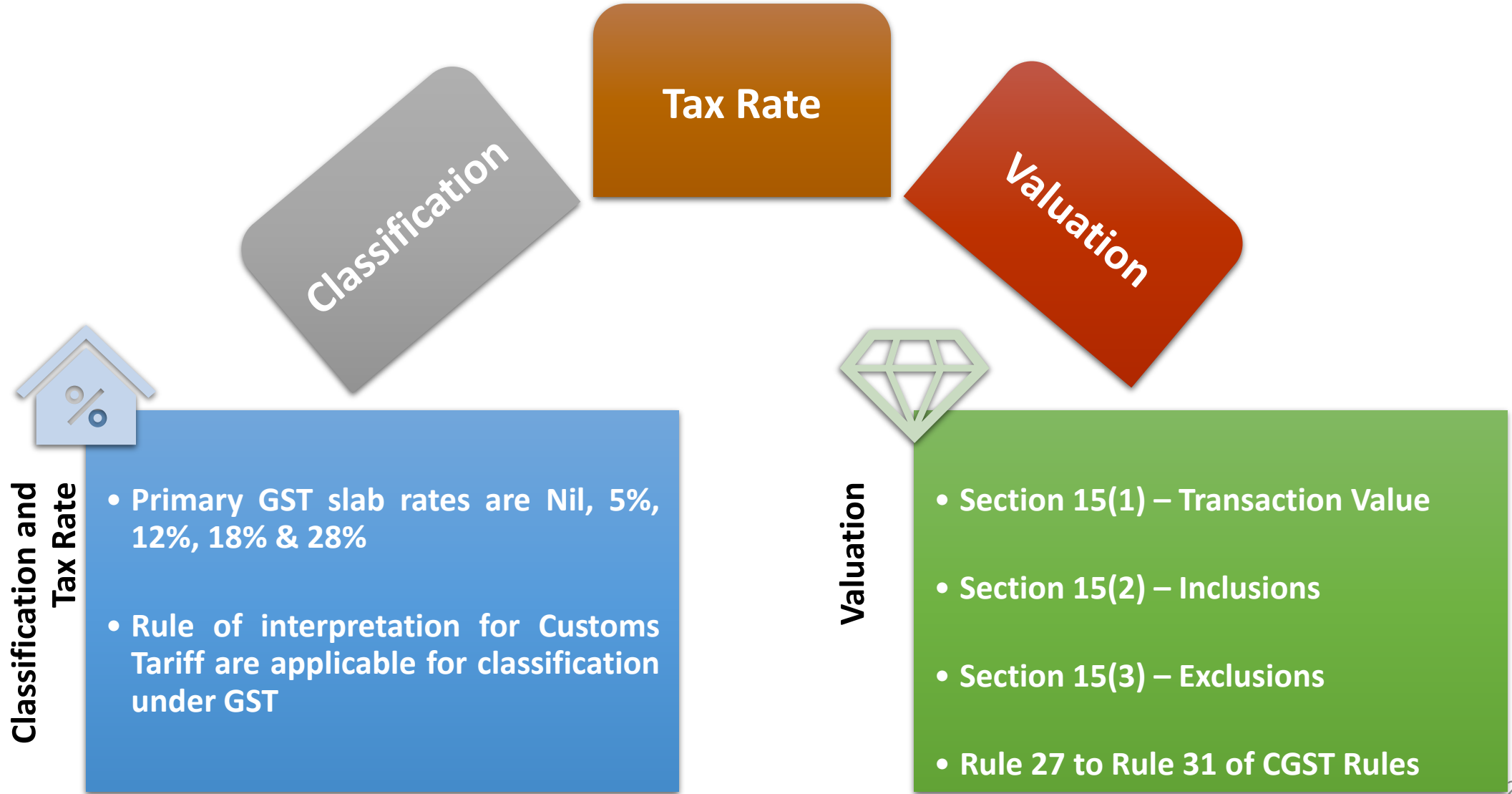




Issue and Case Studies in Valuation

- CA Vivek Baj

Crucial aspects for paying GST on a 'supply'



Classification

Tax Rate

Valuation

Classification and Tax Rate

- Primary GST slab rates are Nil, 5%, 12%, 18% & 28%
- Rule of interpretation for Customs Tariff are applicable for classification under GST


Valuation

- Section 15(1) – Transaction Value
- Section 15(2) – Inclusions
- Section 15(3) – Exclusions
- Rule 27 to Rule 31 of CGST Rules

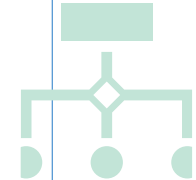
Section 15(1) – Transaction Value

SECTION 15(1) of the CGST Act - Value of taxable supply

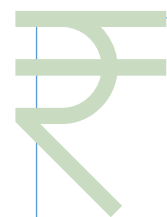
“The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply”



Price actually paid or payable for supply



Supplier and recipient are not related persons



Price is the sole consideration for the supply

If any one of the above cumulative factors are not fulfilled, value of taxable supply is to be determined based on the ‘Valuation Rules’

Section 15(2) – Inclusions...

Taxes, duties, cess, fees and charges except CGST/SGST/IGST and Compensation Cess

Amount incurred by the recipient, which supplier is liable to pay

Incidental expenses and amount charged for activities done at the time of or before delivery

Interest/ late fee/ penalty for delayed payment of any consideration

Subsidies directly linked to the price (excluding subsidies provided by the Central/ State Government)

Circular No. 76/50/2018-GST dated December 31, 2018 – TCS under Income Tax Act is not to be included

Moulds and dies owned by Original Equipment Manufacturer ('OEM') sent free-of-cost to component manufacturer for supply of goods

Illustration 

Commission, packing charges, inspection or certification charges, installation and testing, weighment charges, etc.

Any amount by whatever name called, collected additionally than the original value of supply in respect of delayed payment

Supreme Court of Super Synotics - PSI

Section 15(2) – Exclusions

Discount on or before supply – to be duly recorded in the invoice

Post supply discount – pre-decided as per the agreement between supplier and the recipient before the time of supply, and recipient has reversed the ITC

Turnover discount

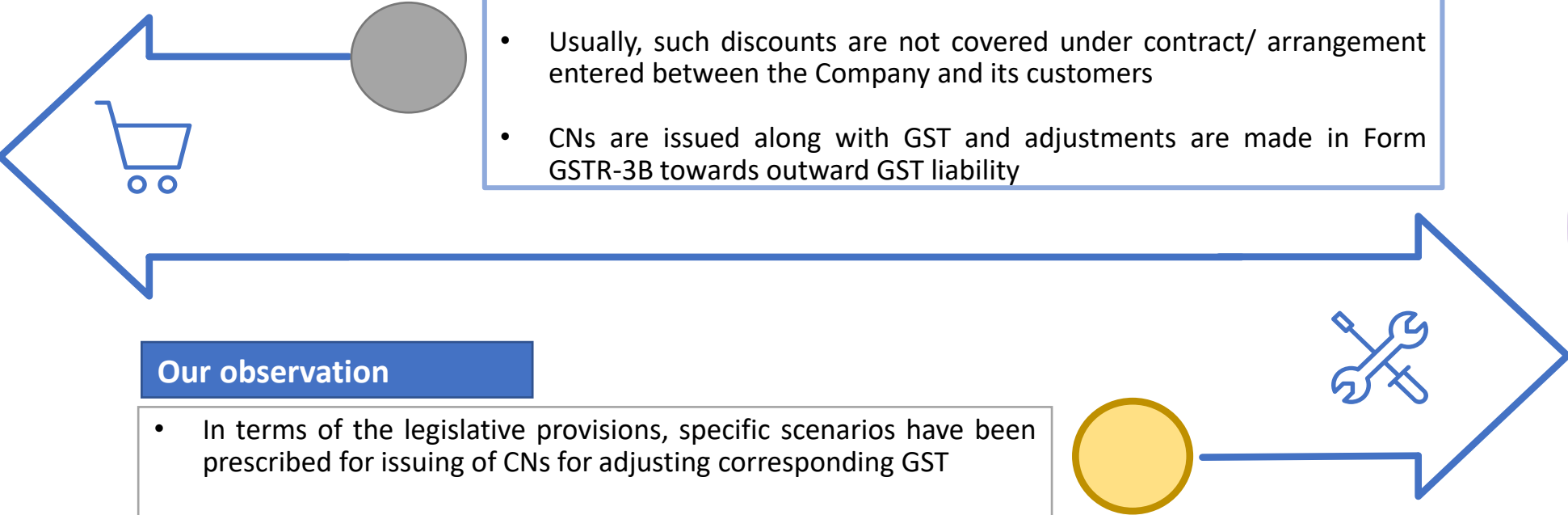
- The Company is providing turnover discounts post supply of goods to its customers on achieving a specific turnover
- Usually, such discounts are not covered under contract/ arrangement entered between the Company and its customers
- CNs are issued along with GST and adjustments are made in Form GSTR-3B towards outward GST liability

M/s Ultratech Cement Ltd. [2018 (15) G.S.T.L. 455 (AAR – GST)] by AAR Maharashtra

Supplier to clearly mention the quantum of discount or percentage of discount which is to be worked out on the basis of certain parameters or certain criteria

Our observation

- In terms of the legislative provisions, specific scenarios have been prescribed for issuing of CNs for adjusting corresponding GST
- One of the important conditions for the said adjustment is that such discount is **established in terms of an agreement entered into at or before the time of such supply**



Valuation Rules

- Price is not the sole consideration
- Supplier and recipient are related

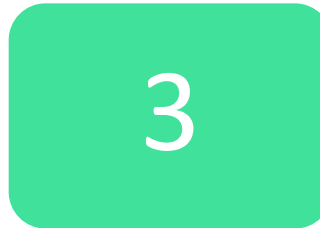
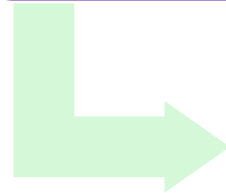
Rule 27 - Value of 'supply' where consideration is not wholly in money...



- **Open market value ('OMV')** of such supply



- If OMV is not available, 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



- If value not determinable by 1 and 2 above, **value of supply of goods/services of like kind or quality**



- If 1, 2, and 3 above are not applicable, then as per **Rule 30, Rule 31** chronologically



...Rule 27 - Value of 'supply' where consideration is not wholly in money

Illustrations

1

Supplier

New phone – INR 40,000/-
 Exchange of an old phone – INR 4,000
 Payment – INR 36,000

Recipient

Value of supply – INR 40,000

2

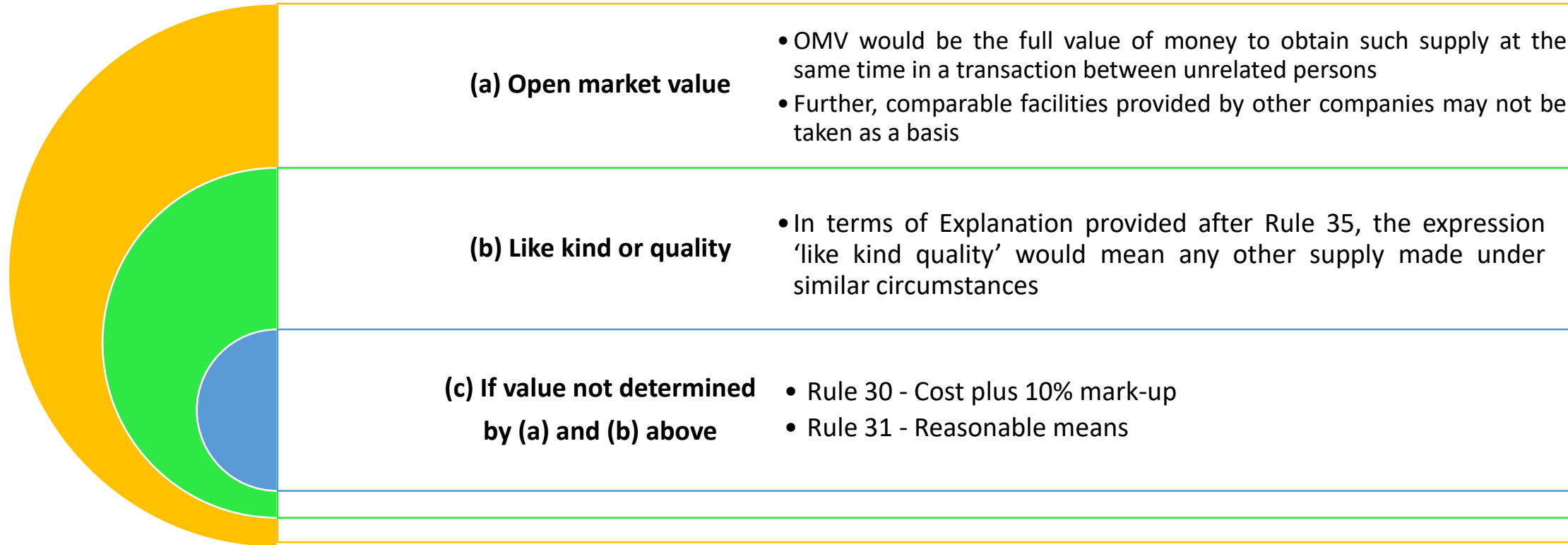
Supplier

Laptop – INR 50,000/-
 Exchange of desktop – INR 5,000

Recipient

Value of supply – INR 55,000

Rule 28 - Valuation in case of related persons



First proviso to Rule 28

Provided that where the 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 ninety percent 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

Second proviso to Rule 28

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

Rule 29 - Value of supply of goods made or received through an agent

1

- OMV of the goods being supplied; 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 to his customer not being a related person, where the goods are intended for further supply by the said recipient

2

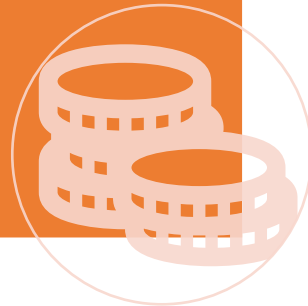
Where the value of a supply is not determinable under clause (1), the same shall be determined by the application of Rule 30 or Rule 31 in that order



Rule 30 and Rule 31

- **Value of supply of goods or services or both based on cost:** *Where the value of a supply of goods/services is not determinable by any of the preceding rules, the value shall be 110% of the cost of production/manufacture/cost of acquisition of such goods or the cost of provision of such services.*

Rule 30



- **Residual method for determination of value of supply of goods/services:** *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 31





Specific Case Studies

Corporate Guarantee between related persons

What is a Corporate Guarantee? - A corporate guarantee is a legal promise by the guarantor to repay the debt of the debtor in the event the debtor is unable to perform its obligation

It is a mode of ownership contribution given to compensate for the inadequacies of the financial position of the Company

Issues

Schedule I of the CGST Act: Activities to be treated as supply even if made without consideration: Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business

Issue I: - As the debtor Company does not receive any actual consideration, it is difficult to determine the value on which GST may be paid.

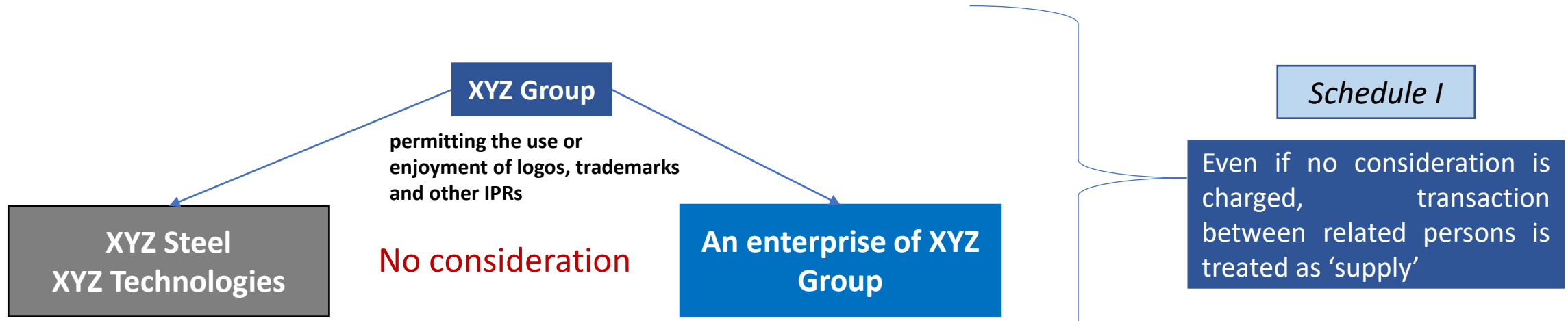
Value may be determined as per Rule 10TD (2A) of Safe Harbour Rules - which is generally in the range of 0.13% p.a. to 1% p.a

Issue II: - GST to be paid on year-on-year basis?

Issue III: - Value determinable based on the loan amount and not benefit derived?

The valuation mechanism is not prescribed under the law- Can one say that absent possibility of valuation, the levy would fail?

Use of logos, trademarks, other IPRs by related persons

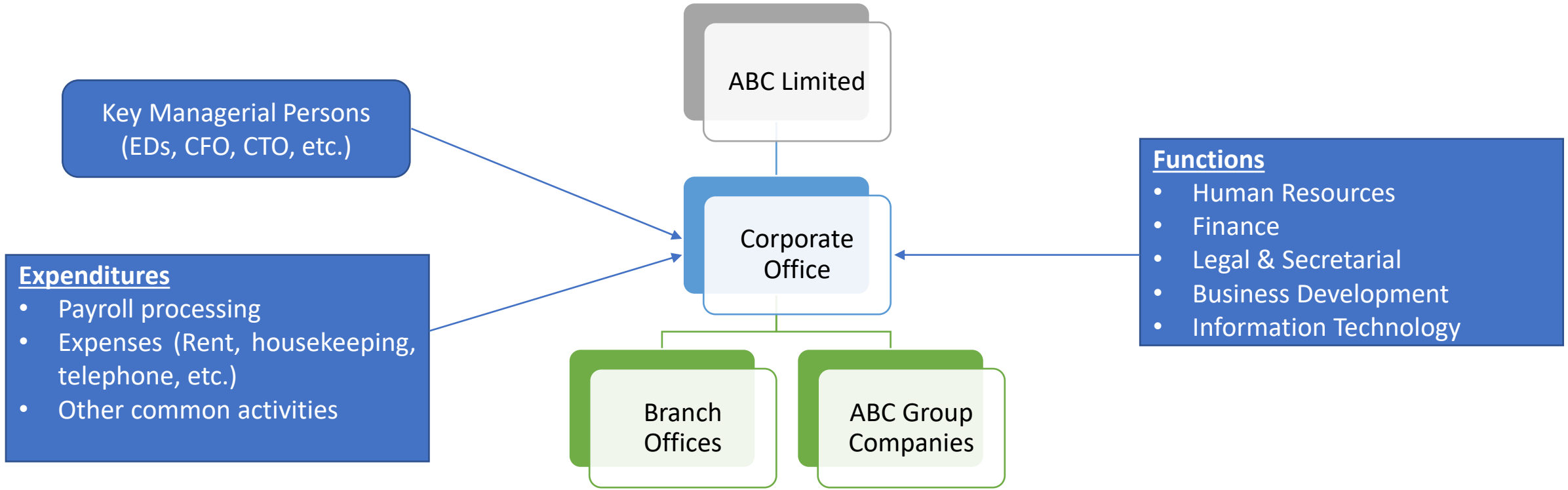


Amount declared on invoice is to be treated as an OMV if, the recipient is eligible to take full ITC (second *proviso* to Rule 28)

Value to be determined based on reasonable means along with 10% mark-up (application of Rule 30 and Rule 31)

Valuation to be certified by an expert

Services provided by one GSTIN to another GSTIN ('cross charge')



There is no mechanism provided under the GST provisions with respect to valuation of such services

Reference may be made to the Advance Ruling of **Cummins India Limited** wherein it has been held that valuation should be 110% of the cost of provision of such services. Cost of provision of services attributable to each of the distinct persons may be quantified based on the turnover of each registration

Whether employee cost to be considered?

Valuation in case of Gross up of TDS in case of group companies

Issue

- Agreement/ contract for import of service is entered with the overseas group company
- Value of service is INR 100 and the amount of income tax TDS is INR 11.11 which is paid to the government on behalf of overseas group company
- Whether GST under RCM shall be payable on INR 100 or INR 111.11?

Reference can be drawn from the case of ***T.V.S. Motor Company Vs Commr. of C. Ex. & S.T., Chennai-III Commissionerate [2021 (55) G.S.T.L. 459 (Tri.-Chennai)]***, wherein it has been held that when the TDS amount has been borne by the assessee and only the consideration for the services as agreed upon by the parties has been paid to the service provider, the same cannot be included in the taxable value for determining the Service Tax liability

Whether second proviso to Rule 28 applicable?

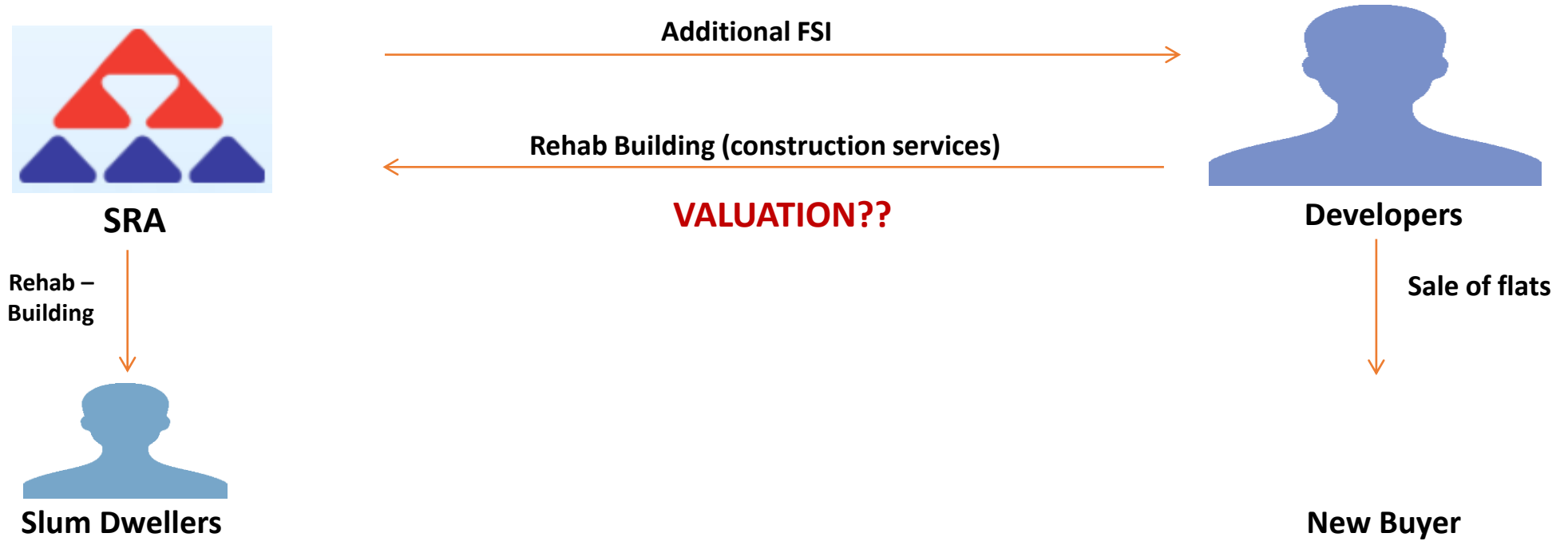
Valuation for export of goods to group companies

Export of goods with like kind and quality to group company at a price higher than that to non group company to claim higher export incentives

In the event, the valuation is not at arms length and on the higher side, then the following benefits are questionable:

- Refund claimed of IGST on export with payment of duty
- Duty drawback benefit
- RoDTEP benefit
- Export obligation under EPCG and Advance Authorization
- May have issues under transfer pricing – Income Tax
- In case of export of services, SEIS benefit would be questionable
- NFE would be questionable in case of SEZ and EOU

SRA Transactions...



...SRA Transactions...

Explanation 2A to **Notification 03/2019-Central tax (Rate) dated March 29, 2019** provides as under:

*2A. Where a registered person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be deemed to **be equal to the Total Amount charged for similar apartments in the project from the independent buyers**, other than the person transferring the development right or FSI (including additional FSI), nearest to the date on which such development right or FSI (including additional FSI) is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 above.*

In terms of Paragraph 2A above, there is a requirement to adopt the value based on value of apartments sold to an independent buyer.

In the case of SRA, there may arise a situation where the developer is not selling any area to an independent buyer.

Application of Rule 27:

Rule 27(a)- Open Market Value is not available for construction services

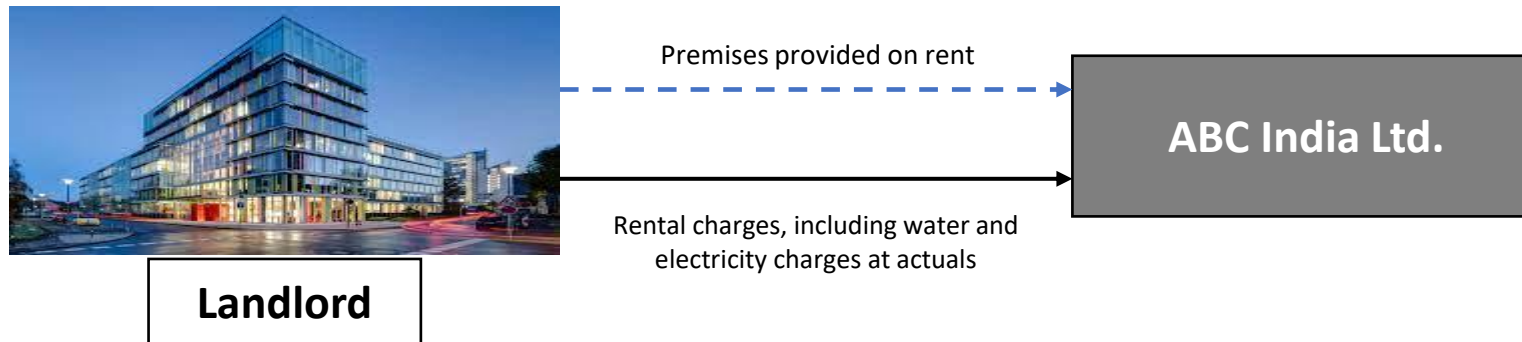
Rule 27(b)- Also, monetary value of consideration (i.e. Development Rights) may not be determined at the time of supply.

Rule 27(c)- Thereafter, value of like kind quality is also not determinable.

Rule 27(d)- One may need to resort to the valuation as mentioned in Rule 30 i.e. 110% of cost of construction.

However, the Authorities may dispute the aforesaid valuation and may take recourse to the reckoner price of the constructed flats or the reckoner price of the Development Rights or sales price of such Development Rights, if sold by Promoter in the open market.

Renting of immovable property

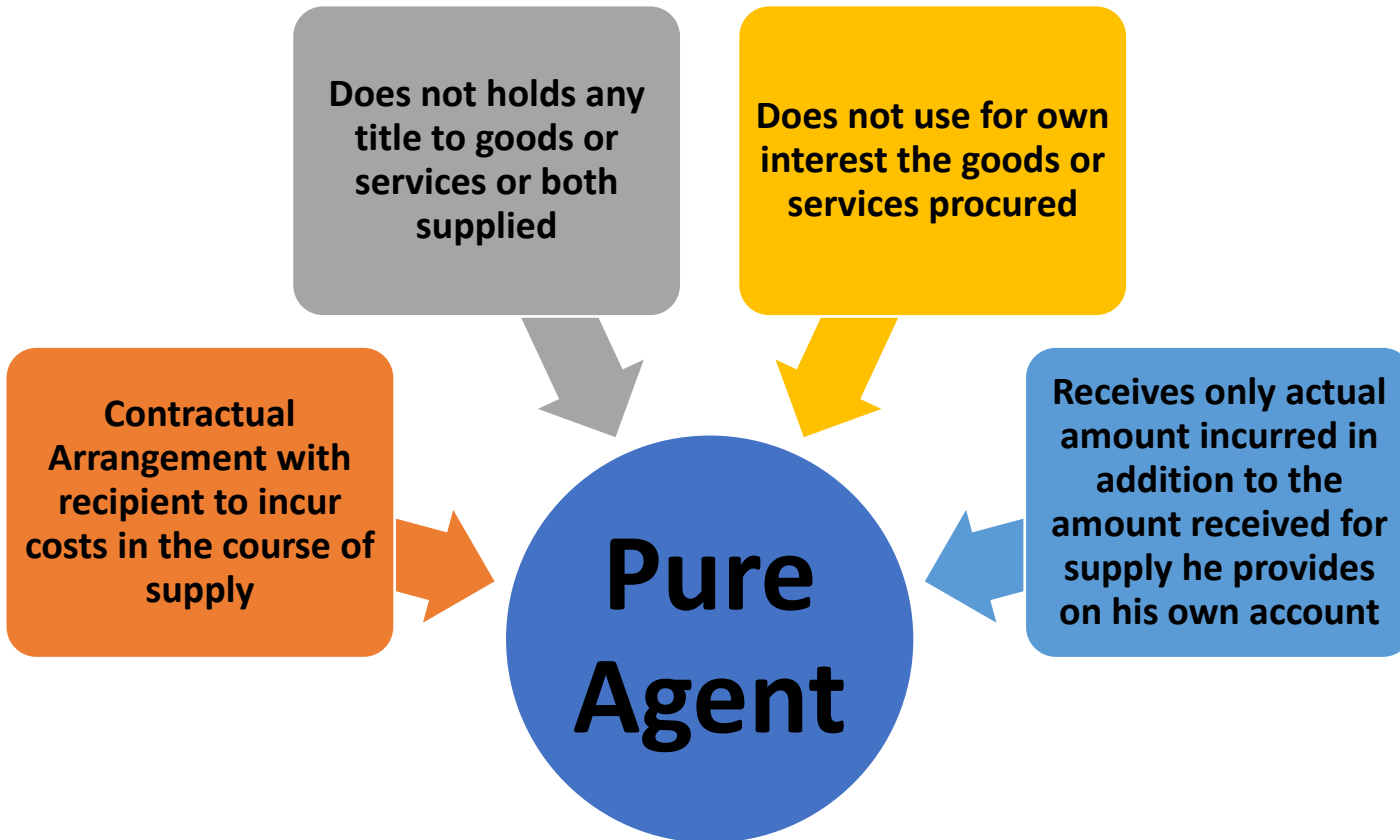


M/s. Indiana Engineering Works (Bombay) Pvt. Ltd. (AAR – MH) - GST payable on electricity charges and water charges as per meter reading and collected from the recipients on actual reimbursement basis

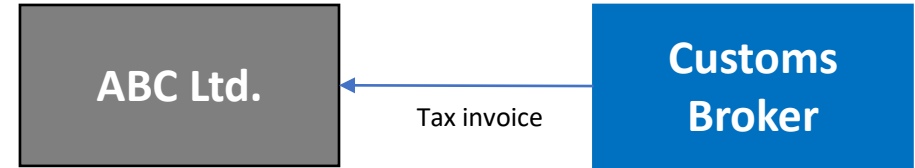
Harish Chand Modi (GST AAAR Rajasthan) - Reimbursement of electricity expenses had not been made on actual basis by the lessee to lessor as it has been collected in advance with rent and further adjusted by raising the invoice by the lessor hence, will form part of taxable value

Whether electricity and water charges on actual basis will be chargeable to GST or will be covered under pure agent?

Pure Agent Concept



Illustration



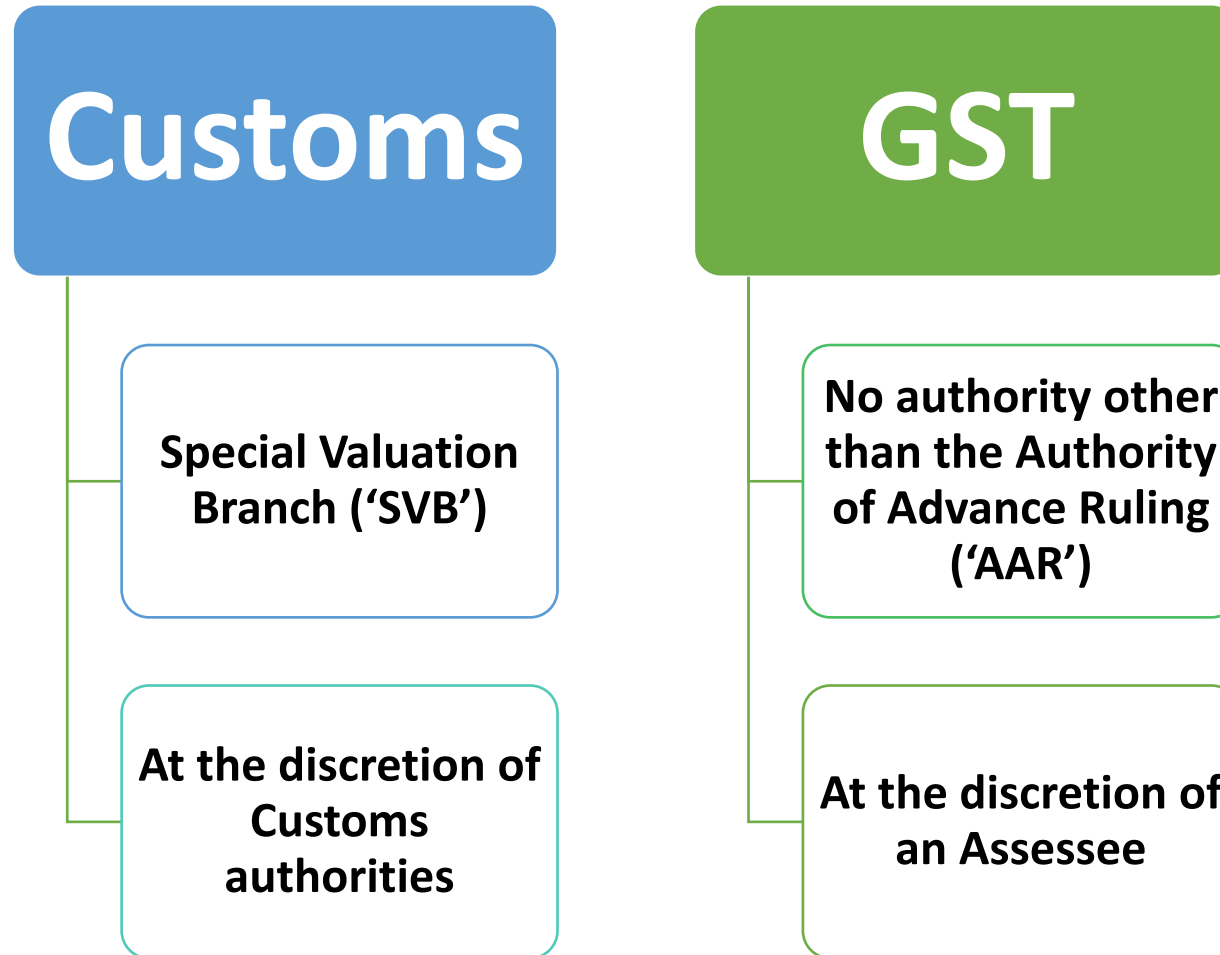
S. No.	Component charged in invoice	Amount (in INR)
1	Agency charges	10,000
2	Travelling expenses	15,000
3	Customs duty	55,000
4	Docks dues	5,000

Agency charges and travelling expenses shall be added for determining the value of supply by the Customs Broker whereas Docks dues and the Customs Duty shall not be added to the value provided the conditions of pure agent are satisfied



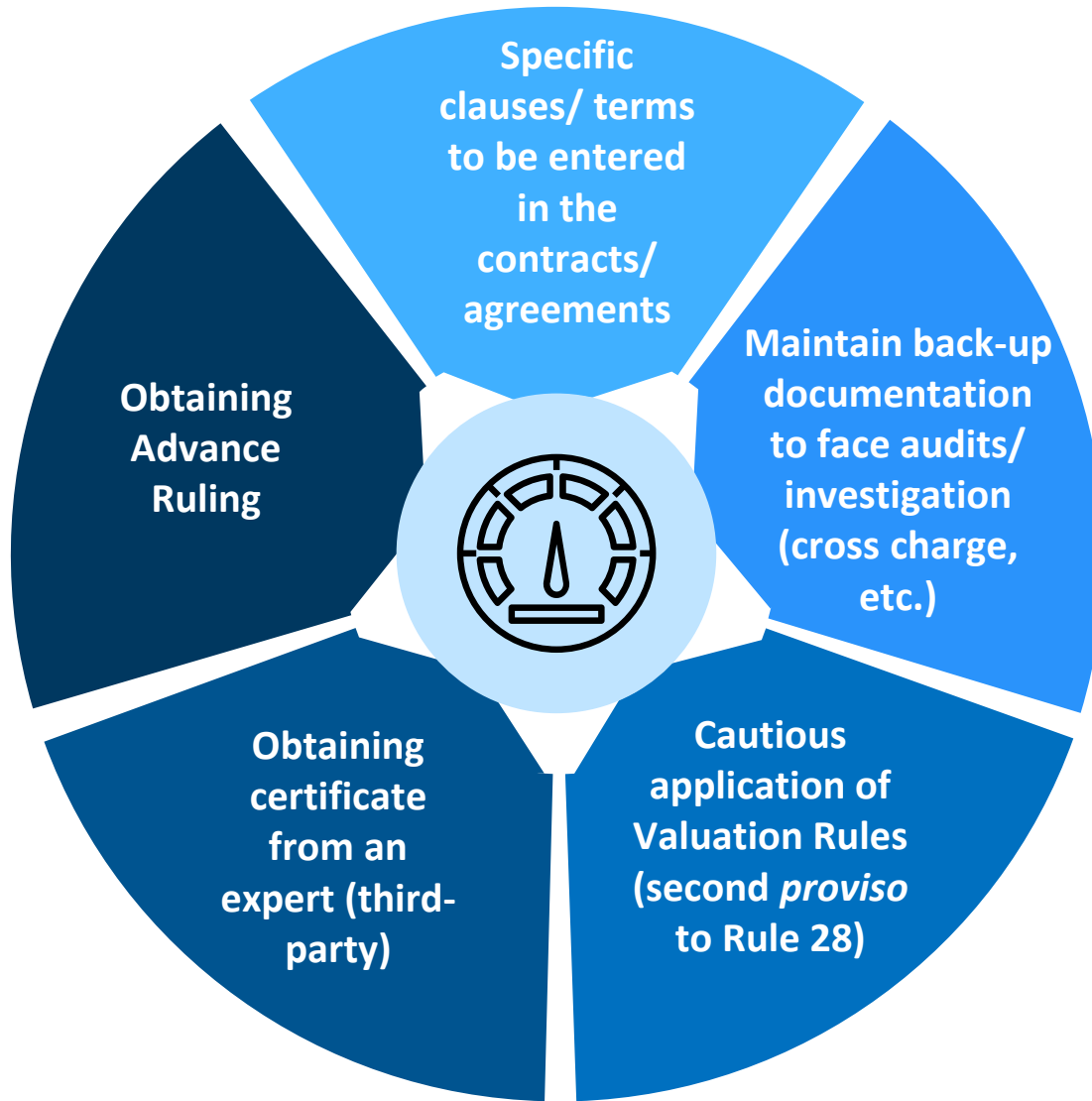
**Valuation - Preferred
industrial practices**

Valuation – Customs & GST



Under GST, there is an increased onus on the Assessee for the purpose of determining appropriate value for discharging GST liability

Valuation - Preferred industrial practices





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Economic Laws Practice (ELP)

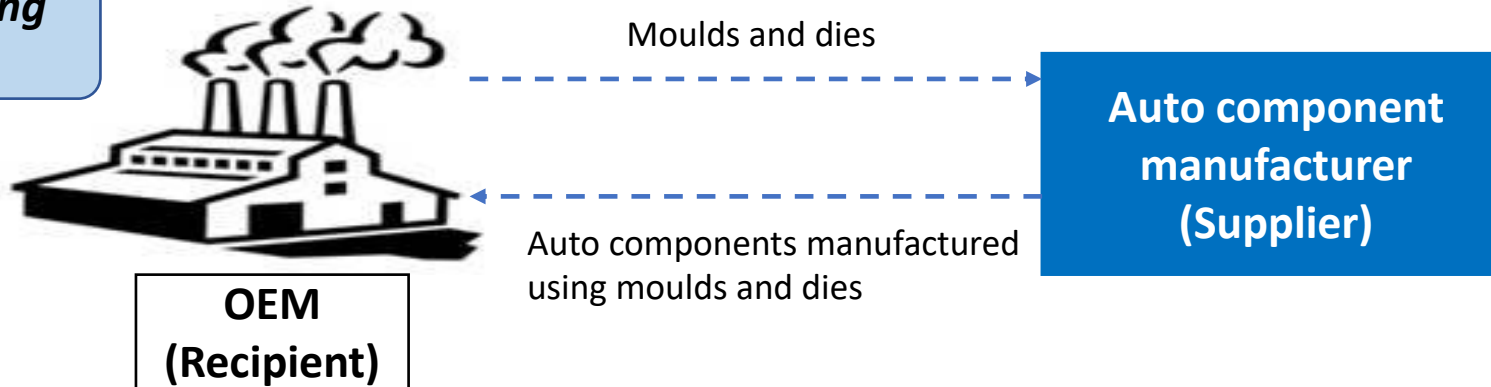
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Amount incurred by the recipient, which supplier is liable to pay...

Illustration I – Tooling transaction



Circular No. 47/21/2018-GST dated June 8, 2018

Moulds and dies provided by OEM on FOC basis does not constitute supply

Value of moulds and dies provided by OEM not to be included to the auto components supplied since, cost of moulds and dies was not to be incurred by the auto-component manufacturer

If the contract between OEM and manufacturer is for supply of components made by using the moulds/ dies, but the same have been supplied by the OEM, the amortized cost of such moulds/ dies shall be added to the value of components

...Amount incurred by the recipient, which supplier is liable to pay

Illustration II – FOC supplies by Recipient



Recipient

Installed its unit within Recipient's factory for supply of industrial gases



GST applied on tax invoice



FOC supply of electricity, water and land **No invoice is issued, and no GST applied**



Gas Supplier

