

Valuation Time and Place of Supply

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Value of Supply

Consideration

- ▶ Section 2(31): Consideration – Inclusive definition
 - ▶ Any payment made or to be made, whether in money or otherwise,
 - ▶ monetary value of any act or forbearance,
 - ▶ 'in respect of', a supply
 - ▶ 'in response to', a supply
 - ▶ 'for the inducement of', a supply.
 - ▶ nexus between the payment and the supply
 - ▶ whether by the recipient of the supply or any other person
 - ▶ Does not include subsidy given by Central/ State Government
- ▶ Consideration includes advances received for supply.
- ▶ Consideration does not include deposit unless applied as consideration for the supply.

Non-refundable deposit ?

Value of Supply

▶ Section 15(1) –

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.

- ▶ Transaction Value
- ▶ Price actually paid or payable for the said supply
- ▶ Supplier and recipient of the supply are not related
- ▶ Price is the sole consideration for the supply

- Contract based levy – Service Tax and Sales Tax
- Intrinsic value of goods – Excise and Customs

Inclusions in Transaction Value

- ▶ Section 15(2)(a) - 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;
 - ▶ GST on Excise Duty paid on Tobacco products
 - ▶ GST on Entertainment Duty
 - ▶ GST on Custom Duty on imported goods
 - ▶ GST on Stamp duty on sale of flats

Inclusions in Transaction Value

- ▶ Section 15(2)(b) - 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.
 - ▶ Scope of expenses covered ?
 - ▶ Scope of the Supply in terms of Contract ?
 - ▶ Travel arrangements to the Consultant ?
 - ▶ Free issue material to contractor ?
 - ▶ Non monetary consideration`
 - ▶ Union of India v. Intercontinental Consultants And Technocrats Pvt Ltd (2018-TIOL-76-SC-ST)

Australian Goods and Service Tax Ruling (GSTR) 2001/6

- Conditions of the contract - things used in making the supply
- 'Economic value' to supplier in return for his supply.
- Character of the transaction that occurs

Inclusions in Transaction Value

- ▶ Section 15(2)(c) - Incidental expenses, including commission and packing, 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;
 - ▶ At the time or before the delivery.
 - ▶ Commission and Packing
 - ▶ Transit Insurance?
 - ▶ Inclusion of freight till customer premises? Ispat Industries (2015-TIOL-238-SC-CX)

Inclusions in Transaction Value

- ▶ Section 15(2)(d) - Interest or late fee or penalty for delayed payment of any consideration for any supply
 - ▶ Interest received for pre-GST supply
 - ▶ Interest received for exempt supply
 - ▶ Addition to the value, not separate taxable supply
 - ▶ Interest received on loans, deposits, advances - Exempt
-
- Rate of Tax – as applicable on the supply for which the consideration is delayed.
 - Time of Supply – The date on which the supplier receives interest, late fee or penalty.

Inclusions in Transaction Value

- ▶ Section 15(2)(e) - Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.--For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

- ▶ Grant/Subsidy affects price charged
- ▶ Subsidy by Energy Action Grants Agency -Keeping Newcastle Warm Limited- ECJ- C-353/00
- ▶ Sales Tax incentive schemes - Super Syncotex - 2014 301 ELT 273 (S.C.)
- ▶ Capital Investment incentives?

Discounts – Pre-supply

- ▶ Section 15(3)(a) - The value of supply shall not include any discount which is given –

Before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply

- ▶ Duly recorded in the invoice
- ▶ Cash discount

- Discount quantified on the basis of past performance whereas allowed as reduction in the subsequent invoices - Whether can be treated as discount allowed before supply has been made?
- Cost cutting by way of discounts?

Discounts – Post-supply

- ▶ Section 15(3)(b) - The value of supply shall not include any discount which is given –
after the supply has been effected, if—
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
 - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.
 - ▶ established as per agreement
 - ▶ specifically linked to invoice
 - ▶ known at or before the supply
 - ▶ ITC reversed by the recipient

- Agreement – Oral Communication/ E-mail Communication/ Contract
- Scheme issued after the start of scheme period
- Change in terms and conditions of scheme during the scheme period

Valuation Rules

When to refer to Valuation Rules?

- ▶ Valuation Rules to be referred when:
 - ▶ Consideration is not in money (wholly / partly)
 - ▶ Related party transactions
 - ▶ Business transactions by money changer, pure agent, insurer, air travel agent and second hand goods dealer.

Rule 27: Consideration not wholly in money

Value of supply shall be :

OMV – Open Market Value

Where OMV is not available and amount is known at the time of supply -- ✘

Consideration in Money
+
Equivalent Value of Consideration not in money*

Where such value is not determinable -- ✘

Value of supply of like kind and quality

Where such value is not determinable -- ✘

Consideration in Money
+
Rule 30 or 31

Rule 28: Valuation of supplies to distinct or related person

Value of supply shall be :

Where full credit is available -- ✓

Any Invoice value (proviso Rule 28)

Where full credit is not available -- ✗

OMV – Open Market Value

Where OMV is not available -- ✗

Value of supply of like kind and quality

Where such value is not determinable -- ✗

110% of cost of production /acquisition/manufacture etc.(Rule 30)

Where such value is not determinable -- ✗

Residual Value (Rule 31)

If the goods are for further supply "as such" by the recipient, then the value may be 90% of price charged to unrelated customer.

• Rule 30 can be bypassed in case of services

Related Person

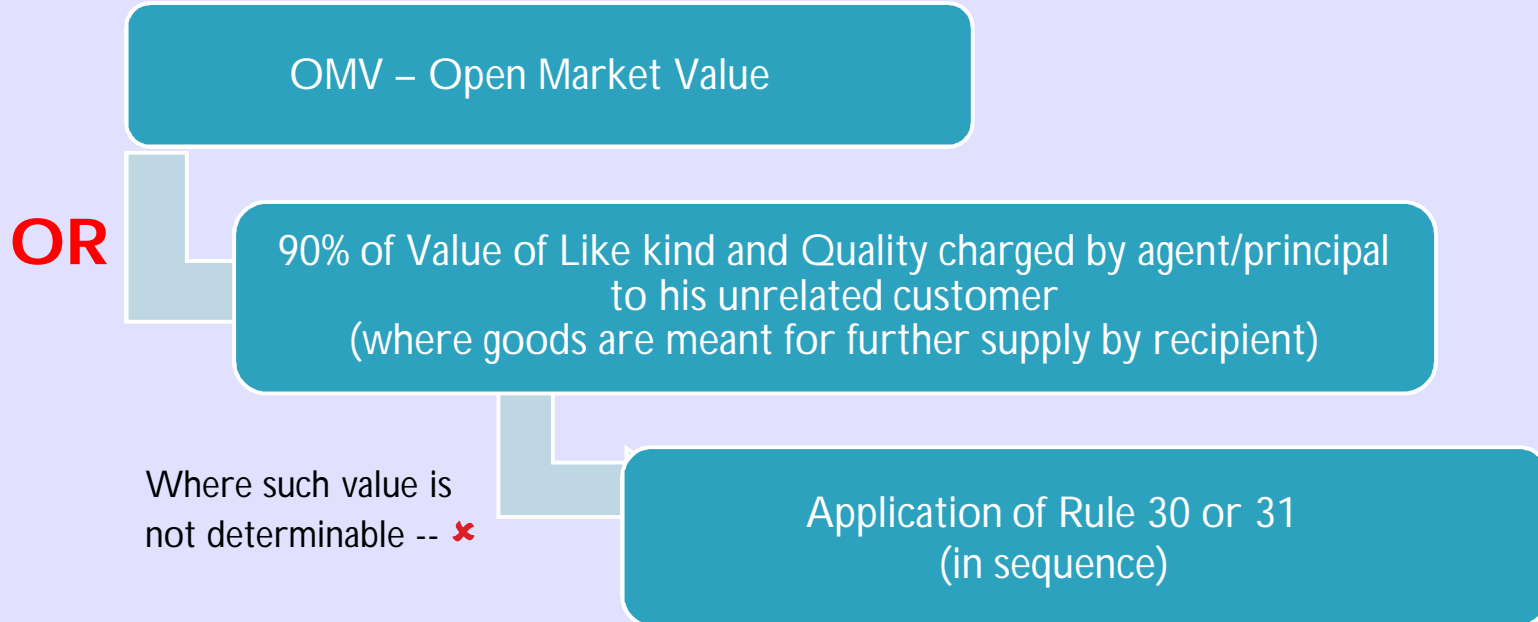
- ▶ Explanation to Section 15 - The buyer and seller are related persons when:
 - ▶ They are officers or directors of one another's businesses
 - ▶ They are legally recognized partners in business
 - ▶ They are employer and employee
 - ▶ Any person directly or indirectly owns, controls or holds twenty 25% or more of the shares of both of them
 - ▶ 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
 - ▶ They are members of the same family
 - ▶ Associated in the business of one another such that one is the sole agent/distributor/concessionaire of another

Specific Transaction

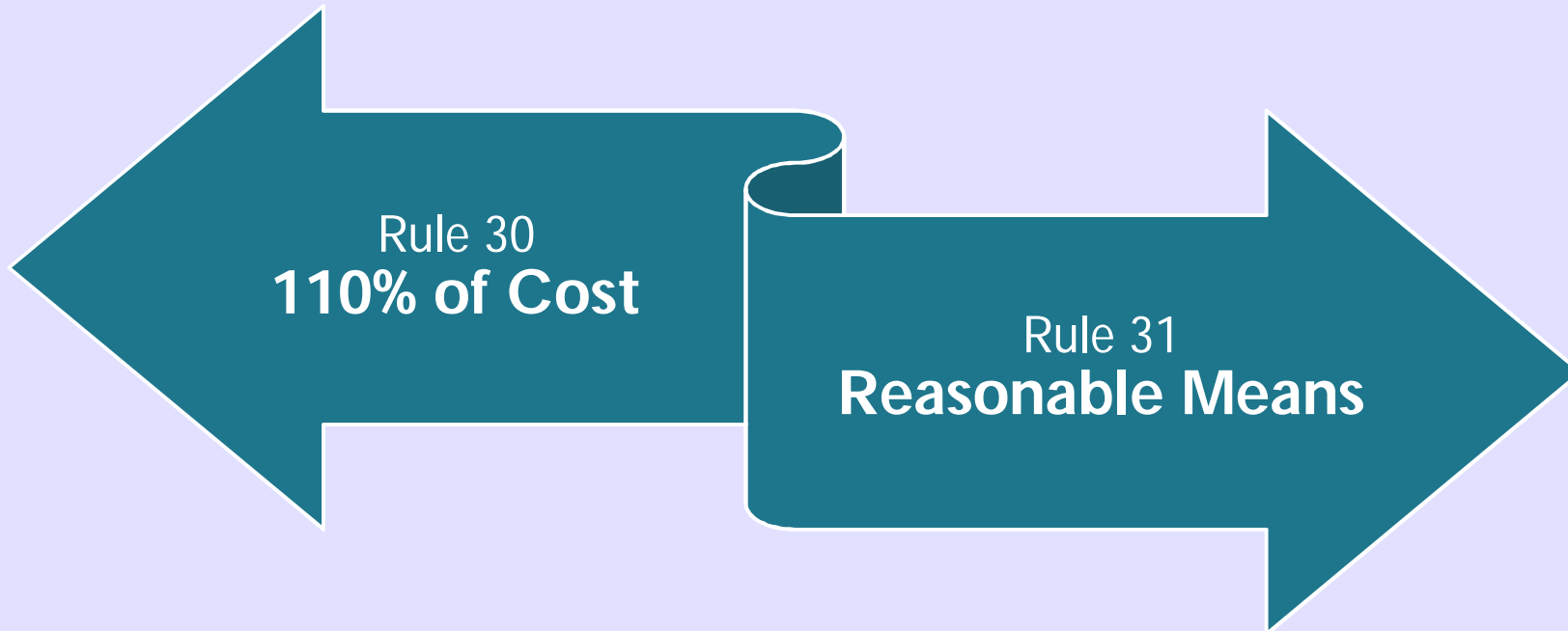
- ▶ Valuation between Distinct/ Related persons – Rule 28
 - ▶ Stock transfer
 - ▶ Cross-charging
 - ▶ Whether to include salary cost ?
 - ▶ At cost or to include profit element ?
 - ▶ Job Work
 - ▶ Inter-state movement of capital goods
 - ▶ Undervalue in receiving state
 - ▶ Overvalue in originating state

Rule 29: Valuation of supplies made through an Agent

Value of supply shall be :



Rule 30 & 31: Where value cannot be determined as per above rules



A supplier of service can disregard Rule 30 and can apply Rule 31

Rule 32: Valuation of certain specified supplies

- ▶ Money changing services
 - ▶ If exchanged to or from Indian currency
 - ▶ (Buying rate – Selling Rate) X RBI Reference Rate
 - ▶ Where RBI reference rate no available
 - ▶ 1% of gross amount of INR provided or received
 - ▶ Neither currencies exchanged is Indian Rupees
 - ▶ 1% of lesser of two amounts obtained by converting both currencies into Indian currency

OR

Amount of Currency Exchanged	Taxable Value	Minimum/Maximum
Upto 1 Lakh	1% of Gross Amount of Cx	Minimum= Rs. 250/-
<10 Lakhs > 1 Lakh	Rs. 1000/- (+) 0.5%	N/A
Exceeding 10 Lakhs	Rs. 5000/- (+) 0.1%	Maximum= Rs. 60K/-

Option once exercised shall not be withdrawn during the remaining FY

Rule 32: Valuation of certain specified supplies

- ▶ Air travel agent
 - ▶ Domestic booking – 5% of basic fare
 - ▶ International booking – 10% of basic fare
- ▶ Life insurance services
 - ▶ Gross Premium – Amount allocated for investment and savings
 - ▶ Single Premium annuity policy – 10% of single premium
 - ▶ Other cases –
 - ▶ 25% of Premium charged in first year
 - ▶ 12.5% of premium charged in subsequent years
- ▶ Dealer of second hand goods
 - ▶ Value of Supply = Selling Price – Buying Price

Rule 33: Value of supply of services in case of pure agent

- ▶ The expenditure or costs incurred by a supplier as a pure agent shall not be included in the value of supply if –
 - ▶ The payment to third party is made on authorisation by the recipient;
 - ▶ Payment is separately indicated on the invoice;
 - ▶ Supplies procured are in addition to the supplies provided by the supplier.
- ▶ Pure agent means a person who –
 - ▶ Enters into contractual agreement to act as pure agent;
 - ▶ Does not hold or intend to hold title to goods or services;
 - ▶ Receives only actual amount.

Rule 34: Rate of Exchange

▶ Supply of Goods

- ▶ Rate of exchange as notified by the Board under section 14 of the Customs Act
- ▶ For the date of time of supply of such goods in terms of section 12 of the CGST Act

▶ Supply of Services

- ▶ Rate of exchange determined as per the generally accepted accounting principles
- ▶ for the date of time of supply of such services in terms of section 13 of the CGST Act

Rule 35: Value of Supply inclusive of tax

- ▶ The tax amount shall be determined as per following manner –
 - ▶ Tax amount = $\frac{\text{Value inclusive of tax} \times \text{Tax Rate in \%}}{100 + \text{Sum of Tax Rates in \%}}$

Time of Supply

Time of Supply for Goods

Taxable under Forward Charge

Earlier of

Date of issuance of invoice

Last date on which invoice has to be issued

Date of receipt of payment

Taxable under Reverse Charge

Earlier of

Date of receipt of goods

Date when payment is entered in the books of accounts or debited in the bank account, whichever is earlier

Date immediately following 30 days from the date of invoice

Date of entry in books of account of recipient of supply, in case none of the above apply

Time of Supply for Services

Taxable under Forward Charge

Invoice issued in 30/45 days

- Earlier of:
- Date of issuance of invoice, or
- Date of receipt of payment

Invoice not issued in 30/45 days

- Earlier of:
- Date of provision of service, or
- Date of receipt of payment

In other cases

- Date of receipt of services by recipient

Taxable under Reverse Charge

Earlier of

Date of payment

Date immediately following 60 days from the date of invoice

Date of entry in books of account of recipient of supply, if none of above apply

In case of associated enterprises, date of entry in the books of accounts of recipient of supply

Time of Supply: Other Situations

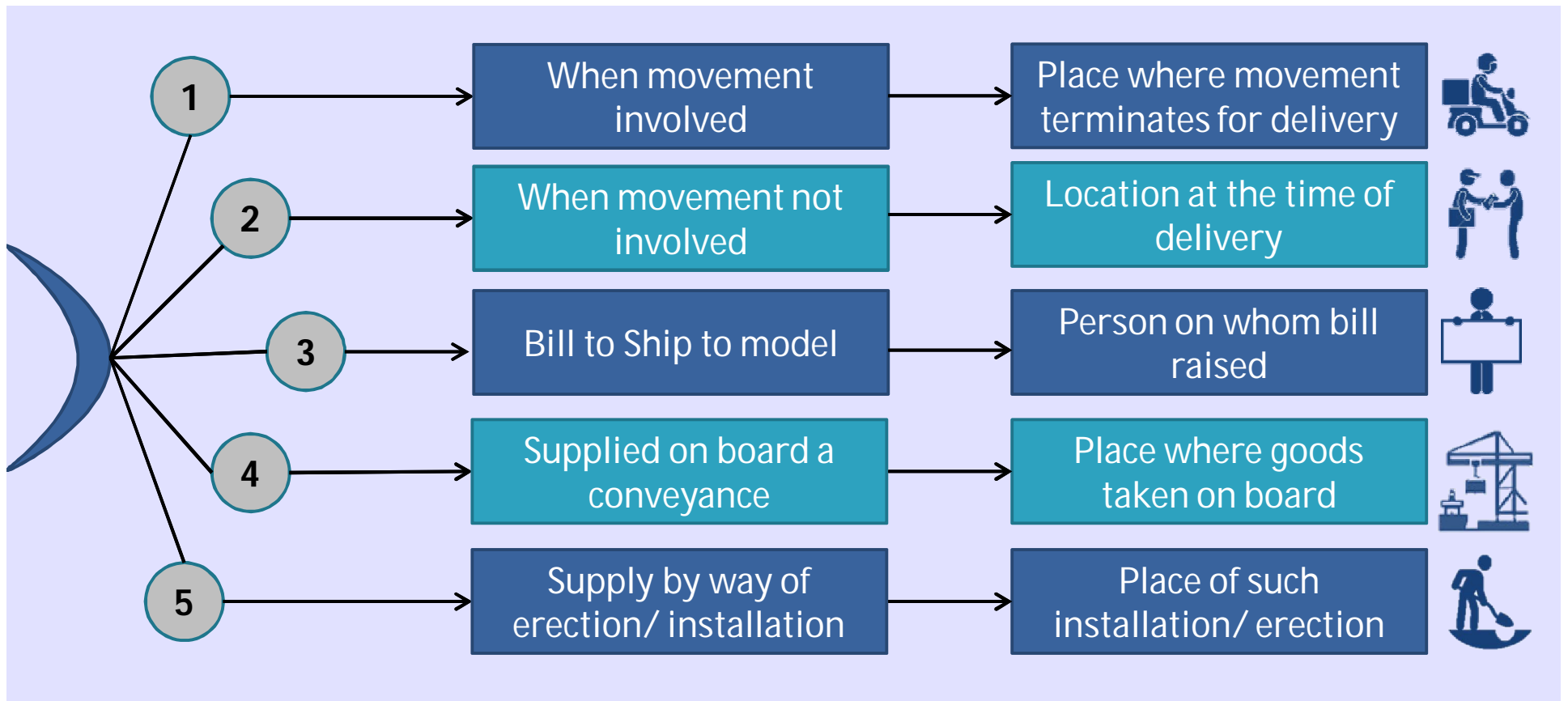
Situation	Time of Supply
(1) Interest, Late Fee, etc.	Date on which the supplier receives such addition in value
(2) Supply of Vouchers	the date of issue of voucher, if the supply is identifiable at that point; or the date of redemption of voucher, in all other cases
(3) Where it is not possible to determine the time of supply	Date on which return is filed (where periodical return is to be filed) or Date on which tax is paid (in other cases)
(4) Where the supplier receives an amount upto one thousand rupees in excess of the amount indicated in the tax invoice	Date of issue of invoice relating to such excess amount (at the option of supplier)

Place of Supply

Location of Supplier

- ▶ “location of the supplier of services” means-
 - ▶ where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
 - ▶ where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
 - ▶ where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
 - ▶ in absence of such places, the location of the usual place of residence of the supplier;

Place of Supply – Goods [other than Import/Export]



Place of Supply – Goods: Import or Export

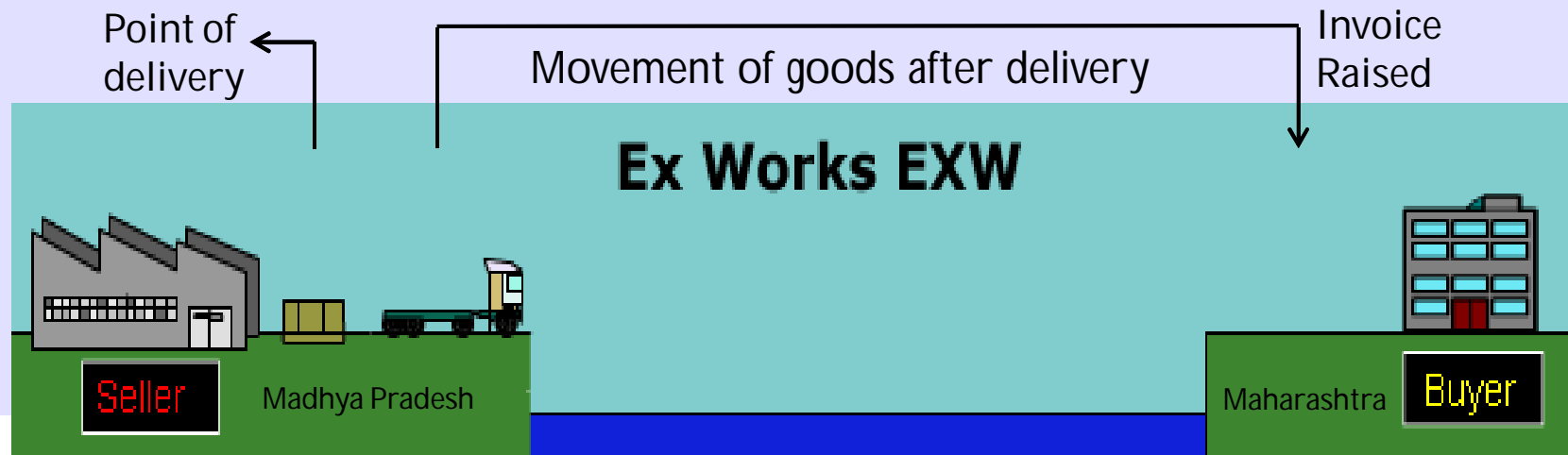
- ▶ Import – Location of Importer
- ▶ Export – Location outside India



Delivery Terms - Ex Works

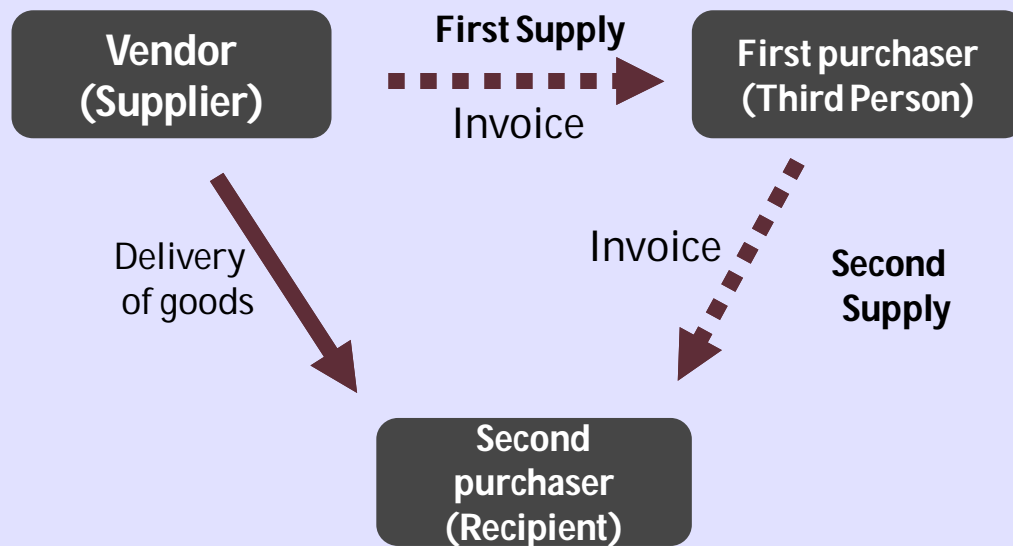
Section 10(1)(a), IGST Act, 2017- Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

- Seller to levy Local CGST + SGST or IGST ?
- Whether ITC can be claimed by Buyer without having a place of business in that State?



Place of Supply : Bill-to/Ship-to Model

Section 10(1)(b) of IGST Act - Where the goods are delivered by the supplier to a recipient or any other person, on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.



Place of Supply
<u>First Supply</u> Principal place of business of first purchaser
<u>Second Supply</u> Where delivery terminates i.e. location of second purchaser

Definition of Recipient of Supply of Goods

2(93) “recipient” of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

Place of Supply : Bill-to / Ship-to Model

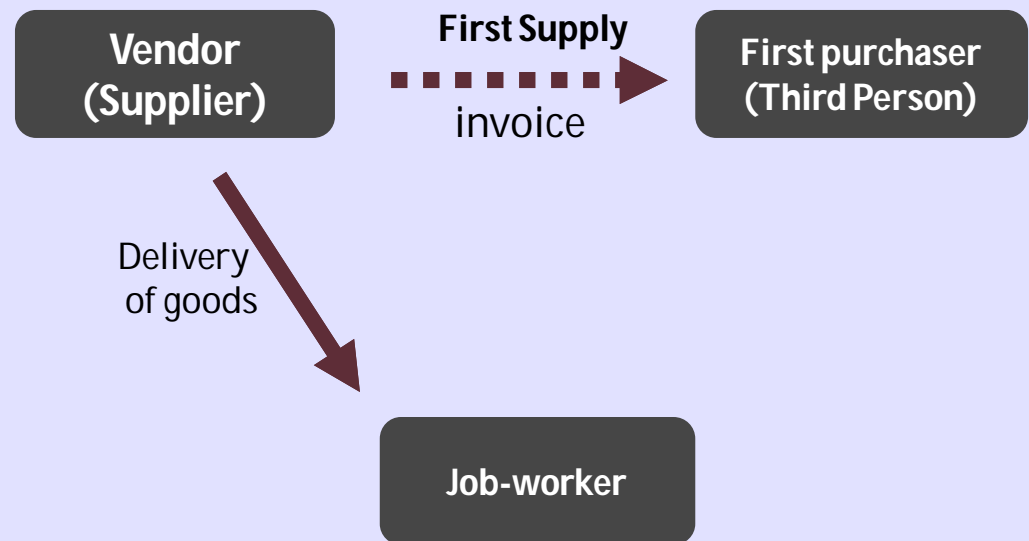
Section 16 of the CGST Act:

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

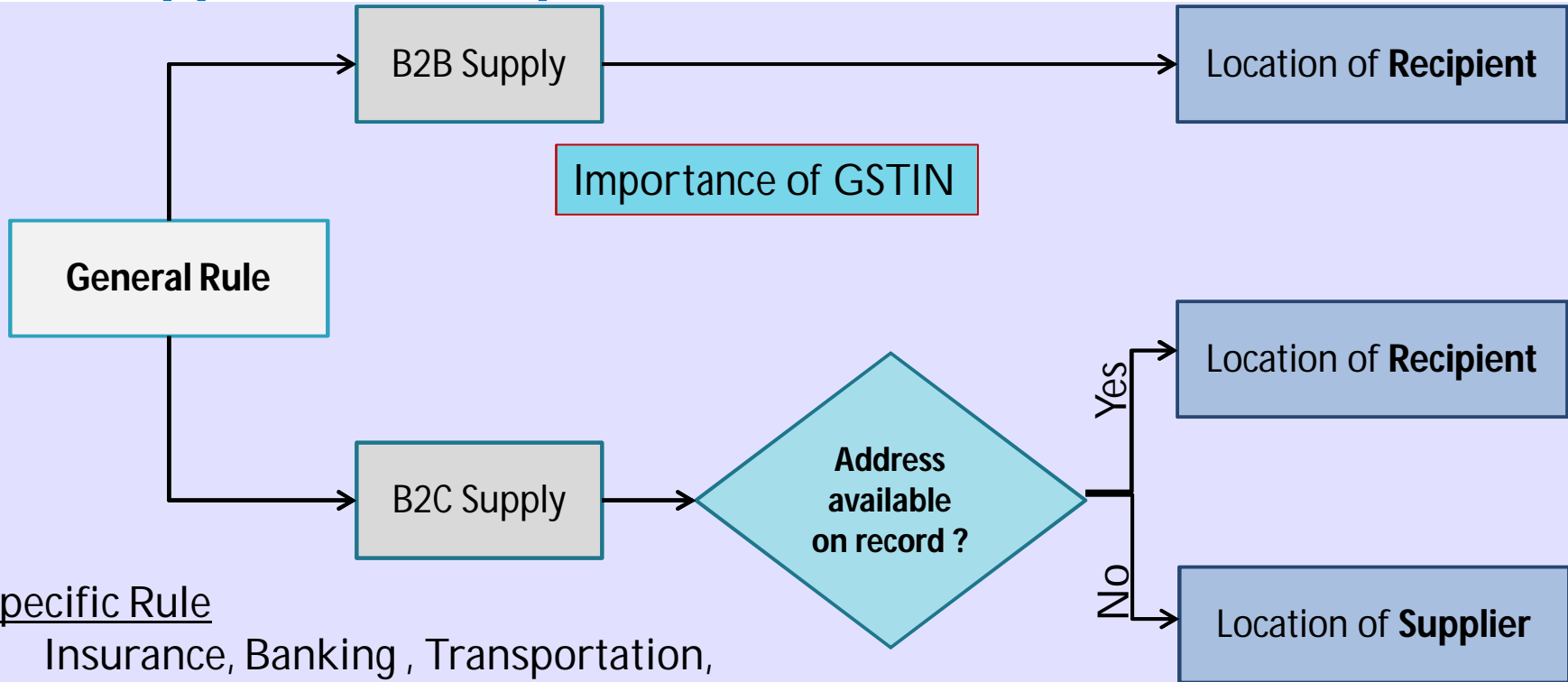


Issues

- ▶ Movement of goods in own conveyance by the supplier to its customer.
- ▶ The conveyance obtains certain supplies while on the way, in another state, such as engine oil, etc.
 - ▶ Who is the recipient – Person in charges of conveyance or the Supplier?
 - ▶ What is the place of supply – Section 10(1)(a) or 10(1)(b)
 - ▶ Whether credit will be available to the supplier?

Place of Supply- Services (General Rule)

Both supplier and recipient in India



Specific Rule

- Insurance, Banking, Transportation, Telecommunication, services in relation to immovable property, etc.

Place of Supply of Services – Either Party outside India

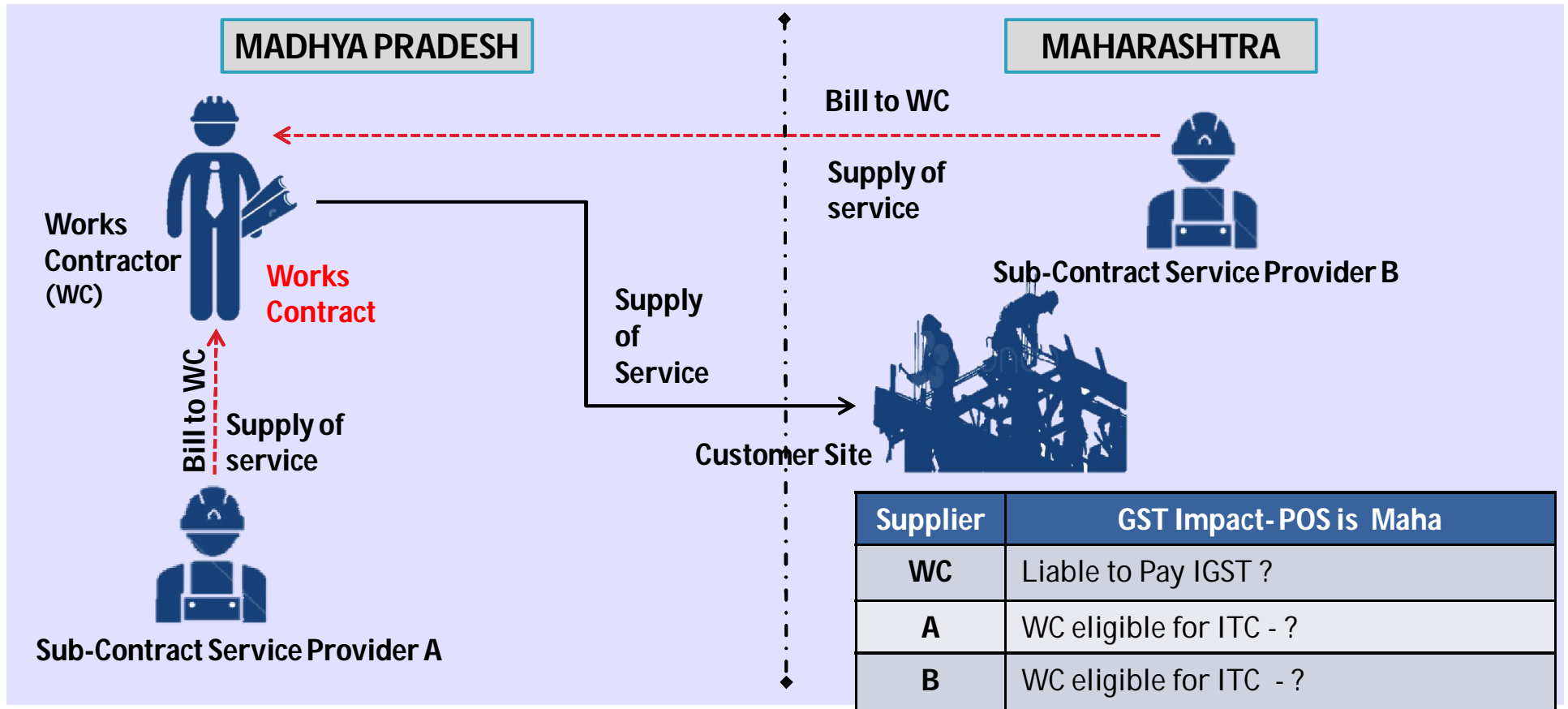
▶ General Rule:

- ▶ No distinction of B2B and B2C
- ▶ Other than special rules, POS is location of service recipient
- ▶ If not available, POS is location of service provider

▶ Specific Rule

- ▶ Service in respect of goods and personal service
- ▶ Immovable property related service
- ▶ Event based service
- ▶ Banking
- ▶ Intermediary
- ▶ Transportation of goods and passengers
- ▶ Online information and database access or retrieval.

Works Contract – Credit Chain



Wrong determination of nature of supply- Impact

- ▶ Tax wrongly collected and paid to Central Government or State Government (Section 19 of IGST Act)
 - ▶ A registered person who has paid IGST on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.
 - ▶ A registered person who has paid CGST and SGST or UTGST, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of IGST payable.
- ▶ ITC claimed by the buyer?
- ▶ Unjust enrichment?



THANK YOU!
