

SUPPLY & VALUATION - S. JAIKUMAR

GST IN INDIA - II



COMPONENTS...

- ▶ **TAXABLE EVENT**
- ▶ **PERSON LIABLE TO TAX**
- ▶ **RATE OF TAX**
- ▶ **TIME OF SUPPLY**
- ▶ **PLACE F SUPPLY**
- ▶ **VALUE ON WHICH TAX IS PAYABLE**



GST LEVY...

- ▶ **Supply of goods or service**
- ▶ **Supply is for a consideration** [except Schedule I supplies]
- ▶ **Supply is made in the course or furtherance of business**
- ▶ **Supply takes place in India**
- ▶ **Supply is a taxable supply**
- ▶ **Supply is by a taxable person**



SCOPE OF SUPPLY...

- ▶ **Section 3(1)- “Supply” includes...**
- ▶ **(a) All forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,**
- ▶ **(b) Importation of services, for a consideration whether or not in the course or furtherance of business**
- ▶ **(c) a supply specified in Schedule I, made or agreed to be made without a consideration.**



SCHEDULES...

- ▶ **Schedule I - Supplies made without a consideration**
- ▶ **Schedule II - Deemed classification of Goods & Services**
- ▶ **Schedule III - Neither Goods nor Services**
- ▶ **Schedule IV - Specified govt supplies to be out of GST**
- ▶ **Schedule V - Persons liable to be registered**



MEANING OF SUPPLY...

- ▶ **'Supply of goods'** means the transfer of right to dispose off tangible property as owner which means the transfer of both title to the goods and possession of, or control over, the goods
- ▶ **Supply of services'** means a supply which is not a supply of goods, made for consideration which may include grant, assignment or surrender of any right, assignment of intangible property, obligation to refrain from an act or to do an act, lease, hire and right to access any premises etc



GOODS & SERVICES...

- ▶ **'Goods'** means every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to, or forming part of land which are agreed to be severed before supply or under the contract of supply
- ▶ **Explanation:** For the purpose of this clause, the term movable property shall not include any intangible property
- ▶ **Services'** means anything other than goods
- ▶ **Explanation:** Services include intangible property and actionable claim but does not include money



GOODS...

- ▶ **Supply of goods means the transfer of both the title to any goods and possession of, or control over, the goods. Possession refers to control over the goods, in the sense of having the immediate facility for their use**
- ▶ **Following situations illustrate different ways in which title and/ or possession may be transferred:**
- ▶ **Transfer of title as well as possession- In a simple sale, title as well as possession is transferred, such as across-the counter sale of a drug or a garment**
- ▶ **Transfer of possession but not title- In a case of sale on approval basis or hire-purchase, possession of goods is transferred, under a clear contemplation of transfer of title at a later date**
- ▶ **Possession of goods is transferred but title is retained- When goods are let out on hire or lease, it would be a supply of services**



SERVICES...

- ▶ **Anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of service**
- ▶ **Supply of immovable property is not under GST but construction, WCS and commercial exploitation of the same (ex. renting) is a supply of service**



CONSIDERATION...

- ▶ **All payments may not be 'consideration'**
- ▶ **'Consideration' is different from profit**
- ▶ **Advances is a consideration but deposits are not**
- ▶ **Direct link between the 'supply' and the 'consideration'**
- ▶ **Reciprocity**
- ▶ **Transaction between the parties**



BUSINESS...

- ▶ **Unless a transaction is in the course or furtherance of business, it will not be liable to GST**
- ▶ **The business test requirement ensures that occasional supplies, even if for a consideration, will not be subject to GST**
- ▶ **For example, when a household makes a one-time sale of some paintings, if it is not in the business of selling paintings, the sale will not be a supply for GST purposes. But a painter, who sells his paintings on a regular basis, even if infrequently, will be liable to pay GST since he is in the business of selling paintings**



TYPES OF SUPPLY...

- ▶ **Taxable supply, Exempt supply**
- ▶ **Zero-rated supply**
- ▶ **Single supply, Mixed supply, Composite supply**
- ▶ **Continuous supply, Deemed supply**
- ▶ **Inter-state supply, Intra-state supply**
- ▶ **Inward supply, Outward supply**



TYPES OF SUPPLY...

- ▶ **Taxable Supply - Supplies that are subject to GST**
- ▶ **Exempt supply means supply of any goods and / or services which are not taxable under this Act and include such supplies of goods and / or services which may be exempt or attract NIL rate of tax**
- ▶ **Zero-rated supply means, a supply of any goods and / or services on which no tax is payable but credit of the input tax related to that supply is admissible - Exports - Supplies to SEZ / Developers shall be treated as Zero-rated supply - Tax to be paid by supplier and refund to SEZ**
- ▶ **Composite supply means a supply consisting of - (a) two or more goods; (b) two or more services; or (c) a combination of goods and services provided in the course of furtherance of business whether or not the same can be segregated**



TYPES OF SUPPLY...

- ▶ **'Intra-State Supply'** means, supply where the location of the supplier and the place of supply are in the same State
- ▶ **'Inter-State Supply'** means, supply where the location of the supplier and the place of supply are in different States



STOCK TRANSFERS...

- ▶ Current Scenario:
- ▶ No Tax
- ▶ Reversal of part ITC based on formula (cost)
- ▶ No credit of ITC to recipient
- ▶ Humongous disputes
- ▶ GST Scenario:
- ▶ Liable to IGST
- ▶ ITC of IGST allowed - can be used to discharge IGST / CGST / SGST
- ▶ **No credit on closing stock**



TIME OF “SUPPLY” ...

- ▶ **The liability to pay GST arise only when supply is made**
- ▶ **The time of supply fixes the point when the liability has to be discharged**
- ▶ **The time of supply differs for supply of goods and supply of service**
- ▶ **Section 12 and 13 of Model GST Law prescribes time of supply for goods and services respectively**



GOODS...

- ▶ **Time of supply of goods could be the earliest of the following:**
- ▶ **Date on which the goods are removed by the supplier for supply to the recipient, where the goods are required to be removed; or**
- ▶ **the date on which the goods are made available to the recipient, where the goods are not required to be removed; or**
- ▶ **the date on which the supplier issues the invoice with respect to the supply; or**
- ▶ **the date on which the recipient shows the receipt of the goods in his books of account: or**
- ▶ **the date on which advance payment is received in respect of the supply**



GOODS...

- ▶ **Where the goods are made available but not removed;**
- ▶ **the goods are not physically capable of being removed; or**
- ▶ **supplied in assembled or installed form; or**
- ▶ **are supplied by the supplier to his agent or his principal**
- ▶ **the time of supply shall be the date on which the goods are made available**
- ▶ **In case of supplies in respect of which tax is paid on reverse charge basis, the time of supply shall be the earliest of the following dates:**
 - ▶ **the date of the receipt of goods, or**
 - ▶ **the date on which the payment is made, or**
 - ▶ **the date of receipt of invoice, or**
 - ▶ **the date of debit in the books of accounts**



GOODS...

- ▶ **Continuous Supply of Goods**
- ▶ **Where successive statements of accounts or successive payments are involved, the time of supply shall be the date of expiry of the period to which such successive statements of accounts or successive payments relate**
- ▶ **If there are no successive statements of account, the date of issue of the invoice (or any other document) or the date of receipt of payment, whichever is earlier, shall be the time of supply**
- ▶ **Supply on Approval Basis / Sales Return**
- ▶ **If the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, the time of supply shall be at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier**



SERVICES...

- ▶ **Time of supply of services shall be the earliest of the following:**
- ▶ **the date of issue of invoice/receipt of payment, whichever is earlier, where the invoice is issued within the prescribed period; or**
- ▶ **the date of completion of the provision of service/receipt of payment, whichever is earlier, where the invoice is not issued within the prescribed period; or**
- ▶ **the date on which the recipient shows the receipt of services in his books of account, where the above two situations do not apply**



SERVICES...

- ▶ **Continuous supply of services:**
- ▶ **where the due date of payment is ascertainable from the contract, the date on which the payment is liable to be made by the recipient of service, whether or not any invoice has been issued or any payment has been received by the supplier of service**
- ▶ **Where the due date of payment is not ascertainable from the contract, each such time when the supplier of service receives the payment, or issues an invoice, whichever is earlier**
- ▶ **Where the payment is linked to the completion of an event, the time of completion of that event**
- ▶ **Reverse Charge**
- ▶ **Where the tax is payable on reverse charge basis, the time of supply shall be the earliest of the following dates, namely -**
- ▶ **the date of receipt of services, or**
- ▶ **the date on which the payment is made, or**
- ▶ **the date of receipt of invoice, or**
- ▶ **the date of debit in the books of accounts**



PLACE OF “SUPPLY” ...

- ▶ **To determine whether supply is Intra / Inter / International**
- ▶ **Dual tax structure makes POS vital**
- ▶ **To determine whether to pay CGST/SGST/IGST**
- ▶ **Separate POS for Goods & Services**



PLACE OF “SUPPLY” ...

- ▶ **Goods, being tangible in nature, do not pose significant problems for determining the place of destination**
- ▶ **The only challenge in the case of goods is e-commerce based trading of goods and supply to third parties**
- ▶ **However, in the case of services, it is difficult to determine the place where the services are acquired, enjoyed and consumed**



PLACE OF “SUPPLY” ...

- ▶ **The determination of POS becomes more complex in certain category of services**
- ▶ **Sale of pre paid cards - Broadcasting service or roaming telecom service**
- ▶ **Construction of Railway line, National high way or Bridge which originate in one State and end in the other State**
- ▶ **The card issued by Delhi Metro could be used by a person located in Delhi or Noida or Faridabad**
- ▶ **Catering service provided on board**



GOODS . . .

- ▶ **When goods are moved - Location of goods at the time at which the movement terminates for delivery to the recipient**
- ▶ **If the goods are delivered to a recipient on the direction of a third party - Principal place of supply of third party**
- ▶ **Without involving movement of goods - Location of goods at the time of delivery to the recipient**
- ▶ **Assembly of goods at site - Place of installation**
- ▶ **Supplied on Board a conveyance - The location at which the goods are taken on board**
- ▶ **Import of goods - location of importer**
- ▶ **For export of goods - Location outside India**



SERVICES...

- ▶ **Supplier and recipient of services located in India**
- ▶ **Provided to registered person - location of recipient**
- ▶ **Unregistered person - If address exist - Location of recipient**
- ▶ **If address not available- Location of supplier of service**
- ▶ **For specific services-**
- ▶ **Services relating to immovable property, Accommodation by hotel, guest house, boat house, etc, Mandap or convention service - Location of immovable property**
- ▶ **Restaurant & catering service, Beauty treatment, Health & fitness service, Health services - The place of performance**
- ▶ **Training and performance appraisal - Location of registered person**



PRINCIPLES...

- ▶ **Determination of value is not only required to determine the GST payable but also to compute the turnover for threshold limit or Composition Scheme**
- ▶ **GST Law proposes to adopt the concept of transaction value for determining the taxable value of supply or service**



VALUATION . . .

- ▶ **As per section 15 of Revised Model GST law, the taxable value is the price actually paid or payable for supply of goods or services**
- ▶ **The taxable value shall include:**
- ▶ **Any amount that the supplier is liable to pay but incurred by the recipient and not included in the price**
- ▶ **Incidental expenses such as commission, packing , etc, charged by the supplier**
- ▶ **Any taxes, duties, cesses, fees and charges levied under any statute charged by the supplier other than the GST**
- ▶ **Interest or penalty or late fee for delayed payment**
- ▶ **Subsidies, except the subsidy provided by the Government**



VALUATION...

- ▶ **The taxable value shall not include “discounts” given before or at the time of supply, if such “discount” is shown in the invoice**
- ▶ **“Post supply discount” also not includible,**
- ▶ **If it is established in terms of an agreement and known before or at the time of supply and**
- ▶ **ITC has been reversed by the recipient**



VALUATION . . .

- ▶ **If the value could not be arrived at as per Section 15(1), then the same will be determined as per the provisions of Valuation Rules**
- ▶ **Since the draft Valuation Rules released along with the earlier Model Act has not been revised, it is presumed that it still holds good**
- ▶ **Non monetary consideration**
- ▶ **Related party transactions**
- ▶ **Comparable method**
- ▶ **Computation method**
- ▶ **Residual method (Best judgement)**
- ▶ **Pure agent**

www.swamyassociates.com

chennai . coimbatore . madurai . bengaluru . hyderabad . pune . ahmedabad . nagpur . delhi