

***VALUATION OF TAXABLE SUPPLY  
UNDER REVISED GST LAW  
& VALUATION RULES  
UNDER DRAFT MODEL GST LAW  
FEW THOUGHTS***

# VALUE OF TAXABLE SUPPLY – Sec 15

- For any levy / tax, apart from Taxable person, Taxable Event, Taxable rate - measure of tax i.e. *value is necessary*  
If valuation fails levy not intended..
- **Charging Section - S.8 of CGST / SGST Act provides for levy of GST –**
  - (1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services *on the value determined under section 15.*

# GST CONCEPTS - VALUATION

## Transaction Value (TV) Inclusions

Any taxes, duties, cesses, fees and charges levied under any other statute

**Any sum charged** for anything done in respect of supply **at the time of or before delivery of goods**

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

Subsidies directly linked to price excl. subsidies provided by CG and SG

## TV Exclusions

**Discount recorded in the invoice**

**Post supply discount not be included, if:**

- Established as per the agreement and linked to invoices
- ITC has been reversed by the recipient of supply

## Valuation Rules\*

### Applicable when

- Consideration is not in money terms;
- Parties are related
- TV declared is not reliable

If TV cannot be determined, the Valuation Rules to be applied sequentially as:

- Value by comparison
- Computed value method
- Residual method
- Rejection of Declared Value
- Valuation in specific cases like Pure agent, Money changer etc.

\* Valuation Rules as prescribed in Model GST Law released in Jun'16.

# VALUE OF ALL SUPPLIES

- Value of (?) Supply = Transaction Value (TV)  
= Price actually Paid / Payable for said supply
- 2 Conditions
  - ✓ Supplier & recipient **not related**
  - ✓ Price is sole consideration for supply
- TV *subject to inclusions and exclusions*
- ***Where Value cannot be ascertained-*** the Value of Supply of Goods and Services may be determined as may be prescribed.

# PRICE ACTUALLY PAID OR PAYABLE

- The words Price actually paid or payable – not defined-
- Hon'ble SC in the case Purolator India Ltd- 2015 (323) ELT 227 (SC)- para 18-

*The expression “actually paid or payable for the goods, when sold” only means that whatever is agreed to as the price for the goods forms the basis of value, whether such price has been paid, has been paid in part, or has not been paid at all. The basis of “transaction value” is therefore the agreed contractual price. Further, the expression “when sold” is not meant to indicate the time at which such goods are sold, but is meant to indicate that goods are the subject matter of an agreement of sale..*

# PRICE FOR SAID SUPPLY - NEXUS

- Value under :
  - Sec 4 CEA - price for the goods
  - Sec 67 – charged by SP for such service...
  - Sec 15-GST- price for said supply of goods/service....

Larger Bench decision in *Bhayana Builders* case [2013 (32) [S.T.R.](#) 49 (Tri.-LB.)] and held that the value of goods/materials supplied free by the service recipient for providing services was not includible in the gross amount **charged by the service** provider under Section 67 of the Finance Act, 1994 read with Notification No. 1/2006-S.T.

# INTERCONTINENTAL CONSULTANTS & TECHNOCRATS PVT. LTD.[ 2013 (29) S.T.R. 9 (Del.)]

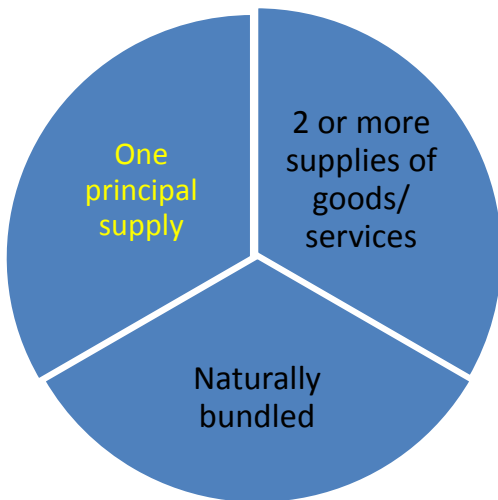
- It is inbuilt mechanism to ensure that only taxable services shall be evaluated under Section 67 ibid, where under value of taxable service is gross amount charged by service provider **‘for such service’**.
- Expenditure/costs like air travel, hotel stay, etc., are not includible in gross taxable value of services. Only value of service rendered as consulting engineer could be brought to charge

# COMPOSITE SUPPLY

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## Section 2(27)

*“Composite supply” means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, or any combination thereof, which are **naturally bundled** and supplied in conjunction with each other in the ordinary course of business, one of which is a **principal supply***



## Section 2(78)

*“Principal supply” means the supply of goods or services which constitutes the **predominant element** of a composite supply and to which any other supply forming part of that composite supply is ancillary and does not constitute, for the recipient an aim in itself, but **a means for better enjoyment of the principal supply***

### **Example:**

Indian Airlines provides passenger transportation service. They also supply food on board to passengers. Supply of transportation services would be the principal supply and the service as a whole would qualify as composite supply.

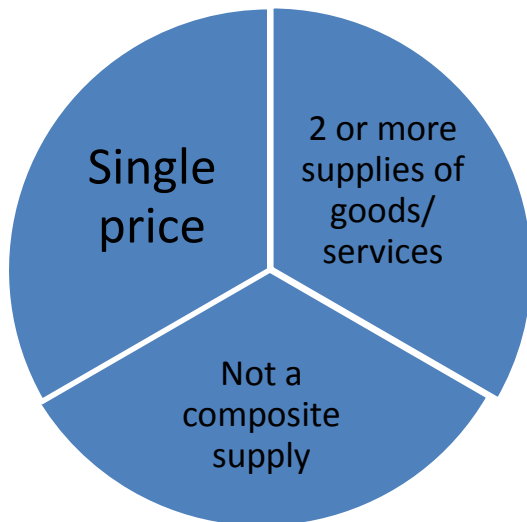


# MIXED SUPPLY

## Section 2(66)

*“Mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply*

**Examples:** Supply of soap bars where soap boxes are given free of cost; supply of wheat for which a bottle of honey is given free of cost.



In the above example of honey being supplied with wheat, both wheat and honey will be taxed at the rate of tax applicable for honey (being commodity **taxed at higher rate**).

# TRANSACTION VALUE (TV) INCLUSIONS

Any taxes, duties, **cesses**, fees and charges *levied* under any other statute – except GST Acts - *if charged* separately by supplier

Such taxes would be included if levied & charged

- It does not say actually paid/payable –
- Taxes which are not subsumed in GST would continue to be levied –included in VALUE for paying GST.

# TAXES OVERVIEW

Taxes subsumed  
– will not be  
included in Value  
of supply

## CENTRAL TAXES

- ▶ Excise Duty
- ▶ Excise Duty levied under the Medicinal & Toiletries Preparation Act
- ▶ CVD
- ▶ SAD
- ▶ Service tax
- ▶ CST
- ▶ Surcharges & Cesses (relating to supply of goods & services)

## STATE TAXES

- ▶ VAT
- ▶ Entry tax / Octroi
- ▶ Luxury tax
- ▶ Tax on entertainment and amusement not levied and collected by Panchayat / Municipality / Regional Council / District Council
- ▶ Taxes on lottery, betting & gambling
- ▶ State cesses & surcharges (relating to supply of goods & services)

Taxes not  
subsumed – will  
be included in  
the value of  
supply.

## CENTRAL TAXES

- ▶ Basic Customs Duty
- ▶ Export Duties
- ▶ Clean Energy Cess
- ▶ Customs Cess

## STATE TAXES

- ▶ Stamp Duties
- ▶ Taxes on consumption or sale of electricity
- ▶ Taxes on goods and passengers carried by road or on inland waterways
- ▶ Taxes on vehicles
- ▶ Taxes on professions, trades, callings and employments
- ▶ Tax on entertainment and amusement levied and collected by Panchayat / Municipality / Regional Council / District Council

# TAXES LEVIED /CHARGED-INCLUDED

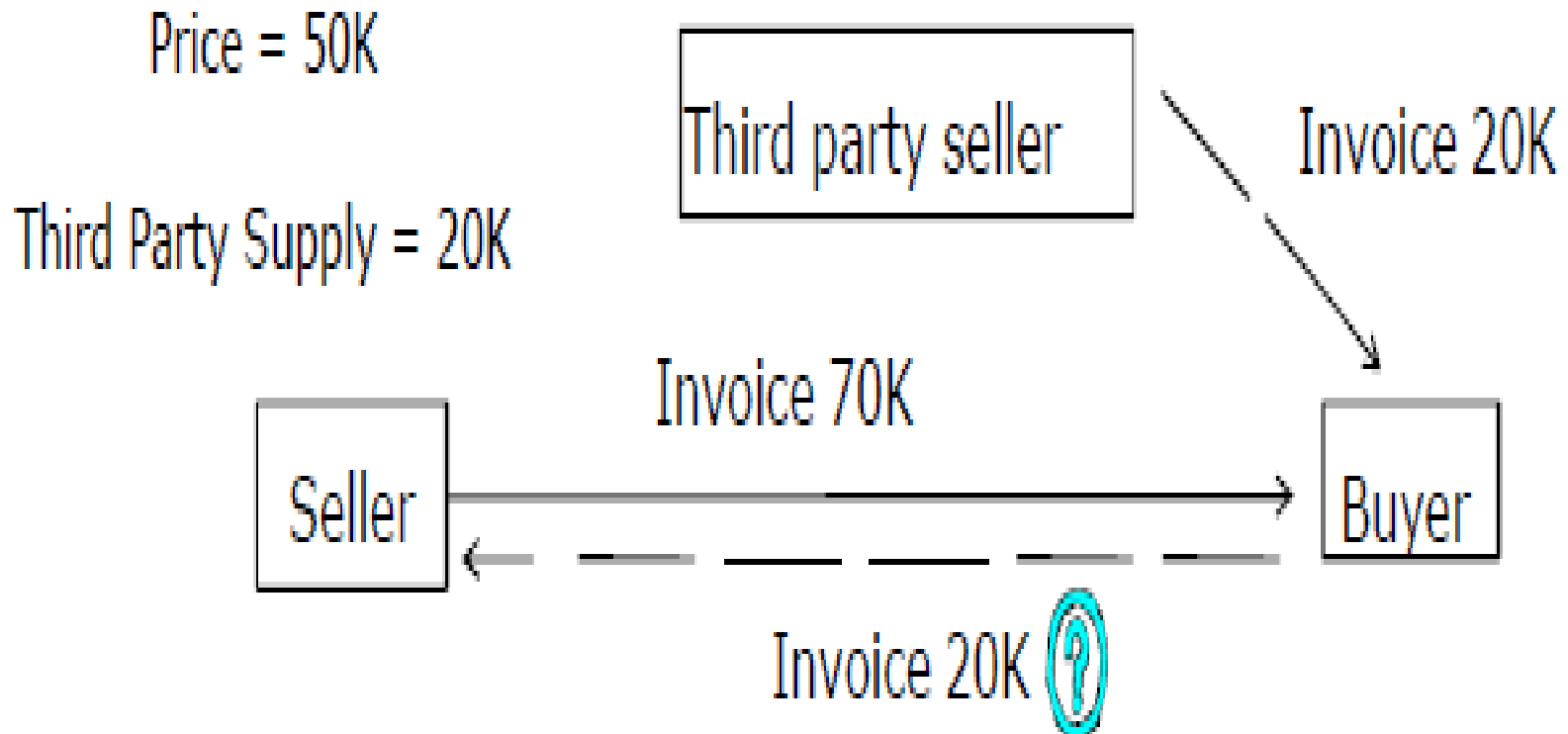
- Taxes levied under any acts except GST, if charged separately. ( **whether paid /or not**)
- Hon'ble SC- Super Synotex (India) Ltd- 2014 (301) ELT 273 (SC)- interpreted words taxes actually paid for exclusion- Sales Tax Incentive Scheme permitting assessee to retain 75% of sales tax collected as incentive and making them liable to pay 25% to Department - *HELD* : Impugned scheme was incentive scheme and not an exemption - In case of exemption, sales tax is neither collectable nor payable and if still assessee collects any amount on head of sales tax, that would **become price of goods** - Amount retained by assessee had to be treated as price of goods under basic fundamental conception of “transaction value” as substituted w.e.f. 1-7-2000 in Section 4 of Central Excise Act, 1944

# INCLUSIONS IN TRANSACTION VALUE

**Any sum that supplier is liable to pay in respect of supply – incurred by recipient of supply – if not included in price**

- Door delivery sale but freight paid by buyer?
- Interior contractor using electricity and water of client?
- Customized tiles provided by the buyer of flat?
- Value of free / Reduced rate supplies by recipient for use in supply to the extent not included in price ?
- Cement / steel supplied by recipient for construction of plant included in price ?

# LIABILITY OF SUPPLIER IN RELATION TO SUPPLY



*Clue: To see whether its part of suppliers cost or his liability to pay –*

# INCLUSIONS IN TRANSACTION VALUE

- Incidental expenses such as Commission, packing charged by supplier to recipient of supply, including any amount charged for anything done by supplier at the time of, or before delivery of the goods, or as the case may be supply of service.
- Commission payable by the recipient to agent of supplier while settling its dues for supply of goods/services.  $(900+100)=1000$
- Gift packing / special packing etc - separately charged
- Machine sold on as is where is basis - dismantling done by buyer- ??
- To be included in TV - Only if **charged-**

# INCLUSIONS IN TRANSACTION VALUE

- ✓ Subsidies directly linked to the price excluding subsidies provided by Central /State Govt –
  - Subsidy received by seller is included and
  - not when received by buyer

NGO's paying subsidy for using smoke free Chulha

Private person subsidizing installation of wind mills/electricity lamps/ environment friendly/saving devices etc.

- ✓ Interest /late fee/penalty for delayed payment of consideration for any supply- irrespective whether recovered /charged – GST would be payable.



# ISSUES

- Compensation for delay in supply of goods deducted by buyer under a price variation clause, whether called penalty or liquidated damages is reduction from price – resultant price (reduced price) is transaction value. [*CCE vs. Victory Electricals Ltd.* (2013) 298 ELT 534 (Tri.-LB)]

[Argument - Not consideration for tolerating an act by buyer].

- Warranty
  - Repairs during warranty period not separately charged – no separate supply.
  - Optional extended warranty supplied for a price – not price of goods [*Ford India Pvt. Ltd. v. CCE* (2006) 212 ELT 44 (Tri.-Chennai)]. But it would be supply of services.



# ISSUES

## DISCOUNT

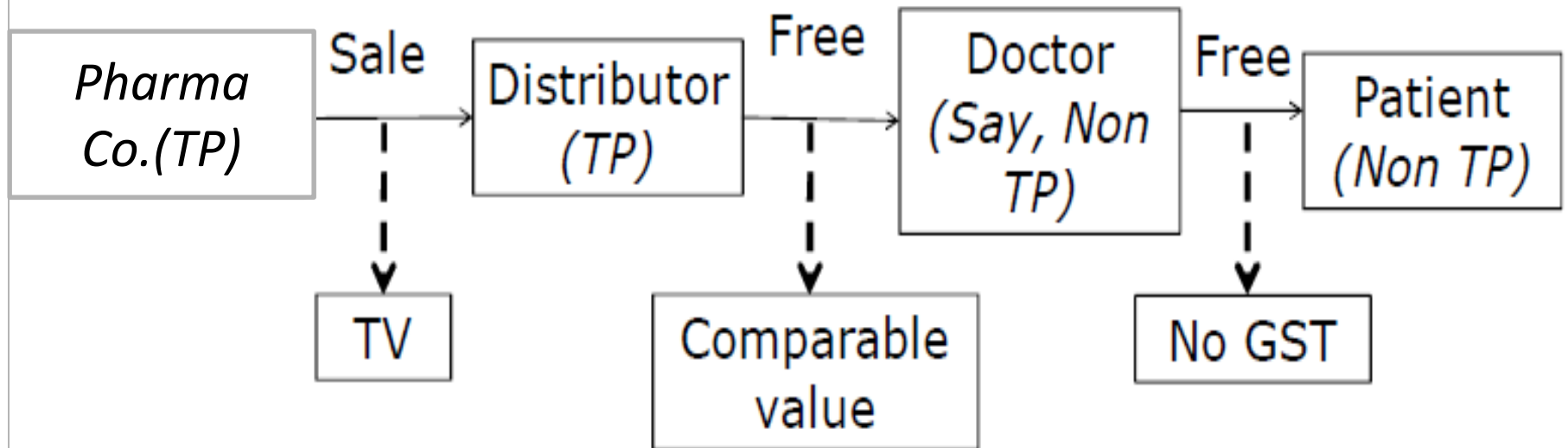
- Various Discounts – Trade discount, Cash discount, Volume discount, etc. – criteria is whether contemplated and agreed at or before time of supply – If yes, deductible – If not, includible.
- Additional incentive given to a prestigious distributor to promote manufacturer's product – discount [Dy. CST vs. Motor Industries (1983) 53 STC 48 (SC)]
- Meeting distributor's expenses of advertising – Trade Discount [Philips India Ltd. v. CCE (1997) 91 ELT 540 (SC)]; **Contra** Torrent Pharmaceuticals Ltd. v. CST (2015) 39 STR 97 (Tri.-Ahmd.) – held, distributor providing promotion services to manufacturer.

**Safer, in B2B transaction – distributor to raise invoice and manufacturer takes credit**

# ISSUES

- Provision in GST Law to be made for conversion of foreign currency to Indian Currency.
- Separate disclosure required to be made in invoice where supplies are valued by supplier under comparable / computed / residual value method
  - complicated in case of free supply – Invoice to be issued 
- Market penetration pricing – may have to value by comparable value / computed value
- Promotional schemes – buy 2 get 1 free – Free item maybe liable
- Notice pay recovery 
- Inclusive of tax – method to be provided

# PHYSICIAN SAMPLES



*TP = Taxable Person*

# ABSENT REVISED VALUATION RULES-??

Category to be valued	Possible method
Reverse Charge - Goods	Section 5(1) IGST act - Proviso - IGST payable on value as per Section 15 GST Act – could be either FOB or CIF basis including Customs duty.
Reverse Charge - Services	Main Section 3(4) r/w 5(1) (2) IGST act - - IGST payable on value as per Section 15 GST Act-
Stock transfer-interstate No transfer of property/ title. Jobwork w/o Sec 55	Could be price of identical goods supplied to unrelated person about the same time of supply. ITC could be an issue- it would be supply of service- Sec 16(2)2 <sup>nd</sup> proviso of GST Act- in absence of payment to supplier by branch.
Warranty with purchase of goods	GST would have been paid at the time supply of goods. When repairs are carried out by dealer free of charge – using goods or otherwise ? If product is replaced -
Extended warranty	GST is paid on service – When repairs are carried out by dealer free of charge – using goods or otherwise ? If product is replaced -

# ABSENT REVISED VALUATION RULES-???

Category to be valued	Possible method
Goods /services used for personal consumption	If Capital goods – Sec 18(10) GST- reduced value or TV whichever is higher Other then Capital goods – seems equivalent ITC needs to be reversed.
Goods lost, stolen, destroyed, written off, disposed by way of gift/free sample.	Same as above
Permanent transfer/disposal of business assets if Input tax credit [ITC] taken	Same as above
Barter /part consideration in kind / Monetary value of any ACT or forbearance.	???
Exchange /Replace /Free quantity	Could be price of identical goods supplied to unrelated person about the same time of supply.

# ABSENT REVISED VALUATION RULES-??

Category to be valued	Possible method
Supply to related person including employee – relationship has influenced the price	Could be price of identical goods supplied to unrelated person about the same time of supply or Cost plus fixed margin -
Undervaluation of Goods/ Services	Could be price of identical goods supplied to unrelated person about the same time of supply –subject to litigation.

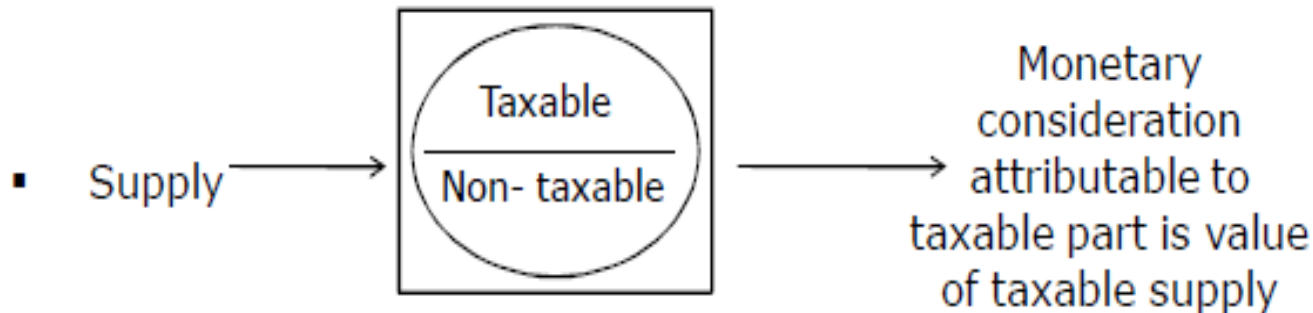
# VALUATION RULES, 2016- JUNE VERSION

- Provisions for – Method of Valuation
- Transaction Value (TV) [R.3]
- If TV Not Available - 3 Methods To Be Applied Sequentially
  - ✓ Comparable Value [R.4]
  - ✓ Computed Value [R.5]
  - ✓ Residual Value [R.6]
- Rejection of Declared Value [R.7]
- Valuation in Specified Cases [R.8]
- Pure Agent (For Services)
- Money Changer





## Transaction Value Method [Rule 3]

- Transaction value to be determined in monetary terms.

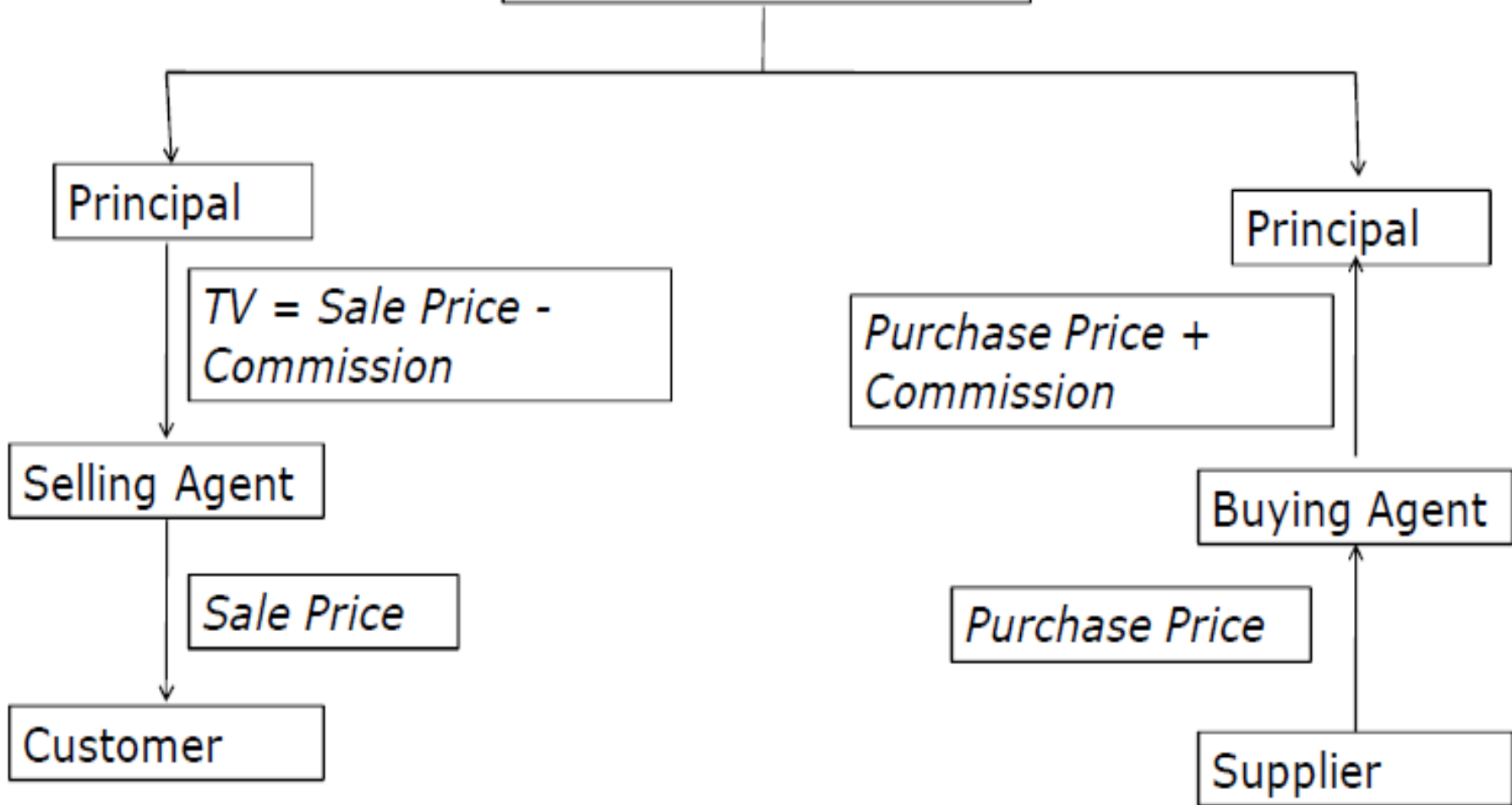



- Supplier and recipient related – price paid / payable for supply is value ***if price not influenced by relationship***
  - Onus to prove that declared value is not true transaction value is on department [CC v. Prodelin India (P.) Ltd. (2006) 202 ELT 13 (SC)]
  - If department has reason to doubt, procedure under rule 7 has to be followed.
  - Prices for supply to unrelated buyers good evidence [Sew – Curodrive (I) Pvt. Ltd. v. CC (2012) 284 ELT 294 (Tri.-Del.)]

- If price of supply is adequate to cover cost *plus* profits representative of the supplier's overall profit realised over a representative period of time (e.g. on annual basis) – good evidence [Interpretative Note to rule 3(3) of Customs Valuation Rules, 2007].
  
- Transaction value to be applied to transfer of **goods** -
  - from one place of business to another place of same business [*intra* or inter state]
  - Between agent and principal *inter se* [intra or inter state]
  - Is transfer of goods from one place of business to another a taxable supply [FAQs say 'yes' for inter state] 
  - What would be the transaction value since goods are supplied without consideration 

N.B. Not applicable to **services**

# Agent Transactions




Commission - Taxable 

## Comparable Value Method [Rule 4]

- Value to be determined on the basis of transaction value of goods/services of “like kind and quality” supplied at or about the same time to other customers.
- “Goods of like kind and quality” means [Rule 2(1)(b)]:
  - Goods identical or similar in physical characteristics, quality, **reputation** and functionality or are commercially interchangeable
  - Supplied by same or different persons
- “Services of like kind and quality” means [Rule 2(1)(c)]
  - Services which are identical or similar in nature, quality and **reputation**
  - Supplied by same or different persons.

# Comparable value method Contd....

- Value of comparable goods / services to be adjusted by proper officer taking into consideration '**relevant factors**' including:
  - Difference in **dates** of supply
  - Difference in **commercial / quantity** levels
  - Difference in composition, quality and design
  - Difference in freight and insurance charges depending on place of supply
- If goods are customised to the buyer, comparison of contemporaneous imports of similar goods or identical goods does not arise [CC v. Kwang Sung Brake India Pvt. Ltd. (2016) 335 ELT 520 (Tri.-Mad.)]
- Valuation of services – Challenge – services – intangible, varied, diverse and personality centric 



## Computed Value Method [Rule 5]

- To apply if comparative value cannot be determined
- Computed value to include the following:
  - Cost of production, manufacture or processing of the goods or, the cost of provision of services
  - Charges, if any, for the design or brand
  - Profit and general expenses usually reflected by other suppliers supplying the same class or kind of goods/services.
- Very difficult for services predominantly intellectual.
- Cost certificate of Cost Accountant / CA / Govt. approved valuer to be given due consideration [CBEC Circular No.37/2007 – Cus dated 9.10.2007 in the context of Customs]

# Residual Method [Rule 6]

- To apply if comparable / computed value cannot be determined
- Value to be determined consistent with principles and general provisions of Valuation Rules

## **Procedure for Rejection of declared transaction value [Rule 7]**

- If officer has reasons to doubt the truth or accuracy of declared value, he may ask the supplier to submit further documents and information.
- Considering the information or in the absence of response from supplier, if officer still has reasonable doubt about the truth or accuracy then
  - he shall intimate in writing to supplier the grounds for his doubt;  
and
  - provide reasonable opportunity of being heard
- If after hearing he is not satisfied, he may proceed to determine the value in accordance with provisions of Rule 4, 5 or 6 proceeding sequentially.



***Reasons for doubting the value may include the following situations but many more possible .....***

- Comparable supplies are at significantly higher value
- Declared value significantly lower or higher than Market value of supplies
- Mis-declaration of goods and/ or services in parameters such as description, quality, quantity, year of manufacture or production

# Value in Specified Cases [Rule 8]

- Pure Agent for services
- Money Changer
- Insurer
- Air Travel agent
- Lottery distributor / selling agent

**Rules for Insurer, Air Travel Agent and Lottery**

**Distributor / Selling Agent yet to be drafted**

# PURE AGENT- SERVICE PROVIDER

- Recovery of reimbursements by service provider excludible if incurred as a *pure agent* & ***all other conditions satisfied*** :
  - ☐ SP pays as a *pure agent*
  - ☐ SR **uses the goods** /services
  - ☐ SR liable to pay
  - ☐ SR authorises SP to make payment
  - ☐ SR knows goods / services shall be provided by the third party
  - ☐ SP indicates payment separately in his invoice
  - ☐ No profit
  - ☐ Payments in addition to own services [C+R]

**[SP = Service provider; SR = Service recipient]**

“Pure agent” means an agent who -

- Contracts with SR for incurring expenditure
- Holds no title to the goods / services procured
- Does not use such goods / services
- Receives only actual amount charged

# Thank You



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**For any Clarification, Please Contact**

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