

Valuation & Time of Supply

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Coverage Today

- GST Today- Relevant to Valuation
- Valuation in GST
- Valuation Alternatives
- Issues with Relevant Landmark Judgments –Customs/ CE/ ST
- Time of Supply
- Q/A – 30 Minutes.



Valuation
In GST

Pre-requisite of Taxation

- 4 essential conditions
 - Subject matter of levy
 - Person to be taxed
 - Rate
 - Value on which tax to be calculated.
- Mathuram Agrawal v. State of MP [1999 (8) SCC (667)]
- Govind Saran Ganga Saran v. Commissioner of Sales tax and others [1985 (60) STC (1)]
- Levy fails when Valuation is not provided
 - CIT, Bangalore v. B.C.Srinivasa Shetty (1981) 128 ITR 294 (SC)
 - Suresh kumar Bhansal Vs Union of India & ORS (2016-TIOL-1077-HC-DEL-ST)

Structure of Law

- Section 15(1) - Basic Valuation Provision
- Section 15(2) – Mandatory Inclusions
- Section 15(3) – Exclusions.
- Section 15(4) – Go to Rules
- Section 15(5) – For Certain Supply, directly go to Rules and don't look at Transaction Value.

Transaction Value – 15 (1)

- Transaction Value = Price actually paid or payable
- Conditions
 - Buyer and Seller Not related
 - Price being the sole consideration
- In case cannot be determined – Rules
 - Rule 27 – Consideration in Money + Kind
 - Rule 28 – Related Party
 - Rule 29 – Supply through / to Agents
 - Rule 30 – Cost + 10%
 - Rule 31 - Residual
 - Rule 31A – Lottery
 - Rule 32 – Forex, Air Ticket, LIC, Second Hand Goods, etc.
 - Rule 33 – Pure Agent

- **Commissioner of Customs, Tiruchirapalli v. Hindustan Lever Ltd.** 2015 325 ELT 7 SC has observed that the provisions of valuation rules are subject to main provisions and valuation under the rules could be resorted only when the transaction value was not available.

Related Party

- Explanation to Sec. 15
- Officers or **directors** of one another's businesses;
- Legally recognised **partners** in business;
- **Employer and employee**;
- any person directly or indirectly owns, controls or holds **25% or more** of the outstanding **voting stock** or shares of both of them;
- **One** of them directly or indirectly **controls the other**;
- **Both of them** are directly or indirectly **controlled by a 3rd person**;
- **Together they** directly or indirectly **control a third person**; or
- They are members of the **same family**;

Transaction between related person

➤ Comparison between various laws:

GST	Customs	Excise
<p>The value of a supply shall be the transaction value, which is the price actually paid or payable for the said supply where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.</p>	<p>Value of goods shall be the transaction value that is to say the price actually paid or payable for the goods where the buyer and seller of the goods are not related and price is the sole Consideration</p>	<p>Value shall be the transaction value in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;</p>

Transaction between related person

- In the case of **Commissioner of Customs, Mumbai v. Clariant (India) Limited [2007 (210) E.L.T. 481 (S.C)]**, the Apex Court ruled that merely because the two parties are related to each other, it will not amount to undervaluation per se. It will depend on the facts and circumstances of each individual case to decide whether the relationship had influenced the price.
- In the case of **CC v. Prodelin India P. Ltd. 2006 (202) ELT 13 SC**, it was held that if the buyer can demonstrate that the relationship did not influence the price, the transaction value shall be accepted.
- In the case of **CCE v. Acorn Engg Ltd. (2005) 181 ELT 175 (SC)**, it was held that merely because the buyer is a holding company and a related person of the manufacture, by itself does not show that the invoice price is an influenced one, particularly when the manufacturer is also selling the same goods at the same price to other independent parties.

Transaction between related person

- In the case of **Commissioner of Central Excise, Hyderabad v. Detergents India Ltd. [2015 (318) E.L.T. 559 (S.C)]**, the Apex court ruled on the phrase "*where the buyer is not a related person and the price is the sole consideration for the sale*" as follows:

*As far as arm's length transactions are concerned, it is clear that where the price is the sole consideration for the sale and is not a specially low price because of extra commercial considerations, even where a buyer is a related person, the normal price mentioned in Section 4(1)(a) post the 1973 amendment would apply. The expression "**where the buyer is not a related person and the price is the sole consideration for the sale**" is to be read conjunctively as meaning that because the buyer is a related person, the price usually ceases to be the sole consideration for the sale. Where it is shown that even in the case of a buyer who is a related person, the price is the sole consideration for the sale and is not a specially low price because of extra commercial considerations, such price would fall within Section 4(1)(a) as the price of the taxable goods to be taken into consideration for arriving at "normal price".*

Price

- Kohler dictionary of accountants defines Price as the money consideration asked for or offered in exchange for a specified unit of a good or service. In accounting, it is the amount received or receivable or the amount paid or payable for a good or service in either case less discount.
- As per Chamber's Dictionary, 'Price means the amount, usually in money, for which a thing is sold or offered, what must be given up or suffered in gaining something'.
- Apex Court in the case of Jayam and Company vs Assistant Commissioner & ANR, it was held that *it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis.*

Price is the sole consideration

- In the case of **Commissioner of Central Excise, Mumbai v. FIAT India Pvt. Ltd [2012 (283) E.L.T. 161 (S.C.)**, the Apex Court did not agree that the transaction value cannot be accepted for the purpose of levy of excise duty where the products are sold at considerable losses for an unduly long period of time for the purpose of market penetration. The Court further stated in para 50 of the said judgement that there are two instances where a manufacturer may sell goods at a price lower than the cost of manufacture and profit, and yet the declared value can be considered as normal price. These instances are when the company wants to switch over its business or where a manufacturer has goods which could not be sold within a reasonable time. The Hon'ble Court has further held that these examples are not exhaustive.

Price is the sole consideration

- In the case of **C.C.E. & S.T. Noida v. Sanjivani Non-Ferrous Trading Pvt. Ltd. [2019 (365) E.L.T. 3 (S.C)]**,
- *The normal rule was that the assessable value has to be arrived at on the basis of the price which was actually paid, and that was mentioned in the Bills of Entry. The Tribunal has clearly mentioned that this declared price could be **rejected only with cogent reasons** by undertaking the exercise as to on what basis the Assessing Authority could hold that the paid price was not the sole consideration of the transaction value. Since there is no such exercise done by the Assessing Authority to reject the price declared in the Bills of Entry, Order-in-Original was, therefore, clearly erroneous.*
- This case has been relied on by the Apex Court while passing the Order in the case of **Century Metal Recycling Pvt. Ltd. v. Union of India [2019 (367) E.L.T. 3 (S.C.)]**.

Price is the sole consideration

➤ In the case of **Naturally Yours Cosmetics Ltd. (NYCL) vs Commissioner of Customs and Excise (UK) [1988 (3) BVC 428]**

➤ **Facts:**

NYCL carries on the business as a wholesaler of cosmetic products for resale by the retailer (Beauty Consultants). One of the methods of promotion adopted by NYCL is, the retailer arranges for the private parties in which NYCL's products are offered for sale. For facilitating this service, NYCL will supply one of its products at a lower price to the retailer.

➤ **Issue:**

The issue is whether such product is to be valued at such lower price or at a normal price at which the product is sold commercially.

Price is the sole consideration

Analysis:

- The court held that the basis of assessment for a service is everything which makes up the consideration for the service therefore there should be a **direct link between the service provided and the consideration received** if the supply of a service is to be taxable. In the instant case it is apparent from the Order for reference that a feature of the NYCL sales method is that retailer operate at private parties which they organize through hostesses. That is why, it is said, NYCL agrees to sell the product at a very low price. Moreover, it became apparent at the hearing that where the beauty consultant, being unable to find a hostess to organize a party, does not provide the envisaged service, the product must be returned or paid for at the normal wholesale price.

Judgement:

- The taxable amount is the sum of the monetary consideration and the value of the service provided by the retailer. The value of that service must be regarded as being equal to the difference between the price actually paid for that product and its normal wholesale price. ¹⁶

Valuation in case of free supplies

- In the case of **Commissioner of C.Ex., Bangalore v. Himalaya Drug Company [2015 (324) E.L.T. 9 (S.C.)]**, the Apex Court ruled while deciding on the contention of the Department that since the face wash gel is sold free along with dandruff shampoo, the value/price of face wash gel should also be included in the transaction value held that
“MRP mentioned is to be the sole consideration in arriving at the transaction value at which the excise duty is payable.”
- Further Circular No. 92/11/2019-GST dated 07th March 2019 also clarifies that 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.

Valuation in case of amount incurred by the recipients-

- The Apex Court in the case of **Commissioner of Service Tax v. Bhayana Builders (P) Ltd [2018 (10) G.S.T.L. 118 (S.C)]** held that

“The value of goods/material that is provided by the service recipient free of charge is not to be included while arriving at the 'gross amount' simply, because of the reason that no price is charged by the assessee/service provider from the service recipient in respect of such goods/materials. The value of taxable services cannot be dependent on the value of goods supplied free of cost by the service recipient. The service recipient can use any quality of goods and the value of such goods can vary significantly. Such a value, has no bearing on the value of services provided by the service recipient.”

Valuation in case of amount incurred by the recipients-

- In the case of **Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd. [2018 (10) G.S.T.L. (401) S.C]**, the apex court held that

The value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of taxable service cannot be anything more or less than the consideration paid as quid pro quo for rendering such a service.

The value of such material which is supplied free by the service recipient cannot be treated as 'gross amount charged' and that is not the 'consideration' for rendering the services. Therefore, value of free supplies of diesel and explosives would not warrant inclusion while arriving at the gross amount charged on its service tax is to be paid“

- **Circular no: 47/21/2018-GST dated 08.06.2018**

Valuation in case of subsidies provided by Government

- In the case of **Commissioner of Central Excise, Bangalore v. Mazagon Dock Limited [2005 (187) E.L.T. 3 (S.C)]**, the aspect of subsidy received from the Government and the subsidy received from buyer i.e. ONGC under a policy of government was discussed and held as follows:

The subsidy of 20% was paid by the Government, 10% was paid by the buyer. In our view the subsidy of 20% from the Government cannot be said to be additional consideration as it is not received from the buyer either directly or indirectly. Therefore, that would not be includable in the price of the goods for the purposes of excise. However, it is an admitted position that 10% subsidy was received by the Respondent from the buyer. It is therefore additional consideration received by the Respondent from the buyer. The fact that it is received under a policy of the Government does not detract from the above position. It is therefore includable.

Valuation in case of Post Sale Discount/Quantity discount

- In the case of **Government of India v. Madras Rubber Factory Ltd. [1995 (77) E.L.T. 433 (S.C)]**, the Apex Court ruled that Trade discounts/ quantity discounts known and understood at the time of removal of goods, allowable as deduction for computing the value even if it is quantified at a later date. This proposition was also upheld in the case of **Union of India v. Bombay Tyres International Pvt. Ltd [1984 (17) E.L.T. 329 (S.C)]** which was further relied in the case of **Maya Appliances (P) Ltd v. Addl. Commissioner of Commercial Taxes [2018 (10) G.S.T.L. 6 (S.C)]**.
- **Moped India Limited v. Assistant Collector of C.Ex., Nellore and others [1986 (23) E.L.T. 8 (S.C.)]**

Actual Land deduction instead of 1/3rd notional

- In the case of **Wipro Ltd vs Assistant Collector of Customs and Ors [2015-TIOL-79-SC-Cus]**, honourable Supreme Court held that "*no doubt, rulemaking authority has the power to make Rules, but such power has to be exercised by making the rules which are consistent with the scheme of the Act and not repugnant to the main provisions of the statute itself. Such a provision would be valid and 1% F.O.B. value in determining handling charges etc. could be justified only in those cases where the actual cost is not ascertainable*".

Valuation in case of consideration partly in cash and partly in kind

- In the case of **Inox Air Products Ltd v. Commissioner of C. Ex. & Cus., Nagpur [2012 (286) E.L.T. 26 (Bom.)]**, the High Court while deciding on the issue whether electricity supplied on free of cost by the customer for the maintenance services on air separation plant provided by the Appellant whether includable in the value of taxable services provided ruled as under:

Instead of supplying the electricity free of cost for the manufacture of oxygen, if the customers were to permit the assessee to purchase electricity from third parties and the customers were to reimburse the cost of electricity, it could not be said that the cost of electricity reimbursed constituted consideration received by the assessee for rendering the services. Similarly, if electricity is supplied free of cost for the manufacture of oxygen and the said oxygen belongs to the customer, then, it cannot be said that the cost of electricity constitutes the consideration in kind received by the assessee.

Valuation in case of barter transaction

- In the case of **DHL Express India Pvt. Ltd. V. CCE [2015-TIOL-2695-CESTAT-Mum]**, it was held that when one receives a service from a person and also provides a service to the same person, service tax is payable on both the transactions independently and they cannot set off value of service provided against value of service availed to arrive at assessable value.

Specific Inclusion – 15(2)

- 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
 - Hon’ble SC- Super Synotex (India) Ltd-2014 (301) ELT 273 (SC)- 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*

Specific Inclusion – 15(2)

- 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
- **Issues**
- 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 ?

Specific Inclusion – 15(2)

- Incidental expenses, 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
- Includes Commission and packing,
- Charged after Delivery?
- Eg: Supply of AC and its installation

Specific Inclusion – 15(2)

- Interest or late fee or penalty for delayed payment of any consideration for any supply
- subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments

Transaction Value - Exclusion -15 (3)

- Any discount which is given
 - Before or at the time of supply- to be recorded in invoice
 - After supply has been effected
 - (i) discount is established in terms of agreement into and specifically linked
 - (ii) ITC has been reversed by recipient.

Transaction Value

- 15(4) - Value of supply of goods or service cannot be determined under sub-sec (1), shall be determined in such manner as prescribed.
- 15(5) – Notwithstanding anything 15(1) or 15(4) the value of such supplies may be notified by Govt on the recommendation of council determined in such manner.

Valuation Rules- R-27- not wholly in money

STEPS

- I. Open Market Value - Any buyer can buy- not restricted – Old Law- Comparable price: timing, quantity, state of stocks, marketing strategy
- II. Money + equivalent money for supply (service, goods etc) New TV at 20,000 for used TV- Without TV fixed at 21000/- . GST payable on 21k
- III. Like Kind and quality- for goods – possible – (reasonable differences) services not possible?
- IV. Money + Determination u/r 30/31

Valuation Rules- R-28- distinct or related

STEPS

- I. Open Market Value - Any buyer can buy- not restricted – Old Law-
Comparable price: timing, quantity, state of stocks, marketing strategy
- II. Like Kind and quality- for goods – possible – (reasonable differences)
services not possible?

III. Apply u/r 30/31

Exception: Goods for further sale- 90% of recipient's sale price to independent buyer

If related/ distinct person able to avail 100% ITC – then invoice price accepted.[supply of nil rated, exempt, non taxable- not appl.]

Valuation Rules- R-29- Agent

STEPS

- I. 90% of recipient's sale price to independent buyer or Open Market Value
- II. Apply u/r 30/31

Valuation Rules- R-30- Cost of Supply

STEPS

110% of:

1. Cost of manufacture
2. Cost of acquisition
3. Cost of provision of service

CAS-4 preferable

Residual – R-31- Residual- Consistent with Gen principles u/s 15

Basic Issues in Valuation

- Corporate Guarantee Commission as part of the investment in new markets/ regions/ products within group. Comparable value or reasonable method.
- Essential Goods - Free of cost during comparable value – Rs. 5 cr. Not a supply for a consideration – not liable at all?. However ITC reversal of approx.- 60 lakhs needed.
- Same item supplied at 5 lakhs – Value would be Rs.5 Lakhs. ITC would be available.

Issues in Valuation

- TV to be accepted unless sole consideration violated – Basant Ind- SC [1996]
- Open Market Value – Unrelated quotations/ bills cannot be basis
- Scrap sold by Job worker adjusted in price– General Engg [2007]
- Holding to Subsidiary - Price to independent comparable – Prodelin- SC [2006]
- Del credere agent interest extended to buyer – not addl consideration

Issues in Valuation

- Market penetration is an additional consideration? – FIAT India ++
- Consideration from OEM in slow down also a consideration – Cars + White Goods
- Discount cannot be called Marketing services – Accounted as discount in book –special discount to TVS - MICO- 1983- SC
- Pure Agent- reimbursements – Not Liable – Intercontinental Consultants

Issues in Valuation- Discounts & Schemes

- Discount to clear stock; introduction of new model/ change in model- not questionable- Eicher Tractors-SC -2000
- Madras Rubber Factory (Discounts).
- Schemes – 1 free for 1, tooth brush with paste free, (combination of taxable at different rates, non taxable also)

Issues in Valuation- Free of Cost

- Designs Drawings provided to contract Manufacturers
Associated Cement Companies Ltd –SC – Tech known how not linked to imports - (Drawings and Designs)
- Supply goods for Services- Bayana Builder – No [2013]
- Supply of material / Moulds/ dies - FOC – Goods – yes in many SC in Central Excise - Circular 38/18 – Whose scope [Obligation] + supplied to market/ OEM- decides?

Issues

- Ad hoc deduction – 75% deduction for land in ST – Suresh Kumar Bansal- 2016- In GST 66% deemed to be construction??
- Royalty paid to brand name owner – no nexus to import- Feroda – 2008- Not includible
- Notional interest on advances – VST – Security deposit from dealers
- Notional interest on advances – Metal Box – huge advance depresses the value.
- Interest on customised machinery – Not liable as taken to secure against order cancellation



TIME OF SUPPLY

Introduction

- **Why is ‘Time of Supply’ important???**
 - TOS enables to determine
 - The point when the liability for payment of tax arises
 - Tax rate in case of change in rate of tax
- **What are the consequences if not complied???**
 - Difference in tax rate in case of change in rate of tax
 - Interest on delayed payment of liability
 - Penalty as consequence of delay

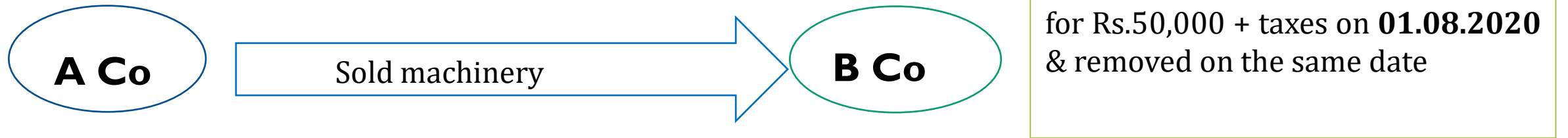
Time of supply of Goods - Sec 12 (2)

- **Earlier of the following:**
 - Invoice date or last date for issue of invoice;
 - Date of receipt
- Notification 66/2017-CT – 15-11-2017 Exempts payment on Advance
- **Note:**
- TOS w.r.t advances (i.e, amount in excess of invoice value) received up to Rs. 1000 shall be at the option of the supplier.
- Receipt voucher to be issued in case of advance receipts but NOT a tax invoice

Due date for issuance of invoice- Section - 31

Scenario	Due date for issue of invoice
Supply involves movement	Time of removal
Sale on approval basis	Actual sale or 6 months from date of removal
Other cases	Delivery of goods/ making available to the recipient
Notified categories of supplies	Time to be specified by Rules

Example



Invoice issued
31.07.2020



TOS is 31.07.2020

To continue with the above example

Goods was send on approval basis and sale was approved on **15.12.2020**



TOS -15.12.2017

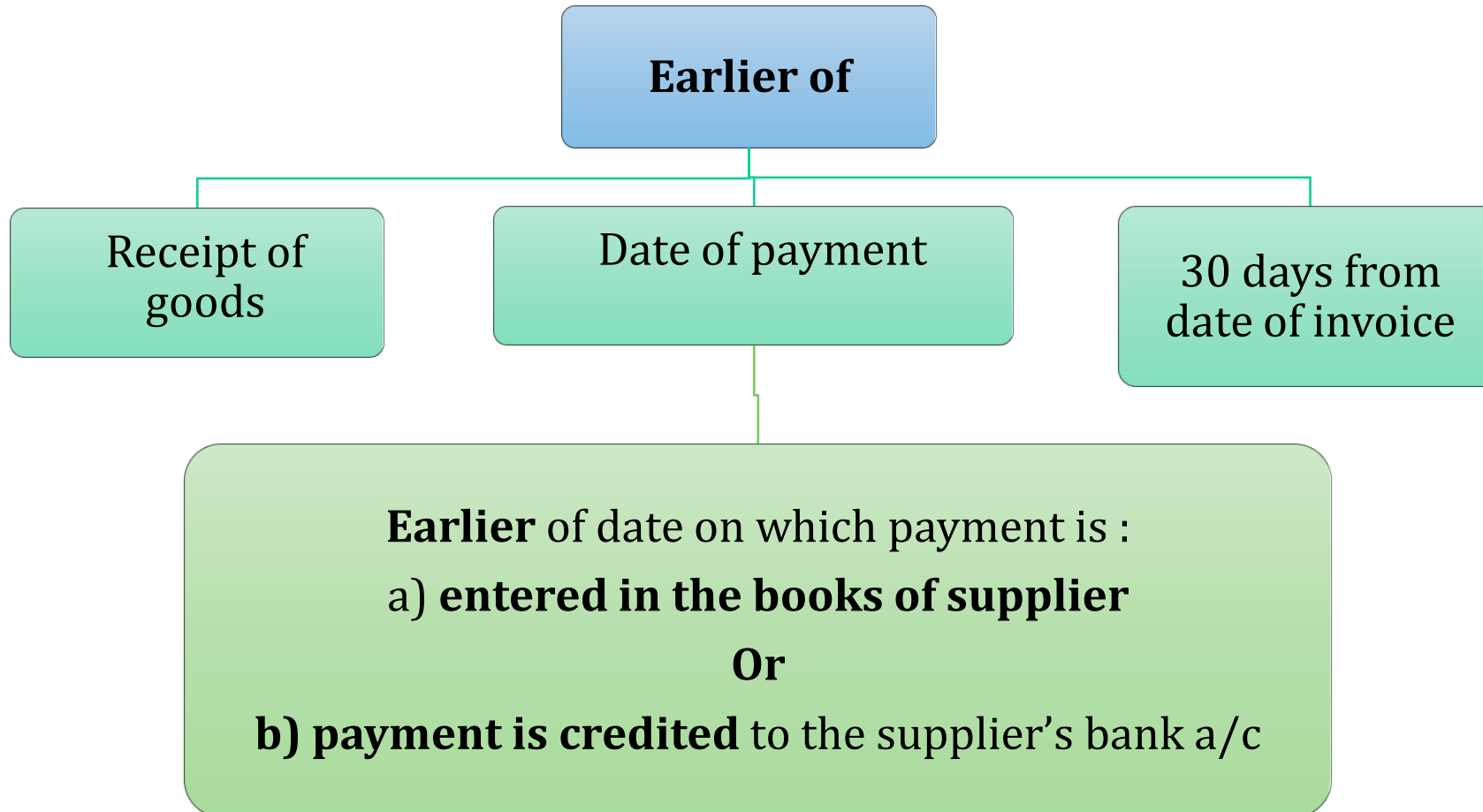
TIME OF SUPPLY OF SERVICES - Sec 13 (2)

- **Earlier of the following:**
 - Invoice date if invoice is issued within 30 days (or)
 - Provision of service if invoice is not issued within 30 days;
- **AND**
 - Date of receipt
- **Note:**
- TOS w.r.t advances (i.e, amount in excess of invoice value) received up to Rs. 1000 shall be at the option of the supplier.
- Receipt voucher to be issued in case of advance receipts but NOT a tax invoice

TIME OF SUPPLY OF SERVICES - EXAMPLES

Date of provision of service	Date of invoice	Date of receipt of payment	Time of supply
22.07.2020	27.07.2020	31.08.2020	27.07.2020
22.07.2020	21.08.2020	31.07.2020	31.07.2020
22.07.2020	25.08.2020	31.08.2020	22.07.2020
22.07.2020	25.08.2020	05.07.2020	05.07.2020

Time of supply of Goods under RCM



Reverse charge - example

Example:

- Payment made on 20th Aug 2020 (a)
- Invoice dated 25th Aug 2020
- 60 days after invoice date-24th Oct 2020 (b)

TOS is earliest of above (a) or (b) i.e., 20th Aug 2020



Time of supply – Other cases (w.r.t goods or services)

- **Supply of Vouchers :**

- If supply is identifiable at that point– Date of issue
- Other cases – Date of redemption



- **TOS w.r.t receipt of addition in value**

- In case of amounts received in the form of interest, late fee or penalty for delayed payment of consideration – TOS is ***date of receipt***

- **Residual:**

- If it is not possible to determine TOS from any of the above provisions, TOS shall be:
 - If return has to be filed - Date of filing the return
 - Other cases – Date of payment of CGST/SGST

Change in rate of tax

Supplies (goods/services) made **before** change in rate of tax

Supplies made	Issue of invoice	Receipt of payment	Time of supply
Before	After	After	Earlier of: • Invoice date or • receipt of payment
Before	Before	After	Invoice date
Before	After	Before	Date of receipt

Change in rate of tax

Supplies (goods/services) made **after** change in rate of tax

Supplies made	Issue of invoice	Receipt of payment	Time of supply
After	Before	Before	Earlier of: <ul style="list-style-type: none">• Invoice date or• Date of payment
After	Before	After	Date of payment
After	After	Before	Date of invoice

Issues

- Supply of service involving supply of goods – POT on completion of service/30days
- Continuous supply service
- Inter unit supply of service
- Change in effective rate of tax – ST Vs. GST

THANK YOU

THANK YOU



For any clarification

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