PERSONAL NOTES ON THE CASE STUDIES

Abhay Desai

Valuation and Time of Supply under GST
24th September 2021

Panelists: Adv Vishal Agrawal ***[VA],*** and CA Abhay Desai ***[AD]***
Moderator: CA A. R. Krishnan

VALUATION

Sec. 9(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Sec. 15(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

Commissioner of Central Excise, Indore vs. Grasim Industries Ltd. 2018 (360) ELT 769 (S.C.) (5-member bench decision)

The levy of a tax is defined by its nature, while the measure of the tax may be assessed by its own standard. It is true that the standard adopted as the measure of the levy may indicate the nature of the tax but it does not necessarily determine it.

A broader based standard of reference may be adopted for the purpose of determining the measure of the levy. Any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy.

In fact, we are of the view that there is no discernible difference in the statutory concept of 'transaction value' and the judicially evolved meaning of 'normal price'.

1. Discounts (VA)

1.1 Enticing Hardware Limited deals in variety of products and has appointed area-wise distributors across India. The Company also has a variety of schemes to promote its products. The dealer who crosses a sales turnover of Rs. 5 crores in previous year would be enrolled as a Distributor. In terms of the distributorship agreement, the following benefits will be allowed:

(i) Trade Discount of 1%

(ii) Turnover discount of 5% once the distributor crosses turnover of Rs. 5 crores
(iii) Rebate of 5% on crossing turnover of Rs. 10 crores
(iv) "*Such other discounts, offers and schemes as may be agreed by the Company and the Distributor*"

The Distributors also have to incur certain specific expenditure towards advertisement / publicity. The advertisement would be joint advertisement with Enticing Hardware Limited.

1.2 Star Sales LLP was the sole distributor for South Mumbai region and achieved fantastic sales of Rs. 20 crores during the year. Traditionally the Company was struggling to make sales in south Mumbai region and hence decided to offer the following benefits to the Star Sales:

- ✓ Standard 1% Trade discount on all purchases made;
- ✓ At the year end, Turnover discount of 5%, rebate of 5% on all purchases made during the year;
- ✓ Additional discount of 10% on all purchases made during the year. By this, Enticing Hardware Limited made a loss of 2% on its sales to Star Sales LLP.

1.3 The Panelists' views are sought on the following issues:

(i) Would Enticing Hardware Limited and Star Sales LLP be considered as related persons?

Section 15

Explanation. — For the purposes of this Act, —

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Meaning

Sole agent/distributor – A person who is given exclusive right to sell in a particular area to the exclusion of even the company.

To sell all products of the principal to the exclusion of all others – CIT v. Arkay Wires P. Ltd. (2005) 277 ITR 225 (All)

***Jay Engineering Works Ltd.* v. *Union of India*, 1981 E.L.T. 284 (Del.)**

The precise meaning of the expression distributor is not clear and has not been defined in the statute. This is a very wide expression which gains colour from the context in which it is employed. Its meaning is very vague, extensive, and indefinite. It ranges from a person, who, under an enforceable contract, acts as an agent of the manufacturer for the distribution of his goods to a person who at some stage or point of time distributes i.e. physically transports and sells the goods manufactured by a particular manufacturer. We have already referred to the fact that the effect of a person falling within the definition of related persons

is very extensive and far reaching. It will have the effect of enabling the authorities to ignore the price at which the sale are effected to or through such persons and even to proceed right upto the stage of retail distribution for the purpose of determining the assessable value. Having regard to the very radical impact of this definition on the assessable value of the excisable goods it appears to us that this expression should be given a very restricted meaning. It will be seen that to give a very wide meaning would practically alter the entire scheme of the Excise Act. It any person who distributes a fairly good part of the goods of a manufacturer were to be treated as a distributor (and it should not be forgotten that the definition also takes in the sub-distributors of such distributor) the effect will practically be that the assessable value in many cases will be taken as the retail price of the goods.

Government of India vs. Ashok Leyland Ltd., Madras 1983 (14) ELT 2168 (Mad.)

Section. 4 –

(c) related person means a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee, and any sub-distributor of such distributor.

Webster's dictionary gives several meanings of the word `distribute' as follows : (1) to divide among several or many to deal out; apportion; allot; (2) to spread out so as to cover a surface or a space; (3) to divide or separate, as into classes, orders, kinds, or species to classify; assort; as specimens, letters etc. The same meaning is found in the Oxford's Concise dictionary, Murry's Standard dictionary gives a somewhat better definition. The second meaning attached to the word is "to spread or disperse abroad, through a whole space or over a whole surface; properly, so that each part of the space or surface receives a portion; less definitely, to spread generally scatter". The distributor can therefore be only either an agent who sells goods for and on behalf of a manufacturer or a person who physically distributes the goods on behalf of the manufacturer. In the ordinary commercial parlance, also, the word distributor is understood as an agent or one who distributes goods to consumers. Such an agent who acts for and on behalf of the manufacturer earns a commission. He cannot be termed a buyer of goods from the manufacturer on his own account. He does not himself pay the price for the goods before the goods are passed on to the consumers. Suffice it to say, a distributor is only an agent or a sole selling agent if he may be so described on behalf of the manufacturer.

Recourse to *Atics* case, 1978 E.L.T. (J 444)

Amar Dye Chem. Ltd. v. Union of India, 1981 E.L.T. 348 (Bom.)

It is necessary at this stage to point out that a distributor in the commercial world is understood to be a person who distributes goods of the manufacturer to the consumers and in so doing, he acts for and on behalf of the manufacturer. A distributor normally is, therefore, an agent of the manufacturer for the purpose of reaching out the goods to the consumers. The transaction between the distributor and the manufacturer in such a case is not a transaction of sale as a

principal to a principal, but the distributor is in effect an agent who acts for and on behalf of the manufacturer. Such a distributor who acts for and on behalf of the manufacturer and probably earns something which is generally recognised in the commercial world as commission is not a buyer of goods from the manufacturer on his own account. Such a distributor does not himself pay price for the goods purchased before the goods are passed on to the consumers. However, in the case of a buyer who purchases goods on payment of a commercial price to the manufacturer and the transaction is in effect a sale, such a buyer is different from the kind of distributor earlier noticed though even such a buyer is sometimes described as a distributor. The distributor in such a case is in fact a wholesale buyer and the property in the goods passes to such a buyer. It is wholly immaterial whether the price is paid in cash or the goods are supplied on credit. We must not, therefore, go merely by the use of the word distributor sued by the petitioner manufacturer in the price list or in the forwarding letter. What will have to be ascertained in order to find out whether a distributor falls within the definition of related person is the real substance of the transaction between the manufacturer and the so called distributor.

Rule 2(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988

Explanation II - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule."

Commissioner of Cus. (Imports), Mumbai vs. Bayer Corp. Science Ltd. 2015 (324) ELT 17 (S.C.)

6. Explanation-II which is appended to Rule 2(2) would make a 'related person' as a sole distributor only if it falls within the criteria of this sub-rule. Therefore, mere sole distributorship is not the conclusive consideration. It has also to be demonstrated that the case falls in one of the clauses mentioned in Rule 2(2) out of clauses stipulated therein.

Aspect of control

Commissioner of Cus. (Imports), Mumbai vs. Bayer Corp. Science Ltd. 2015 (324) ELT 17 (S.C.)

The transaction between M/s. R & H and the assessee, as it is clear from the reading of agreement, was at arms length. By no stretch of imagination it can be said that M/s. R&H had been controlling the assesee either directly or indirectly.

Not a related party.

(ii) Whether the GST liability of Enticing Hardware Ltd. can get reduced to the extent of GST on the various discounts given? What documents would be required for the same?
Sec. 15(3) The value of the supply shall not include any discount which is given —

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
(b) after the supply has been effected, if —
(i) such 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
(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

✓ Standard 1% Trade discount on all purchases made; - **No issues**

✓ At the year end, Turnover discount of 5%, rebate of 5% on all purchases made during the year; - **No issues**

✓ Additional discount of 10% on all purchases made during the year. By this, Enticing Hardware Limited made a loss of 2% on its sales to Star Sales LLP.

SECTION 34. Credit and debit notes. — (1) [Where one or more tax invoices have] been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient [one or more credit notes for supplies made in a financial year] containing such particulars as may be prescribed.

Scheme of the Act

Southern Motors vs. State of Karnataka 2017 (358) ELT 3 (S.C.)

Karnataka Value Added Tax Act, 2003

"29. Tax invoices and bills of sale. - (1) A registered dealer effecting a sale of taxable goods or exempt goods along with any taxable goods, in excess of the prescribed value, shall issue at the time of the sale, a tax invoice marked as original for the sale, containing the particulars prescribed, and shall retain a copy thereof.

30. Credit and Debit Notes. - (1) Where a tax invoice has been issued for any sale of goods and within six months from the date of such sale the amount shown as tax charged in that tax invoice is found to exceed the tax payable in respect of the sale effected, or is not payable on account of goods sold being returned within the prescribed period, the registered dealer effecting the sale shall issue forthwith to the purchaser a credit note containing particulars as prescribed.

Karnataka Value Added Tax Rules, 2005

Rule 3(2)(c) : All amounts allowed as discount :

Provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of any contract or agreement entered into in a particular case and the tax invoice or bill of sale issued in

respect of the sales relating to such discount shows the amount allowed as discount.

Provided further that the accounts show that the purchaser has paid only the sum originally charged less discount."

Para 26 That there is an inseverable co-relation between the taxable turn over and the tax payable need not be over emphasized. Noticeably, Section 30 dilates on the contingencies witnessing reduction or enhancement of tax liability subsequent to the sale/purchase of goods. The tax liability, to reiterate would be contingent on the sale/purchase price in the eventual sale/purchase price, to be essentially reflected in the return of the assessee. Section 30 axiomatically thus deals only with the incidence of tax and not the spectrum of situations or eventualities bearing on the tax liability. Rule 3(2), in particular lists the array of deductions conditioned on variety of situations as scheduled therein to ascertain the taxable turnover. Allowance of discount is one of the several other permissible deductions contingent on the melange of determinants referred to therein. These deductions, however contribute to the reduction of the total turnover to quantify the taxable turnover and thus the tax liability. It is too trite to state that neither an assessee is liable to pay tax in excess of what is due in law nor is the revenue authorized to exact the same. Any interpretation of Rule 3(2)(c) though an integrant of a fiscal statute has to be in accord, in our estimate unite this fundamental mandatory postulation.

27. It is a matter of common experience that in the present contemporary competitive market, trade discounts not only are dependent on variable factors but also might be strategically not disclosable at the time of the original sale/purchase so as to be coevally reflected in the tax invoice or the bill of sale as the case may be. The actual quantification of the trade discount, depending on the nature of the trade and the related stipulations in any contract with regard thereto, may be deferred till the happening of a contemplated event, so much so that the benefit thereof is extended at a point of time subsequent to that of the original sale/purchase. That by itself, subject to proof of such regular trade practice and the contract/agreement entered into between the parties, would not render the trade discount otherwise legal and acceptable, either *non est* or fictitious for evading tax liability. In the above factual premise, the interpretation as sought to be provided by the Revenue would evidently reduce Section 3(2)(c) to a dead letter, ineffective and unworkable and would defeat the objective of permitting deductions from the total turnover on account of trade discount.

In our comprehension, Sections 29, 30 and Rule 3 are the constituents of a same scheme to determine the taxable turnover and thus the extent of exigibility. Whereas Sections 29 and 30, to repeat, deal with the issuance of tax invoice and bill of sale to start with and thereafter credit and debit notes to be in accord with the tax actually payable, Rule 3 in a way espouses the exercise of ascertaining the taxable turnover by enumerating the permissible deductions from the total turnover. We are thus of the considered view that there is no repugnance or conflict amongst these three provisions so much so that Rule 3(2)(c) stands out in isolation and is incompatible with either the scheme of the Act or Sections 29 and 30 to be precise. The interplay of these three provisions is directed to ensure correct computation of the taxable turnover for an accurate

computation of the tax liability. These provisions therefore, for all practical purposes complement each other and are by no means militative in orientation or impact. Perceptionally, if taxable turnover is to be comprised of sale/purchase price, it is beyond one's comprehension as to why the trade discount should be disallowed, subject to the proof thereof, only because it was effectuated subsequent to the original sale but evidenced by contemporaneous documents and reflected in the relevant accounts.

While, devious manipulations in trade discount to avoid tax in a given fact situation is not an impossibility, such avoidance can be effectively prevented by insisting on the proof of such discount, if granted. The interpretation to the contrary, as sought to be assigned by the Revenue to the first proviso to Rule 3(2)(c) of the Rules, when tested on the measure of the judicial postulations adumbrated hereinabove, thus does not commend for acceptance.

MAYA APPLIANCES (P) LTD. v. ADDL. COMMISSIONER OF COMMERCIAL TAXES 2018 (10) G.S.T.L. 6 (S.C.) (3-Judge bench)

In the first part of the proviso, Rule 3(2)(c) recognizes trade practice or, as the case may be, the contact or agreement of the dealer. The latter part which provides a methodology for ascertainment does not override the earlier part. Both must be construed together.

Therefore even additional discount of 10% should be allowable.

(iii) If GST liability of Enticing Hardware Ltd. is not getting reduced to the extent of GST on some of the discounts given, then whether Star Sales LLP needs to reverse the ITC claimed by it?

No. Sec. 16(1) – "Tax charged"

(iv) Enticing Hardware Ltd. is worried that would its sale price to Star Sales LLP be accepted as Transaction value or can additions be made by the Department on account of:

— 10% additional discount for market penetration on account of which 2% loss was incurred
— Advertisement costs which the distributors have undertaken in terms of the distributorship agreement.

Sec. 15(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

Price is the sole consideration

Valuation Pre-1973

A.K. Roy and Another vs. Voltas Ltd. 1977 (1) ELT 177 (S.C.)

The fact that the appellant sold 90 to 95 of the articles manufactured to consumer direct would not make the price of the wholesale sales of the rest of the articles and the less the 'wholesale cash price' for the purpose of s. 4 (a) even if these sales were made pursuant to agreement stipulating for certain commercial advantages, provided the agreements were entered into at arm's length and in the ordinary course of business.

As there was no case for the appellants that there was any secret arrangements between the wholesale dealers and the respondent in respect of the sales to them or that the price of the articles was understated in the agreements or that any extra-commercial advantages to the dealers were taken into account in fixing the price we do not think that we should go into the question whether the discount allowed to the wholesale dealers was 'trade discount' or not for the purpose of the explanation.

Atic Industries Ltd. vs. H.H. Dave Assistant Collector of Central Excise 1978 (2) ELT 444 (S.C.)

Department did not allege charging of low price or showing of some undue favour to the buyer Agreements arrived at on purely commercial basis - Price charged from such buyers will be the " Wholesale cash price"-The fact that goods were sold to only two wholesale buyers and were not available to independent buyers will not affect the position

Post 1973

Union of India v. Bombay Tyre International Ltd. - (1984) 1 SCC 467

Under the new Section 4 also, it is necessary to take the price charged by the manufacturer as one which is unaffected by any concessional or manipulative considerations, and therefore, the "normal price" mentioned in the new Section 4(1)(a) speaks of a price "where the buyer is not the related person and the price is the sole consideration for the sale". The expression "related person" has been specifically defined in the new Section 4(4)(c), and transactions in which a "related person" is involved are covered by the third proviso of Section 4 (1)(a).

It is true, we think, that the new Section 4(1) contains inherently within it the power to determine the true value of the excisable article, after taking into account any concession shown to a special or favoured buyer because of extra-commercial considerations, in order that the price be ascertained only on the basis that it is a transaction at arm's length. That requirement is emphasised by the provision in the new Section 4(1)(a) that the price should be the sole consideration for the sale. In every such case, it will be for the Revenue to determine on the evidence before it whether the transaction is one where extra-commercial considerations have entered and, if so, what should be the price to be taken as the value of the excisable article for the purpose of Excise duty. Nonetheless, it was open to Parliament to incorporate provisions in the section declaring that certain specified categories of transactions fall within the tainted class, in which case an irrebuttable presumption will arise that transactions belonging to those categories are transactions which cannot be dealt with under the usual meaning of the expression "normal price" set forth in the new Section 4(1)(a). They are cases where it will not be necessary for the Revenue to

examine the entire gamut of evidence in order to determine whether the transaction is one prompted by extra-commercial considerations. It will be open to the Revenue, on being satisfied that the third proviso to the new Section 4(1)(a) read with the definition of "related person" in Section 4(4)(c) is attracted, to proceed to determine the "value" in accordance with the terms of the third proviso.

Post 2000

Commissioner of Central Excise, Hyderabad vs. Detergents India Ltd. 2015 (318) ELT 559 (S.C.)

Read in accordance with the object of the pre-amended Section 4 as explained in Voltas's case it is clear that the expression "where the buyer is not a related person and the price is the sole consideration for the sale" is to be read conjunctively as meaning that because the buyer is a related person, the price usually ceases to be the sole consideration for the sale. This merely raises a rebuttable presumption. Once the presumption is rebutted and it is shown that even in the case of a buyer who is a related person, the price is the sole consideration for the sale and is not a specially low price because of extra commercial considerations, such price would fall within Section 4(1)(a) as the price of the taxable goods to be taken into consideration for arriving at "normal price".

Commissioner of Central Excise, Bombay v. Universal Luggage Manufacturing Company Limited - 2005 (190) E.L.T. 3

Court found as a matter of fact that the assessee (holding company) was selling its products through its wholly owned subsidiary at the same price at which it was selling the same goods to other buyers at arm's length, in which the subsidiary company had no role to play. This being the case, this Court agreed with the Tribunal that the price at which sales have been effected through the subsidiary, not being a depressed price, would be the price that would be taken into consideration for valuation under Section 4(1)(a).

CCE-II, Chennai v. Beacon Neyrpic Ltd. - 2006 (193) E.L.T. 16

Assuming that the assessee was related to its subsidiary company i.e. M/s. Best & Crompton Ltd. (BCL), this by itself would not be sufficient for the purpose of invoking the Central Excise (Valuation) Rules, 1975 read with Section 4(1)(a) of the Central Excise Act, 1944. The Department would have to go further and show that the relationship has introduced an element other than purely commercial consideration in effecting the sale by the assessee to BCL. No such evidence has been produced by the Revenue.

Commissioner Central Excise, New Delhi v. India Thervit Corporation Ltd. - (2008) 17 SCC 374

ATL a subsidiary of ITCL, sold all goods manufactured by it to ITCL. Despite the fact that on facts ATL and ITCL may be taken to be related persons, (though this Court did not hold so), since there is no under valuation as the price paid by the Railways (an arm's length purchaser) was the same as the price paid by ITCL,

the price paid by the holding company to its subsidiary was taken to be a price on which Excise duty would be calculated.

Government of India vs. Madras Rubber Factory Ltd. 1995 (77) ELT 433 (S.C.)

As rightly pointed out by Bhagwati, C.J. in the Order dated December 20, 1986, "what is really relevant is the nature of the transaction". The learned Chief Justice pointed out further that "the warranty is not a discount on the tyre already sold, but relate to the goods which are being subsequently sold to the same customers. It cannot be strictly called as discount on the tyre being sold. It is in the nature of a benefit given to the customers by way of compensation for the loss suffered by them in the previous sale". He characterised it as "a compensation in the nature of warranty allowance on a defective tyre". We express our respectful concurrence with the said observations. - Year-end discount/cash discount allowable deductions

Purolator India Ltd. vs. Commissioner of Central Excise, Delhi-III 2015 (323) ELT 227 (S.C.)

The basis of "transaction value" is therefore the agreed contractual price. Further, the expression "when sold" is not meant to indicate the time at which such goods are sold, but is meant to indicate that goods are the subject matter of an agreement of sale. Once this becomes clear, what the learned counsel for the assessee has argued must necessarily be accepted inasmuch as cash discount is something which is "known" at or prior to the clearance of the goods, being contained in the agreement of sale between the assessee and its buyers, and must therefore be deducted from the sale price in order to arrive at the value of excisable goods "at the time of removal".

Customs Law - Commissioner of Customs, Calcutta v. South India Television (P) Ltd. [2007(6) SCC 373]

12. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of undervaluation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege undervaluation, it must make detailed inquiries, collect material and also adequate evidence. When undervaluation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving undervaluation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts'

proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of undervaluation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods.

Market penetration loss

Consideration – direct co-relation

Sec. 2(31) of the CGST Act, 2017

Bai Mamubai Trust vs. Suchitra 2019 (31) GSTL 193 (Bom.)

58. The Learned *Amicus Curiae* correctly submits that enforceable reciprocal obligations are essential to a supply. The supply doctrine does not contemplate or encompass a wrongful unilateral act or any resulting payment of damages.

R. J. Tolsma Case C-16/93

A supply of services is effected 'for consideration' within the meaning of Article 2 (1) of the Sixth Council Directive (77/388) on the harmonization of the laws of the Member States relating to turnover taxes, and hence is taxable, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient.

Mitteldeutsche Hartstein-Industrie AG v Finanzamt Y Case C-528/19

UniCredit Leasing C-242/18

Para 69 In that regard, the Court has held that classification as a 'transaction for consideration' requires only that there be a direct link between the supply of goods or the provision of services and the consideration actually received by the taxable person. Such a direct link is established if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient.

Admittedly, the Court has ruled that consideration for a supply of goods or services may be consideration in monetary terms or in kind. However, in so far as, according to the unilateral decision of the Regional Council to authorise the operation of the limestone quarry, such an authorisation would have lapsed if the works for the extension of the municipal road had not been completed by 31 December 2006, those works are not consideration for the right to operate that quarry but a condition *sine qua non* for the exercise of that right.

Commissioner of Central Excise, Mumbai vs. Fiat India Pvt. Ltd. 2012 (283) ELT 161 (S.C.)

It is for the Excise authorities to show that the price charged to such selling agent or distributor is a concessional or specially low price or a price charged to show favour or gain in return extra-commercial advantage. If it is shown that the price charged to such a sole selling agent or distributor is lower than the real value of the goods which will mean the manufacturing cost plus manufacturing profit, the Excise authorities can refuse to accept that price.

When the price is not the sole consideration and there are some additional considerations either in the form of cash, kind, services or in any other way, then according to Rule 5 of the 1975 Valuation Rules, the equivalent value of that additional consideration should be added to the price shown by the assessee. The important requirement under Section 4(1)(a) is that the price must be the sole and only consideration for the sale. If the sale is influenced by considerations other than the price, then, Section 4(1)(a) will not apply. In the instant case, the main reason for the assessees to sell their cars at a lower price than the manufacturing cost and profit is to penetrate the market and this will constitute extra commercial consideration and not the sole consideration.

Fiat decision will not apply.

Levy is on supply for consideration (wherein "consideration" has been defined).

Central Excise, New Delhi v. Guru Nanak Refrigeration Corpn. [2003 (153) E.L.T. 249 (S.C.)]

5. A perusal of the show cause notice shows that it does not contain an allegation that the wholesale price to the buyers was for consideration other than the one at which it purported to be sold or that it was not at arms length. There is also no allegation that there was any flowback of the money from the buyer to the assessee. *In the absence of these factors it cannot be contended that normal price was not ascertainable. There is no valid reason to doubt the genuineness of the sale price.* It can therefore safely be concluded that the goods were sold at the normal price within the meaning of Section 4(1)(a) of the Act. In our view, the Tribunal is right in accepting the wholesale price as the correct price following the judgment of the Court in *Union of India & Ors.* v. *Bombay Tyres International Ltd. etc.* [1983 (14) E.L.T. 1896]. We hold that clause (b) of sub-section (1) of Section (4) of the Act would not be attracted to determine the nearest ascertainable equivalent of the normal in price of the goods for assessment of excise duty in the facts of this case. We do not find any illegality in the order of the Tribunal in setting aside the order of the Collector. The appeal is therefore dismissed. No costs."

Fiat's case – peculiar to the given facts

Para 50 - There could be instances where a manufacturer may sell his goods at a price less than the cost of manufacturing and manufacturing profit, when the company wants to switch over its business for any other manufacturing activity, it could also be where the manufacturer has goods which could not be sold

within a reasonable time. These instances are not exhaustive but only illustrative.

Para 66 - Before we conclude on this issue, we intend to refer to the often quoted truism of Lord Halsbury that a case is only an authority for what it actually decides and not for what may seem to follow logically from it. We may also note the view expressed by this Court in the case of *Sushil Suri* v. *Central Bureau of Investigation & Anr*. (2011) 5 SCC 708, wherein this Court has observed, "Each case depends on its own facts and a close similarity between one case and another is not enough because either a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

Circular No. 979/03/2014-CX. dated the 15th Jan , 2014

Verification of this aspect may be conducted by the Central Excise officer during the audit of units. Aspects such as the percentage of loss at which sale has taken place , the period for which such loss making price has prevailed , reasons for sale at such loss making price , whether such sales are contrary to the standard and accepted business practices , and whether such sale is leading to erosion of capital of the company , may be looked into . In addition, due care may be taken at the level of the Commissioner to see whether the case at hand is similar to the facts and circumstances of the FIAT case.

C.B.E. & C. Circulars Nos. 979/3/2014-CX, dated 15-1-2014 and 983/7/2014-CX, dated 10-7-2014 clarifying that mere fact that sale price is lower than manufacturing cost not to be criterion to reject transaction value unless aspects such as percentage of loss at which such sale takes place and period for which such loss takes place, reasons of sale at such loss, etc. are examined to ascertain if there was any "extra commercial consideration".

Fiat case distinguished

T & T METALS PVT. LTD. v. PRINCIPAL COMMR. OF CGST & C. EX., RANCHI 2021 (376) E.L.T. 545 (Tri. - Kolkata)

Sales/marketing costs

Philips India Ltd. v. Collector of Central Excise, Pune [1997 (6) SCC 31]

It seems to us clear that the advertisement which the dealer was required to make at its own cost benefited in equal degree the appellant and the dealer and that for this reason the cost of such advertisement was borne half and half by the appellant and the dealer. Making a deduction out of the trade discount on this account was, therefore, uncalled for.

We think that in adjudicating matters such as this, the Excise authorities would do well to keep in mind legitimate business considerations.

We cannot help but observe that the reduction of the trade discount by two percentage points would not have occurred to the adjudicating authorities, being an unlikely estimate, but for the fact that the 2% here realised Rs. 50 lacs and odd.

Alembic Glass Industries Ltd. vs. Commissioner of Central Excise 2006 (201) ELT 161 (S.C.)

Standard Electric Appliances v. Supdt. of Central Excise [(1986) 23 E.L.T. 302 (Mad)]

The advertising of a product by the wholesaler was one of the well-known methods by which the wholesaler attracted customers and if, as a result of increasing its business, the demand for the product of the manufacturer also increased, the advertising by the manufacturer could not be said to be for and on behalf of the manufacturer.

Union of India v. Mahindra and Mahindra Ltd. [(1989) 43 E.L.T. 611 (Cal)]

Emphasised the relationship between the parties, being of buyer and seller on principal-to-principal basis. The Court observed that the manufacturer and its distributor had a mutual interest in maximising the sale of the products. The provisions in the contract between them relating to advertising and the like were in furtherance of this desire on the part of both the manufacturer and its distributor and in no way affected the real nature of the transaction which appeared to be of sale on principal-to-principal basis.

HERCULES HOISTS LTD. v. COMMISSIONER OF C. EX 2016 (343) E.L.T. 449 (Tri. - Mumbai)

Advertisements cannot be called as advertisements for manufactured goods but are advertisements of dealers.

Against Scientific Instrument Co. Ltd. vs. Collector of Customs 1989 (41) ELT 599 (Tri.-Del) affirmed by 1996 (87) E.L.T. A51 (S.C)]

It is quite evident, and even the appellants do not dispute it, that the net price paid by them for their imports was not the sole consideration for the sale because, as per their agreements with the foreign suppliers, they were required to perform various services like advertisement and publicity for the products, their installation and after sale service, training and warranty obligations etc. on behalf of the foreign suppliers. These obligations rightly belong to the foreign manufacturer/supplier because, considering the nature of the products, they were essential to make the products marketable. The appellants performed these services and obligations at their own cost which was in addition to the net price which they paid to the foreign supplier. The foreign supplier got this additional consideration in the shape of services if not in cash. For this reason, the net price paid by the appellants could not be the assessable value in terms of Section 14(l)(a).

RULE 27. Value of supply of goods or services where the consideration is not wholly in money. — Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall, -
(a) be the open market value of **such** supply;
(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

Explanation (a)

Open Market Value means the full value in money excluding taxes under GST laws, payable by a person to obtain such supply at the time when supply being valued is made, provided such supply is between unrelated persons and price is the sole consideration for such supply.

Meaning of "such"

Webster – "having the particular quality or character specified"

Central Bank of India v. Ravindra AIR 2001 SC 3095 – Draftsman's intention to assign same meaning or characteristics to noun as previously indicated.

Revenue neutrality

Commissioner of C. Ex., Pune vs. Coca-Cola India Pvt. Ltd. 2007 (213) ELT 490 (S.C.)
Commr. of C. Ex., Ahmedabad-II vs. Reclamation Welding Ltd. 2014 (308) ELT 542 (Tri.-Ahmd)
Jay Yuhshin Ltd. vs. Commissioner of Central Excise, New Delhi 2000 (119) ELT 718 (Tri.-LB)
Trinity Dic Forgers Ltd v. Commissioner of Central Excise 2017 (348) E.L.T. 276 (Tri. - Mumbai)

2. Job Worker (AD)

2.1 M/s ABC Engineers are job workers who process metal received from their principal M/s. PQR to carve out metal pieces and return the metal pieces to PQR. During the course of processing certain trimmed material in form of metal chips is generated which is not returned to the Principal. Only the whole metal pieces are returned back to PQR. M/s ABC Engineers have been advised that they have to add the value of the trimmed metal chips to the job work charges to arrive at the taxable value, since the same are not returned to the Principal. Their Principal M/s PQR is neither ready to accept the higher value of job work charges (due to the addition of the value of trimmed metal chips) nor is it ready to take

back the trimmed metal chips. The views of the panelists are sought by M/s ABC Engineers as to the correct legal position for valuation?

Sec. 15(1) – The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the **sole consideration** for the supply.

Sec. 15(4) further provides that where the value of supply cannot be determined u/s 15(1), the same shall be determined in the manner prescribed. The manner for determination of such value for the issue before us is prescribed under Rule 27 of the CGST Rules, 2017.

Rule 27 starts with the phrase "where the supply of goods or services is for a consideration not wholly in money". Hence the moot question before us is whether the scrap retained by the job worker can be considered as a "consideration" ?

Sec. 2(31) "Consideration in relation to the supply of goods or services or both includes––

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;"

Bai Mamubai Trust vs. Suchitra 2019 (31) GSTL 193 (Bom.)

58. The Learned *Amicus Curiae* correctly submits that enforceable reciprocal obligations are essential to a supply. The supply doctrine does not contemplate or encompass a wrongful unilateral act or any resulting payment of damages. For example, in a money suit where the plaintiff seeks a money decree for unpaid consideration for letting out the premises to the defendant, the reciprocity of the enforceable obligations is present. The plaintiff in such a situation has permitted the defendant to occupy the premises for consideration which is not paid. The monies are payable as consideration towards an earlier taxable supply. However, in a suit, where the cause of action involves illegal occupation of immovable property or trespass (either by a party who was never authorised to occupy the premises or by a party whose authorization to occupy the premises is determined) the plaintiff's claim is one in damages.

Sec. 2(d) of the Contract Act

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

Meaning of discard vs. supply

To cast off as useless or no longer of service.

Ujagar Prints v/s. Union of India (1989) 39 ELT 493 (SC)

"It must be clarified that the value of scrap would be included in the value of the points and crossings only in case where it is shown that the conversion charges get depressed by the fact that the processor is allowed to keep and sell the scrap. ------- If the conversion charges are not depressed or if the scrap/waste is returned then, their value will not get added.

The burden of proving that the price is so depressed would be on the Revenue. But one of the methods of proving it would be through the contract between the parties itself."

General Engineering Works v. Commissioner of Central Excise (2007) 212 ELT 295 (SC)

It must be clarified that the value of scrap would be included in the value of the points and crossings only in case where it is shown that the conversion charges get depressed by the fact that the processor is allowed to keep and sell the scrap. Thus in the example given above, it would have to be shown that the conversion charges are Rs. 450/- because Rs. 50/- is earned from the sale of scrap. If the conversion charges are not depressed or if the scrap/waste is returned then, their value will not get added.

CCE., Nagpur v. Lloyds Steels Industries Limited (2007) 213 E.L.T. 339 (S.C.))

"(a) Conversion charges are applicable on CR output waste of CR coils including 1.5% unrolled/semi-rolled material going along with the CR FH coil. The conversion charges are with due consideration of scrap credit after reduction of estimated salvage value."

Hence in cases where the contract envisages the scrap to be retained by the job worker and the job work charges are adjusted on this account, the value of actual scrap generated shall be treated as a consideration and GST shall be leviable.

Exchange – Sec. 118 of the TP Act

Barter – Equal exchange

Both the concepts in the context of property

However scope of supply u/s 7(1) broad enough to cover all supplies of goods/services

3. **Cross Charge (AD)**

3.1 Smart Financial Advisors Private Limited ("Smart") is a corporate insurance agent of Insurance companies and is involved in soliciting, procuring and servicing of insurance business for them. It also provides various services to the policy holders (no consideration flows from the policy holders to Smart). Smart has its Head office located at Mumbai, from where the entire commission

income billing is done to the Insurance companies for policy holders across India. Smart also has 3 branch offices in Delhi, Bangalore and Ahmedabad and it is registered under GST laws in all the 4 states (as they have other taxable income as well). The management and strategic team of the Company operates from Mumbai. The cost of senior management salary is Rs. 15 lacs per month and overheads of the HO are Rs. 10 lakhs per month. Smart seeks the views of the panelists on the following:

(a) The branches want to cross charge the HO at Mumbai for various support services provided. Smart is confused at what value should the branches invoice to the HO? Would it include the employee cost–

(i) If paid by the Branch
(ii) If paid by the HO but relatable to the Branch

Schedule III

Sr. No. 1. Services by an employee to the employer in the course of or in relation to his employment.

"Employee" defined

Sec. 2(1)(e) of the Employee's Compensation Act, 1923

"employer includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, means such other person while the employee is working for him"

Sec. 2(e) of the Minimum Wages Act, 1948.

"employer means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act"

"employee"

Relevant portion of the definition u/s 2(f) of the Employees Provident Fund Act, 1952 is reproduced below:

"employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer"

Interpretation of deeming fiction

Sant Lal Gupta v. Modern Co-operative Group Housing Society Ltd 2010 (262) E.L.T. 6 (S.C.)

Legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really exist.

Court is to ascertain for what purpose the fiction is created and interpret the same accordingly.

Legal fiction to be limited to purpose as indicated by context and cannot be given larger effect -What can be deemed to exist under legal fiction are merely facts and no legal consequences which do not flow from the law as it stands

Bhuwalka Steel Industries Ltd. V. Union of India 2017 (348) E.L.T. 393 (S.C.)

It cannot be extended by importing another fiction.

STATEMENT OF OBJECTS AND REASONS

3. In view of the aforesaid difficulties, all the above-mentioned taxes are proposed to be subsumed in a single tax called the goods and services tax which will be levied on supply of goods or services or both at each stage of supply chain starting from manufacture or import and till the last retail level. So, any tax that is presently being levied by the Central Government or the State Governments on the supply of goods or services is going to be converged in goods and services tax which is proposed to be a dual levy where the Central Government will levy and collect tax in the form of central goods and services tax and the State Government will levy and collect tax in the form of state goods and services tax on intra-State supply of goods or services or both.

4. In view of the above, it has become necessary to have a Central legislation, namely the Central Goods and Services Tax Bill, 2017. The proposed legislation will confer power upon the Central Government for levying goods and services tax on the supply of goods or services or both which takes place within a State. The proposed legislation will simplify and harmonise the indirect tax regime in the country. It is expected to reduce cost of production and inflation in the economy, thereby making the Indian trade and industry more competitive, domestically as well as internationally. Due to the seamless transfer of input tax credit from one stage to another in the chain of value addition, there is an in-built mechanism in the design of goods and services tax that would incentivise tax compliance by taxpayers. The proposed goods and services tax will broaden the tax base, and result in better tax compliance due to a robust information technology infrastructure.

Printers (Mysore) Ltd. and Another v. Assistant Commercial Tax Officer and Others (1994) 2 SCC 434

We do not think that such was the intention behind the amendment of definition of the expression "goods" by the 1958 (Amendment) Act. Even apart from the opening words in Section 2 referred to above, it is well settled that where the context does not permit or where it would lead to absurd or unintended result, the definition of an expression need not be mechanically applied. [Vide T.M. Kanniyan v. ITO, Pushpa Devi v. Milkhi Ram 12 (para 14) and CIT v. J.H. Gotla.]

All India Federation of Tax Practitioners v. Union of India - 2007 (7) S.T.R. 625 (S.C.)

Para 17 As stated above, as an economic concept, there is no distinction between the consumption of goods and consumption of services as both satisfy human needs. It is this economic concept based on the legal principle of equivalence which now stands incorporated in the Constitution vide Constitution (Eighty-eighth Amendment) Act, 2003. Further, it is important to note, that "service tax" is a value added tax which in turn is a general tax which applies to a commercial activities involving production of goods and provision of services. Moreover, VAT is a consumption tax as it is borne by the client."

Association of Leasing and Financial Services Companies v. Union of India - 2010 (20) S.T.R. 417 (S.C.)

"In *All India Federation of Tax Practitioners'* case (supra), this Court explained the concept of service tax and held that service tax is a Value Added Tax ('VAT' for short) which in turn is a destination based consumption tax in the sense that it is levied on commercial activities and it is not a charge on the business but on the consumer. That, service tax is an economic concept based on the principle of equivalence in a sense that consumption of goods and consumption of services are similar as they both satisfy human needs. Today with the technological advancement there is a very thin line which divides a "sale" from "service". That, applying the principle of equivalence, there is no difference between production or manufacture of saleable goods and production of marketable/saleable services in the form of an activity undertaken by the service provider for consideration, which correspondingly stands consumed by the service receiver. It is this principle of equivalence which is inbuilt into the concept of service tax under the Finance Act, 1994. *That service tax is, therefore, a tax on an activity*. That, a service tax is a value added tax. The value addition is on account of the activity which provides value addition, for example, an activity undertaken by a chartered accountant or a broker is an activity undertaken by him based on his performance and skill. This is from the point of view of the professional. However, from the point of view of his client, the chartered accountant/broker is his service provider. The value addition comes in on account of the activity undertaken by the professional like tax planning, advising, consultation etc. It gives value addition to the goods manufactured or produced or sold. Thus, service tax is imposed every time service is rendered to the customer/client.

Tech Mahindra Vs. CCE, Pune - 2016 (44) S.T.R. 71 (Tri. - Mumbai)

The activity of the head office and branch are thus inextricably enmeshed. Its employees are the employees of the organization itself. There is no independent existence of the overseas branch as a business.

Draft Circular (June 2019)

Litigation management

Issuing employee appointment letters from HO showing the deputation at the Branch on behalf of HO.

(b) Whether HO also has to cross charge Branch considering the billing is from the HO and not from the Branch. How to value the supply of services such as legal, finance, administration, strategic decision making etc. by the HO to the branches? Can a fixed monthly amount of Rs. 10 lakhs or Rs. 25 lakhs be pre-decided for valuation of services or whether actual values needs to be worked for each month? Would the salary cost of management personnel be included in value?

Same as before.

(c) For valuing the cross charge, can the second proviso to Rule 28 be applied i.e. will any value declared in the invoice be accepted as open market value?

Note: Services supplied by an insurance agent to the Insurance Company is covered under reverse charge provisions in GST i.e. the insurance company shall discharge GST (as per Entry 7 of Notif.No.13/2017-CT-R). Further for the supplier of services the RCM supply is considered as an exempt supply under section 17(3) of the CGST Act.

Proviso to Rule 28

Provided further 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.

Sec. 17(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Sec. 17(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

4. Real Estate Agreements – inclusion of stamp duty (VA)

4.1 Happy Homes Infrastructure Ltd is in the business of real estate industry. During the Financial year 20-21, they have sold under construction property which are subject to levy of 5% as per the provisions of Act. They had floated a scheme whereby buyers are not required to pay any stamp duty on purchase of the property and it is also advertised accordingly in public domain. Buyer has deducted income-tax TDS @ 1% on the Total agreement value as per the provisions of section 194-IA of the Income Tax Act 1961. Details of various property sold to buyers are as under:

Name of the Buyer	Property No.	Agreement date	Agreement value (Inclusive of Stamp Duty)	Stamp Duty Payable included in (4)	Happy Homes view – value subject to

			Rs.	i.e. agreement value Rs.	levy of GST (excluding Stamp Duty) Rs.
(1)	(2)	(3)	(4)	(5)	(6) = (4) – (5)
Tom	101	Sept 20	1,00,00,000/-	5,00,000/-	95,00,000/-
Jerry	201	Jan 21	1,10,00,000/-	5,50,000/-	1,04,50,000/-
Bruno	601	Mar 21	1,20,00,000/-	6,00,000/-	1,14,00,000/-

4.2 The panelists' views are sought on the issue whether GST should be paid on the value including stamp duty or excluding stamp duty? Happy Homes is of the considered view that they are paying stamp duty as pure agent on behalf of the buyer and the statutory liability for payment of stamp duty is with the buyer. The scheme promoted is not an agreement by which the statutory liability of payment of stamp duty falls on Happy Homes but it was only a scheme to offload the inventory accumulated in view of slump and cut throat competitions in the market segment. (Ref: Definition of Consideration – Section 2(31) of CGST Act 2017 and Section 15 of the CGST Act 2017)

Sec. 15(1) - The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

Sec. 2(31) - "consideration" in relation to the supply of goods or services or both includes —

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Rule 33 - Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party **on authorisation by such recipient**;
(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. — For the purposes of this rule, the expression "pure agent" means a person who –

(a) **enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both**;
(b) **neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply**;
(c) does not use for his own interest such goods or services so procured; and
(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

McDowell and Co. Ltd. vs. Commercial Tax Officer [1985] 59 STC 277 (SC),

Maharashtra Stamp Act, 1958

Sec. 30 In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,— (b) in the case of a conveyance (including a re-conveyance of mortgaged property) by the grantee; in the case of a lease or agreement to lease by the lessee or intended lessee;

Sec. 43(1) When any duty or penalty has been paid under section 34, section 36, section 39 or section 40, by any person in respect of an instrument, and, by agreement or under the provisions of section 30 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first—mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

Sec. 46(1) All duties, penalties and other sums required to be paid under this [Act] may be recovered by the Collector by distress and sale of the moveable property of the person from whom the same are due, or as an arrear of land revenue.

Kunwarpal Sharma And Anr. vs State Of U.P. AIR 2003 All 7

For finding out the person from whom the duty is due, one will have to refer to Section 29 of the Act. It, therefore, follows as a corollary that in the case of a sale deed of immovable property the deficiency in the stamp duty can be recovered from the vendee only and not from the vendor. Section 44 contemplates a situation where any duty or penalty has been paid under Sections 35, 37, 40 or 41 by any person in respect of an instrument and by agreement or under the provisions of Section 29 some other person was bound to bear the expenses of providing the proper stamp for such instrument. In such a case that person is entitled to recover the amount from the person who was bound to bear the expenses of providing the proper stamp for such instrument in accordance with Section 29. This provision again shows that the liability to pay stamp duty has to be ascertained in accordance with Section 29 of the Act and the person who has paid the amount under Sections 35, 37, 40 or 41 of the Act is entitled to recover the amount from the said person. These provisions show in unequivocal terms that in case of a sale deed

of immovable property, the liability to pay stamp duty is that of the vendee and not that of the vendor.

We are unable to accept the submission made. Section 17 only enjoins that all instruments chargeable with duty shall be stamped before or at the time of execution. It neither makes reference nor has any bearing on the question as to who is liable to pay the stamp. Section 62 no doubt makes a vendor liable for punishment in case the instrument executed by him has not been duly stamped but this provision cannot lead to an inference that the stamp should also be provided by him. It is noteworthy that the offence under Section 62 is punishable with fine only which may extend to five hundred rupees. The intention behind this section appears to be that the vendor should also take care and should not execute the deed until the same is properly stamped. The effect and import of Section 29 cannot be changed or altered by giving an extended meaning to Section 62 of the Act. We are, therefore, clearly of the opinion that in case of sale deed of immovable property, the liability to pay the proper stamp is that of the grantee or vendee.

With profound respects, we are unable to accept the view taken in the decisions cited by learned standing counsel that Sections 29 and 44 of the Act only regulate the liabilities as between the parties inter se. Section 54 of Transfer of Property Act de-fines a sale and it provides that sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised. The consideration for sale of an immovable property is a matter of agreement between the vendor and vendee. They can also enter into an agreement regarding the expenses of providing the proper stamp duty. There was no requirement of making a legislation which may deal with expenses for providing proper stamp duty as between a vendor and vendee of immovable property as such a matter can always be settled by mutual agreement. If in a case of a conveyance the stamp duty is paid by the grantor, the deed would not be rendered invalid nor it would violate any provision of law. Under the scheme of the Act, the Collector has been empowered to recover any deficiency in stamp duty. The purpose of enacting Section 29(c) is that he may recover the amount from the grantee and not from the grantor. This also appears to be logical as the vendee who acquires title over the property by the deed of conveyance should be held liable to pay the requisite stamp duty.

Sec. 32A(1) Every instrument of conveyance, exchange, gift, certificate of sale, deed of partition or power of attorney to sell immovable property when given for consideration, deed of settlement or transfer of lease by way of assignment 2[and also any other instruments mentioned in SCHEDULE I chargeable with duty on the basis of market value of the property], presented for registration under the provisions of Registration Act, 1908, shall be accompanied by a true copy thereof.

Sec. 34 No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped 3[or if the instrument is written on sheet of paper with impressed stamp 4[such stamp paper is purchased in the name of one of the parties to the instrument.

Registration Act, 1908

Sec. 17 Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

Sec. 49 Effect of non-registration of documents required to be registered.—No document required by section 171 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall— (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

IRC v. G. Angus & Co. (2004) 9 SCC 438

Apex Court held that the thing which is made liable to stamp duty is the "instrument". It is not a transaction of purchase and sale, which is struck at, it is the "instrument" whereby the purchase and sale are effected which is struck at. It is the "instrument" whereby any property upon the sale thereof is legally or equitably transferred and the taxation is confined only to the instrument whereby the property is transferred. If a contract of purchase or sale or a conveyance by way of purchase and sale, can be, or is, carried out without an instrument, the case would not fall within the section and no tax can be imposed. Taxation is confined to the instrument by which the property is transferred legally and equitably transferred. In the case on hand the only instrument is Bill of Lading on which tax has already been paid and the same is exempted from the definition of "instrument".

Circular No. 192/02/2016-S.T., dated 13-4-2016

Sr. No. 3 Service Tax on taxes, cesses or duties.

Taxes, cesses or duties levied are not consideration for any particular service as such and hence not leviable to Service Tax. These taxes, cesses or duties include excise duty, customs duty, Service Tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, octroi, entertainment tax, luxury tax and property tax.

Corrigendum to Circular No. 76/50/2018-GST dated 31st December, 2018

For the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

Circular F. No. 354/32/2019-TRU, dated 14-5-2019

For the purpose of determining the threshold of the gross amount of Rs. 45.00 lakh for affordable residential apartments, all the charges or amounts charged by the promoter from the buyer of the apartments shall form part of the gross amount charged. Clause xvi, sub-clause (a)(ii)(C) of paragraph 4 of notification No. 11/2017-C.T. (R), dated 28-6-2017, reproduced below, refers.

"C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc."

However the value shall not include stamp duty payable to the statutory authority, maintenance charges/ deposits for maintenance of apartment or maintenance of common infrastructure.

FAQ on Banking, Insurance and Stock Brokers Sector

In the case of stock broking, whether stamp duty or securities transaction tax or other Central or State taxes would be considered as a part of the value of supply as prescribed under Section 15 of the CGST Act, 2017, for levy of GST?

GST is not payable by the stock brokers on these recoveries as long as the conditions of pure agent as provided in Rule 33 of the CGST Rules, 2017 are met. If not, then valuation will be done as per Section 15 of the CGST Act, 2017 read with Rule 27 of CGST Rules, 2017.

Sec. 15(2)(a) – Stamp duty is not levied on the Supplier and then recovered separately by the buyer.

Chaudhary Ramesar v Prabhawati Phool Chand, AIR 2012 All 173

Padam Chand v Lakshmi Devi, (2010) 173 DLT 604 (Delhi).

UMI Special Steel Ltd. v. C.C., Bhubaneswar 2001 (137) E.L.T. 174 (Tribunal)]

8. After hearing both sides, we find that stamp duty is neither a part of the price of the imported goods nor is the same a part of the transaction-value. The same was also not a payment to M.S.T.C. towards the price in the sale of the goods or towards its remuneration or commission etc. Stamp duty is a statutory levy by way of cost of the stamps affixed on the documents. We agree with the submissions of the learned Advocate that there is no provision in the Customs Act, 1962 or in the Customs (Determination of Price of Imported Goods) Rules, 1988, where such stamp duty paid to the State Government in India, can be included in the assessable value of the imported goods. Accordingly, we hold that the said duty cannot be added to the assessable value of the goods

Tata Yodogawa Ltd. vs. Commissioner of Customs, Bhubaneswar 2001 (135) ELT 960 (Tri.-Cal)

5. Valuation – inclusion of value of supplies by recipient (VA)

5.1 S Ltd. is the owner of 3 ships and lets out the same on a time charter basis. Time charter is a contract for the cargo space of a manned ship for a specified period. A customer, R Ltd., has contracted to take a ship on time charter basis and the contract contains *inter alia* the following terms:

(i) S Ltd. agrees to provide the ship on time charter basis for 1 month alongwith ship management services for a consideration of Rs. 85 Lakhs.

(ii) R Ltd. agrees to provide the fuel (known as bunker) for the ship during the time charter period. Fuel necessary for the ship is the responsibility of R Ltd. and not S Ltd. This is as per the accepted international practice whereby the ship owner does not want to take the price fluctuations in the oil prices.

The panellists' views are sought on whether the value of fuel supplied by R Ltd. will be added to Rs. 85 lakhs for the purpose determining the value of taxable supply of S Ltd.

Sec. 15(2) The value of supply shall include —

(b) 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 or services or both;

McDowell and Co. Ltd. vs. Commercial Tax Officer [1985] 59 STC 277 (SC),

N.M. Goel & amp; Co. [1989] 72 STC 368 (SC)

Ts Tech Sun (India) Ltd. [2008] 15 VST 559 (SC)

6. Inclusion of tax and penalties in value (AD)

6.1 M/s 'Hum hai Bemisaal' (supplier) from Karnataka enters into a contract with M/s 'Hum jaisa koi Nahi' (recipient) of Madhya Pradesh for supply of corrugated boxes as per the Purchase order. The goods were valued at INR 20,00,000 and were to be transported by the supplier to recipient's premises by arranging necessary transport facilities. The lorry was intercepted by the GST Wing and the goods were detained since the necessary documents were not provided. Later, on payment of tax and penalty u/s 129 totalling Rs. 2,00,000 by the recipient the goods were released.

6.2 During the internal Audit, the supplier's auditor pointed out that the value of the above transaction under GST should be INR 22,00,000 as per section 15(2)(b) of the CGST Act, 2017 stating that the tax and penalty paid by the recipient was an obligation of the supplier since he was responsible to arrange for the transport. Further the said amount is in the nature of penalty and hence would not get excluded as per section 15(2)(a) of the CGST Act,2017 which provides for exclusion of tax, duties, cess, fees and charges levied under CGST Act.

6.3 The panellists have been approached by the supplier for their views on the auditor's observation.

Sec. 15(2)(b) 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 or services or both

Not the liability to pay to the third parties under the contract.

Sec. 68(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

Rule 138(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees -
(i) in relation to a supply; or
(ii) for reasons other than supply; or
(iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods as specified in **Part A** of **FORM GST EWB-01**, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal :

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill in **FORM GST EWB-01*** electronically on the common portal after furnishing information in **Part B** of **FORM GST EWB-01***.

Sec. 129(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, ––

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

Circular No. 41/15/2018-GST, dated 13-4-2018

Not the obligation of the supplier.

Sec. 15(2)(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

7. Reimbursements of warranty costs (VA)

7.1 A Ltd. manufactures electronic gadgets for foreign buyers. One of its regular customers is B Inc. incorporated in USA. It supplies goods under a warranty agreement which provides for replacement of parts in case of any damage during the warranty period. In respect of a consignment of supplies in January 2020, B Inc. raised a warranty claim in August 2020. However, at that time A Ltd. was not in a position to service the claim and it requested B Inc. to replace the gadgets from another supplier and agreed to reimburse the costs. B Inc. contracted with another supplier and got the parts replaced. The entire cost was INR 35,00,000. Later, B Inc. placed another order on A Ltd. valued at INR 10 Crores. The consignment was delivered in November 2020. A Ltd. adjusted the costs reimbursable under the warranty claim viz., Rs. 35,00,000/- in the said Invoice by way of discount.

7.2 The panellists' views are solicited on following:

(i) Whether the amount deducted from the invoice value by A Ltd. is a discount and if so whether it is an eligible deduction u/s 15(3) of the CGST Act,2017?

Meaning of "discount" – pre-sale concurrence – Southern Motors

Not a discount

Government of India vs. Madras Rubber Factory Ltd. 1995 (77) ELT 433 (S.C.)

52. In the clarificatory Order in *Bombay Tyre International* (dated 14/15th November, 1983) this court has held : "discounts allowed in the Trade by whatever name such discount is described) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the nature of the discount being known at or prior to the removal of the goods. Such Trade Discount shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price".

53. The question is whether the claim, put forward as TAC/Warranty discount is a trade discount within the meaning of Section 4(4)(d)(ii)? We think not. It is only a claim for refund by the buyer for the manufacturing defect in the tyre sold by the assessee, which is being honoured by the assessee in a manner acceptable to both the parties. In a given case, a buyer may well insist that he must be reimbursed in cash and not in kind. In such a case, the assessee cannot certainly refuse such a claim; it would have to pay cash. The nature and character of the amount so being refunded is certainly not a trade discount contemplated by Section 4(4)(d)(ii), whether the claim is honoured by paying cash or by deducting it from the price of the new tyre. As rightly pointed out by Bhagwati, C.J. in the Order dated December 20, 1986, "what is really relevant is the nature of the transaction". The learned Chief Justice pointed out further that "the warranty is not a discount on the tyre already sold, but relate to the goods which are being subsequently sold to the same customers. It cannot be strictly

called as discount on the tyre being sold. It is in the nature of a benefit given to the customers by way of compensation for the loss suffered by them in the previous sale". He characterised it as "a compensation in the nature of warranty allowance on a defective tyre". We express our respectful concurrence with the said observations.

(ii) In case the amount of INR 35,00,000 is neither adjusted nor reimbursed by A Ltd. (with the acceptance of B Inc.) whether it could be treated as an addition to the value of supplies in terms of section 15(2)(b) of the CGST Act, 2017. If the value is to be added, would it have to be added to the value of consignment of January 2020 or November 2020?

B Inc waives the warranty.

Sec. 15(2)(b) 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 or services or both.

Sec. 2(d) of the Contract Act

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise

Jagadindra Nath Roy v. Chandra Nath Poddar (1903) 31 Cal 242 – Forbearance at the promisor's request is a good consideration.

Bittan Bibi v. Kuntu Lal AIR 1952 All 996 (FB)

8. Compensation – value and time of supply (AD)

8.1 Kiaraa is supplier of Machinery to food processors. In March 2021 it supplied a machinery valued at INR 50,00,000 with a credit period of 2 months to Khanaa Khazanaa Ind. In case of delay in payment of consideration, the terms provided for a compensation of INR 5,00,000. Due to Covid 2nd Lockdown the payment was delayed and it could be made in August 2021. However Kiaraa waived the compensation considering the pandemic conditions and past relationship with the customer. Kiara paid GST on Rs. 50,00,000/- in April 21 (supply of March 21) but did not pay GST on the compensation.

8.2 The department's auditor is of the view that the compensation even though waived is part of value as per sec 15(2)(d) of the CGST Act, 2017 [interest or late fee or penalty for delayed payment of consideration is part of value]. The accountant argued that that as per section 12(6) of the CGST Act, 2017 the time of supply for compensation for delayed payment of consideration would be the date of actual receipt of the said compensation and since the compensation was not received the liability to pay tax does not arise. The department's auditor however, is of the view that section 15(2)(d) does not provide for actual receipt for the purpose of valuation. Hence he contends that

the value of supply should be taken as INR 55,00,000 and has demanded GST on Rs. 5,00,000/-. The panellists' views are solicited on following issues:

(i) Whether the contention of the departments' auditor is correct?

No. Waiver of a consideration is no consideration. Inclusions to the value of supply u/s 15(2) to be considered only if the same are enforceable.

Article 265. Taxes not to be imposed save by authority of law No tax shall be levied or collected except by authority of law.

ACCE* v. *National Tobacco Co. of India Ltd. - AIR 1972 SC 2563 - Article 265 of Constitution makes a distinction between 'levy' and 'collection'-

Though taxable event is 'manufacture', duty payable is as applicable on date of removal i.e. clearance from factory. In ***Wallace Flour Mills Co. Ltd.* v. *CCE* 44 ELT 598** = 186 ITR 440 = 1989(4) SCC 592 (SC), goods were fully manufactured and packed when goods were exempt from duty. These were cleared after the exemption was withdrawn and goods became liable to duty. It was held that duty is payable as applicable on date of removal.

In ***S K Pattanaik* v. *State of Orissa*** 2000 AIR SCW 41 = 115 ELT 9 = AIR 2000 SC 612 = (2000) 1 SCC 413 (SC 3 member bench), it was held that the expression 'levy' may include both the process of taxation as well as the determination of amount, while the expression 'collection' refers to the actual collection of the payable duty or tax.

Sec. 9(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and **collected in such manner as may be prescribed** and shall be paid by the taxable person.

SECTION 12. Time of supply of goods. — (1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

(ii) If yes, what would be the time of supply for the above compensation?

Not applicable.

TIME OF SUPPLY

9. **Time of supply of royalty income (VA)**

9.1 Mr. Z is a film producer who licences the copyright (right of display to the public) in his films to theatre owners for a specified in consideration for a royalty. The terms of agreement are as under:

(i) The film will be displayed 3 times a day for 40 consecutive days.
(ii) Royalty amount will be calculated as a percentage of the box office collection (admission receipts of the theatre); and
(iii) the royalty would be determined, and becomes payable, within a week after the end of 40 days.

Mr. Z raises a tax invoice raised after the end of the term of licence – i.e. after 40 days. What would be the time of supply of Mr. Z in respect of the royalty income – Is it at the time of granting the licence or at the end of 40 days. Panellists' views are sought on the issue.

Sec. 31(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed

RULE 47. Time limit for issuing tax invoice. -—The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service

Circular No. 144/13/2011-S.T., dated 18-7-2011

2. These representations have been examined. The Service Tax Rules, 1994 require that invoice should be issued within a period of 14 days from the completion of the taxable service. The invoice needs to indicate *inter alia* the value of service so completed. Thus it is important to identify the service so completed. This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. The test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. However such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

10. **Time of Supply – retrospective effect of agreements (AD)**

10.1 Landlord Private Limited has rented out its commercial property to a manufacturer, who happens to be a very good friend of the landlord. The manufacturer started occupying the premises from the month of July 20. However, the agreement was negotiated and entered in September 20, to be effective from July 20. It was agreed in the agreement that rent would be Rs. 2,00,000 per month and monthly invoices are required to be raised by 5th of next month. Invoices for all the 3 months are raised by the landlord on 5th October 20. What will be the time of supply for the 3 months viz., July 20, August 20 and September 20?

SECTION 13. Time of supply of services. — (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.
(2) The time of supply of services shall be the earliest of the following dates, namely :—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

Sec. 31(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed.

Section 2(33) "continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify

Sec. 31(5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services, -

(a) where the **due date** of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

RULE 47. Time limit for issuing tax invoice. -—The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service.

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Rent becomes due only when the contract is executed.