



CHAPTER 9

VALUE OF SUPPLY

**CHAPTER OVERVIEW**

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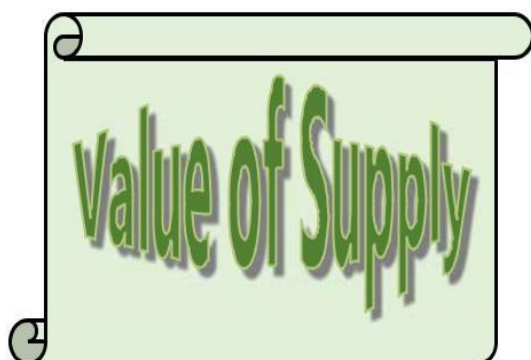


VALUE OF SUPPLY – SECTION 15

INTRODUCTION

GST is payable

- (i) on supply of goods and / or services for a consideration in the course of or furtherance of business;
- (ii) on certain supplies made without a consideration as specified in Schedule I to the CGST Act.



As GST is levied as a % of the value of supply, whether of goods or of services, it becomes important to know how to arrive at the value on which tax is to be paid.

Section 15 of CGST Act supplemented with “**Chapter IV: Determination of Value of Supply of CGST Rules**” prescribes the provisions for determining the value of goods and services

Section 15 of the CGST Act provides common provisions for determining value of goods and services. It provides the mechanism for determining the value of a supply **which is made between unrelated persons and when price and only the price is the sole consideration of the supply.**

When value cannot be determined u/s 15, the same is determined using Chapter IV: Determination of Value of Supply of CGST Rules.

ANALYSIS OF SECTION 15 – VALUE OF SUPPLY

<p>Section 15(1), 15(2), 15(3)</p>	<p>Supplies made for a</p> <ul style="list-style-type: none"> (i) price in money (monetary consideration), (ii) to unrelated persons <p>Value of supply is the “Transaction value”</p>
<p>Section 15(4), 15(5) read with CGST Valuation Rules</p>	<p>Supplies made for</p> <ul style="list-style-type: none"> (i) non-monetary consideration, or (ii) for part monetary consideration and part other, or (iii) involving additional consideration, or (iv) to related persons, or (v) for specific classes of supply <p>Value of supply is determined as per “Valuation Rules”</p>



SUPPLIES TO UNRELATED PERSONS WHERE PRICE IS THE SOLE CONSIDERATION [SECTION 15(1)]

When a transaction of supply of goods / services is made

- (i) between two persons who are not related to each other, and
- (ii) price is the sole consideration for the supply,

Price actually paid or payable for the supply is the transaction value. It includes (i) amount already paid at the time the supply and (ii) the amount payable and not yet paid at that time. **[Section 15(1)]**

The “TRANSACTION VALUE” PLUS certain elements as enumerated, will be the value on which tax is to be worked out.

Example: The transaction value shall not include refundable deposit, discount allowed subject to certain conditions.

INCLUSIONS IN TRANSACTION VALUE [SECTION 15(2)]

The taxable value includes certain elements in addition to price which are mentioned below:

<p>Any taxes, duties, fees and charges levied under any statute other than CGST Act or SGST Act or UTGST Act or IGST Act and GST (Compensation to States) Act, if charged separately [Sec 15(2)(a)]</p>	<p>GST and GST cess are not part of taxable value, but other taxes/cesses/fees etc. will form part of the value of taxable supply, if separately billed.</p> <p>Example: Supplier of goods pays a municipal tax with respect to the goods being supplied and bills the same separately, such tax will form part of the value of taxable supply [Need not be included if already factored while computing cost of goods]</p>
<p>Payments to third parties by recipient on behalf of supplier in relation to the supply and not already included in price [Sec 15(2)(b)]</p>	<p>Any amount that supplier is liable to pay but which has been incurred by the recipient of the supply and not already included in the price. Amount paid by the recipient to third parties will be added only when the supplier is under contractual liability to make payment to such third parties and the said payment is in relation to such supply.</p> <p>Example: Grand Biz contracts with ABC Co. to conduct a dealers’ meet. Grand Biz contracts with vendors to deliver goods/ services, like water, soft drinks, projector, flowers etc. at the venue. Grand Biz is liable to make these payments as contracted. The soft drinks supplier wants payment upon delivery; ABC Co. agrees to pay the bill raised by the soft drinks vendor on Grand Biz on receiving crates of soft drinks. This amount is not billed by to ABC Co. It would be added to the value of service provided by Grand Biz to ABC Co. for</p>



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<p>Incidental expenses [Sec 15(2)(c)]</p>	<p>Commission and packing charged by supplier to the recipient of a supply, including any amount charged for anything done by supplier in respect of supply of goods/services at the time of, or before delivery of the goods /supply of the services</p> <p>Examples: (i)Commission paid to agent and recovered from the buyer of the goods / services (ii) Packing charges charged by supplier (iii) Inspection or certification charges billed to recipient (iv) Installation and testing charges at the recipient's site(iv) Weighment charges, loading & designing charges incurred before supply</p>
<p>Interest or late fee or penalty for delayed payment of consideration [Sec 15(2)(d)]</p>	<p>The value for a taxable supply will include not only the base price but also the charges for delay in payment.</p> <p>Example: A supply priced at ₹ 2,000 is made, with a credit period of 1 month for payment. Thereafter interest of 12% is charged. The payment is received after lapse of 2 months from date of supply. The amount of 12% p.a. (i.e. 1% per month) on ₹ 2,000 for one month after the free credit period is ₹ 20. Such interest will be added to the value and thus, the value of taxable supply will work out to be ₹ 2,020, assuming the interest to be exclusive of GST.</p>
<p>Subsidies, provided in any manner, linked to the price, other than subsidies given by State or Central Governments [Sec 15(2)(e)]</p>	<p>If the subsidy is given by the State or Central Government; the lower price, after adjusting the subsidy, is the taxable value. If the subsidy is given by a person or entity other than the State or Central Government, it does not lower the taxable value.</p> <p>Example: The selling price of a notebook is ₹ 50. For notebooks sold to students in Government schools, a company uses its CSR funds to pay the seller ₹ 30, so that the students pay only ₹ 20 per notebook. The taxable value of the notebook will be ₹ 50, as this is a non-government subsidy. If the same subsidy is paid by the Central Government or State Government, the taxable value of the notebook would be ₹ 20.</p>

**EXCLUSIONS OF DISCOUNTS FROM TRANSACTION VALUE [SECTION 15(3)]**

The principle here is that price as established at the time of supply forms the basis of taxable value. Discounts that are allowed to be reduced are as follows:

- (i) Discounts that are allowed **before or at the time of supply** and **shown in the invoice**;
- (ii) Discounts that are allowed **after supply** in terms of an agreement **that existed at the time of supply and are worked out invoice-wise** and the **proportionate input tax credit is reversed by the recipient**

Example 1: Discount deductible from value of supply

Royal Biscuit Co. gives a discount of 30% on the list price to its distributors. Thus, for a carton of Spicebisk, in the invoice the list price is mentioned as ₹ 200, on which a discount of 30% is given to arrive at the final price of ₹140. The taxable value is ₹ 140, as the discount is allowed at the time of supply and shown in the invoice.

Example 2: Discount deductible from value of supply

The agreement of Raju Electrical Appliances with its dealers is that sale of rice cookers over 100 pieces in the Diwali month will entitle them to discount of 5% per cooker sold in the next month. The next month's stock has already been despatched when the sales figures for the Diwali month are worked out. However, as the agreement was in existence at the time of supply, and the discount can be worked out for each invoice, the taxable value will be billed price minus 5%. The dealer must reverse the proportionate input tax credit on the relevant stock to bring it in line with the reduced tax

Example 3: Non-deductible discount

A company announces turnover discounts after reviewing dealer performance during the year. The discounts are based on performance slabs and are given as cash-back. As these discounts were not known at the time of supply of the goods, they will not be deducted from taxable value of those goods

Illustration 1: Black and White Pvt. Ltd. has provided the following particulars relating to goods sold by it to Colourful Pvt. Ltd.

Particulars	₹
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such goods	5,000
CGST and SGST chargeable on the goods	10,440
Packing charges (not included in price above)	1,000



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Black and White Pvt. Ltd. received ₹ 2000 as a subsidy from a NGO on sale of such goods. The price of ₹ 50,000 of the goods is after considering such subsidy. Black and White Ltd. offers 2% discount on the list price of the goods which is recorded in the invoice for the goods. Determine the value of taxable supply made by Black and White Pvt. Ltd. **Answer: ₹ 57,000**

Illustration 2: Samriddhi Advertisers conceptualised and designed the advertising campaign for a new product launched by New Moon Pvt Ltd. for a consideration of ₹ 5,00,000. Samriddhi Advertisers owed ₹ 20,000 to one of its vendors in relation to the advertising service provided by it to New Moon Pvt Ltd. Such liability of Samriddhi Advertisers was discharged by New Moon Pvt Ltd. New Moon Pvt Ltd. delayed the payment of consideration and thus, paid ₹ 15,000 as interest. Determine the value of taxable supply made by Samriddhi Advertisers. **Answer: ₹ 5,32,712**

**Clarification on valuation methodology for ascertainment of GST on TCS under Income Tax Act, 1961**

Section 15(2) of CGST Act specifies that the value of supply shall include “any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier.

It has been clarified that for the purpose of determination of value of supply under GST, **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 No. 76/50/2018 GST dated 31/12/2018 amended vide corrigendum dated 7/03/2019]

Clarification on value to be adopted for computing GST on services of Business Facilitator (BF) /Business Correspondent (BC) to Banking Company

Issue: What is the value to be adopted for the purpose of computing GST on services provided by BF/BC to a banking company?

Clarification: As per RBI’s Circular and subsequent instructions on the issue (‘guidelines’), banks may pay reasonable commission/fee to the BC, the rate and quantum of which may be reviewed periodically. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner. The arrangements of banks with the BCs specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the BF/BC.

Hence, banking company is the service provider in the BF model or the BC model operated by a banking company as per RBI guidelines. **The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via BF or BC.**

[Circular No. 86/05/2019 GST dated 01.01.2019]



Clarification on discounts [Circular 92/11/2019 GST dated 07.03.2019]

A. Discounts including 'Buy more, Save more' offers

- (i) Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example - Get 10 % discount for purchases above Rs. 5,000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-. Such discounts are shown on the invoice itself.
- (ii) Some suppliers also offer periodic / year ending discounts to their stockists, etc. For example- Get additional discount of 1% if you purchase 10,000 pieces in a year, get additional discount of 2%, if you purchase 15,000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.
- (iii) It is clarified that discounts offered by the suppliers to customers (including staggered discount under "Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in Section 15(3) of the CGST Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document(s) issued by the supplier.**
- (iv) It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

B. Secondary Discounts

- (i) These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10,000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards, M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet.
- (ii) The issue for consideration is that whether credit notes(s) u/s 34(1) of the CGST Act can be issued in such cases even if the conditions laid down in Section 15(3)(b) of the CGST Act are not satisfied. It is hereby clarified that financial/commercial credit note(s) can be issued by the supplier even if the conditions mentioned in Section 15(3)(b) of the CGST Act are not satisfied. **In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.**
- (iii) It is further clarified that **such secondary discounts shall not be excluded** while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in Section 15(3)(b) of the CGST Act are not satisfied.
- (iv) There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

**Taxability of No Claim Bonus offered by Insurance companies [Circular No. 186/18/2022-GST dated 27/12/2022]**

Issue: Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?

Facts: The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of section 15 of the CGST Act.

Clarification: No Claim Bonus (NCB) is a permissible deduction u/s 15(3)(a) of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.

Whether GST is applicable on the incentive paid by Ministry of Electronics and Information Technology (MeitY) to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions

Facts: Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM- UPI transactions, the Government pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to ₹ 2000. The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.

The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the Central Government in the form of incentive. However, it is not a consideration paid by the CG for any service supplied to CG.

Clarification: The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15. It is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.



**Supplies where value cannot be determined u/s 15(1) and notified supplies
[Section 15(4) & (5)]**

Section 15(4) lays down that where Section 15 (1) is not applicable, i.e.

- if the transaction is with a related party, and/or
- price is **not the sole consideration** for the supply of goods / services,

then the value will be determined in the manner as prescribed in the **Valuation Rules**.

Section 15(5) lays down that in respect of certain **notified supplies** also, the value will be determined in the manner as stipulated in the Valuation Rules. Thus, the methodology of transaction value will not apply for such notified categories of transactions; ***instead, the rules will prescribe a different method of determining value for these notified transactions.***

Examples: Money changing services; service of booking air tickets by an air travel agent; life insurance service; buying and selling of second-hand goods; vouchers, token, coupons or stamps (other than postage stamps) redeemable against goods or services; services provided without consideration between distinct persons under GST laws that are different units of the same legal entity; supply in case of lottery, betting, gambling and horse racing.

With effect from 01.10.2023, following supplies have been notified under section 15(5) for prescribing the manner of determination of the value of these supplies under the CGST Rules.

- supply of online money gaming,
- supply of online gaming other than online money gaming and
- supply of actionable claims in casinos

**VALUATION RULES****RULE 27 - Value of supply of goods / services where consideration is
NOT WHOLLY IN MONEY**

- a) The **open market value** of such supply;
- b) If open market value of the supply is not known, the consideration in money plus the **money equivalent of the non-money consideration**, if such amount is **known** at the time of supply;
- c) If the value **cannot be determined** under the previous two clauses, the value of supply of goods and/or services of **"like kind and quality"**;

MEANING OF IMPORTANT TERMS:**1. "Open market value" means**

- full value of **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

2. What is supply of like kind and quality

Supply of like kind & quality means any other supply made under similar circumstances, which is same or closely or substantially resembles in respect of **characteristics, quality, quantity, functionality, reputation to the supply being valued.**

Examples:

- a) Exchange value of old phone lowers the price of a new phone. The known market value of the new phone (without exchange of old phone) is its taxable value.
- b) Laptop is manufactured and supplied for ₹ 40,000. Part value is received in barter in the form of a printer valued at ₹ 4000. Market value of the laptop is not known. Its taxable value will be ₹ 44,000.

What if value cannot be determined based on above factors?

Cost based valuation method (110% of cost of supply) under Rule 30 or Best Judgement method under Rule 31 will be applicable.



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- c) A company procures and modifies a machine and supplies it to its unrelated customer. Since, it is a customised machine, the open market value of the machine is not available as also the value of any other machine of the like kind and quality is also **not available**. **Therefore, value should be worked out by adding the cost of modification to the cost of acquisition of the machine and adding thereto 10% of the sum of these costs**

RULE 28(1) - Value of supply of goods or services or both between distinct or related persons, [other than through an agent]

A supply between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business is treated as supply even if **made without consideration** in terms of Schedule I of CGST Act. **This rule, does not provide the value of the supply made through an agent.**

State whether following persons are related persons or not?

Mr. A and Mr. B are partners in the partnership firm A&B Co.	
Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd.	
Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd	
Alpha Ltd. controls the composition of Board of directors of Beta Ltd. and Gama Ltd.	
Brita Ltd. and Grita Ltd. together control Margarita Ltd.	

A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of **each such registration**, be treated as **distinct persons** for the purposes of this Act [Section 25(4)]

VALUATION PARAMETERS:

- a) The ***open market value*** of such supply;
- b) If open market value of the supply is **not known**, the value of supply of goods and/or services of ***like kind and quality***;
- c) **Cost based valuation method** (110% of cost of supply) under Rule 30 or **Best Judgement method** under Rule 31 will be applicable, if above methods are **NOT APPLICABLE**.

If recipient is eligible for full Input tax credit, **invoice value is accepted as Open Market Value (Taxable Value)**



OPTIONAL METHOD OF VALUATION

If the goods are intended to be supplied **AS SUCH** by the recipient

Value = 90% of the price charged for the supply of goods of *like kind and quality* by the recipient to his unrelated customer

It is **not mandatory** for the supplier to adopt this method of valuation. He can opt to value his goods in accordance with the valuation methods prescribed in clause (a), (b) or (c) above.

The value of taxable services provided by “NOTIFIED CLASS OF SERVICE PROVIDERS”, without any consideration, between distinct persons is NIL, if ITC is available [Rule 32(7)]

Rule 28(2) - Valuation of Corporate guarantee to a related person

Notwithstanding anything contained in Rule 28(1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be

- (i) 1% of the amount of such guarantee offered, or
- (ii) the actual consideration, whichever is higher.

Following issues arose for consideration were:

- (i) the taxability and valuation of activity of providing **personal bank guarantee by Directors** to banks for securing credit facilities for the company without consideration, and
- (ii) the taxability and valuation of the activity of providing **corporate guarantee by a related person to banks/FIs for another related person**, as well as by a **holding company in order to secure credit facilities for its subsidiary company**, without consideration



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In this regard, **Circular No. 204/16/2023** GST dated 27/10/2023 clarified the following:

Issue	Clarification
<p>Whether activity of providing personal guarantee by the Director of a company to the bank/ FIs for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not & whether the same will attract GST or not?</p>	<p>Since director and company are related persons, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration (as per Schedule I)</p> <p>Value will be open market value (OMV) of such supply [Rule 28].</p> <p>As per the mandate provided by the RBI Guidelines in this regard, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits, except in exceptional cases. Consequently, there is no question of such supply/ transaction having any OMV.</p>
<p>Accordingly, it is clarified that OMV of the said transaction/ supply may be treated as Nil and therefore, no tax is payable on such supply of service by the director to the company. However, in exceptional cases, where remuneration is payable to the <i>director</i>¹, the taxable value of such supply of service shall be the remuneration/ consideration provided to such guarantor by the company, directly or indirectly.</p>	
<p>Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ FIs, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services?</p>	<p>Such activity is to be treated as a supply of service between related parties even when made without any consideration [Para 2 of Schedule I]</p> <p>In such cases, the taxable value will be determined as per the newly inserted Rule 28(2) irrespective of whether full ITC is available to the recipient of services or not.</p> <p>As per rule 28(2), value in above cases will be higher of:</p> <p>(i) 1% of the amount of such guarantee offered,</p> <p>or</p> <p>(ii) actual consideration.</p> <p>It is clarified that this sub-rule shall not apply for determining value in S. No. 1 above.</p>

¹ Instances where consideration is payable to the director may include cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, are paid remuneration/ consideration in any manner, directly or indirectly.



Clarification regarding internally generated services - where HO is providing certain services to the BOs for which full ITC is available to the concerned BOs [Circular No. 199/11/2023 GST dated 17.07.2023]

Issue	Clarification
<p>In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full ITC is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs.</p> <p>(i) Whether the HO is mandatorily required to issue invoice to BOs u/s 31 for such internally generated services, and/ or</p> <p>(ii) Whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full ITC is available to the concerned BOs?</p>	<p>The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 r/w 15(4). As per rule 28(a), the value of supply between distinct persons shall be the open market value (OMV) of such supply. The second proviso to rule 28 provides that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the OMV of the goods or services.</p> <p>Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be OMV of such services, if the recipient BO is eligible for full ITC.</p> <p>Accordingly, in cases where full ITC is available to a BO, <i>the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the OMV of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.</i></p> <p>Further, in such cases where full ITC is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, <i>the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as OMV in terms of second proviso to rule 28.</i></p>
<p>In respect of internally generated services provided by the HO to BOs, in cases where full ITC is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs?</p>	<p>In respect of internally generated services provided by the HO to BOs, <i>the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full ITC is not available to the concerned BO.</i></p>



RULE 29 - Value of supply of GOODS made or received through an agent

VALUATION PARAMETERS:

Supplier has option to choose **either** of the following methods:

This rule is applicable for
SUPPLY OF GOODS only

a) The **open market value** of goods being supplied;

OR

b) **90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer**

In case value cannot be determined as above:

c) **Cost based valuation method** (110% of cost of supply) under Rule 30

OR

d) **Best Judgement method** under Rule 31 will be applicable

Example

P (principal) supplies groundnuts to A (agent). A in turn sells groundnuts at ₹ 5000 per quintal. Another independent supplier sells groundnuts at ₹ 4550 per quintal.

Thus, the open market value of groundnuts is ₹ 4550 per quintal. 90% of A's selling price in the normal course of trade is ₹ 4500 per quintal. P has the option to adopt the open market price (₹ 4550) or 90% of A's onward selling price (₹ 4500) as the taxable value of the groundnuts supplied by him to A.

RULE 30 – Value of supply of goods or services or both based on cost

If the value of a supply of goods and/or services cannot be worked out by the foregoing methods, its value will be 110% of the cost of production/ manufacture/acquisition of such goods or cost of provision of such services.

Service Providers have
option to directly move to
Rule 31 by-passing Rule 30

**RULE 31 – Residual method for determination of value of supply of goods or services or both [Best Judgement Method]**

- a) Supplier of **goods** needs to sequentially follow **Rules 27 to 30** before valuing goods as per residual **Rule 31**.
- b) **Service providers** have option of valuing services as per **Rule 30 or Rule 31** after sequentially following **Rules 27 to 29**.
- c) The residual method consists of determination of value by using reasonable means consistent with the principles and general provisions of section 15 and these Rules.

Example:

A cosmetics company buys its products from a subcontractor, who supplies “testers” of each product, to be placed in retail outlets, free of charge. These are of different size from the product that is sold. The company and the sub-contractor are related persons. As none of the methods in Rules 27 to 30 will work for valuing these testers, the value will have to be determined by using reasonable means consistent with the principles and general provisions of section 15 and the Rules.

A possible method may be pro rata reduction of the price based on difference in size from the product that is sold.

Rule 31A - Value of supply in case of lottery, betting, gambling and horse racing

Valuation of supply of lottery and actionable claim in the form of chance to win in betting, gambling or horse racing in a race club. **Valuation of such supplies will be governed by the specific provisions and not by any other valuation rule.**

Supply	Value
Supply of lottery	100/128 of higher of the following two amounts <ul style="list-style-type: none">• Face value of ticket or• Price as notified in the Official Gazette by the organizing State
Supply of actionable claim in form of chance to win in betting, gambling or horse racing in a race club	100% of the face value of the bet or the amount paid into the totalizator



Rule 31B - Value of supply in case of online gaming including online money gaming

Notwithstanding anything contained in this chapter, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player:

However, any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

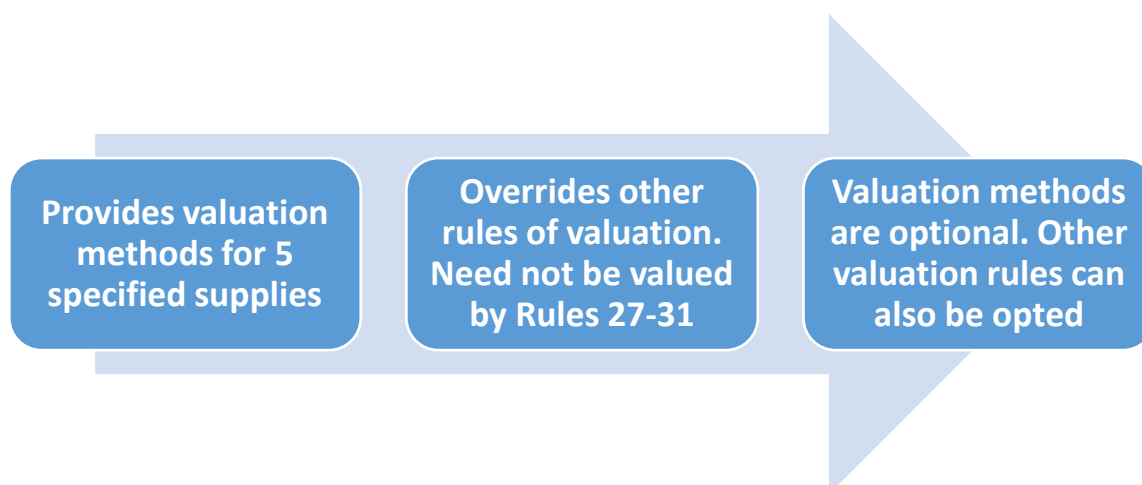
Rule 31C - Value of supply of actionable claims in case of casino

Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

- (i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or
- (ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:

However, any amount returned/refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

Explanation: For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

**RULE 32 – Determination of value in respect of certain supplies**

No	Nature of service	Rule
1	Purchase/sale of foreign currency (Money changing)	32(2)(a) - Method 1 or 32(2)(b) - Method 2
2	Air travel tickets by air travel agent	32(3)
3	Life Insurance business	32(4)
4	Value of supply of second-hand goods (Margin scheme)	32(5)
5	Value of redeemable vouchers/coupons/tokens	32(6)
6	Value of services provided by notified service providers between distinct persons	32(7)



1. Value of service of purchase or sale of foreign currency including MONEY CHANGING [Rule 32(2)]

The value of service in relation to purchase or sale of foreign currency, including money changing, is determined by either of the **two methods**

METHOD 1 [Rule 32(2)(a)]	
CASE 1	CASE 2
Transaction where one of the currencies exchanged is ₹	Transaction where neither of the currencies exchanged is ₹
<p>If RBI reference rate for a currency is <u>available</u>, Total units of foreign currency* [RBI reference rate of that currency – Buying / Selling rate of that currency]</p> <p>If RBI reference rate for a currency is <u>not available</u>, 1% of the Gross Amount of Indian Rupees provided/ received by the person changing the money [Refer Example 1]</p>	<p>1% of the <u>lesser</u> of the two amounts the person changing the money would have received by converting (at RBI reference rate) <u>any of the two currencies in Indian Rupees</u> [Refer Example 2]</p>

Example 1: On 10th May, Mr. Doshi converted USD \$ 100 into ₹ 6,400 @ ₹ 64 per USD through Eastern Money Changers. RBI reference rate on 10th May for US \$ is ₹ 63 per US \$.

Answer: The value of supply in this case is $(₹ 63 - ₹ 64) * \$ 100 = ₹ 100$ and GST will be levied on this amount. If the RBI reference rate is not available, then 1% of ₹ 6,400 i.e., ₹ 64 will be the value of supply of service.

Example 2: US \$ 9,000 are converted into UK £ 4,500. RBI reference rate at that time for US \$ is ₹ 63 per US dollar and for UK £ is ₹ 82 per UK Pound. In this case, neither of the currencies exchanged is Indian Rupee.

Answer: Hence, in the given case, value of taxable service would be 1% of the lower of the following:-

(a) US dollar converted into Indian rupees = $\$ 9,000 \times ₹ 63 = ₹ 5,67,000$

(b) UK pound converted into Indian rupees = $£ 4,500 \times ₹ 82 = ₹ 3,69,000$

Value of taxable service = 1% of ₹ 3,69,000 = ₹ 3,690

**METHOD 2 [Rule 32(2)(b)]**

S.L. No	Currency exchanged	Value of Supply
1	Upto ₹ 1,00,000	1% of gross amount of currency exchanged or ₹ 250, <i>whichever is higher</i>
2	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 1,000 + 0.50% of the (gross amount of currency exchanged – ₹ 1,00,000)
3	Exceeding ₹ 10,00,000	₹ 5,500 + 0.1% of the (gross amount of currency exchanged - ₹ 10,00,000) OR ₹ 60,000 <i>whichever is lower</i>

Once opted for the above method, he cannot withdraw it during the remaining part of the financial year.

Example 3

Mr. X, a money changer, has exchanged US \$ 10,000 to Indian rupees @ ₹ 64 per US \$. Mr. X wants to value the supply in accordance with Rule 32(2)(b) of CGST Rules. Determine the value of supply made by Mr. X.



**Value of service of booking of tickets for air travel by an air travel agent
[Rule 32(3)]**

Nature of Fare	Value of Supply
Domestic Air Travel	5% of Basic Fare
International Air Travel	10% of Basic Fare

Basic Fare is the Air fare on which commission is normally paid to the air travel agent by the airlines.

Example 4

Mr. U is an air travel agent. Compute the value of supply of service made by him during a month with the help of following particulars furnished by him

Particulars	Basic Fare	Other charges	Taxes	Total Value of tickets
Domestic Bookings	1,00,900	9,510	4,990	1,15,400
International Bookings	3,16,880	20,930	15,670	3,53,480

**Value of service in relation to LIFE INSURANCE BUSINESS [Rule 32(4)]**

Nature of Policy	Taxable Value
Policy with dual benefits of risk coverage and investment	Gross premium charged less amount allocated for investments/savings if such allocation is <u>intimated to the policy holder</u> at the time of collection of premium.
Single premium annuity policy	10% of the single premium charged from the policy holder where allocation for investments/savings is <u>not intimated</u> to the policy holder
Other cases	25% of premium charged from the policy holder - 1st year and 12.5% of premium charged for subsequent years
Policy with ONLY risk cover	Entire premium charged from the policy holder

Example 5

Arihant Life Insurance Company Ltd. (ALICL) has charged gross premium of ₹ 180 lakh from policy holders with respect to life insurance policies in the 2017-18; out of which ₹ 100 lakh have been allocated for investment on behalf of the policy holders.

Compute the value of supply of life insurance services provided by ALICL:

- (i) if the amount allocated for investment has been intimated by ALICL to policy holders at the time of supply of service.
- (iii) if the amount allocated for investment has not been intimated by ALICL to policy holders at the time of providing of service.
- (iv) if the gross premium charged by ALICL from policy holders is only towards risk cover.

Note: ALICL has started its operations in the year 2017-18. Thus, the entire gross premium of ₹ 180 lakh is the premium for the first year of all the policies. ALICL has not issued any single premium annuity policy

Example 6

LIC of India provides you the following information for the month of Oct 2017. You are required to compute GST payable by the company if the company has opted to pay GST as per Rule 32(4) of CGST Rules, 2017:

General policies: Total premiums collected ₹ 12,000 lakhs (Out of which 1st year premium is ₹ 5,000 lakhs)

Only Risk Cover Policies: Premiums collected ₹ 500 lakhs.

Variable Insurance Policies: Premiums collected ₹ 8,000 lakhs. (80% of the amount is allocated for investments on behalf of policy holder for which policy holder is given separate break up in premium receipts).



Value of SECOND-HAND GOODS [MARGIN SCHEME] [Rule 32(5)]

Second hand goods are **used goods** as such or after **such minor processing** which does not change the nature of goods.

GST is charged on the transaction value of the goods. However, in respect of **second hand goods**, a person dealing in such goods **may** be allowed to pay tax on the **margin** i.e., the difference between the value at which the goods are supplied and the price at which the goods are purchased.

The purpose of the margin scheme is to **avoid double taxation** as the goods, having once borne the incidence of tax, re-enter the supply chain.

ITC IS NOT AVAILED [MARGIN SCHEME]	ITC IS AVAILED
Value = Selling Price – Purchase Price Selling price < Purchase price ⇒ Ignore negative value CGST on second hand goods received from unregistered supplier <u>exempt</u>	Normal valuation as per other applicable provisions

Intra-State supplies of “second hand goods” by an unregistered supplier to “registered second hand goods dealer” (who pays tax under margin scheme) exempt from CGST [Notification No. 10/2017 CT (Rate) dated 28.06.2017]

Important points to remember:

- (i) Persons who purchase second hand goods after payment of tax to supplier of such goods, are governed by this valuation rule only when they **DO NOT AVAIL ITC** on such input supply. If ITC is availed, then such supply is governed by normal GST valuation provisions.
- (ii) **Purchase value of supply of goods repossessed from a defaulting borrower**

Defaulting borrower is REGISTERED	The repossessing lender agency will discharge GST at the supply value without any reduction from actual/notional purchase value
Defaulting borrower is UNREGISTERED	Purchase value = Purchase price in the hands of such borrower reduced by 5% for every quarter or part thereof , between the date of purchase and the date of disposal by the person making such repossession

**Example 6**

A company X Ltd, which deals in buying and selling of second hand cars, purchases a second hand Maruti Alto Car of March, 2014 make (Original price ₹ 5 lakh) for ₹ 3 lakh from an unregistered person and sells the same after minor refurbishing for ₹ 3,50,000. The supply of the car to the company for ₹ 3 lakh shall be exempted, and the supply of the same by the company to its customer for ₹ 3.5 lakhs shall be taxed.

The value for GST purpose shall be ₹ 50,000 i.e., the difference between the selling and the purchase price of the company. In case any other value is added by way of repair, refurbishing, reconditioning etc., the same shall also be added to the value of goods and be part of the margin.

If margin scheme is opted for a transaction of second hand goods, the person selling the car to the company **shall not issue any taxable invoice** and the company purchasing the car **shall not claim any ITC.**

Value of redeemable vouchers/stamps/coupons/tokens [Rule 32(6)]

Value of a token, voucher or coupon, which is redeemable against a supply of goods and/or services is the **Money value** of the goods and/or services **redeemable** against such token, voucher or coupon

Example 7: If ₹ 1,500 worth of Sodexo is supplied by the taxable person, the value of supply under GST law will also be ₹ 1,500.

Rule 32(7): Value of taxable services provided by **notified class of service providers**, without consideration, between **distinct persons** [as referred in Schedule 1 of CGST Act], **is deemed to be NIL if ITC is available**

RULE 33 - Value of supply of services in case of PURE AGENT**Meaning of Pure Agent**

'Pure agent' here means a supplier who

- (i) enters into contractual agreement with recipient to act as his pure agent to incur expenditure/costs in the course of supply of goods and /or services;
- (ii) does not hold or intends to hold any title to the goods and / or services so procured or supplied as pure agent of 'recipient';
- (iii) does not use for his own interest such goods or services so procured; and
- (iv) receives only the actual amount incurred to procure such goods or services (apart from the amount for the services provided on his own account)



VALUE OF SUPPLY

The supplier needs to fulfil **ALL** the above conditions in order to qualify as a pure agent. In case the conditions are **not satisfied, such expenditure incurred is included in the value of supply under GST.**

Example 1

A is an importer and B is a custom broker. A approaches B for customs clearance work in respect of an import consignment. The clearance of import consignment and delivery of the consignment to A would also require taking service of a transporter. So, A, also authorises B, to incur expenditure on his behalf for procuring the services of a transporter and agrees to reimburse B for the transportation cost at actuals.

Here, B is providing customs brokers service to A, which would be on a principal to principal basis. The ancillary service of transportation, is procured by B on behalf of A as a pure agent and expenses incurred by B on transportation should not form part of value of customs broker service provided by B to A. This, in sum and substance is the relevance of the pure agent concept in GST.

Example 2

Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B.

- Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies.
- The fees charged by the Registrar of the Companies for registration and approval of the name are compulsorily levied on B.
- A is merely acting as a pure agent in the payment of those fees.
- Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B

Importance of concept of Pure Agent

Expenditure / costs incurred by the supplier of services ('S') as pure agent of the recipient of services ('R') **is excluded from the value of supply**, and thus, also from aggregate turnover, if all the following conditions (*in addition to the conditions required to be satisfied to be considered as a pure agent*) are satisfied:

- a) The payment arises out of a contract between 'R' and a third party, and 'S' acts as pure agent of 'R' when he makes the payment;
- b) 'R' authorizes 'S' to make payment on his behalf;
- c) 'S' shows the payment separately in the invoice issued by him to 'R';
- d) The supplies procured by 'S' from the third party as pure agent of 'R' are in addition to the services that he provides on his own account

**Examples of expenditure/costs incurred as pure agent are:**

- Port fees, port charges, custom duty, dock dues, transport charges etc. paid by customs broker on behalf of the owner of goods.
- Expenses incurred by C&F agent and reimbursed by principal such as freight, godown charges.

Whenever the supplier intends to act as a pure agent, care should be taken to ensure that the conditions specified for such pure agents and other conditions given in the valuation rules are also met so that only the real value of the service provided is subjected to GST.

Clarification on issue of GST on Airport levies [Circular No. 115/34/2019-GST dated 11 October 2019]

Airport levies do not form part of the value of services provided by the airlines and consequently no GST should be charged by airlines on airport levies.

Kinds of Airport Levies

Passenger Service Fee (PSF) is charged under rule 88 of Aircraft Rules, 1937 according to which the airport licensee may collect PSF from embarking passengers at such rates as specified by the Central Government. According to the rule the airport license shall utilize the said fee for infrastructure and facilitation of the passengers.

User Development Fee (UDF) is levied under rule 89 of the Aircraft rules 1937 which provides that the licensee may levy and collect, at a major airport such fees. The authority which manages the airport is eligible to levy and charge UDF from the embarking passengers at any airport.

In order to avoid inconvenience to passengers and for smooth and orderly air transport/airport operations, the UDF shall be collected from the passengers by the airlines at the time of issue of air ticket and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue.

The above facts clearly indicate that PSF and UDF are charged by airport operators for providing the services to passengers. **PSF and UDF charged by airport operators are consideration for providing services to passengers. Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST.** UDF was also liable to service tax. It is also seen from the Air India website that the UDF is inclusive of service tax. Further in order No. AIC S. Nos. 3/2018 and 4/2018, both dated 27.2.2018, **it has been laid down that GST is applicable on the charges of UDF and PSF.**



Applicability of GST on Airport levies

PSF and UDF being charges levied by airport operator for services provided to passengers, are collected by the airlines as an agent and is not a consideration for any service provided by the airlines. Thus, airline is not responsible for payment of ST/GST on UDF or PSF provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. **It is the licensee, that is the airport operator (AAI, DIAL, MIAL etc) which is liable to pay ST/GST on UDF and PSF.**

Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the CGST rules. Rule 33 of the CGST rules provides that 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.

Conclusion:

Accordingly, the airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. **In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee),** provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. **The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.**

The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of ST/GST, there is no question of their not paying ST/GST collected by them to the Government.

The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.



RULE 34 – Rate of exchange of currency, other than Indian rupees, for determination of value

Goods: The relevant rate of exchange for determining the value of taxable goods is the rate notified by CBIC u/s 14 of the **Customs Act, 1962, prevalent on the date of time of supply of said goods.**

Services: The relevant rate of exchange for determining the value of taxable service is the rate determined as per **GAAP, prevalent on the date of time of supply of said service.**

RULE 35 – Value of supply inclusive of IGST, CGST, SGST, UTGST

Where the value of supply is inclusive of GST, the tax amount is determined in the following manner:

$$\text{Tax amount} = \frac{(\text{Value inclusive of taxes} \times \text{GST rate in \%}) [\text{IGST or CGST, SGST/UTGST}]}{(100 + \text{sum of GST rates in \%})}$$

Illustration: If the value inclusive of tax is ₹ 100 and applicable GST rate is 18% [IGST or CGST, SGST/UTGST] then,

$$\text{Tax amount} = (100 \times 18) / (100 + 18) = 1800 / 118 = ₹ 15.25$$



ANALYSIS OF KEY ADVANCE RULINGS

Specsmakers Opticians Private Limited (GST AAAR Tamil Nadu - 2019):

Facts of the case:

Applicant View: The two provisos under Rule 28 of the CGST Rules deal with specific situations. There is no requirement that the provisos should be applied sequentially.

Grounds before AAR:

- (i) The first proviso to Rule 28 does not mandate and it is at the option of the supplier, to take the value as 90% of the sale value of goods of like kind and quality;
- (ii) The second proviso is an alternative, whereby the invoice value can be taken as Open Market Value;
- (iii) The second proviso is not subordinate to the first proviso. It independently deals with a situation where the recipient is eligible for full ITC.**

Ruling of the AAR:

Based on the above, when the supply is to the distinct person of the appellant and the recipient is eligible for full Input tax credit, the second proviso provides the value declared in the invoice to be the 'open market value' for such transaction. Also, the second proviso does not restrict its application as in the first proviso, which is to be applied for cases of 'as such supply' only. Therefore, the appellants may adopt the value for supply to distinct person as provided under Proviso 2 to Rule 28

Lakshmi Tulasi Quality Fuels – 2022 (62) GSTL 71 (App. A.A.R -GST – A.P.)

Facts of the case:

Where residential building consists of several rooms are leased/rented out and lessee has not used it itself as residence but sub-leased for its commercial interest and business for accommodating students and working professionals in bulk numbers for a temporary period of stay.

AAAR held:

The Appellate Authority for Advance Ruling observed that the benefit of exemption is available only where residential dwelling is used as residence. The lessee would be involved in business of sub-leasing of property and had no intention to use property as residence. Moreover, the intention of lessee to take property on lease for commercial and business purposes was evident from lease deed. As a result, lessor is not eligible to exemption and liable to 18% IGST said by AAAR.

Therefore, leasing services involving own or leased non-residential property would be classifiable under SAC 997212 and taxable at 18%

**Intas Pharmaceuticals Limited. (GST AAR Gujarat) - 2022 GSTL & Dishman Carbogen Amcis Ltd. (GST AAR Gujarat) – 2022 GSTL****Facts of the case:**

Canteen charges – employee portion – Applicant providing canteen facility to its employees at concessional amount – part charges borne by applicant and balance collected from its employees and paid to canteen service provider – no profit margin retained by applicant.

Issues involved:

Whether GST, at the hands of the applicant, is leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant from employees and paid to the Canteen Service Provider?

Ruling:

GST, at the hands of the Intas Pharmaceuticals Limited, **is not leviable on the amount representing the employees portion of canteen charges**, which is collected by Intas Pharmaceuticals Limited and paid to the Canteen service provider

Greenbrilliance Renewable Energy LLP – 2022 (61) GSTL 114 (AAR – GST – Guj.)**Facts of the Case:**

The applicant was supplying photovoltaic panels and Solar EPC services and empanelled as channel partner to execute the solar rooftop system in Gujarat under the Surya Gujarat Yojna. As per the scheme, the beneficiaries have to pay channel partner amount after deducting subsidy portion from total system cost and after successful installation of solar system, channel partner has to apply to respective electricity distribution company (DISCOM) of region for subsidy and funds are released by respective DISCOM directly to channel partners. It filed an application for advance ruling to determine whether subsidy should be reduced for arriving at taxable value of solar system in order to collect GST on goods supplied to customer under rooftop solar project.

Subsidy granted by Government does alter taxable nature of supplies to make supply partly exempted and partly taxable; thus section 17(2) of CGST Act, has any implication?

AAR held:

Subsidy provided Government on Solar Rooftop System is not includible in value of supply; however, since said subsidy received by applicant also included GST element, applicant would be liable for paying back to Government.

Subsidy granted by Government does not alter taxable nature of supplies to make supply partly exempted and partly taxable; thus, entire supply being taxable, sub-section (2) of Section 17 of CGST Act, 2017 in respect of input tax credit has no implication.



Fastrack Deal Comm Pvt. Ltd. – 2022 (61) GSTL 125 (AAR – GST – Guj.)

Facts of the case:

When sale of land is not treated as supply as per Schedule III of GST Act, 2017, whether forfeiture of advance pertaining to sale of land will be treated as supply and accordingly attract GST?

AAR Held:

Forfeiture of advance amount in a land transaction by seller for breaching sale condition by buyer is taxable activity of 'refraining or tolerating or doing an act' and taxable accordingly in hand of person forfeiting such amount.

Shanmuga Durai – 2022 (62) GSTL 210 (AAR – GST – T.N)

Facts of the case:

Renting out property by partner free of rent to his partnership firm in which he and his wife are partners and he is managing partner holding 2/3rd shares amounts to supply?

AAR Held:

The AAR ruled that therefore the activity of renting immovable property owned by the Applicant to the partnership firm, in which he was a major shareholding partner, is a taxable supply under CGST Act. Valuation of renting of property free of rent by partner to his firm in which he and his wife partners and he is managing partner holding 2/3rd shares is to be determined by applying Rule 28 of CGST Rules, 2017.

Emerald Court Co-operative Housing Society Ltd. – 2021 (54) GSTL 41 (AAR – GST – Mah.)

AAR Held:

Co-operative Housing Society – Maintenance charges – Activities or transactions, by a person, other than an individual to their members or constituents – In view of insertion of clause (aa) to Section 7(1) of CGST Act, 2017, principle of mutuality between society and its member not applicable – Maintenance charges received by society from its members amounted to consideration received for supply of goods/services as separate entity – GST applicable on maintenance charges (by whatever name called) collected from its members, if monthly subscription or contribution charged from members exceeds ₹ 7,500 per month.

Manyam Venkateswara Rao – 2021 (54) GSTL 318 (AAR – GST – Andhra Pradesh)

Facts of the case:

Mining service – Valuation (GST) – Contribution to National Mineral Exploration Trust (NMET) and District Mineral Foundation (DMF) under Mines and Minerals (Development and Regulation) Act, 1957 (MMDR) read with National Mineral Exploration Trust Rules, 2015 and Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015

AAR Held:

Charges under MMDR Act are levied under law other than GST Act – Hence, payments to DMF and NMET were includible under "value of supply" in addition to royalties paid. They qualify as consideration for grant of mining and leasing rights by State Government, chargeable to GST under RCM in hands of applicant – service recipient

**M/s Kasturi and Sons Ltd. (GST AAR Maharashtra - 2022)****Facts of the case:**

The Applicant proposes to let out on Leave and License Basis the said premises to M/s. Life Insurance corporation of India for residential purpose of their staff members and the Ruling is sought on the applicability of exemption vide SI. No.12 of the Notification No. 12/2017-CT (Rate) on the said transaction

Contention of the department:

LIC is commercial organisation and hence the staff to whom the flat is let out, can sit late in office and work more. LIC is not natural person and LIC is profit making company. So, in order to increase profit, the facility of accommodation is given to employee, which is a commercial use and not for residential use.

AAR Held:

In its ruling, the AAR held that GST exemption is provided by the nature of the property and its usage and not by the status of the recipient. Only if a residential property was either used or let out for Commercial purposes then it would be classified as a service provided and attract GST whereas, property let out for residential purposes will be exempt from GST ambit, said by the AAR.

The GST applicability is not decided by the nature of the property but by the purpose for which it is used i.e. it is not the nature of the property, but the nature of the end use that will determine whether it is a commercial rent or residential rent.

The AAR held that Kasturi and Sons would be eligible for the exemption from payment of GST on the monthly license fee to be received on the proposed letting out on leave and license basis of their residential building.

M/s Baroda Medicare Private Limited, Sunshine Global Hospital [2022-TIOL-24-AAAR-GST] (GUJARAT AAAR):**Facts of the case:**

Whether the supply of Occupational Health Check-up (OHC) service by the hospital i.e. nursing staff, Doctors, Paramedical staff on hospital's payroll, working in different corporate for providing health checkup service, ambulance facility, and allied medical services to their employees and also the camps conducted for health check-up outside the hospitals, to be treated as Health Care service and hence not taxable under CGST / SGST?

AAAR Held:

The AAAR modified an earlier ruling by the Gujarat Authority for Advance Ruling (AAR) that had said 18% GST would be applicable on such health services.

“we modify the ruling ... and hold that supply of occupational health check-up services by the hospital, i.e. nursing staff, doctors and paramedical staff on the hospital's payroll working in different corporates for providing health check-up services, ambulance facilities and allied services to their employees and also the camps conducted for health check-up outside the hospitals, to be treated as healthcare services and exempted under GST,” the Gujarat AAAR ruled.



Antara Purukul Senior Living Ltd. – 2022 (61) GSTL 177 [AAR – GST – Uttarakhand (UK)]

Facts of the Case:

The applicant has sought advance ruling from AAR Uttarakhand on the following questions:

- 1) Whether the electricity charges paid to Uttarakhand Power Corporation Limited (UPCL) for the power consumed by residents in their residential apartments and recovered from them on actual cost basis liable to GST?
- 2) Whether the electricity charges paid to UPCL (Electricity supply authority) for the power consumed towards common area and recovered from residents on actual cost basis are liable to GST?
- 3) Whether Asset Replacement Deposits collected from residents are liable to GST?

AAR Held:

- 1) The electricity charges paid to Uttarakhand Power Corporation Limited (UPCL) for the power consumed by residents in their residential apartments and recovered from them on actual cost basis is liable to GST.
- 2) The electricity charges paid to UPCL (Electricity supply authority) for the power consumed towards common area and recovered from residents on actual cost basis is liable to GST.
- 3) The amounts collected towards Asset Replacement Deposits, amounts to advancement for future supply of services to residents, are taxable, in terms of Section 15(2)(a) of the CGST Act, 2017.