario 2 : Option to purchase quantity of other product.
- Turnover Discount
 - Through Debit notes and credit notes
 - Discount terms pre agreed ?
 - Communicated to the recipient ?
 - ITC reversed ?

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Exhibitions

- Buy 1 Get 1 Free
- Buy 1 – Get 30% off on 2nd product
- Product MRP is more but sold for less amount in exhibitions.
 - Pay tax on lower amount

Incidental Charges

- Incidental charges like freight, Insurance, certification
 - Terms of the contract ?
 - Who is liable to pay ? [Sec 15(2) (b)]
 - At the time of , or before delivery of goods or supply of services? [Sec 15(2) (c)]
 - Paid or payable by the recipient to the supplier?
 - To be included in transaction value or not ?

Incidental Charges [cont..]

- Loading/Unloading Charges:
 - Transport through
- A Goods Transport Agency
- Own Transport
 - Are these services borne by the supplier? Pure agency?
 - Is it Naturally Bundled – products where delivery is expected in normal course
 - Rate of Tax? Payable by Supplier or Recipient?

Free Samples

- What is free? Is it really free?
- Is there a valuation issue? Distinction between free quantity /given away as free sample
- Taxable Value of Free Sample
 - Free samples to distributors/medical representative to be given to end consumers?
 - Free samples given through branches ?
 - Free samples given through sole distributors ?

Extra grammage and discounts

- How to value the 25% extra offered ?
- What if 20% discount is given on MRP ?
- A taxable product is given free with exempt product
 - Biscuits (GST5%) is given free with Bread (GST Exempt)

Combos and Hampers:

- Mixed Supply or Composite supply ?
- What if some products in the hamper are exempt ?
 - Eid Hamper has Milk (GST Exempt), Seviyan (GST 5%) and Dry fruits (GST 12%)
- Discount given on the entire combo ?
 - Eg. Scotch brite worth Rs. 27 is sold with a pack 4 VIM bars at a discounted price of Rs. 10.
 - Offer 1: Buy 4 VIM bars & Scotch brite for Rs 50/-
 - Offer 2: Buy 4 VIM bars for Rs. 40 and have option to buy Scotch brite for Rs. 10/-

Warranty replacements

- Are warranty replacement supply?
- Are not included in the scope of supply as there is **no consideration**
 - However the price of warranty replacements, may be factored into the price of the product.

Reward and Loyalty points

- Reward or loyalty points are earned over a span of time.
- What will be their impact when they are redeemed against future purchase? And if redeemed against purchase of other items.
 - Eg. Readymade garments above Rs. 1000 (GST 12%) for which loyalty points were earned
 - Redeemed against readymade garments below Rs. 1000(GST 5%)
 - Redeemed at other franchisee outlet
- What if the redemption is subject to certain conditions ?

Equipment/ storage units

- Deep freezers given by Kquality Walls to its distributors. With the condition that the future purchases to be made
- Is there supply of deep freezer?
- What will be the value of future purchase?
- Is the consideration wholly in money? Rule 27 will be attracted ?

Stock Clearance Sales

- Value of goods sold in 'discounted sales' period?
- When goods are sent to Branch for stock clearance sale?
- When goods are sent to sole distributor for stock clearance sale?

Advertisement Material

- Material provided by manufacturer to distributor for advertisement
 - Eg Hoardings, Display boards, calendars
 - To be considered as supply ?
 - If yes , how to determine the taxable value ?

Exchange Offers

- Are there two supplies?
 - Open Market value of the goods or service supplied ?
 - Money value of used product ?
 - Value of goods or services of like quality or kind ?
- Whether value of used product to be deducted ?
 - Old gold jewellery worth Rs. 10,000/- used by the jeweller in making new jewellery worth Rs. 25,000/-
 - Will the old gold jewellery given by individual considered as supply ? What will the taxable value of the supply by the jeweller ? Rs.15000/- or Rs. 25000/-?

Sec.12AA Activities as per IT Act – Charitable Activities

- Events held for raising funds
- Products sold / Services offered for consideration.
- Whether these Goods/Services will be liable to GST even though they are charitable activities?
- Are there any exemptions?
- If charitable activity is as per definition in GST law, then will it be Taxable?



HOSPITALITY SECTOR

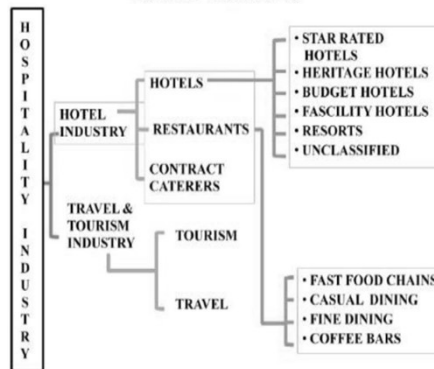
Hospitality Sector

- Basic Introduction of the sector :

The sector can be subdivided into three broad areas:

1. Restaurants and Caterers
2. Hotels/Lodging
3. Tours and Travels

Segmentation - Hospitality Industry.



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Composite Supply/ Mixed supply

- Food plus event admission (karaoke sing along/stand up gigs) for a blanket admission fee
 - How to value it? Is it a composite supply or a mixed supply?
 - Which is the Principal Supply- Rate
 - Ineligible ITC 17(5)
- Thali – Single Price (incl. of tax)
 - Meal + Packaged Water
 - Free Dessert Included
- How to Value?
- Is packaged water – free supply? If yes – disallowance of ITC?

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Combo meals/ Cover charge

- Buffet/combo meal – single price + Tax
 - Food (without alcohol) + desserts
 - Food + (with alcohol) + desserts
 - How to Value? Is price bifurcation possible?
 - How to disallow ITC – to the extent of Non-GST supply – pro-rata
 - Would valuation in GST for alcoholic drink relevant for VAT Payment?
 - What rate to apply?
- Cover charge in Gastropubs/ Restrobars
 - Entry criteria : stags/couple, Event : Bollywood night/Saturday Night/Ladies' Only
 - Non-Refundable/Redeemable – Redemption against – Food & Liquor
 - Only entry to dance floor + 1 pint of beer free/coupons to finger food also? Different inclusions for different events.
 - Valuation Under GST & any implication of VAT?

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Brunch/ Invoicing

- Sunday Brunch – Food + Swim/Activity
 - Valuation – is it still part of restaurant service?
 - If no – where to classify and whether it becomes mixed service?
 - Is the Fee charged inclusive and is bifurcation possible?
 - ITC disallowances under 17(5)- Food and Beverages?
- Issues related to Invoicing :
 - _Delivery Charges
 - By respective staff of restaurant (eg0: BOX 8)
 - Through agency – (eg: GRAB)
 - How will be the revenue be split between partners? Parameters for delivery charge value (distance, weather, traffic)? Rate of GST?

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Tips/ Packing/payment

- Tips/ Service charge collection
 - Voluntary vs. mandatory (Collected in invoices as **Service Charge**)
 - Added by customer – while swiping the card
 - Is it supply? If yes, what rate?
- Container/packing charges
 - If charged for in invoice or returned after consumption?
 - If given away for free? Any impact on ITC - disallowance?
- Mode of Payment
 - Would Mode of payment - cash / card / mobile wallets – meal voucher / voucher gift makes difference in tax liability?
 - How will the taxable value then be arrived at?

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Aggregator

- Discount voucher
 - How to value if purchased online at discount?
 - Face value 500 → 450 → 10% discount
 - On what value GST to be paid? Is the discount to be included or excluded from transaction value (pre-supply or post supply)? Any GST liability?
- Promotional events/Partner Restaurants
 - Aggregators put up offers like 1+1 food or 2+2 drinks. How does the revenue sharing happen. How are these transactions valued? (Zomato Gold)
 - Who bears the burden?
(E.g. Zomato, Uber Eats, Swiggy)

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Hotel and Lodging Industry

- ▶ Declared tariff V. transaction value
 - ▶ Discounts offered (as per agreement)
 - ▶ Corporate discounts (pre-agreed)
 - ▶ based on committed room nights per month/year
- ▶ Tariff includes
 - ▶ Free breakfast (bed & B/F)
 - ▶ All meals – still naturally bundled or Mixed supply? What rate will apply?
- ▶ Service charges for the various facilities given– included in per day tariff rate?
 - a) Includes free airport pickup & drop
 - b) Half day site seeing - city excursions
 - c) Free use of gym & swimming pool, Jacuzzi
- ▶ How to value? Rate? How can the value be bifurcated as per each service?

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Membership programme/ cancellation

- ▶ Membership program – stay + food + wine + cake + gym/swimming + adventure activities (for eg: Hotel Leela, Della)
 - ▶ Some services utilized / some unutilized (single price) – How to value?
 - ▶ Classification and Rate?
- ▶ Refunds/Cancellations:
 - ▶ When 100% refund is not given as per management policy, how will the transaction value then be calculated? What Rate will apply?
 - ▶ Advance receipt
 - ▶ Cancellation charges – nature of service & rate

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Job work

- ▶ Valuation of job work :
 - ▶ Service charges + value of goods (inputs) used for job work)
 - ▶ Will value of moulds, jigs, dyes (consumables) provided by principal be included in value of job work?
 - ▶ What is bargain for job work price?
 - ▶ Supply of waste/scrap by job worker directly? What will be the transaction value?
 - ▶ Refer to Circular 38/12/2018

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Entertainment Sector

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Value of supply for barter & exchange transactions

Barter and exchange transactions are a common arrangement in Media & Entertainment industry wherein the production houses often take free movie ticket codes from exhibitors for promotional activities against transfer of copyright of films.

As per valuation rules, the value of free ticket codes at the time of supply is to be included in the value of transfer of copyright. However, it is difficult to determine the value of free movie ticket codes at the time of supply since, typically, the recipients who are giving the free movie tickets (as promo codes) can use the same to book a movie show for anytime at multiple locations. The ticket rates fixed by the exhibitor for different show timings and different locations would differ and hence, it is difficult to determine the value of free movie ticket codes at the time of supply.

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Movie Theatre

- ▶ Ticket + Food combo
 - ▶ At what value will it be taxable?
 - ▶ Will rate of tax on food be same as ticket or not? Composite or mixed supply?
 - ▶ How to bifurcate them? Goods/Services?
- ▶ e-Wallet promo codes
 - ▶ How to value Paytm discounts?
 - ▶ Cashback – whether to reduce GST liability on such amounts?

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Amusement Parks

- ▶ 1 ticket includes access to Parks, Hotels for stay and Food.
- ▶ Whether to charge tax rates separately as applicable or highest rate or tax on principal supply?
- ▶ 1 night-2 days package along with access to amusement park, here which one is the principal supply?

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Ticketing

- ▶ Online v/s Offline
- ▶ Discounts/Cashback/Coupons/Sodexo
- ▶ Free ticket issued, whether GST needs to be collected and paid on any value?
- ▶ Freebies/gifts received/won along with tickets. Taxable? How to value?
- ▶ Lucky draws

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Karaoke Nights

- ▶ Single price for entry to pub/ restaurant with price redeemable on food and drink [alcoholic/ non-alcoholic]
- ▶ GST not applicable on alcohol but event is liable to GST
- ▶ Whether to charge tax on full amount or excluding alcohol amount?
- ▶ How to bifurcate amounts? As guests may consume different quantities of alcohol and of different prices

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Bookings on 'Book My Show'

- ▶ Whether BMS will charge GST on full transaction value or only on the component of his convenience fees charged?
- ▶ How will cinema halls charge BMS?
- ▶ BMS has tie ups with many banks for payment via Dr & Cr card allowing their coupons and discounts.
 - ▶ How to value?

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