



GST Webinar

10 Case Studies under
GST

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Tax Consultants

Case Study 1

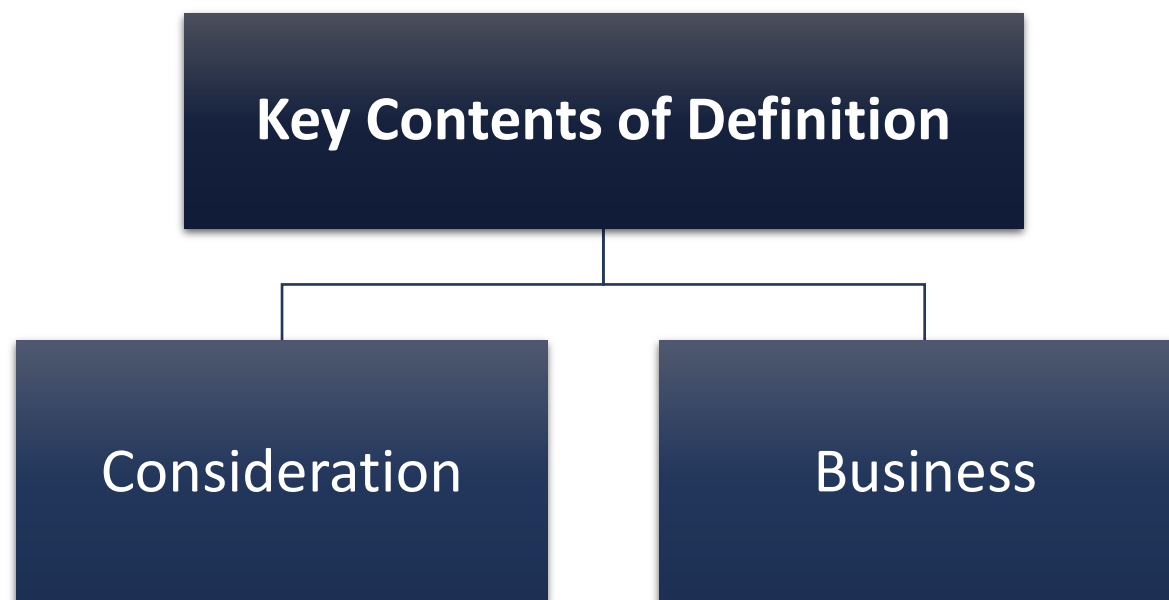
GST implications on ICAI
membership fees and similar
bodies



Section 7 of the CGST Act

(1) Supply includes

(a) all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.



What is consideration?

Section 2(31) of the CGST Act

“Consideration” in relation to the supply of goods or services or both **includes**—

- (a) any payment made or to be made, whether in money or otherwise, **in respect of, in response to, or for the inducement of**, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- (b) the **monetary value of any act or forbearance**, in respect of, in response to, or **for the inducement of**, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a **deposit** given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Section 2(17) of the CGST Act

“business” includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;***

Delhi High Court Judgement in the case of *Bureau of Indian Standards v Director General of Income Tax [2012] 27 taxmann.com 127 (Delhi):*

In this case, while discussing the income-tax applicability on license fee collected by Bureau of Indian Standards (BIS), the Court held that prescribing of standards, and enforcing those standards, through accreditation and continuing supervision through inspection etc., cannot be considered as trade, business or commercial activity merely because the testing procedure or accreditation involves charging of certain fees. The Court further held that BIS is a statutory body established under the Bureau of Indian Standards Act, 1986 and is performing sovereign and regulatory functions as laid down in the said Act, in its capacity of an instrumentality of the State. Therefore, the Court held that BIS is not involved in carrying on any activity in the nature of trade, commerce or business.

The House of Lords in the case of *Institute of Chartered Accountants in England and Wales vs. Customs and Excise Commissioners [1991] 1 W.L.R. 701:*

The court was asked to examine whether VAT is chargeable on the fees received by the Institute in lieu of the licences granted to the accountants for carrying out the investment business. The House of Lords in this case held that performing the licensing function on behalf of the state is not in the nature of carrying on of a business. It should be pointed out that in order to qualify as a business under the UK VAT Act, there must be a performance of an 'economic activity'. The House of Lords referred the Tribunal judgment which stated that a regulatory activity carried out under a statutory power for the purpose of protecting the public by supervising and maintaining the standards of practitioners fall on the other side of the line from economic activities and thus, such regulatory activity cannot be considered as a business.

Case Study 2

ITC Eligibility on CSR Expenditure
like Covid 19 expenditure

ITC Eligibility on Marketing
Schemes





Free distribution of
Mask/Ventilators etc



Construction of
hospital



Free distribution of
food and beverages

This concept is similar to the concept of claiming of business expenditure under Section 37 of Income Tax Act, 1961("IT Act"). There, the courts in various judgements have discussed the basic principle of "commercial expediency". The courts laid down the law that if an expenditure is commercially required to be incurred with a view to benefit the trade and to facilitate the carrying on the business, such expenditure will be allowed as deduction under Section 37 of the Income Tax Act, 1961.

Coca Cola India Ltd. V. CCE, Pune reported at 2009 (15) STR 657 (Bom)

Mazagaon Dock Ltd. v. Commissioner of Income tax and Excess Profits Tax reported at AIR 1958 SC 861

Eligibility of ITC on Gifts & Free Samples

Section 17(5)(h)

- Input tax credit in respect of goods lost, stolen, destroyed, written off, or disposed of by way of gifts or free samples shall not be available

Free Samples

- Free samples are small and packaged portion of merchandise distributed free, especially as an introduction to potential customers.

Gifts

- Gift ordinarily means something which is given voluntarily to other person without consideration and the donor should not derive any advantage from such gift.
- Diwali Gifts given to employees?

Volume Discount

- Input tax credit reversal in respect of the goods provided to dealers, free of cost, as volume discount on achievement of target
 - Goods given are the one in which supplier deals?
 - Goods other than those in which suppliers deals?

CSR Activity / Warranty?

- Whether in nature of gift?

*Buy One Get
One*

“Bonus” articles offered free by the manufacturer are not really given away free, but their price is distributed over the price of the other goods which are charged for and supply of free items is a sales gimmick.

Mapra Laboratories Pvt. Ltd. vs State of Bihar

Bombay Latex & Dispersions Pvt Ltd. vs. CCE

M/s Mahavir Enterprises (India) Ltd. vs. State of A.P.,
[2002] 34 APSTJ 72

Case Study 3

Taxability of Development Rights



- ▶ Right to construct, own and sell the superstructure.
- ▶ The right entitles the holder to carry out development of a particular land or building.
- ▶ The development right, effectively, is associated with the land and emerges from the rights being exercised over such land.
- ▶ This development potential of the land is separated from the land and is transferred to a third party for exploitation, called as transfer of development rights. Such transfer, thus, allows the transferee to access, develop, build/ construct, own, sell the superstructure over the underlying piece of land.
- ▶ The right is in the nature of *Profit a Prendre*: A right to enter another's land and to take some profit of the soil, or a portion of the soil itself, for the use of the owner of the right.

Shakti insulated wires limited v. JCIT [2003 (87) ITD 56 (mum)]

It was held that development rights are embedded in the ownership of land only. These were valuable rights inherent in the ownership of land.

Chedda housing development corpoaration v. Bibijan shaikh farid [2007 (2) TMI 664 – Bom HC]

It was held that TDRs being a benefit arising out of land must be held to be immovable.

Sadoday builders private ltd, v joint charity commissioner [2011 (6) TMI 936 – bom HC]

It was held- s.36(1)(c) of bombay public trusts act, 1950 necessitates taking permission of charity commissioner for sale of immovable property, therefore **TDRs are benefit arising out of land and must be considered as immovable property**. The sale of such rights requires permission of commissioner under the said provision.

PROFIT A PRENDRE

Meaning and nature is described in Halsbury's Laws of England, that is:

A profit a prendre is a right to take something off another person's land. It maybe more fully defined as a right to enter another's land and to take some profit of the soil or a portion of soil itself, for the use of the owner of the right.

In Indian law it is also known as benefit arising out of land.

SERVICE TAX

As per section 65B(44) of Finance Act, 1994

“Service” means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include –

- a) an activity which constitutes ‘merely’,--
 - I. a ‘transfer of ‘title’ in goods or immovable property, by way of sale, gift or in any other manner; or

Goods and Service Tax

Schedule III: activities which shall neither supply of goods nor supply of services-

Paragraph 5

‘sale of land and, subject to clause (b) of paragraph 5 of schedule II , sale of building’

1. Taxability

Category of Project	GST Implications
Pure Residential	Exempted
Pure Commercial	Taxable
RREP (Commercial <15%)	Residential: Exempted Commercial: ?
REP (Commercial >15%)	Residential: ? Commercial: Taxable
Plots	?



Case Study 4

Application Section 42/43 in real estate industry



Section 17 of the CGST Act restricts the Input tax credit on goods or services or both to so much of the input tax attributable to the taxable supplies including zero rated-supplies made for the purpose of business.

The manner of reversal of Input tax credit is stated in the CGST Rules, 2017:

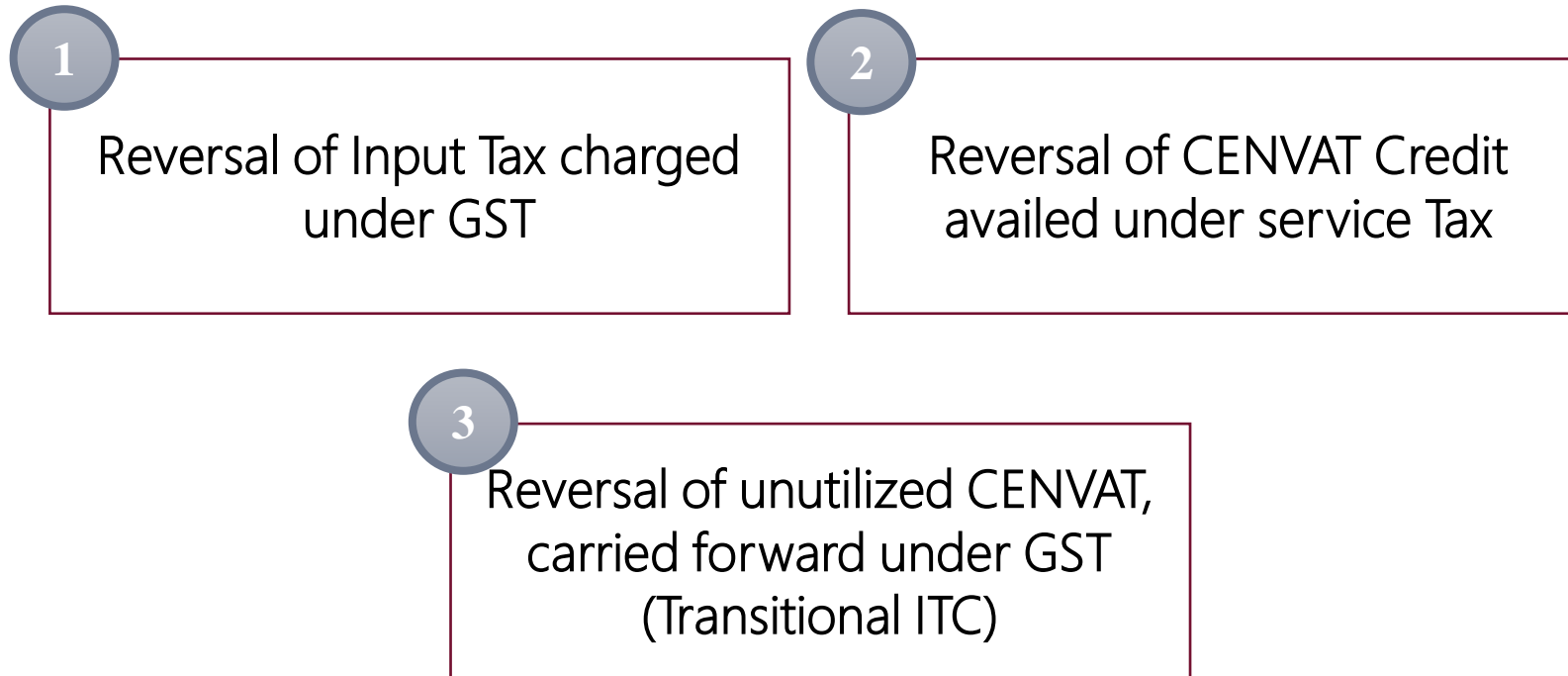
- Rule 42 – Reversal of credit received on Inputs and Input services
- Rule 43 – Reversal of credit received on Capital Goods

Whether Exempt supply includes:

- Interest
- Dividend
- Securities

Important to note:

- The reversal of ITC to be done in every tax period.
- Total Input Tax Credit & Reversal of ITC to be declared in GSTR 3B for the said Tax period.
- At the year end, the reversal of ITC for the financial year to be calculated; and any short/excess reversal to be paid/claimed in GSTR 3B.
- Reversal is to be calculated separately for CGST, SGST, IGST and CESS.



1

Reversal of ITC Availed under GST

- ❑ Exempt supply includes Sale of Land; and Sale of building (after completion certificate or First occupancy).
- ❑ Reversal is to be done on the basis of *carpet Area*.
- ❑ For calculating proportionate common credit on exempt portion $\{C2 \times (E \div F)\}$ -
 - E = Carpet Area of :
 - a. Apartments the construction of which is exempt.
 - b. Apartments remaining unsold on the date of completion certificate
 - F = Aggregate Carpet area of the project
- ❑ Reversal is to be calculated finally, from commencement or 1st July 2017, till the date of completion certificate.

**Calculation- Project wise
or GSTIN wise** ?

2

Reversal of CENVAT Credit availed under service Tax ??

Jurisprudence

- *CCE, Pune v. Dai-Ichi Karkaria Ltd. 1999 (112) E.L.T. 353(S.C.)*
- *H.M.T. V. CCE, Panchkula 2008 (232) ELT 217 (Tri-LB) affirmed by the P&H HC in CCE, Panchkula v. HMT Ltd 2010 TIOL 316 HC P&H.*
- *Hindustan Zinc Ltd. V. UOI 2008 (223) ELT 149 (Raj)*
- *CCE & Cus, Cochini v. Premier Tyres Ltd 2008 (223) ELT 149 (Raj)*

CESTAT

- *M/s Alembic Ltd 2018-CESTATAT-AHM-ST and*
- *M/s Shreno Limited Vs C.C.E & ST*
- *Prajapati Developers vs CCT -CESTAT-Hyd*

CENVAT Credit rules on Reversal??

3

Reversal of Transitional ITC ?

Reversal of Cenvat Credit and ITC : OC/CC

S.No	Description	Amount in crores
1	Total Cost of construction of the project	100
2	Service Tax Cenvat Credit availed in Pre-GST Regime	10
3	ITC (GST) availed from 1.07.2017 to 31.03.2019	3
4	Date of OC	31.3.2019
5	Area unsold on date of OC	33%
Reversals		
6	Cenvat Credit to be reversed	0
7	ITC (GST) to be reversed on receipt of OC	$3 \times 33\% = 1$

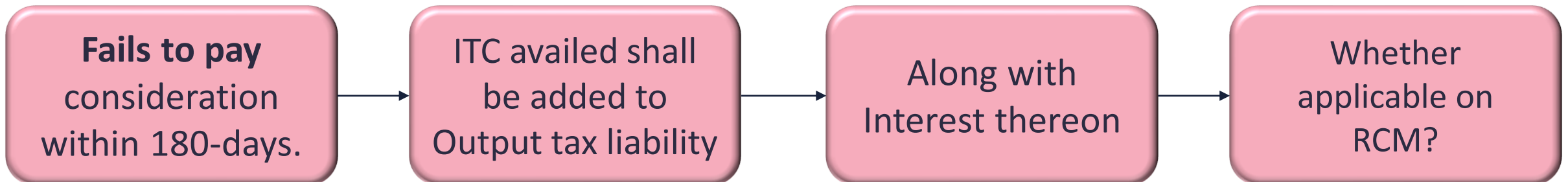
Case Study 5

Reversal of credit on non payment within 180 days even if contractual time line to make the payment is after 180 days



Non-payment of consideration within 180 Days.

- **Section 16(2)** – Where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply of goods or services along with the tax payable thereon, within a period of **one hundred and eighty days** from the date of issue of invoice by the supplier, the amount equal to Input tax credit availed by the recipient shall be added to his **output tax liability**, along with **interest** thereon, in such manner as may be prescribed.
- The recipient shall be entitled to avail Input tax credit on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.
- What does **failure to pay** means?
- What if contract term provide that payment is to be made within 200 days from date of issuance of invoice?



Reversal of ITC on account of non-payment of consideration –

- The amount of such Input tax credit shall be added to the output tax liability.
- A registered person shall be liable to pay interest at the rate notified under section 50(1) for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability.
- The time limit specified in section 16(4) shall not apply to a claim for re-availing of any credit, that had been reversed earlier.

Case Study 6

Identification of **Hidden Supplies**
between Related Parties



Who is a Related Party ?

As per Section 15 of CGST Act 2017, a person shall be deemed to be a related person if

:-

Such Persons are

- Officers or directors of one another's businesses
- Legally recognized partners in business
- Employer and employee

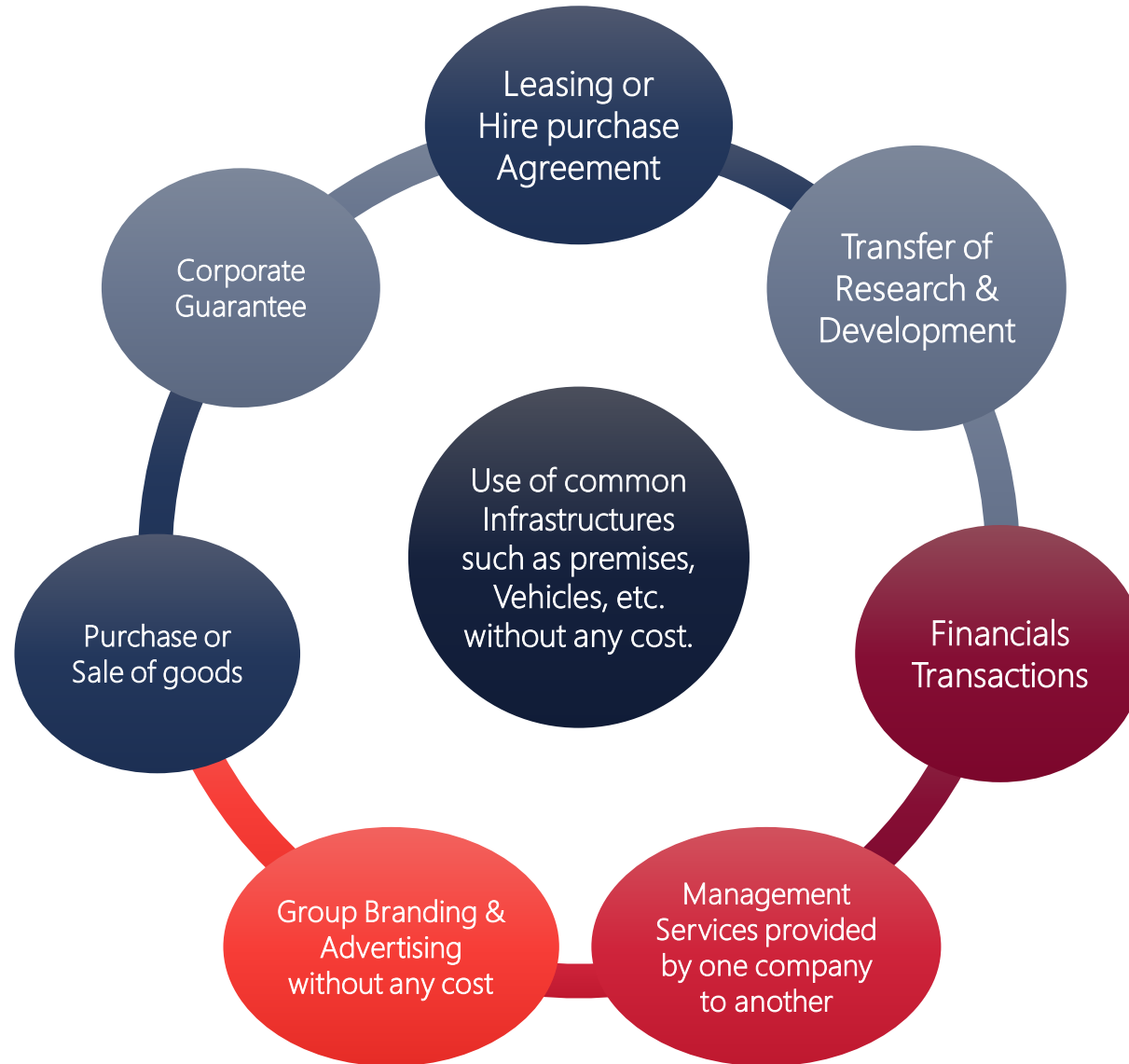
Controlling Power

- One of them directly or indirectly controls the other
- Both of them are directly or indirectly controlled by a third person
- Together they directly or indirectly control a third person
- Any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them.

Related persons also includes members of the same family.

- The term "person" also includes legal persons
- Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Examples of Related party Transactions



- Rent Free accommodation
- Car facility provided to directors of the company
- Provision of furniture to employees at home
- Club Membership facility

Press Release dated 10th July 2017: Clarification regarding perquisites supplied to employees

It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that *if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C)*

Identifying Related party transactions in Financial Statements

Notes to Accounts

AS-18 requires disclosure of related party transactions in the financial statements mandating its disclosures by most of the companies which helps to identify the same for GST purpose

Statutory Audit report

Consists details in respect of related party transactions as observed by the auditor

Shareholding Structure

Identify the companies having majority shareholding and substantial interest in the company

Corporate Guarantee

Whether Company has given or received any corporate guarantee can be identified by the disclosures made by the company

Case Study 7

ITC eligibility on construction of buildings



Blocked Credit

- Section 17(5)(c) – Works Contract Services when supplied for construction of immovable property except where it is an input service for further supply of works contract service
- Section 17(5)(d) – Goods or services or both received by taxable person for construction of immovable property on his own account

ITC
Availability?

Civil Work

Plant and Machinery

Equipment

Foundation or Structural Support

Architect Services

DG Sets

Fire fighting equipments

Furniture

Electrical equipment

Case Study 8

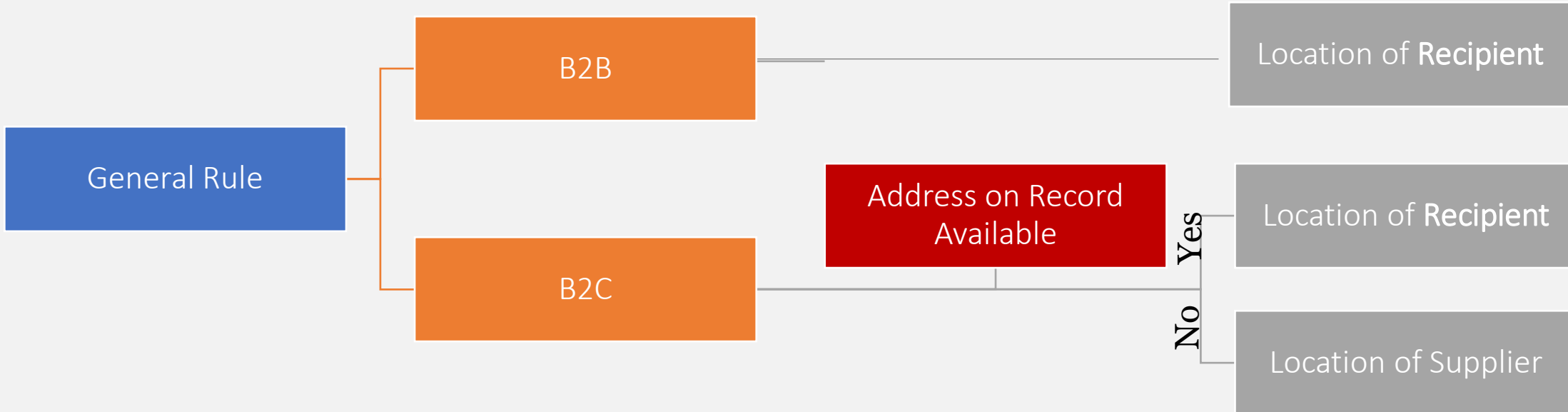
Place of Supply of delivery
charges by Food Apps like Zomoto

Issues – Permanent address vs
corresponding address

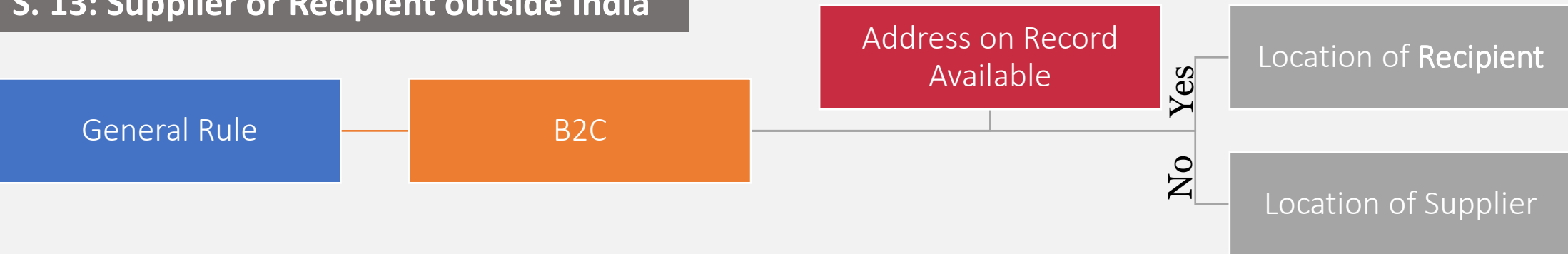


General Rule: Place of Supply of Services

S. 12: Supplier and Recipient in India



S. 13: Supplier or Recipient outside India





Address on Record

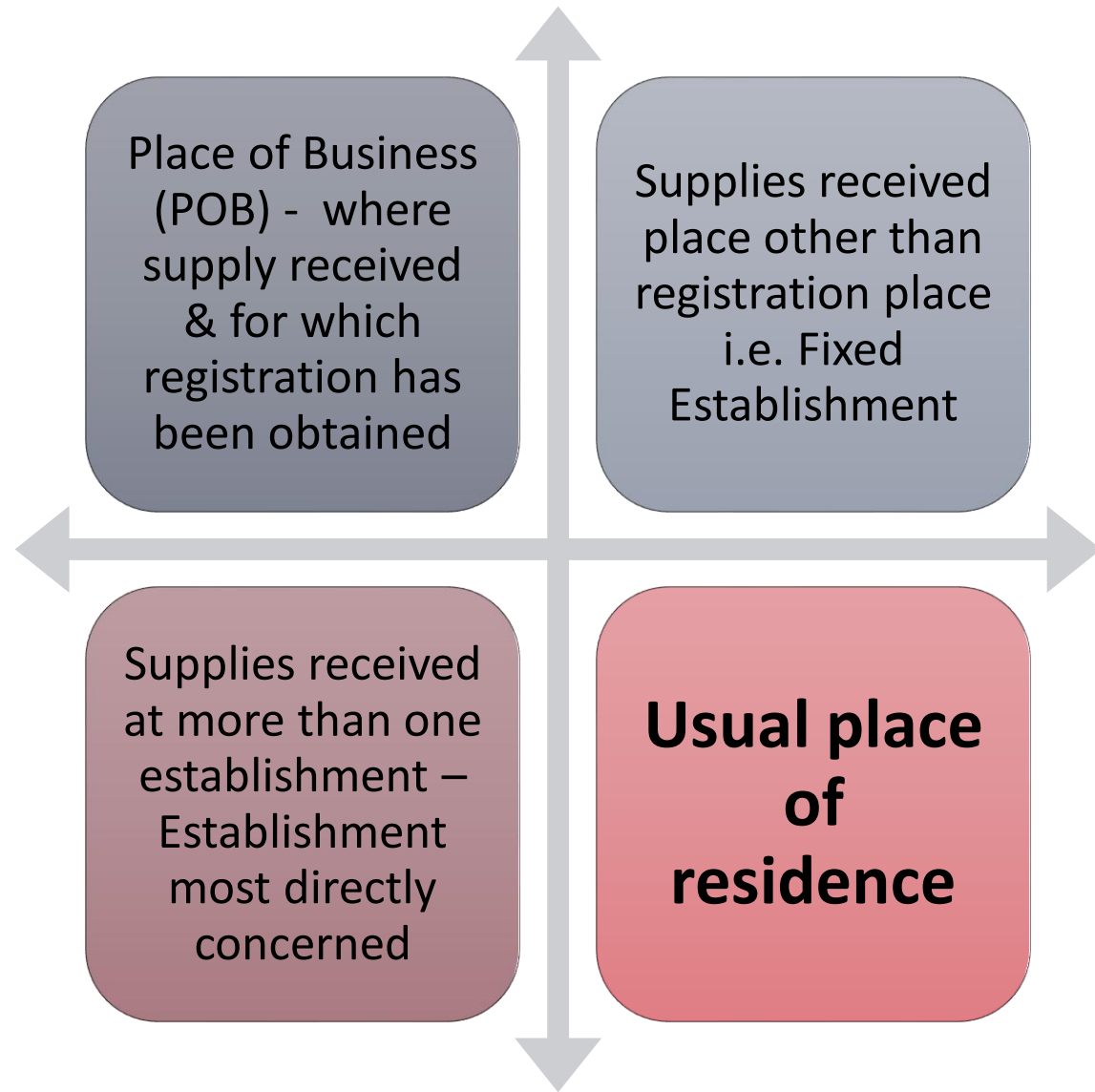


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- **Meaning of “address on record”**
- **Definition of Address as per P. Ramanatha Aiyar’s The Major Law Lexicon”, 4th Edition, 2010:**
- *“a direction for guidance, as to a person’s abode; hence the place at which a person resides, or the name and place of destination, with any other details, necessary for the direction of a letter or package”*

Location of Recipient of Services



OECD Guidelines 2001 on Place of Consumption

What is Usual Place of Residence?

- **Permanent Address**
- **Correspondence/ Current Address**

- *Mr. A is living and working in Gurgaon.*
- *He is availing services from SBI Haryana.*
- *His permanent address is in Rajasthan.*

Bank will charge CGST+SGST or IGST

Case Study 9

Place of supply – Storage and Warehousing services vs Renting of immovable property service



Section 12(3):

The place of supply of services,—

*(a) **directly in relation to** an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or **estate agents**, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or*

*(b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and **including a house boat or any other vessel**; or*

(c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

*(d) **any services ancillary** to the services referred to in clauses (a), (b) and (c),*

*shall be the location at which the immovable property or boat or vessel, as the case may be, is **located or intended to be located**:*

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient



Case Study : Warehousing service vs Renting Services



- **Parameters**

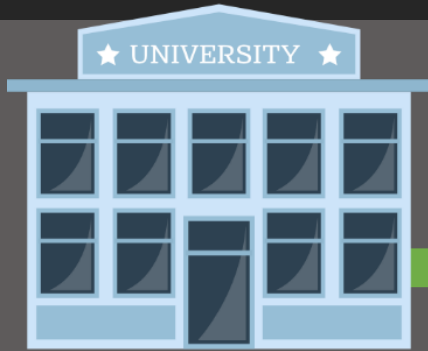
- Whether the **specific area** of the warehouse is identified for the purpose of storing the goods and is **known to the customer**; and
- Such specific part of the property is assigned for the **exclusive use** of the customer during the whole duration of the contract i.e. the customer will be able to store his goods to the exception of any other person.

Case Study 9

Case study on intermediary



Promotion of foreign university?



XYZ University

Commission received in FX



Promotion and inducement
for XYZ varsity



OUTSIDE INDIA

INDIA

ISSUES:

Whether promotion is principal supply or
facilitating recruitment of students?

As per AAR (Global reach), intermediary.



POS: Intermediary Services

Section 13(8)(b): POS = Location of supplier of services.

*“Intermediary” means a broker, an agent or any other person, by whatever name called, who **arranges or facilitates the supply** of goods or services or both, or **securities**, between two or more persons, but does **not include** a person who supplies such goods or services or both or securities **on his own account**;*

- CSC Financial Services Ltd vs Commissioner of Excise and Custom [C-235/00]
- Arthur Anderson & Co. Accountants vs Staatssecretaris van Financien [C-473/03]
- M/s Bookit Ltd. vs Customs and Excise [(2004) UK V18626 (28 May 2004)]
- Five Star Shipping [2018-VIL-21-AAAR]
- Sunrise Immigration Consultants Private Limited vs CCE & ST, Chandigarh [2018-VIL-539-CESTAT-CHD-ST]
- Toshniwal Brothers (Sr) Pvt Ltd [2018-VIL-203-AAR]
- GoDaddy India Web Services (P.) Ltd [2016-VIL-08-ARA]

Case Study 11

Permanent transfer of brand vs
temporary transfer of brand



FACTS

- M/s 'X' (hereinafter referred to as "querist") proposes to purchase a brand name from a company located in Germany (hereinafter referred to as "seller") for a consideration.
- The brand name is registered as a trademark in various countries across the World . The ownership of the brand name would be permanently transferred to the querist.
- The seller and M/s 'X' would enter into the contract with respect to sale of the brand name in GermanyThe right to use brand name will be transferred by the querist to a 100% subsidiary of the querist located in Dubai. As a result of such transfer, the brand name would be used in Dubai by the 100% subsidiary of the querist located in Dubai.
- The entity in Dubai shall pay consideration in the form of a royalty amount to the querist for the use of the brand name.
- The querist would not sell any goods in India under the said brand name.

ISSUE

- The Supreme Court in the case of *Vikas Sales Corporation vs. Commissioner of Commercial Taxes, 2017 (354) ELT 6 (SC)* held that when a movable property has an inherent value of its own and is freely bought and sold in the market as merchandise, it shall be considered as to be a 'good'.
- Section 2(102) of the CGST Act defines "services" as anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged
- Serial No. 5 (c) of Schedule II to the CGST Act treats "temporary transfer or permitting the use or enjoyment of any intellectual property right;" as supply of service.

ISSUE

- **Whether GST will be applicable or not on the proposed sale of the brand name to the querist by the seller?- In the present case whether permanent transfer of Intellectual Property right will be considered as supply of good or supply of services.**
- Serial No. 17 of Notification No. 08/ 2017 – IT (Rate) dated 28.06.2017 (hereinafter referred to as “Service Rate Notification”) covers “Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software”.
- Serial No. 243 of Schedule II to Notification No. 01/2017 – IT (Rate) dated 28.06.2017 (hereinafter referred to as “Goods Rate Notification”) as amended by Notification No. 43/2017 – IT (Rate) dated 14.11.2017 covers “Permanent transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software”.

Case Study 11

GST on salary paid to directors - Clay
Crafts India Pvt Ltd ?

Applicability of RCM on director's salary



RCM Notification requires a company to pay tax for the services provided by director



Schedule III – Services by employee to employer in course of employment shall not be treated as supply



Rajasthan AAR – Clay Crafts India Pvt Ltd – Directors are not employees and tax on salary given to them shall be paid under RCM



Doctrine of Parimateria applicable – Definition to be taken from most relevant Act, which is Companies Act, 2013



Ruling applicable only on applicant who sought the said ruling

Whole Time Director

- Section 2(94) – Director in whole time employment of the company

Managing Director

- Section 2(54) – Director entrusted with management of affairs of the company
- Apex Engineering – MD is employee of company

Executive Director

- Companies (Specification of definition details) Rules 2014 – Executive Director means a whole time director

**WTD/MD/ED –
RCM not
applicable**

**Non-Executive/
Independent/ Nominee
Director – RCM
applicable**

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FIGHT AGAINST COVID-19

