

Valuation of Supply

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Relevant Provisions –CGST Act,2017

Chapter /Section

Particulars

Chapter IV : Time and Value of Supply

Section 15

Value of taxable supply

Applicable to IGST vide Section 20 under Chapter IX of the IGST Act,2017

Applicable to UTGST vide Section 21 under Chapter IX of the UTGST Act,2017

Akin to CGST Act,2017, similar provisions are contained under SGST Acts of respective States

Valuation Provisions: Pre- GST Indirect Tax Regime

Service Tax

Section 67 of
Finance Act,
1994

Service Tax
(Determination of
Value) Rules, 2006

Excise

Section 4
and 4A -
TV/ MRP

Central Excise
(Determination of
Value of Excisable
Goods) Rules, 2000

Customs

Section 14 - TV

Customs Valuation
(Determination of
Price of Imported
/Exported Goods)
Rules, 2007

Value of Taxable Supply

Sec 15

Sec 15 (1)

Transaction
Value

Sec 15(2)

Inclusions

Sec 15(3)

Exclusions

Sec 15(4)

Where the value of the supply of goods or services or both cannot be determined under sub-section (1), Rules to be followed

Sec 15(5)

Value of supply notified by the Government

Chapter IV-Determination of Value of Supply

Rule 27	Value of Supply of Goods or Services where the Consideration is not wholly in money
Rule 28	Value of Supply of Goods or Services or both between distinct or Related persons, other than through an agent
Rule 29	Value of Supply of Goods made or received through an agent
Rule 30	Value of Supply of Goods or services or both based on cost
Rule 31	Residual method for determination of Value of Supply of Goods or Services or both
Rule 31 (A)	Value of Supply in case of Lottery, Betting, Gambling and Horse Racing.
Rule 32	Determination of Value in respect of certain Supplies
Rule 33	Value of Supply of Services in case of Pure agent
Rule 34	Rate of exchange of currency , other than Indian rupees, for determination of value
Rule 35	Value of Supply inclusive of Integrated Tax, Central Tax, State Tax, Union Territory Tax

Valuation of Goods and/or Services

SECTION 15 (1)

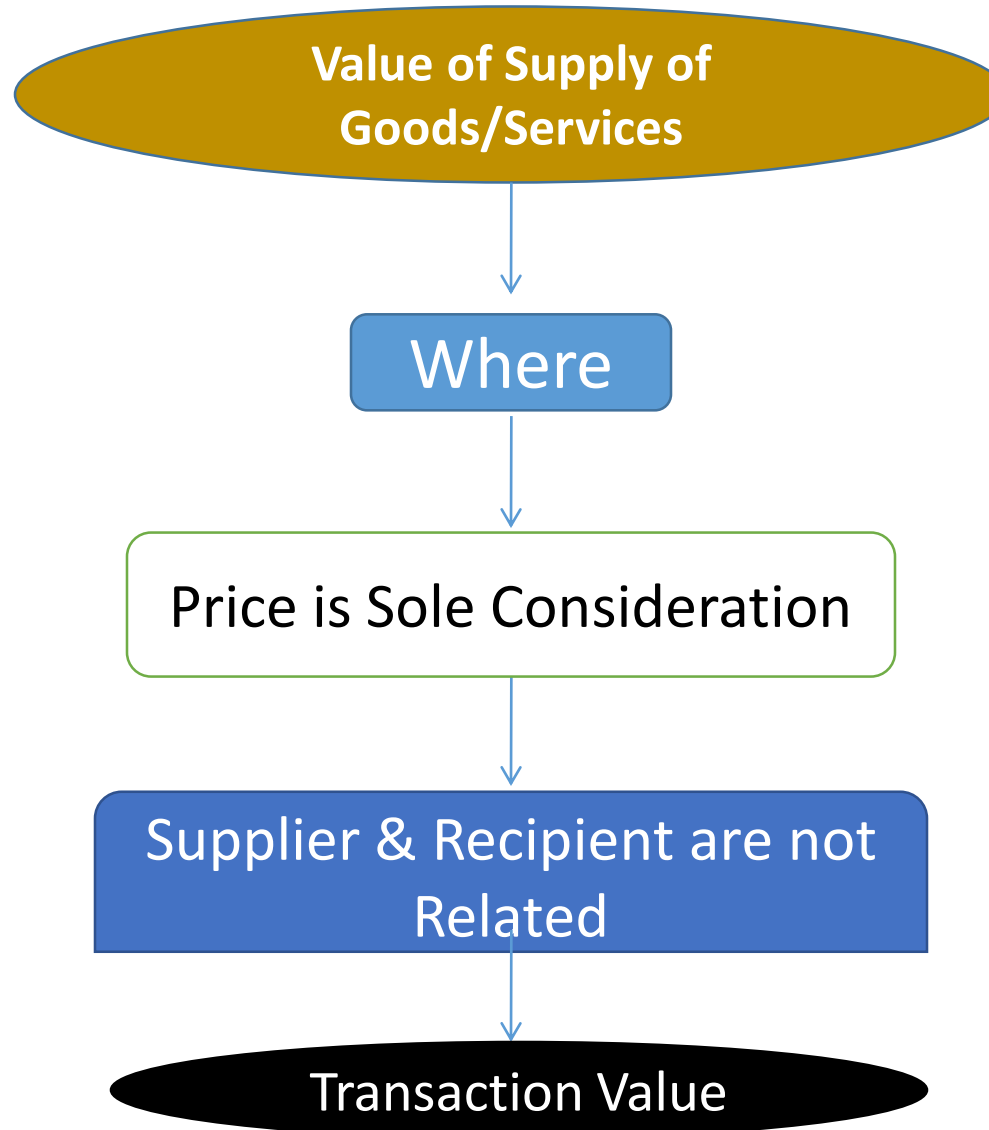
Section 15(1) of CGST Act,2017 quoted as

*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.*

This is subject to dual condition as mentioned below:

- ❖ Supplier and Recipient of the supply are not Related;
- ❖ And Price is the Sole Consideration for the supply

VALUATION –SECTION 15(1)

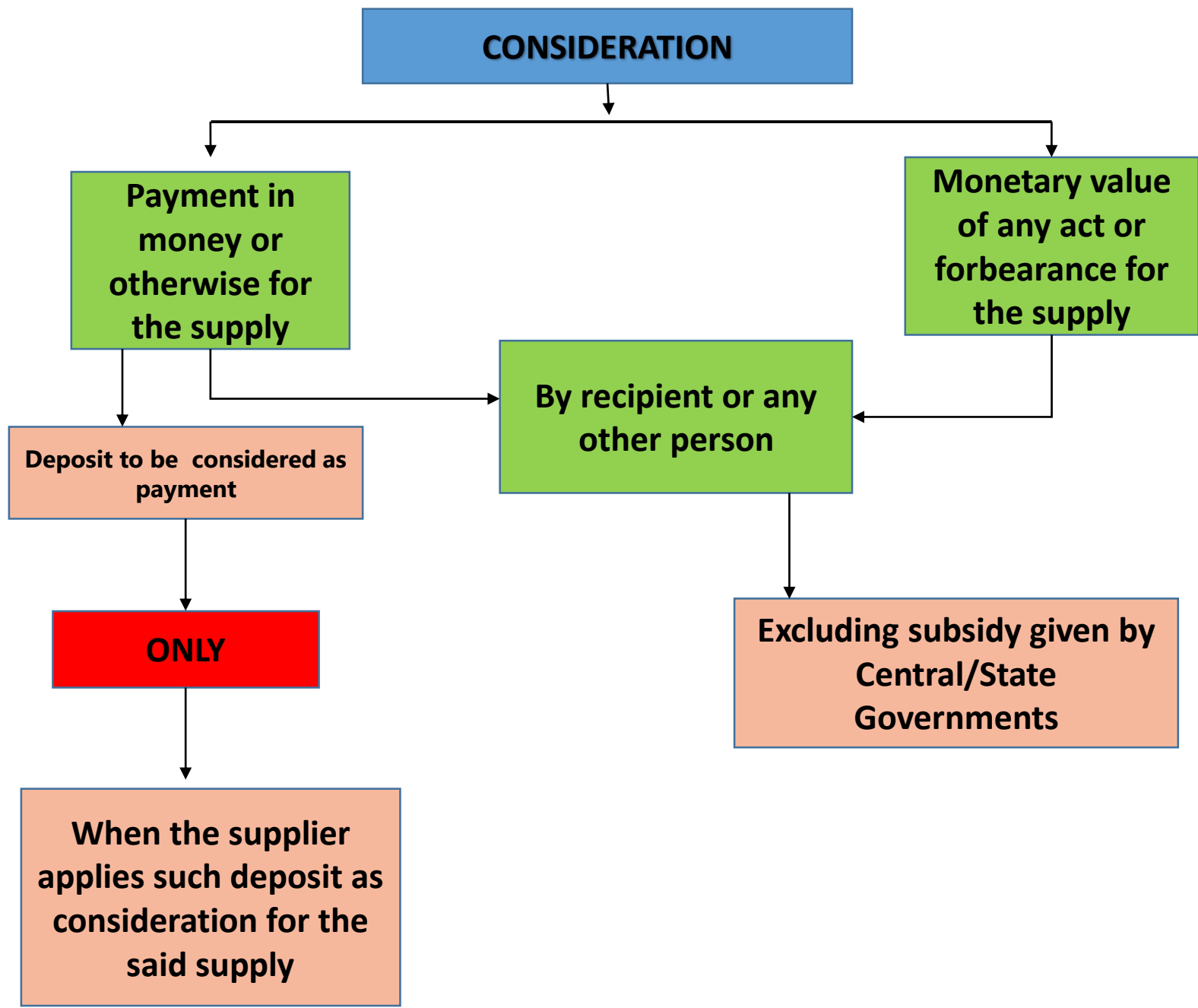


**What is
Transaction?**

The term **Transaction** has not been defined in the CGST Act. Therefore, we will go by its dictionary meaning which is- *an instance of buying or selling something.*

**What is
Price?**

The term **Price** has also not been defined under CGST ACT. Therefore, we will go by its dictionary meaning which is- the amount in **money** expected, required, or given in payment for something.



When Price is not Sole Consideration with unrelated person also:

- Exchange transaction
- Buyer discharging loan of Seller
- Consideration flowing from Supplier for selling Goods at subsidized price.

WHO IS RELATED PERSONS?

Persons including
Legal Persons

DEEMED AS

RELATED PERSONS

IF

Such persons are officers/directors of one another's business

Such persons are legally recognised partners in business

Such persons are employer & employee

A third person controls (directly/indirectly) or own/ holds $\geq 25\%$ voting stock/shares of both of them

One of them controls (directly/indirectly) the other

A third person controls (directly/indirectly) both of them

Such persons together control (directly/indirectly) a third person

Such persons are members of the same family [See definition of family]

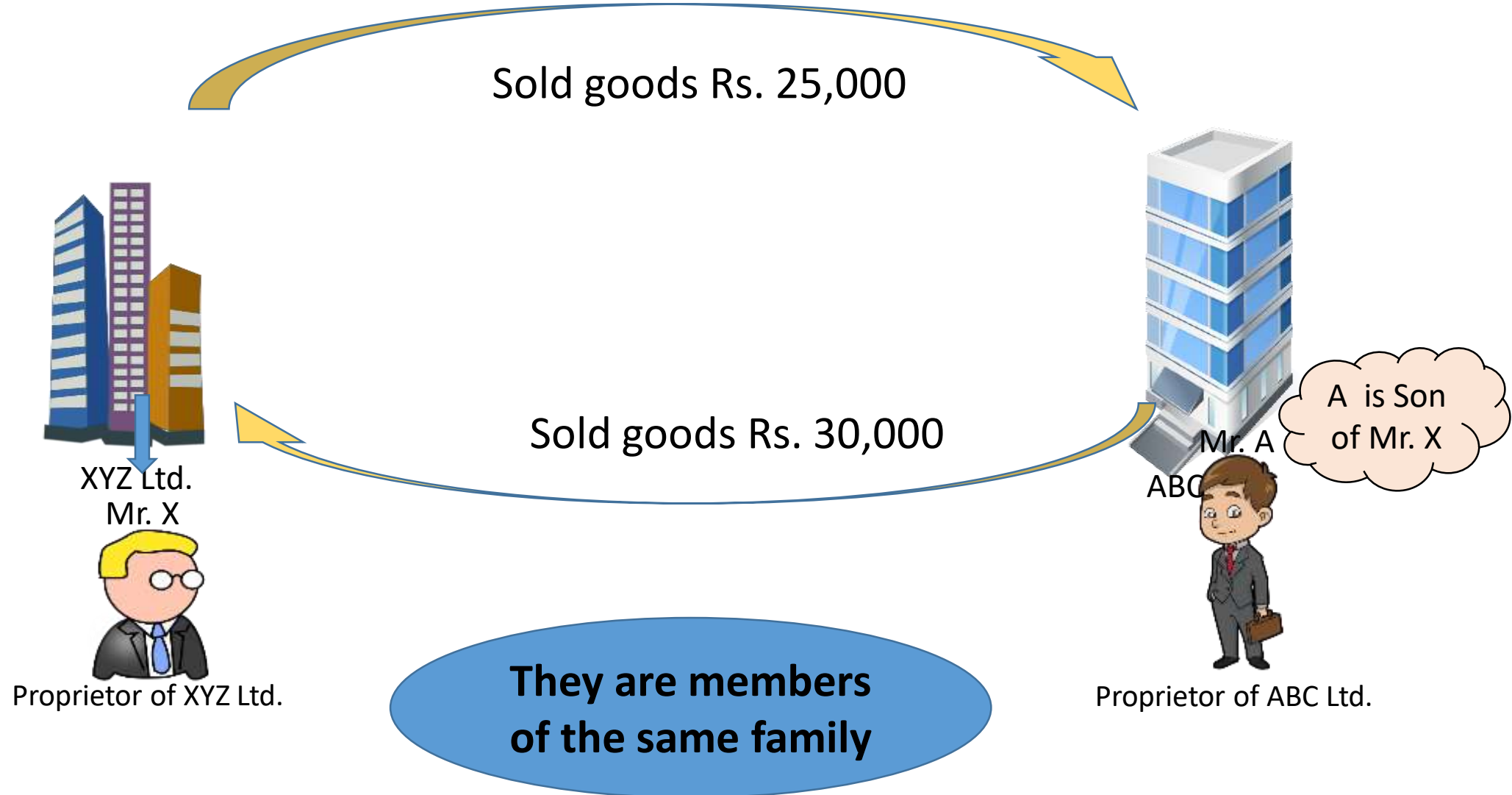
“person” also includes legal persons

One of them is the sole agent/sole distributor/sole concessionaire of the other

Family means,—
(i) the Spouse and Children of the person, and
(ii) the Parents, Grand-Parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person [Section 2(49)].

Mr. Santa located in Nashik purchases 10,000 Hero ink pens worth ₹4,00,000 from Lekhana Wholesalers located in Mumbai. Mr. Mohan's wife is an employee in Lekhana Wholesalers. The price of each Hero pen in the open market is ₹52. The supplier additionally charges ₹5,000 for delivering the goods to the recipient's place of business. The value of such supply will be

There are two firms XYZ Ltd and ABC Ltd. X is the sole proprietor of XYZ Ltd. & A is the sole proprietor of ABC Ltd. A is the son of Mr X. XYZ Ltd sold goods to ABC Ltd and late on ABC Ltd sold goods to XYZ Ltd. Whether both transaction are said to be with related party?



Section 15(1)

Value of supply =
Transaction value

Supplier and
Recipient not
related

Price is the sole
consideration

Price actually paid/payable

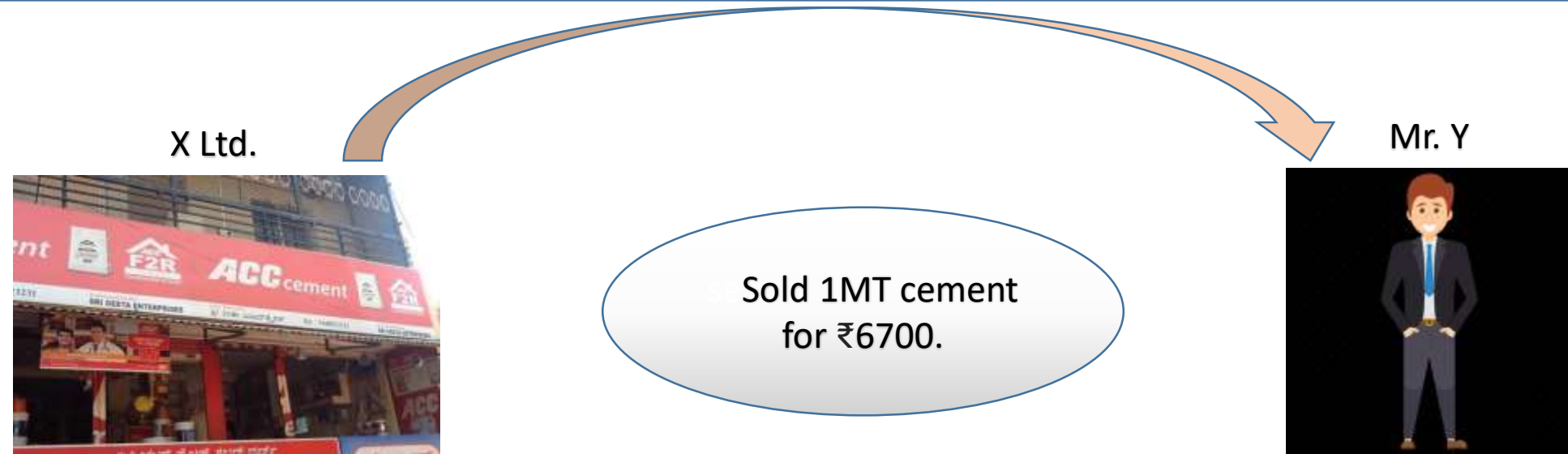
Consideration- Sec 2(31)

- Whether in money or otherwise
- whether by the recipient or by any other person
- Includes the monetary value of any act or forbearance
- Includes Deposits applied as consideration for supply

Wholesale price for 1 MT of cement sold by X Ltd. in the ordinary course of business: ₹7,000.

Price of 1 MT of cement sold by X Ltd. to an unrelated customer Y : ₹6,700.

Value of supply made by X Ltd. to Y is ₹6,700 which is the price actually paid or payable and not the wholesale price.



Wholesale price for selling 1MT cement of X Ltd. is ₹ 7000 in ordinary course of business.

Value of supply made by X Ltd. Is ₹ 6700 which is the price actually paid or payable but not the wholesale price.

ISSUE 1

CA Subhramaniam has leased office premises located at Model Town having area 5,000 Sq.ft to TATA Tea Ltd.



He has collected Rs.5 crore as Interest free security deposit & monthly rental of Rs1,50,000/- (Rs30 per Sq.ft)

The rentals of similar offices in surrounding area around is Rs.5 Lacs per month (Rs 100 per sq.ft)

GST officer has issued SCN alleging that lower rent is charged to avoid GST liability & the same is compensated by collecting higher interest free security deposit

What will be the valuation?



PRICE IS SOLE CONSIDERATION

CGST RULE 28
2ND PROVISIO

Value of supply between distinct & related person where recipient is eligible for full ITC, the value declared in invoice shall be open market value of goods/ services

Section 15 (2)

Inclusion in the Transaction Value

Section 15(2)(a)
Taxes under
other statute

Section 15(2)(b)
Payments made to
third parties by the
recipient on behalf of
the supplier in relation
to the supply

Section 15(2)(c)
Incidental
Expenses

Section 15(2)(d)
Interest or late
fees

Section 15 (2)(e)
Subsidies

Section 15(2)(a)
Taxes under other statute

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;

Section 15(2)(b)
Payments made to third parties by the recipient on behalf of the supplier in relation to the supply

*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*

Section 15(2)(c)
Incidental Expenses

Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

Section 15(2)(d)
Interest or late fees

*Interest or late fee or penalty for delayed payment of **any consideration for any supply***

Section 15(2)(e)
Subsidies

*Subsidies **directly linked to the price excluding subsidies** provided by the Central Government and State Governments.*

Taxes, duties, cesses, fees and charges levied under any law for the time being in force

Section 15(2)(a)

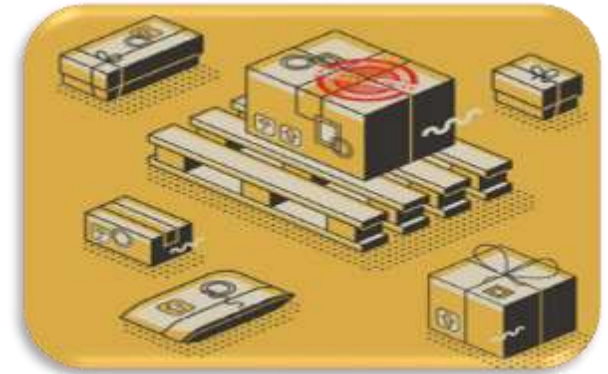
Municipal Tax, Entertainment tax.

Custom duty

Kerala flood cess.

Any taxes, duties, cesses, fees and charges levied under any law for the time being in force except the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier, are includible in the value of supply. In case of inter-State sale liable to IGST, the value of supply will include taxes other than IGST and the GST Compensation Cess in terms of third proviso to section 20 of IGST Act. In effect, all the taxes, duties etc. which are not subsumed in GST form part of the taxable value for the purpose of levying GST.

For instance, if a supplier of goods pays a municipal tax in relation to the goods being supplied, such tax will form part of the value of supply.



The CBIC vide Circular No. 76/50/2018 GST dated 31.12.2018 (amended vide corrigendum dated 7.03.2019) has clarified that 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.

Tax under other statute

As per rent contract of ₹1,00,000, tenant is required to pay local tax ₹10,000 directly to the local body or to owner of the premise. Such local tax may form part of consideration for the supply of renting service and GST would be charged on ₹1,10,000.



Tenant has to pay ₹1,00,000 along with ₹10,000 (Local Tax)

GST will be Charged on ₹1,10,000

Payments made to third parties by the Recipient on behalf of the Supplier in relation to the Supply

[Section 15(2)(b)]

Any amount that the **supplier is liable** to pay **in relation to such supply**, but which has to be **incurred by the recipient** of the supply and **not included in the price** actually paid or payable for the Goods or Services or both.

Any amount to be included in the value of supply in addition to the price paid or payable must satisfy the following three conditions cumulatively:-

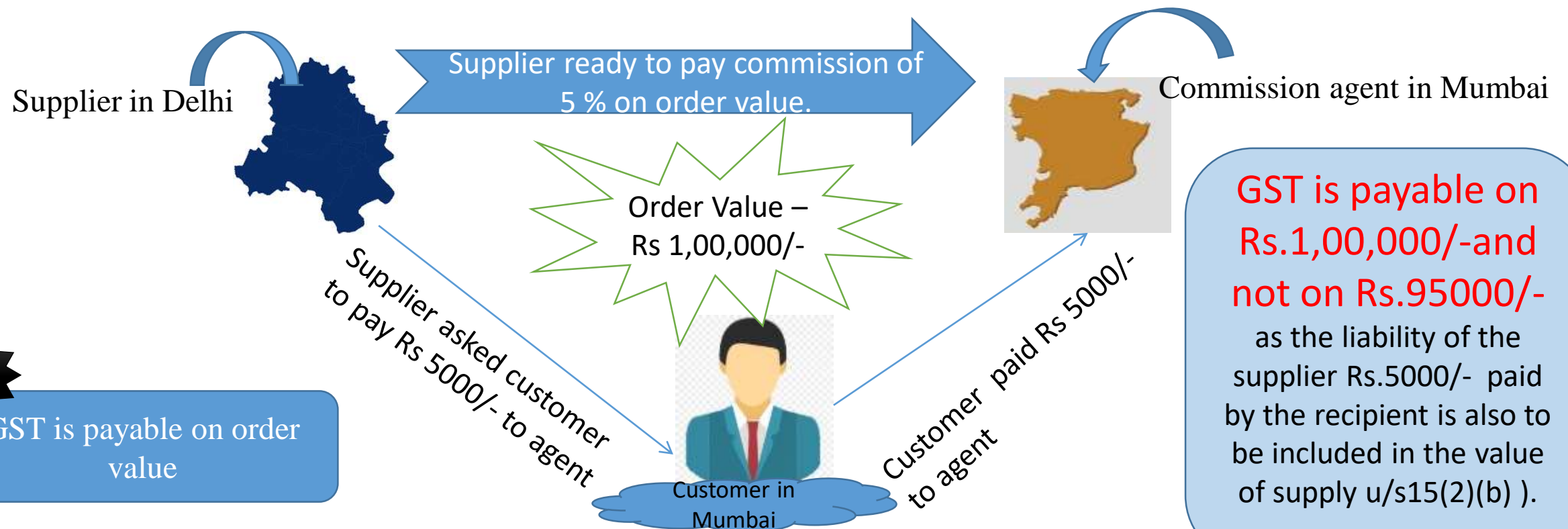
- a) Such amount was liable to be paid by the supplier of goods in term of agreement entered into between the supplier of goods and recipient of goods;
- b) Such amount is incurred by the recipient of goods and has not claimed back from the supplier of goods; and
- c) Such amount has not been charged in the invoice raised by the supplier of goods.

Circular No. 47/21/2018 GST dated 08.06.2018 has clarified that while calculating the value of the supply made by the component manufacturer using **moulds and dies owned by Original Equipment Manufacturers (OEM) sent free of cost (FOC) to him**, the **value of such moulds and dies shall not be added to the value of supply** made by him because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b).

However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components.

Payment made to the Third party on behalf of the Supplier in relation to the supply

A supplier in Delhi hired a commission agent in Mumbai to get orders from Mumbai area and agreed to pay him commission @5% on order value. On supply of such orders for Rs.1,00,000/- he was liable to pay commission of Rs.5000/-to the agent . He directed the customer in Mumbai to pay Rs.5000/- to the agent in Mumbai directly and balance to him.



An Audit firm based in Delhi undertake an audit assignment of his client based in Gurgaon. The Contract mentioned about the audit fees of ₹100000 and **arrangement** of taxi by the Client who is which may be worth ₹5000. Thus here the price payable by the Client who is towards audit is ₹105000 (not only audit fees but also the expenditure incurred in connection with the taxi ₹5000)



To provide service ₹1,00,000



Taxi fare ₹5,000



All amounts which a **supplier is obliged to incur** in the course of making a taxable supply are **considered as expense**. On the Other hand, '**reimbursement**' refers to those amounts which a **recipient is duty bound to pay** but which has been paid by the supplier to the third party.

Total price payable by the client will be
 $=1,00,000 + 5,000 = 1,05,000$

Incidental Expenses

[Section 15(2)(c)]

Incidental expenses, **including** commission and packing, **charged by the supplier** to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services

Incidental expenses (such as

- weightment charges,
- loading charges in the factory,
- inspection,
- testing before supply,
- development charges like design
- commission,
- packing and

any other amount charged by the supplier on supplies **at the time of or before** the delivery of goods or supply of services.

Not post delivery

like Road Tax, Insurance and Registration in case of motor vehicles

Incidental expenses charged by the supplier



Manufacturer

Supply of goods for ₹1,00,000/-



Freight charges ₹4,000/-



Value of supply = ₹1,00,000 + ₹4,000/-



Distributor

All the expenses incurred by the supplier, in relation to the supply, are required to be included in the transaction value to the extent they are charged for. Even if the contract is for delivery of goods ex-factory, and the supplier incurs the cost of transportation on behalf of the recipient for delivery of goods to the recipient, the cost should be included in the transaction value, if the supplier charges the recipient for the same. However, if the contract price is for delivery of goods at the location of the recipient, then the transportation charges incurred by the supplier would not be required to be added to the transaction value, as the cost is contained in the said value.

[Section 15(2)(d)]

Interest, late fee or penalty for delayed payment of any consideration **for any supply -**

Penal interest on EMI late received will be included in the value of supply as clarified by [Circular No.102/21/2019-GST dt. 28.06.2019](#)

Time of supply in case of interest, late fee or penalty will be the tax period in which interest payment is **actually received** even if Debit Note has been raised earlier -refer section 12(6) in case of goods and section 13(6) in case of services and Rate of tax on interest etc. will be the rate applicable on the original supply. This means that tax is payable on interest etc. on receipt basis even if accounted for on accrual basis. Further interest, late fee and penalty should have been received in respect of a consideration **for the original supply** then only it can be included. Any charge received by any other name for delayed payment of consideration for a supply will also be covered here.



Time of supply for such interest/ late fee/ penalty is the date when such amount is received by the supplier. Further, since such charges are an addition in the value of supply, same rate of tax as applicable on the main supply of goods / service are applicable on such charges as well.

Section 15(2)(d)

Example

Mr. Ramesh a trader provides the following information:

Value of supply of goods if payment made by 15 th April 2018.	Rs. 1,00,000
Interest for delayed payment of consideration if payment after 15 th April but before 15 th May.	Rs. 4,000
Value of supply if payment made by recipient on 5 th of May	Rs. 1,04,000

Time of supply for such interest/ late fee/ penalty is the date when such amount is received by the supplier. Further, since such charges are an addition in the value of supply, same rate of tax as applicable on the main supply of goods / service are applicable on such charges as well.

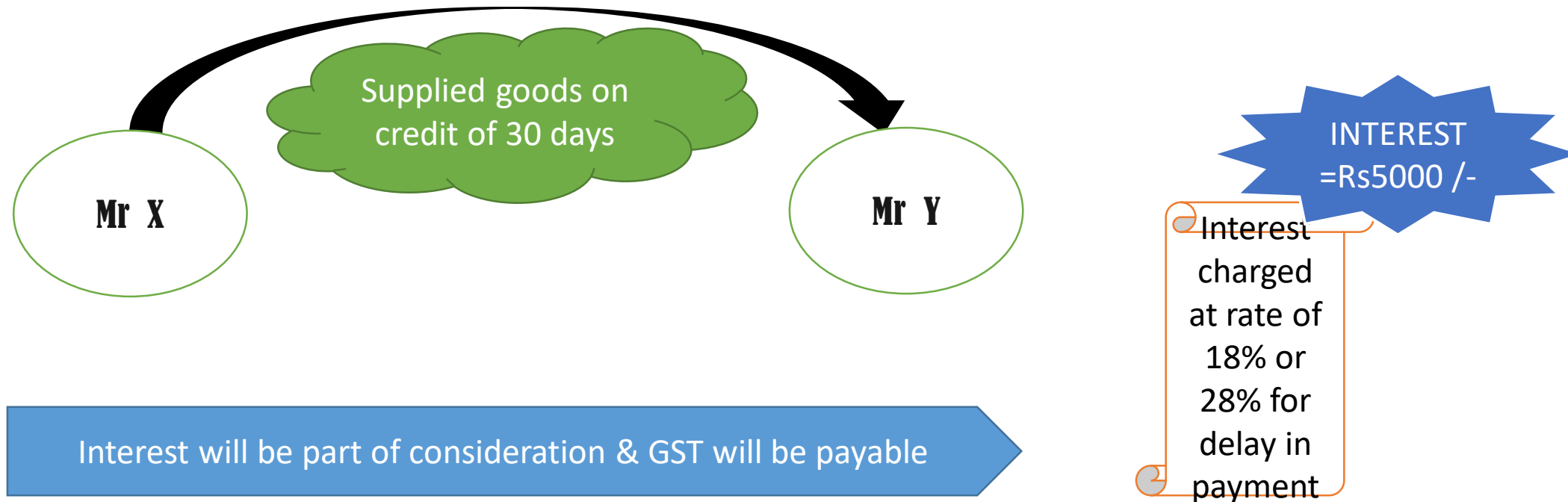
Example

Mr. Ramesh, a trader provides the following information:

Value of supply of goods if payment made within 15 days (normally credit is allowed for 30 days) therefore payment is not likely to be received within 15 days.	Rs. 95,000
Penalty for delayed payment of consideration if payment after 15 days but before 30 days.	Rs. 5,000
In pre-GST era as late fee or penalty etc. was not to be included in the transactional value dealer was paying tax on Rs. 95,000/- whereas consideration received from the customer was 100000/-	Rs. 1,00,000

Interest, late fee or penalty for delayed payment

Mr. X has supplied goods to Mr. Y on credit of 30 days. The contract provides that interest will be charged at the rate of 18% for delay in making payment of supply. Interest is calculated say Rs.5000. It is specifically provides that such interest will form part of consideration and GST will be payable. **If the Goods are taxed at 28% and then the interest amount will be taxed at 18% or 28%?**



[Section 15(2)(e)]

Subsidies

Subsidy is a sum of money given to keep the price of a service or commodity low

If the subsidy is given by the State or Central Government, then **not** to be **included** in the Value

If the subsidy is given by a person or entity other than the State or Central Government, it **should be included** in the value.

The subsidy is added to the value of supply of the supplier who receives the subsidy. It must be noted that **only subsidies directly linked to the price of goods/services** are added to the value. **Blanket subsidy/donation received are not includible in the price.**

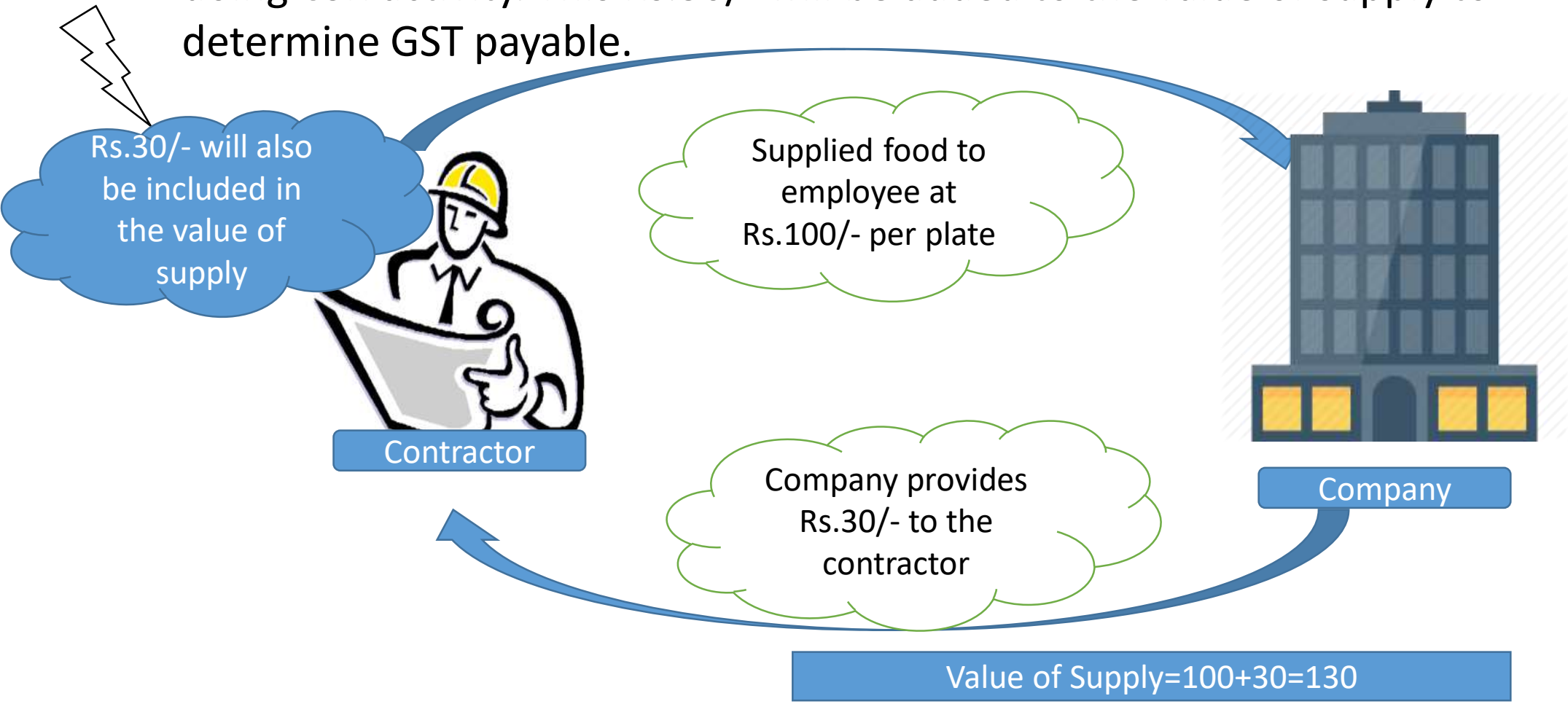
Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation; For the purpose of this, the amount of subsidy shall be **included in the value of supply of the supplier who receives the subsidy**

Government gives **subsidy** on supply of **cooking gas** cylinder to poor families. Nowadays such subsidy is transferred to the bank account of poor family directly and the company making supply of cylinder sells the goods at a fixed price and not at the subsidised rate. The amount of subsidy is directly credited to the bank account and **the same is not received by the said company**. Therefore such subsidy will not be considered as part of transaction value because this is not linked to the price and also the same is provided by government.

SUBSIDIES

A contractor supplying food to employees of a company charging Rs.100/- per plate from the employee but getting Rs.30/- from the Company, who is doing CSR activity. This Rs.30/- will be added to the value of supply to determine GST payable.

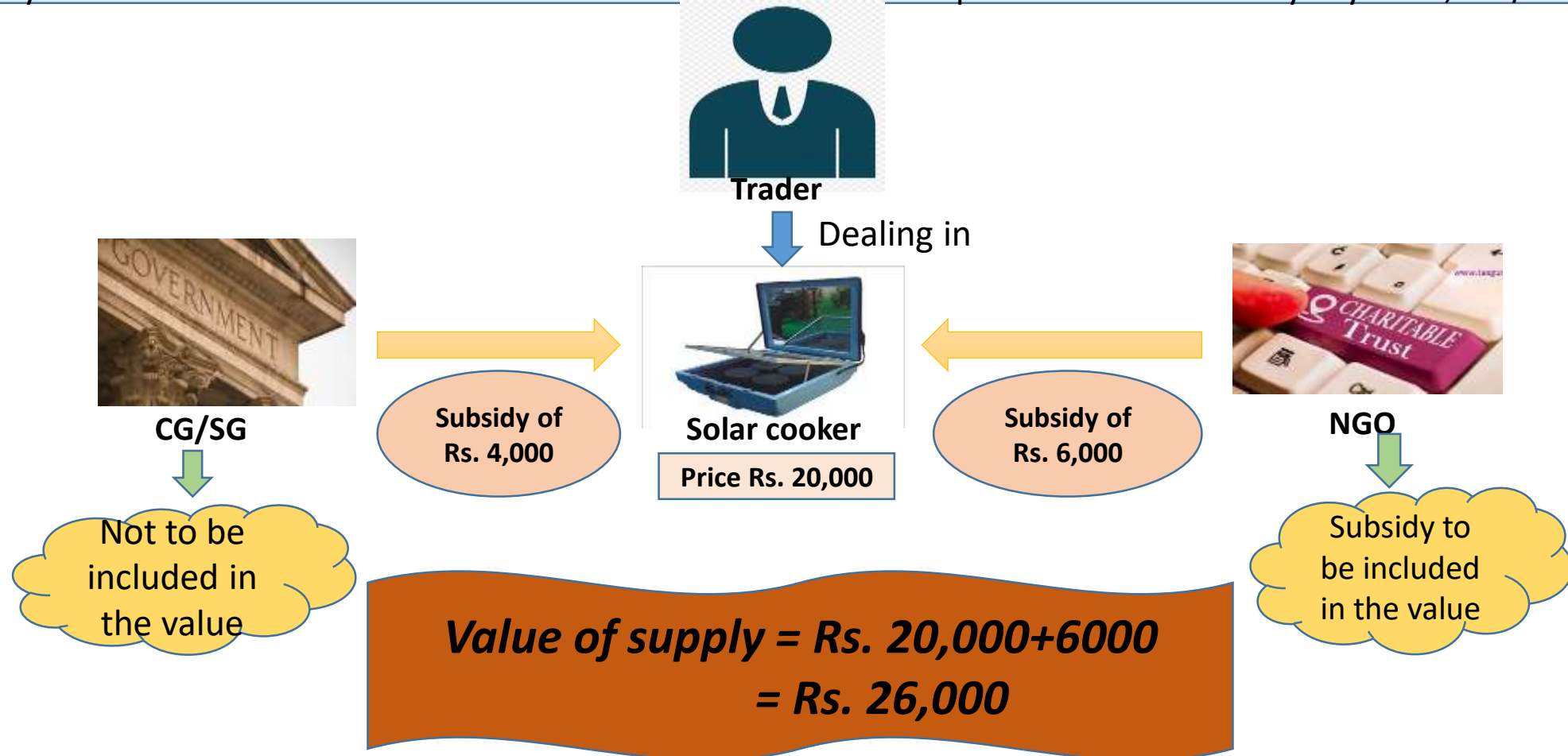


SUBSIDIES

In the judgment of Hon'ble High Court of Madras dated 09.06.2016 in the case of **M/s Farad Fertilisers Pvt. Ltd. vs. Commissioner of Central Excise Customs and Service Tax, Aurangabad 2016- TIOL-1031-CESTAT-MUM** on the subject wherein it held that subsidy amount is not subject to service tax.

Trader dealing in solar cooker has received following subsidies:

- Subsidy directly linked to the supply and received from charitable trust in promotion of solar cooker say Rs. 6,000.
- Subsidy from Central Government as it also want to promote solar product in the country say Rs. 4,000/-.



Exclusion from Transaction Value

Section 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

Discounts given

At the time of supply

Before the supply

After the supply

Shown in the invoice

In terms of an agreement that existed at the time of supply

Can be linked to invoices

Proportionate ITC reversed by recipient

Discounts not included in the Value of supply

Discounts included in the Value of supply

+

+

+

+

+

YES

NO

NO

YES

Free sample and gifts
Circular No.92/11/2019 dated 7th
March,2019

**TRY
BEFORE YOU
BUY**

**Supplied without
consideration**

**Not added in the
value of supply**

**ITC not available to
supplier**

Free sample and gifts

Circular No.92/11/2019 dated 7th March,2019

Pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.



SUPPLIED WITHOUT
CONSIDERATION

DOES NOT ADD IN
THE VALUE OF
SUPPLY

NO ITC AVAILED BY
THE SUPPLIER ON
THE INPUTS, CAPITAL
GOODS AND INPUT
SERVICES

Discount shown in invoice

Price of a car is Rs. 5 Lacs and a discount of 5% is given being the year end sale. Here the transaction value will be Rs. 4.75 Lacs i.e. after discount which will not be included in transaction value



Discount not shown in invoice

Mr. A purchases an Air Conditioner from Mr. B for Rs. 20000 on credit on July 1, 2020. On August 1, 2020, Mr. A gives discount of Rs. 5000 to Mr.B and Mr.B makes payment of Rs. 15000. Here if the discount is not known before or at the time of supply, then transaction value will be Rs. 20000. But if discount is based on terms of contract or terms of payment then transaction value will be Rs 15000 only.



Types of Discounts

Types of Discounts 	Treated as Supply of goods or services or NOT	Eligible to avail of the ITC
<input type="checkbox"/> Free samples and gifts	The goods or services or both which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST	ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
<input type="checkbox"/> Buy one get one free offer	The goods or services which are supplied without any cost and consideration shall not be treated as 'supply' under GST. Only the price of one good is to be treated as 'supply'. Rate and Taxability depends upon Mixed Supply and Composite Supply.	ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.
<input type="checkbox"/> Discounts including 'Buy more, save more' offers	The supplier offers staggered discount to his customers such discounts are shown on the invoice itself.	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.
<input type="checkbox"/> Secondary Discounts	Tax invoices have been issued for supply of any goods or services or both. The discounts shall not be excluded while determining the value of supply.	There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

Value of supply under section 15

Whether price is the sole consideration for supply?

No

Supply to be valued as per Chapter IV : Determination of Value of Supply of CGST Rules

Yes

Whether supplier and the recipient are related?

Yes

No

Whether the supply is a notified supply u/s (15(5))?

Yes

No

Assessable Value = Transaction Value u/s 15(1)

VALUATION RULES

*The value of supply of goods or services or both **which cannot be valued as per section 15 (1)**, shall be determined as per rules [Section 15(4)]. Such valuation may be required in the following situation:*

- I. Value of supply of goods or services where the consideration is not wholly in money*
- II. the supplier and recipient of the supply are related*

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 Open Market Value is not available as (a) above, **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 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 application of **rule 30 or rule 31 in that order**

MARKET VALUE

Full amount which a recipient is required to pay

to obtain goods and/or services

Of like kind & quality

At or about the same time

At the same commercial level

Where recipient & supplier are not related

1
Open market value

2
Monetary consideration + money value of non-monetary consideration

3
Value of supply of like kind and quality

4
Monetary consideration + money value of non-monetary consideration => computed on the basis of cost of supply or by other reasonable means.

Where a laptop is supplied for Rs.40000 along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is Rs.4000 but the open market value of the laptop is not known, the value of the supply of laptop will be Rs.44000.



Supplier

New laptop supplied for ₹40,000



Customer

In exchange of old printer worth ₹4,000 and ₹40,000 in cash

Valuation??

Taxable value will be $40,000 + 4,000 = ₹44,000$

What if OMV of New Laptop is known?

Market value of laptop is not known

Rule 28

Value of Supply of Goods or Services or both between distinct or Related persons, other than through an Agent

(a) The open market value of such supply

(b) If open market value is not available

Value of supply of goods or services of like kind and quality

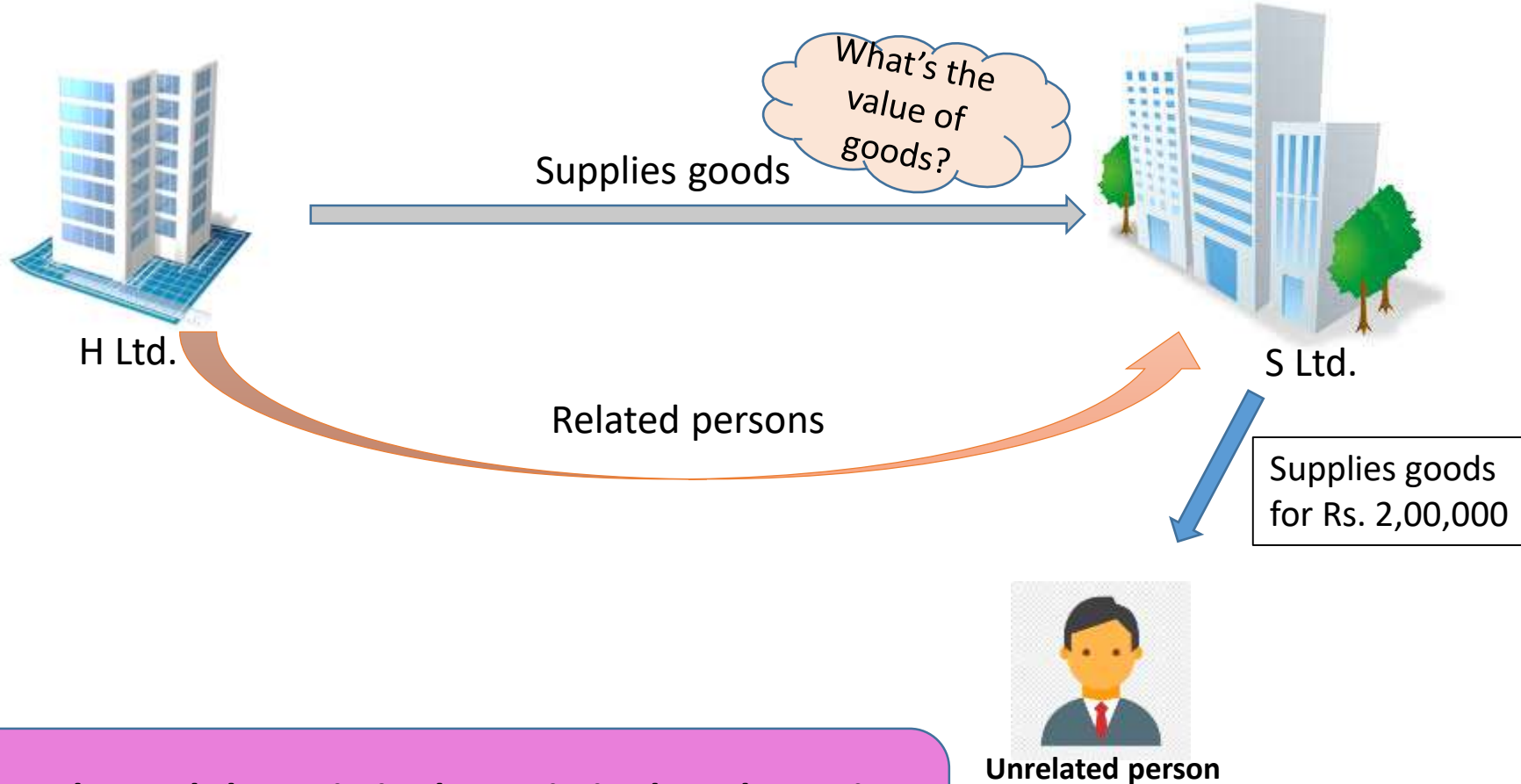
(c) If value of supply is not determinable under clause (a) or (b)

Value as determined by application of Rule 30 or Rule 31, in that order

Provided that where goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person

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

H Limited is a holding company of S Limited Thus, in terms of Explanation(a) to Section 15, H Limited shall be treated as related persons. H Limited supplies certain goods to S Limited which are intended for further supply as such by S Limited . S Limited supplies aforesaid goods to its unrelated customer for Rs. 2,00,000. (excluding, the applicable GST).In this case, in terms of proviso to Rule 28, the value of supply of goods by H Limited to S Limited, at option of H Limited shall be Rs. 1,80,000/- (90% of Rs. 2,00,000)



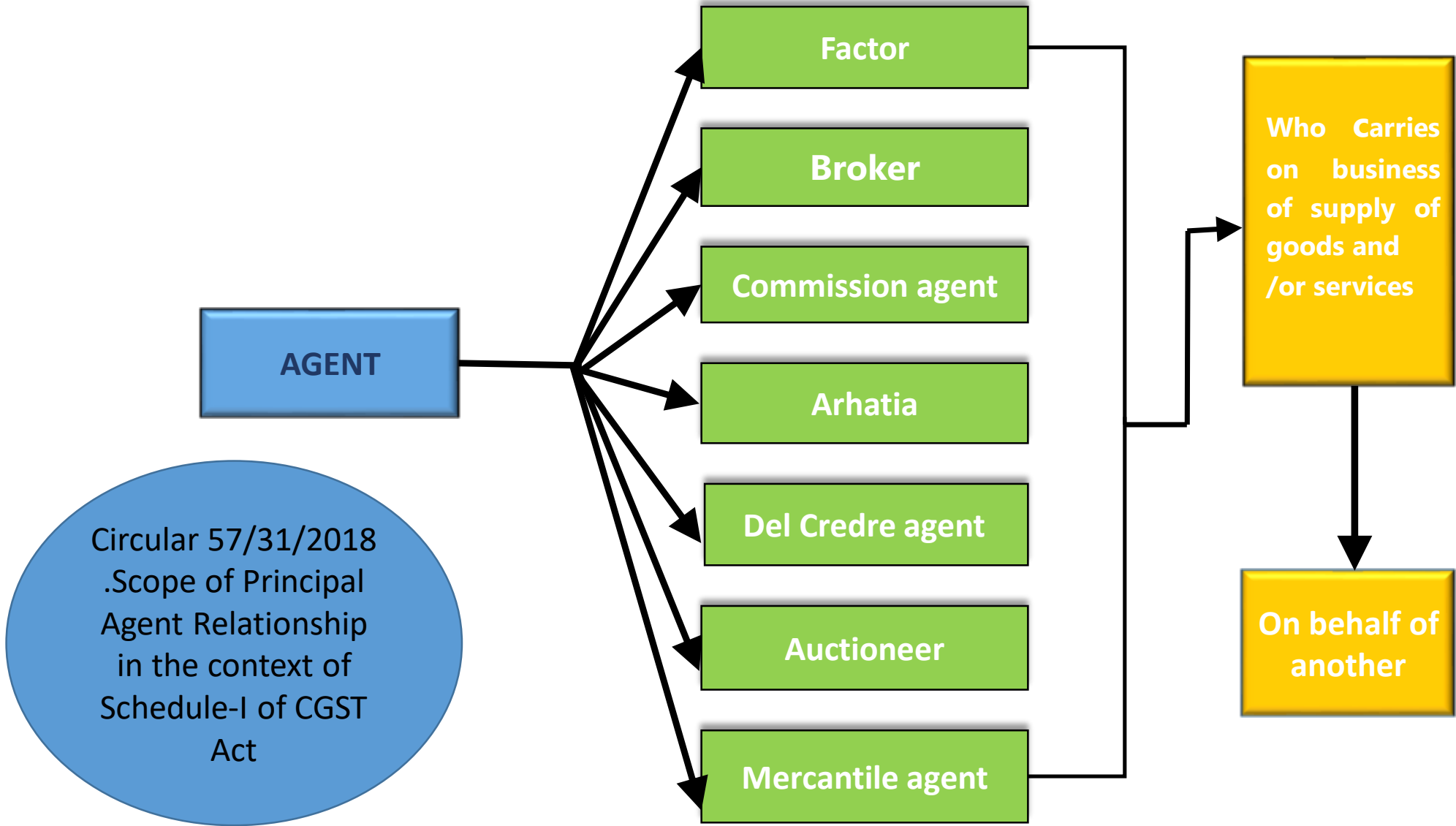
As per
Rule 28

The value of supply goods by H Limited to S Limited ,at the option of H Limited shall be Rs. 1,80,000/- (which is 90% of Rs. 2,00,000)

Rule 29

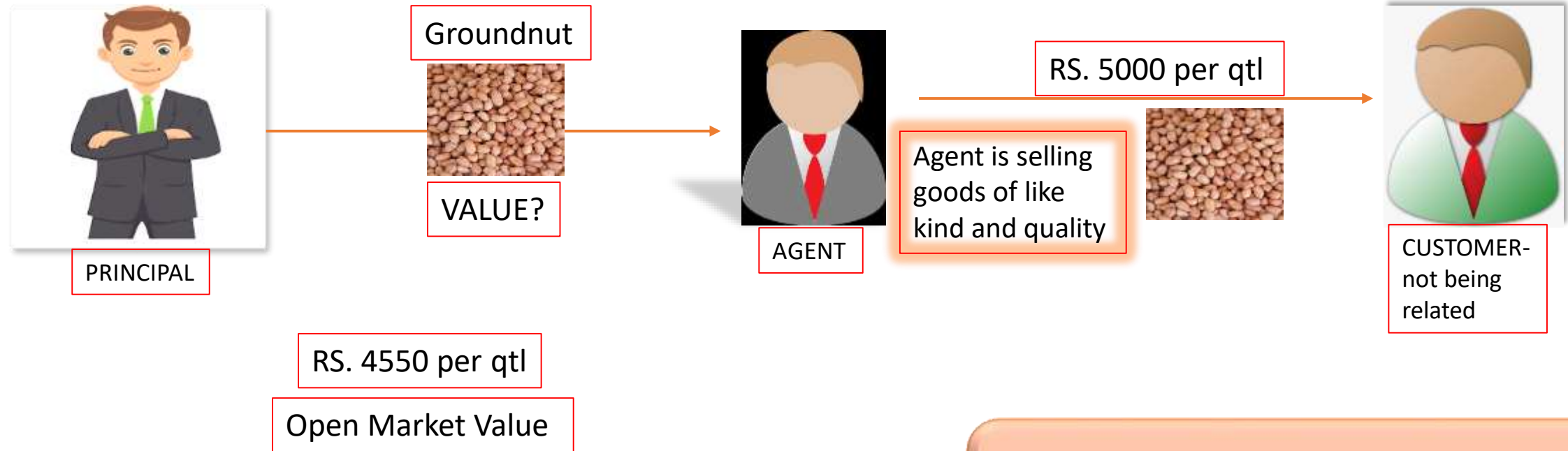
Value of Supply of Goods made or received through an Agent.

- a) **open market value**, or
- at the option of the supplier, **be 90% of the price charged for the supply of goods of like kind and quality by the recipient (agent) to his customer** not being a related person,
 - where the goods are intended for further supply by the said recipient.
- b) where the value of a supply is not determinable under clause (a),
□ the same shall be determined by application of rule 30 or rule 31 in that order.



Circular 57/31/2018
.Scope of Principal
Agent Relationship
in the context of
Schedule-I of CGST
Act

Where a principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of Rs.5000 per quintal on the day of supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of Rs.4550 per quintal. The value of the supply made by the principal shall be Rs.4550 per quintal or where he exercises the option the value shall be 90% of the Rs.5000 i.e. is Rs.4500 per quintal.



Two options-

1. Rs. 4550 per quintal (open market value)
2. 90% of 5000 rupees = Rs. 4500

Rule 30

Value of supply of goods or services or both based on cost

- Where value is **not determinable** by **any of the preceding rules**,
- the Value shall be 110% of the:
 - Cost of production or manufacture or
 - Cost of acquisition of such goods or
 - Cost of provision of such services.

Suppose Peacock Limited is manufacturing office chairs and the cost of manufacturing is Rs. 4,000 per chair. Similar chair in open market is valued at Rs. 4,500. These chairs are supplied to a furniture showroom at the rate Rs. 3,000 and balance in non-monetary consideration. Now since the open market value is available, Rs. 4,500 will be considered for valuation of supply. However in case if Open Market Value is not available, the value of supply as per cost method will be followed which as per the rule will be 110% of the cost of manufacturing i.e. $\text{Rs. } 4,000 \times 110\% = \text{Rs. } 4,400$



Manufacturer

Manufacturing cost Rs 4000

Open Market value price rs 4500

Sold at Rs. 3000



Showroom

If Open Market Value is not available, the value of supply as per cost method will be followed which as per the rule will be 110% of the cost of manufacturing i.e. $\text{Rs. } 4,000 \times 110\% = \text{Rs. } 4,400$.

Rule 31

Residual method for determination of value of Supply of Goods or Services or both

- ❑ Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:
 - ❑ **Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30**

Rule 31A

Value of supply in case of Lottery, Betting, Gambling and Horse Racing:

Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter:

- ❑ Value of supply of lottery authorised by State Governments shall be deemed to be:-
 - 100/128 of the face value of ticket
 - Price as notified in the Official Gazette by the organising State

Whichever is higher

- ❑ Value of supply of lottery run by State Governments shall be deemed to be :-
 - 100/112 of the face value of ticket
 - Price as notified in the Official Gazette by the organising State

whichever is higher

❑ Explanation:-

- a) “lottery run by State Governments” means a lottery not allowed to be sold in any State other than the organizing State
- b) “lottery authorised by State Governments” means a lottery which is authorised to be sold in State(s) other than the organising State also.
- c) “Organising State” has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010

- ❑ Value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be:
 - 100% of the face value of the bet or
 - the amount paid into the totalisator

Rule 32

Determination of Value in respect of certain supplies

Rule 32(1)

- Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, **at the option of the supplier**, be determined in the manner provided hereinafter.

Rule 32(2)	Foreign currency, including money changing
Rule 32(3)	Tickets for travel by Air
Rule 32(4)	Life Insurance Business
Rule 32(5)	Buying and Selling of Second hand Goods
Rule 32(6)	Value of a Token, or a Voucher, or a Coupon, or a Stamp (other than postage stamp)
Rule 32(7)	Such class of service providers as may be notified by the Government,

Rule 32(2)(a): For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, for that currency at that time, multiplied by the total units of currency:



**RBI Ref. Rate
BR/SR = 59**

**Per Unit = 60
Buying Rate = 59
Difference = 1
No. of units 10000
Value of Services =
1*100 =Rs 10000**

**From view point of
supplier of currency.
Currency other than
Indian Rupees to be
seen. Means supplier
purchased USD. So BR
will apply**

Rule 32(2)(b): At the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be

Amount of currency
exchanged up to Rs.1
lakh

1% of the gross amount of currency
exchanged or Rs. 250/-, whichever is
higher

Amount of currency
exchanged exceeding
Rs.1 lakh and up to
Rs.10 Lakhs

Rs.1000/- + 0.5% of the gross amount
of currency exchanged above Rs.
1,00,000

Amount of currency
exchanged exceeding
Rs.10 lakhs

Rs.5500/- + 0.10% of the gross
amount of currency exchanged above
10,00,000 or Rs. 60,000/- whichever
is lower.



Air Travel Agents:

Rule 32(3)

PROVIDER



MR. X

RECEIVER



5% OF BASIC FARE

10% OF BASIC FARE

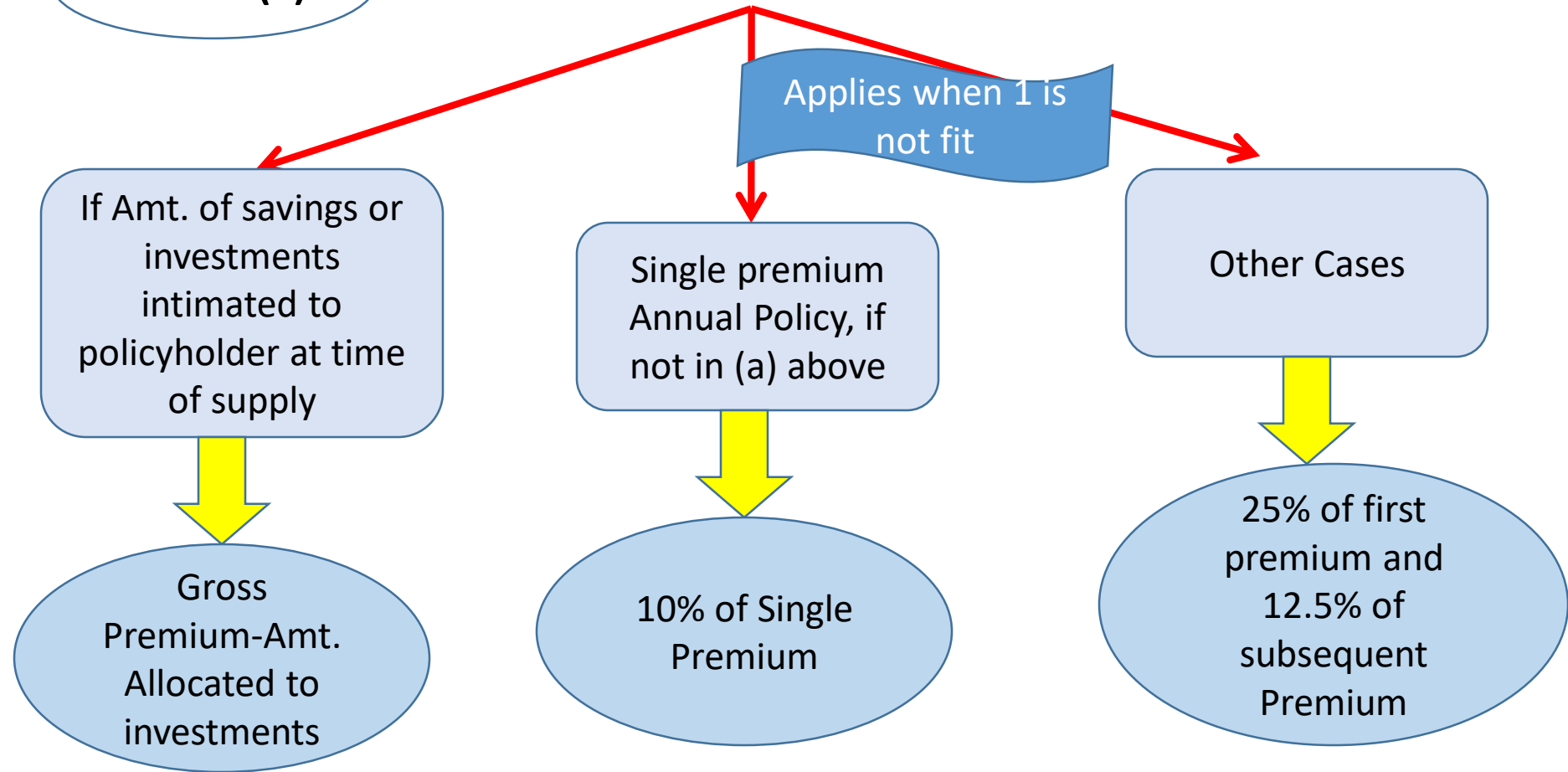
DOMESTIC

INTERNATIONAL

The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of five per cent of the basic fare in the case of domestic bookings, and at the rate of ten per cent of the basic fare in the case of international bookings of passage for travel by air.

Rule 32(4)

LIFE INSURANCE BUSINESS



PROVISO : Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

Rule 32(5)

Second Hand Goods

- Supply of used goods as such or after such minor processing which does not change the nature of the goods and where no ITC has been availed on purchase of such goods,
- the value of supply shall be:
 - the difference between the selling price and purchase price and
 - where the value of such supply is negative, it shall be ignored.

VALUE OF SECOND HAND GOODS

When ITC is not availed [Margin Scheme]

- Value = Selling price - Purchase price
- Selling price < Purchase price => Ignore negative value
- CGST on second hand goods received from unregistered supplier exempt

When ITC is availed

- Normal valuation as per other applicable provisions

Rule 32 (6)

Token / Coupon / Voucher / Stamp

- The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply shall be equal to:-
 - money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

Rule 32 (7)

Distinct Persons

- The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

Value of supply in cases where Kerala Flood Cess is applicable

RULE 32(A)

The Value of Supply of Goods or Services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of section 15 of the Act, but shall not include the said cess.

Value of Supply of Services in case of Pure Agent

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,-

- 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;
- 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
- 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.**

Value of Supply of Services in case of Pure Agent

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.

Rule 33

Illustration

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 fee charged by the Registrar of the companies' registration and approval of the name are compulsory 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.

Illustration in which service provider does not act as pure agent on behalf of the service recipient as provided in service tax (Determination of Valuation):

X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for Television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. **Y does not act as an agent behalf of X when obtaining the television advertisement** even if the cost of television advertisement is mentioned separately in the invoice issued by X. **Advertising service is an input service** for estate agent in order to enable or facilitate him to perform his services as an estate agent.

Rule 34

Rate of exchange of currency, other than Indian rupees, for determination of value.

- (1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.
- (2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.

Value of supply inclusive of Integrated Tax, Central Tax, State Tax, Union Territory Tax

Rule 35

- Where Value of Supply is inclusive of IGST/CGST/SGST/UTGST then:

$$\text{Tax amount} = \frac{\text{Value inclusive of taxes} \times \text{tax rate in \% of IGST or as the case may be CGST, SGST or UTGST}}{(100 + \text{sum of tax rates, as applicable, in \%})}$$

Rule 27

VALUE OF SUPPLY OF GOODS OR SERVICE WHERE THE CONSIDERATION IS NOT WHOLLY IN MONEY

Rule	Particulars
27 (a)	<u>Where the Consideration for Supply is not wholly in terms of money:</u> Value of Supply = Open Market Value of the Supply
27 (b)	<u>If Open Market Value is not available:</u> Value of Supply = Consideration in money + Amount in money equivalent to the consideration not in terms of money
27 (c)	<u>If the Value of Supply is not determinable under clause (a) or clause (b):</u> Value of Supply = Value of supply of goods & services or both of like kind and quality
27 (d)	<u>If Value is not determinable under clause (a),(b) or (c):</u> Value of Supply = Consideration in money + Amount in money equivalent to the consideration not in terms of money determined on the basis of cost(Rule30) or other reasonable means (Rule 31), in that order

Rule 28

VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH BETWEEN DISTINCT OR RELATED PERSONS (OTHER THAN THROUGH AN AGENT)

Rule	Particular
28(a)	<p>The Value of the Supply of goods or services or both between “distinct persons” or where the supplier and recipient are related, (other than where the supply is made through and agent)</p> <p>Value of supply = Open Market value of the supply</p>
28(b)	<p>If Open Market Value is not available</p> <p>Value of supply = Value of supply of goods or services of like kind and quality</p>
28(c)	<p>If the Value of Supply is not determinable under clause (a) or clause (b)</p> <p>Value of supply = Value as determined on the basis of cost (Rule 30) or reasonable means (Rule 31), in that order</p>

Rule 29

VALUE OF SUPPLY OF GOODS MADE OR RECEIVED THROUGH AN AGENT

Rule	Particulars
29(a)	<p>In case of Supply of Goods between the Principal and his Agent</p> <p>Value of Supply = Open Market Value of goods being supplied or, at the option of the supplier</p> <p>Value of Supply = 90% × (Price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by recipient)</p>
29(b)	<p>Where the Value of Supply is not determinable under clause (a)</p> <p>Value of supply = Value as determined on the basis of cost (Rule 30) or reasonable means (Rule 31), in that order</p>

Rule 30

VALUE OF SUPPLY OF GOODS OR SERVICE OR BOTH BASED ON COST

Rule

Particulars

30

Where the value of a supply of goods or service or both is not determinable by any of the preceding rules:

Value of Supply = 110% \times (Cost of production/ manufacture or cost of acquisition of such goods or cost of provision of such services)

Rule 31

RESIDUAL METHOD FOR DETERMINATION OF VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH

Rule

Particulars

31

Where the Value of Supply of Goods or Services or both cannot be determined under rules 27 to 30

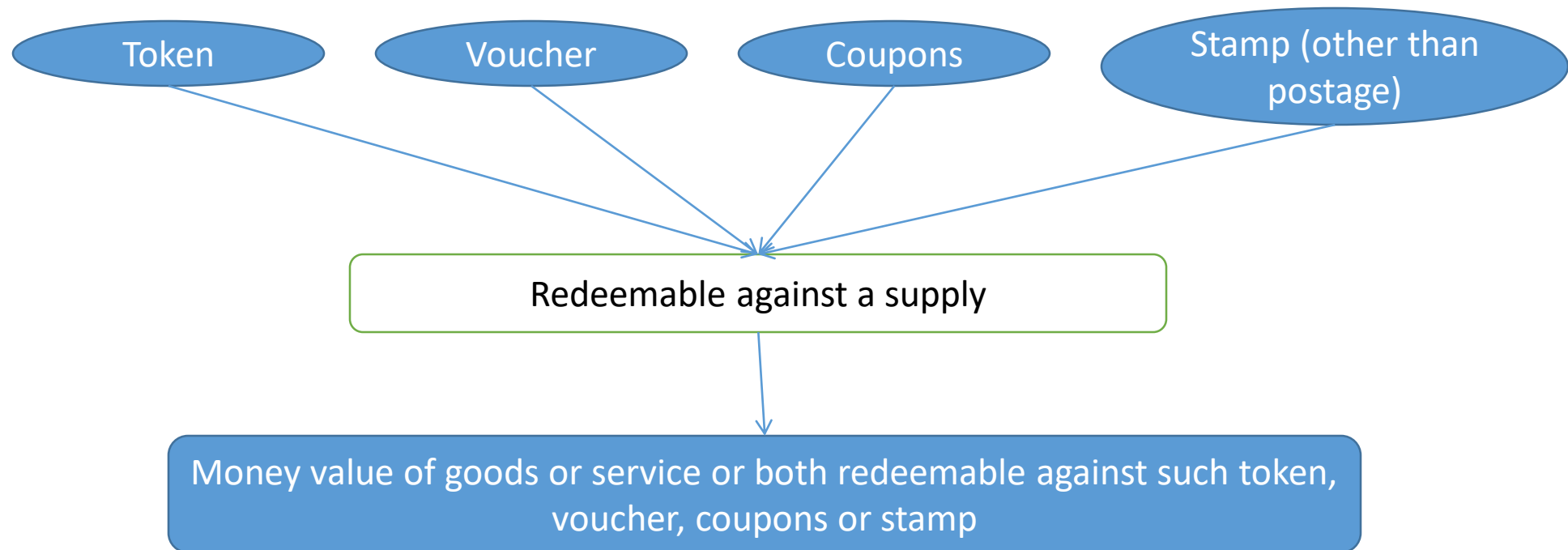
Value of Supply= Value determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter: Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

Rule 31 A

VALUE OF SUPPLY IN CASE OF LOTTERY, BETTING, GAMBLING AND HORSE RACING

Rules	Particulars
31A(2)(a)	Value of Supply of lottery run by State Governments: Value of Supply = 100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher
31A(2)(b)	Value of Supply of lottery authorised by State Governments: Value of Supply 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher
31A(2)(c)	Value of Supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club Value of Supply = 100% of the face value of the bet or the amount paid into the totalisator

Value of token, voucher etc-Sec.12 (4)/13(4) & Rule 32(6)



JOB WORK UNDER GST



INTRODUCTION

Job work sector constitutes a significant industry in Indian economy. It includes outsourced activities that may or may not culminate into manufacture. The term Job-work itself explains the meaning. It is processing of goods supplied by the principal. The concept of job work already exists in Central Excise, wherein a principal manufacturer can send inputs or semi-finished goods to a job worker for further processing. **Many facilities, procedural concessions have been given to the job workers as well as the principal supplier who sends goods for job work.**

Points to be Covered

- Meaning
- Registration
- Nature Of Supply
- Place of Supply
- Return of Goods
- Waste And Scrap

Job Work under GST Regime

Input as well as
Capital Goods

Section 2(68) of the CGST Act, 2017 defines Job Work: –

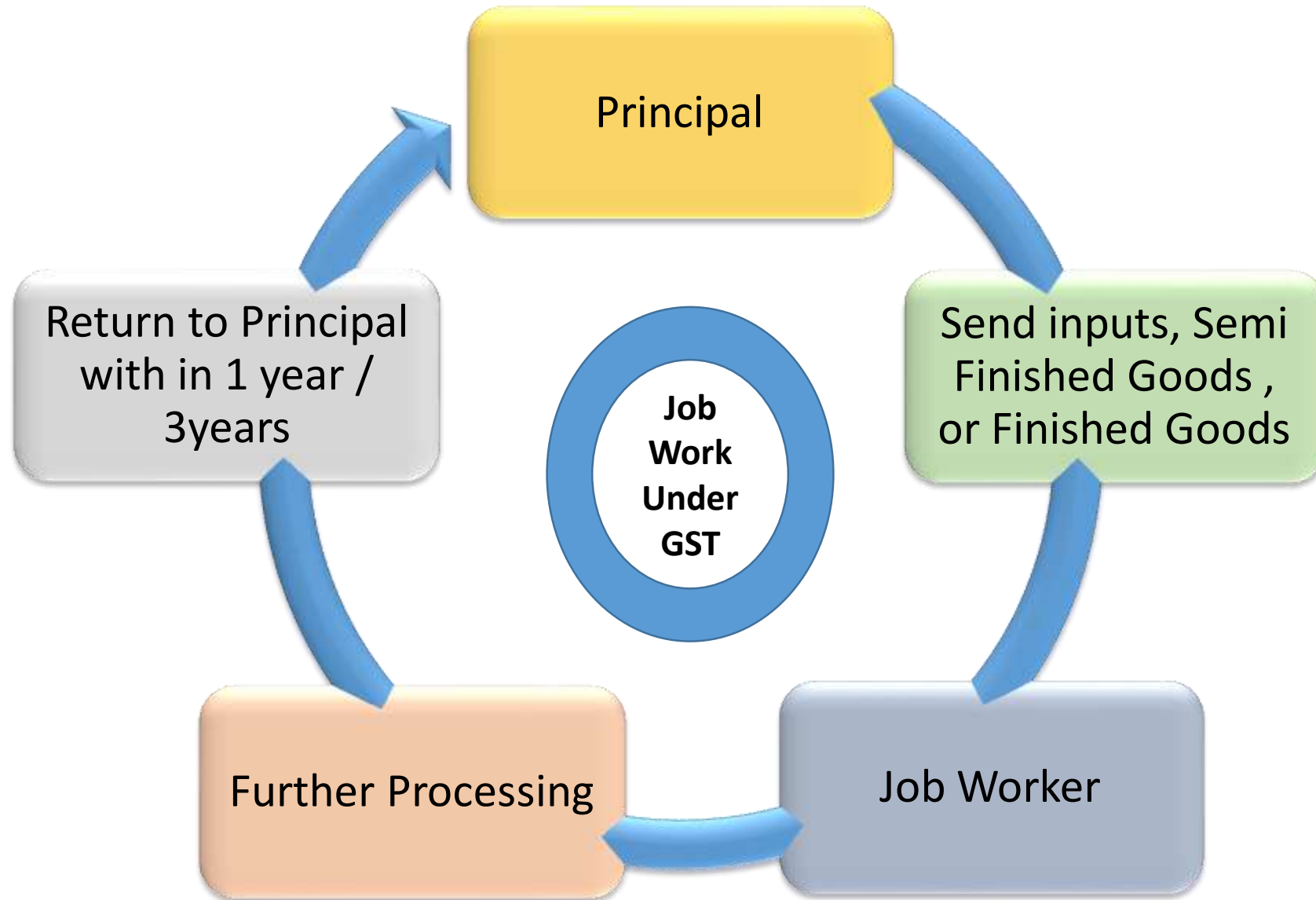
“job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly.

Hence, for treating anything as job work there ought to be: –

- Two persons;
- The goods should belong to another registered person;
- Treatment or process to be undertaken on the said goods shall be by the job worker, whether registered or not.

But even to an unregistered principal, treatment or process may be carried out and that may still amount to manufacture. Now, ‘repair’ seems to be a ‘treatment or process’ but will NOT be ‘job work’. **Principal component must be provided in order for the remainder of the components including conversion to amount to ‘job work’.** If **nothing** is provided except instructions to produce, it does not amount of job work.

Job work should not be interchanged with repair activity as both appear to involve ‘treatment or process’ on goods belonging to another. **Job work brings into existence a functionality that was not in existence whereas repair restores functionality that was already in existence before the article became faulty (and needed repairs).**

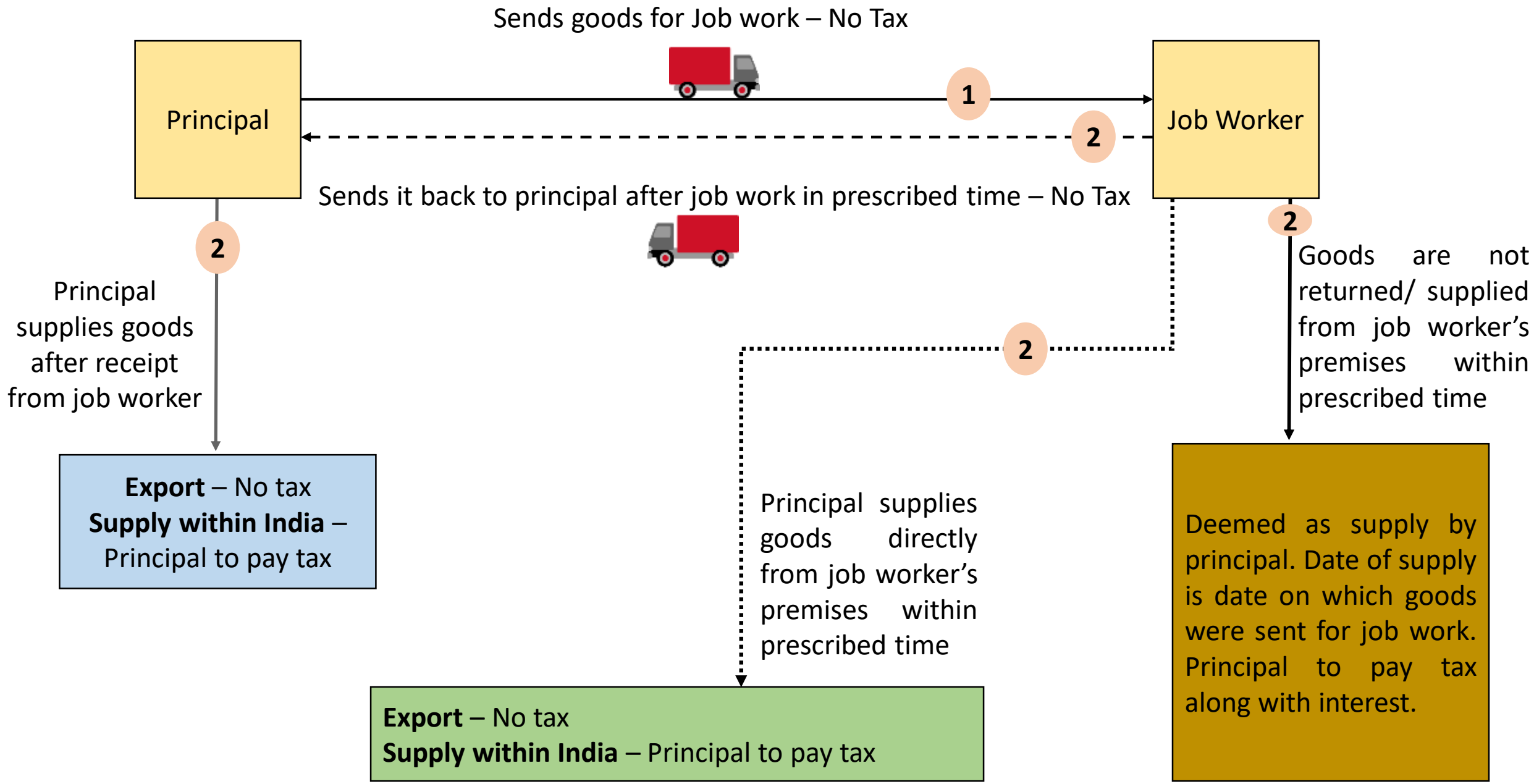


The definition of job work also contemplates that the person i.e. principal should be a registered person. Thus, if some treatment or process is undertaken by a job worker on goods belonging to an **unregistered person**, it will not be considered as job work as per the above definition.

Therefore, in a case where the principal is not a registered person, the activity may not qualify as job work and may be classified as **residual category**, if there is no specific rate prescribed, which may attract a different rate of tax.

As per Schedule II Entry No. 3 which reads: "Any treatment or process which is applied to another person's goods is a supply of services."

However, Schedule II of the CGST Act which specifies activities to be treated as supply of goods or supply of services, inter alia provides that any treatment or process which is applied to another person's goods is a **supply of services**.



Meaning of Principal

Section 2(88) of the CGST Act, 2017 defines principal: –

“Principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;

The law uses the term ‘principal’ in the context of two relationships – one in case of the principal and job worker, and the other in case of principal and agent.

However, in the provisions relating to job work, the term has a separate meaning, the reference of which is separately provided for. **Therefore, one must understand the meaning of the term ‘principal’ wherever else the term finds a mention, as a reference to the principal-agent relationship.**

*It is important to note that the **job worker is not an Agent of the Principal and the relationship inter se is that of Principal to Principal.***

Registration:

- The job worker shall be liable to be registered under GST in the State / Union territory, from where he makes a taxable supply of services, **if his aggregate turnover in a financial year exceeds Rs. 20 lakh/Rs. 10 lakh in special category States.**
- Further, in terms of the **Circular No. 38/12/2018 dated March 26, 2018**, it has been clarified that though Clause (i) of Section 24 of the CGST Act, 2017, mandates registration for making inter-state taxable supply irrespective of threshold limit,
- Vide **Notification No. 10/2017 – Integrated Tax dated October 13, 2017**, exemption from mandatory registration was granted in case of supply of services.
- Hence, a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on **all India basis**, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

Place Of Supply

- So far as job work is concerned, supply for job work charges is governed by section 12 (2) of IGST Act, 2017.
- When the registered job worker and the principal are in different States and goods are removed directly from the place of the job worker :-
 - (i) If the principal (supplier of the goods) and recipient (buyer of the goods) are in the **same State**, then **SGST and CGST** shall be levied, though the job worker is in a different State.
 - (ii) If the principal and recipient are in **different States**, then **IGST** shall be levied, even though the recipient is in the State where the job worker is situated.

Nature Of Supply

- As per entry 3 to **Schedule II**, any treatment or process which is applied to **another person's goods** is a **supply of services**.
- Hence, for the purposes of determining the **value of the job work charges** as per explanation (ii) to section 22 of CGST Act, 2017,
- The value of the **goods supplied by the principal shall be included** in the **aggregate turnover of the Principal**. This means that as the liability to discharge tax under Section 143 would lie on the principal not on the job worker, the job worker would not include the same in his value for the purpose of calculating the threshold limits.
- *But in a case where an **unregistered job-worker receives goods from an unregistered principal** then **this benefit will not be available to him**, the activity may not qualify as job work and may be classified as residual category, and value of the supply of goods of unregistered principal, after completion of job work, by the job-worker shall be treated as the supply of goods by him and the value of such goods shall be included in the aggregate turnover of the job worker. As a result, the job-worker's aggregate turnover may cross the threshold and become liable to be registered.*

Treatment of Waste and Scrap Generated during Job Work

Job Work

If Registered

Then it **can be supplied** by the job worker directly from his place of business, **on payment of appropriate tax** applicable on the said waste / scrap.it

Not Registered

Then the waste / scrap generated should be **returned to the principal** along with the goods and **such waste / scrap would be supplied by the principal** on payment of tax. **Alternatively, the principal may supply waste / scrap directly from premises of the job worker** under **his invoice** on payment of tax.

Quantum of Scrap ?

It might be possible that during the job work, **scrap** may be **generated in less than normal quantity**. In such a case, the department cannot ask for GST on higher value of scrap provided that the principal is not allowing scrap more than what is generated. ***Pearl soap & Co. 187 ELT 460 CESTAT – Mumbai.***

However The principal should also maintain proper records of clearance of waste / scrap from the premises of the job worker

Thank
you!

F. No. CBEC- 20/16/04/2018 – GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 28th June, 2019

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)

The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification regarding applicability of GST on additional / penal interest – reg.

Various representations have been received from the trade and industry regarding applicability of GST on delayed payment charges in case of late payment of Equated Monthly Instalments (EMI). An EMI is a fixed amount paid by a borrower to a lender at a specified date every calendar month. EMIs are used to pay off both interest and principal every month, so that over a specified period, the loan is fully paid off along with interest. In cases where the EMI is not paid at the scheduled time, there is a levy of additional / penal interest on account of delay in payment of EMI.

2. Doubts have been raised regarding the applicability of GST on additional / penal interest on the overdue loan i.e. whether it would be exempt from GST in terms of Sl. No. 27 of notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 or such penal interest would be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) i.e. “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”]. In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarification.

3. Generally, following two transaction options involving EMI are prevalent in the trade:-

- **Case – 1:** X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. However, X gives Y an option to pay in installments, Rs 11,000/- every month before 10th day of the following month, over next four months (Rs 11,000/- *4 = Rs. 44,000/-). Further, as per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional / penal interest amounting to Rs. 500/- per month for the delay. In some instances, X is charging Y Rs. 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional / penal interest amounting to Rs. 500/- per month for each delay in payment.
- **Case – 2:** X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s ABC Ltd. The terms of the loan from M/s ABC Ltd. allows Y a period of four months to repay the loan and an additional / penal interest @ 1.25% per month for any delay in payment.

4. As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the value of supply shall include “*interest or late fee or penalty for delayed payment of any consideration for any supply*”. Further in terms of Sl. No. 27 of notification No. 12/2017-Central Tax (Rate) dated the 28.06.2017 “*services by way of (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services)*” is exempted. Further, as per clause 2 (zk) of the notification No. 12/2017-Central Tax (Rate) dated the 28th June, 2017, “*‘interest’ means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;*”.

5. Accordingly, based on the above provisions, the applicability of GST in both cases listed in para 3 above would be as follows:

- **Case 1:** As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the amount of penal interest is to be included in the value of supply. **The**

transaction between X and Y is for supply of taxable goods i.e. mobile phone.

Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

- Case 2: The additional / penal interest is charged for a transaction between Y and M/s ABC Ltd., and the same is getting covered under Sl. No. 27 of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. Accordingly, in this case the 'penal interest' charged thereon on a transaction between Y and M/s ABC Ltd. would not be subject to GST, as the same would not be covered under notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. The value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST.

6. It is further clarified that the transaction of levy of additional / penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act i.e. “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”, as this levy of additional / penal interest satisfies the definition of “interest” as contained in notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. It is further clarified that any service fee/charge or any other charges that are levied by M/s ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, and accordingly will not be exempt.

7. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

8. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board immediately. Hindi version follows.

(Upender Gupta)
Principal Commissioner (GST)

**F. No. 20/16/04/2018-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing**

New Delhi, Dated the 7th March, 2019

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)

The Principal Director Generals/Director Generals (All)

Madam/Sir,

**Subject: Clarification on various doubts related to treatment of sales
promotion schemes under GST - Reg.**

Various representations have been received seeking clarification on issues raised with respect to tax treatment of sales promotion schemes under GST. To ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the said Act”) hereby clarifies the issues in succeeding paragraphs.

2 It has been noticed that there are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Some of these schemes have been examined and clarification on the aspects of taxability, valuation, availability or otherwise of Input Tax Credit in the hands of the supplier (hereinafter referred to as the “ITC”) in relation to the said schemes are detailed hereunder:

A. Free samples and gifts:

- i It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration. As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the expression “supply”

includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as „supply“ under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as „supply“ under GST, except where the activity falls within the ambit of Schedule I of the said Act.

- ii. Further, clause (h) of sub-section (5) of section 17 of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of „supply“ on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.

B. Buy one get one free offer:

- i. Sometimes, companies announce offers like ‘*Buy One, Get One free*’ For example, „buy one soap and get one soap free“ or „Get one tooth brush free along with the purchase of tooth paste“. As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as „supply“ under GST (except in case of activities mentioned in Schedule I of the said Act). It may appear at first glance that in case of offers like „Buy One, Get One Free“, one item is being „supplied free of cost“ without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as *supplying two goods for the price of one*.
- ii. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

- iii. It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. 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. 5000/-, 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 10000 pieces in a year, get additional discount of 2% if you purchase 15000 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 sub-section (3) of section 15 of the said 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.

D. 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 10000 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 provisions of sub-section (1) of section 34 of the said Act provides as under:
- “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.”*
- iii. Representations have been received from the trade and industry that whether credit notes(s) under sub-section (1) of section 34 of the said Act can be issued in such cases even if the conditions laid down in clause (b) of sub-section (3) of section 15 of the said 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 clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.
- iv. 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 clause (b) of sub-section (3) of section 15 of the said Act are not satisfied.
- v. In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above in para 2 (D)(iii) or by any other means, except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied.
- vi. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Upendar Gupta)
Principal Commissioner (GST)

CBEC-20/16/04/2018-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 28th June, 2019

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)

The Principal Director Generals / Director Generals (All)

Madam / Sir,

Subject: Clarification on various doubts related to treatment of secondary or post-sales discounts under GST - reg.

Circular No. 92/11/2019-GST dated 7th March, 2019 was issued providing clarification on various doubts related to treatment of sales promotion schemes under GST. Post issuance of the said Circular various representations have been received from the trade and industry seeking clarifications in respect of tax treatment in cases of secondary discounts or post sales discount. The matter has been examined in order to ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the CGST Act”) clarifies the issues in succeeding paragraphs.

2. For the purpose of value of supply, post sales discounts are governed by the provisions of clause (b) of sub-section (3) of section 15 of the CGST Act. It is crucial to examine the true nature of discount given by the manufacturer or wholesaler, etc. (hereinafter referred to as “the supplier of goods”) to the dealer. It would be important to examine whether the additional discount is given by the supplier of goods in lieu of consideration for any additional activity / promotional campaign to be undertaken by the dealer.

3. It is clarified that if the post-sale discount is given by the supplier of goods to the dealer without any further obligation or action required at the dealer’s end, then the post sales discount

given by the said supplier will be related to the original supply of goods and it would not be included in the value of supply, in the hands of supplier of goods, subject to the fulfilment of provisions of sub-section (3) of section 15 of the CGST Act. However, if the additional discount given by the supplier of goods to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc., then such transaction would be a separate transaction and the additional discount will be the consideration for undertaking such activity and therefore would be in relation to supply of service by dealer to the supplier of goods. The dealer, being supplier of services, would be required to charge applicable GST on the value of such additional discount and the supplier of goods, being recipient of services, will be eligible to claim input tax credit (hereinafter referred to as the "ITC") of the GST so charged by the dealer.

4. It is further clarified that if the additional discount is given by the supplier of goods to the dealer to offer a special reduced price by the dealer to the customer to augment the sales volume, then such additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by dealer to the customer. This additional discount as consideration, payable by any person (supplier of goods in this case) would be liable to be added to the consideration payable by the customer, for the purpose of arriving value of supply, in the hands of the dealer, under section 15 of the CGST Act. The customer, if registered, would be eligible to claim ITC of the tax charged by the dealer only to the extent of the tax paid by the said customer to the dealer in view of second proviso to sub-section (2) of section 16 of the CGST Act.

5. There may be cases where post-sales discount granted by the supplier of goods is not permitted to be excluded from the value of supply in the hands of the said supplier not being in accordance with the provisions contained in sub-section (3) of section 15 of CGST Act. It has already been clarified vide Circular No. 92/11/2019-GST dated 7th March, 2019 that the supplier of goods can issue financial / commercial credit notes in such cases but he will not be eligible to reduce his original tax liability. Doubts have been raised as to whether the dealer will be eligible to take ITC of the original amount of tax paid by the supplier of goods or only to the extent of tax payable on value net of amount for which such financial / commercial credit notes have been received by him. It is clarified that the dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount received by him through issuance of financial / commercial credit notes by the supplier of goods in view of the provisions contained in second proviso to sub-rule (1) of rule 37 of the CGST Rules read with

second proviso to sub-section (2) of section 16 of the CGST Act as long as the dealer pays the value of the supply as reduced after adjusting the amount of post-sale discount in terms of financial / commercial credit notes received by him from the supplier of goods plus the amount of original tax charged by the supplier.

6. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

7. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Upender Gupta)
Principal Commissioner (GST)

F.No. CBEC – 20/06/03/2019 – GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, the 3rd October, 2019

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners
of Central Tax (All)

The Principal Director Generals / Director Generals (All)

Madam / Sir,

Subject: Withdrawal of Circular No. 105/24/2019-GST dated 28.06.2019 – **reg.**

Kind attention is invited to Circular No. 105/24/2019-GST dated 28.06.2019 wherein certain clarifications were given in relation to various doubts related to treatment of secondary or post-sales discounts under GST.

2. Numerous representations were received expressing apprehensions on the implications of the said Circular. In view of these apprehensions and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, hereby withdraws, *ab-initio*, Circular No. 105/24/2019-GST dated 28.06.2019.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Hindi version will follow.

(Yogendra Garg)
Principal Commissioner (GST)
