

The background of the slide features a pattern of stylized, overlapping leaves in various shades of orange and brown, creating a textured, autumnal effect.

# **Valuation under Service Tax Regulation**

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# AGENDA

- Statutory provisions relating to Valuation of Taxable Services.
- Service Tax (Determination of Value) Rules
- Latest amendments in Valuation Rules with the introduction of 'Negative List'
- **Determination of value of service portion in the execution of a works contract.**

# VALUATION OF SERVICES

- Value of Taxable Service shall be the Gross amount charged by the service provider for such services provided or to be provided rendered by him.
- Tax is payable as soon as advances, if any, is received

# **VALUATION OF TAXABLE SERVICES U/s. 67**

Where consideration for providing services is entirely in money, gross amount charged by service provider/ to be provided shall be the value of Service.

Where consideration is not wholly or partly in terms of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration

# **VALUATION OF TAXABLE SERVICES U/s. 67**

Where provision of services is for a consideration which is not ascertainable, the value would be determined in the prescribed manner and as per the Valuation Rules.

# VALUATION OF TAXABLE

Where consideration is not wholly or partly in terms of money ( or value not ascertainable)

Service Tax is payable :

- a) Value of taxable services shall be equivalent to the Gross amount charged by the Service Provider to provide similar services to other persons in ordinary course of trade , where Gross amount charged is Sole Consideration
- b) In other cases, (not above), Value shall not be less than the Cost of Provision of such Services



## Non-Monetary Consideration

- Supply of goods and service in return for provision of service
- Refraining or forbearing to do an Act in return for provision of service
- Tolerating an Act or a situation in return for provision of a service
- Doing or agreeing to do an Act in return for provision of service

Service Tax is payable on the fair value of non-monetary consideration, which is equivalent money value as determined as per Rules.

# PROVISION OF VALUATION U/s. 67

Where Service Tax is inclusive and not charged separately - value shall be determined on back calculation basis

Gross amount charged shall include any amount received before / during / after such services



# **DETERMINATION OF VALUE - RULES**

The Central Excise / Service Tax Officer can reject the value determined by the service provider and determine value separately.

In case of service provided/ to be provided from outside India, actual consideration received shall be relevant for valuation

[Rule 7]

# PRINCIPLES OF COST ANALYSIS

1. Determination of Cost of Taxable Services
2. 'Cost' would be worked out on the basis of usual Cost Accounting principles
3. Certification of Cost / Chartered Accountants for determination of Cost of Services
4. Specific Guidelines from ICAI for the purpose of determination of Cost of Services is needed

## **PRINCIPLES OF COST ANALYSIS**

1. Value based on Cost of Provision of Services – where reasonable profit (industry average or 10%) shall be added on total cost of services
2. For captive consumption of services – principles laid down in CAS-4 issued by ICAI and CBEC Circular No. 692/8/2003 may be followed
3. All expenditure and cost relating to provision of service incurred by service provider is includable in the value – Rule 5(1) – and shall be treated as consideration for the taxable services

# INCLUSION/EXCLUSION FROM VALUE

1. Where any expenditure/cost has been incurred by the service provider in the course of providing taxable service – all such exp. / costs shall be treated as consideration for taxable service provided / to be provided and shall be included in the value for the purpose of charging Service Tax.
1. Where any expenditure or cost incurred by service provider as “Pure Agent” of the recipient of service – such amount shall be excluded, subject to fulfillment of all eight conditions

# VALUE OF TAXABLE SERVICES

Value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

In other words, Gross consideration is taxable  
(Explanation to Rule 5).



## Non-Monetary Consideration

- Supply of goods and service in return for provision of service
- Refraining or forbearing to do an Act in return for provision of service
- Tolerating an Act or a situation in return for provision of a service
- Doing or agreeing to do an Act in return for provision of service

Service Tax is payable on the fair value of non-monetary consideration, which is equivalent money value as determined as per Rules.



# PRINCIPLES FOR VALUE DETERMINATION

1. **Circular no. B1/4/2006 – TRU dated 19.04.2006 :-**  
“Value for the purposes of charging Service Tax is the gross amount received as consideration for provision of service. All expenditure or cost incurred by the service provider in the course of providing taxable services forms integral part of the taxable value and includable. *It is not relevant that various expenditure or cost has separately indicated in the invoice or bill issued by the service provider to his client.*”
2. ***All earlier circulars stands withdrawn***

# VALUE OF TAXABLE SERVICES

Re-imbbursement of expenses incurred on behalf of client is not includible – Rule 5(2) -

‘Glaxo Smithkline Pharma Ltd. Vs. CCE

Deduction available, if conditions for “Pure Agent” are fulfilled

## LIABILITY OF SERVICE RECEIVER – NOT INCLUDIBLE

Re-imbursment of expenses claimed by the service provider as per agreement, which is a liability of the service receiver – the same should not be included in the value –

**‘Scott Wilson Kirkpatrick India Ltd. Vs. CCE’**

## MEANING OF “ PURE AGENT “

### Means a person who—

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
- (c) does not use such goods or services so procured;
- (d) receives only the actual amount incurred to procure such goods or services

## **CONDITIONS FOR EXEMPTION AS PURE AGENT**

1. SP acts as a pure agent while making payment of third party for goods/services procured.
2. The SR received and uses the goods so procured by the SP in his capacity as pure agent of SR
3. The SR is liable to make payment to the third party
4. The SR authorises the SP to make payment on his behalf
5. The SR is aware that the goods and services for which payment has been made by SP shall be provided by a third party



## CONDITIONS FOR EXEMPTION AS PURE AGENT

6. Payment made by SP on behalf of the SR has been separately indicated in the invoice issued by the SP
7. The SP recovers from the SR only such amount as has been paid by him to the third party
8. The goods and services procured by the SP from third party as pure agent are in addition to the services provided by him on his own capacity.



# Determination of value of service involved in supply of food or any article of human consumption

Determination of value of taxable service involved in supply of food and drinks in any restaurant or as outdoor catering.

Description	Taxable portion as a % of the total amount
Service portion in the supply of food or any other article of human consumption or any drink (whether or not intoxicating), at a restaurant	40%
Service portion in outdoor catering supply of food or any other article of human consumption or any drink (whether or not intoxicating),	60%

Total amount” means the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food/drinks whether or not supplied under the same contract or any other contract, after deducting therefrom, the amount charged for such goods or services, if any; and the amount VAT/Sales Tax levied thereon

## VALUATION – INDIVISIBLE CONTRACTS

1. Service Tax is payable on value of services and not on the value of the material/input used while providing service
2. Notification no. 12/2003-ST- if amount charged includes value of goods and material sold, Service Tax will not be payable on value of such goods and material
3. In case of AMC, if Sales Tax has been paid on components and parts, Service Tax would not be payable on that value. – ‘Kone Elevators Ltd. Vs. CST’

## **OTHER RELEVANT ISSUES**

The existing provisions relating to positive list approach of taxing services under sections 65, 65A, 66, and 66A, which inter-alia include definition of 'taxable service', classification Reverse charge, [u/s. 66A], shall not be applicable from 01.07.2012. (18/2012- 01.06.2012)

Newly inserted Section 65B (effective from 01.07.2012) provides definitions relating to Service Tax which inter-alia includes the definition of 'Service', 'Support Service', 'Taxable Service', 'Negative List' etc. [notification no 19/2012 dated 05.06.2012].

## **Determination of value of services**

In accordance with Rule 3 of the valuation Rules, where the value of services is not ascertainable, the same shall be determined in the following manner:

- a) The value of such taxable service shall be equivalent to the gross amount charged by the service provider for similar service to any other person in the ordinary course of business where such gross amount is the sole consideration.
- b) If the value could not be determined as above, cost of provision of such taxable service would be considered as equivalent money value of such services.

The value of taxable services shall also include any amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service.



# Questions ?????



# ***THANK YOU***



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