

# BASIC CONCEPTS AND PRACTICAL ISSUES IN SERVICE TAX

GURGAON BRANCH OF NIRC OF ICAI

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BY:

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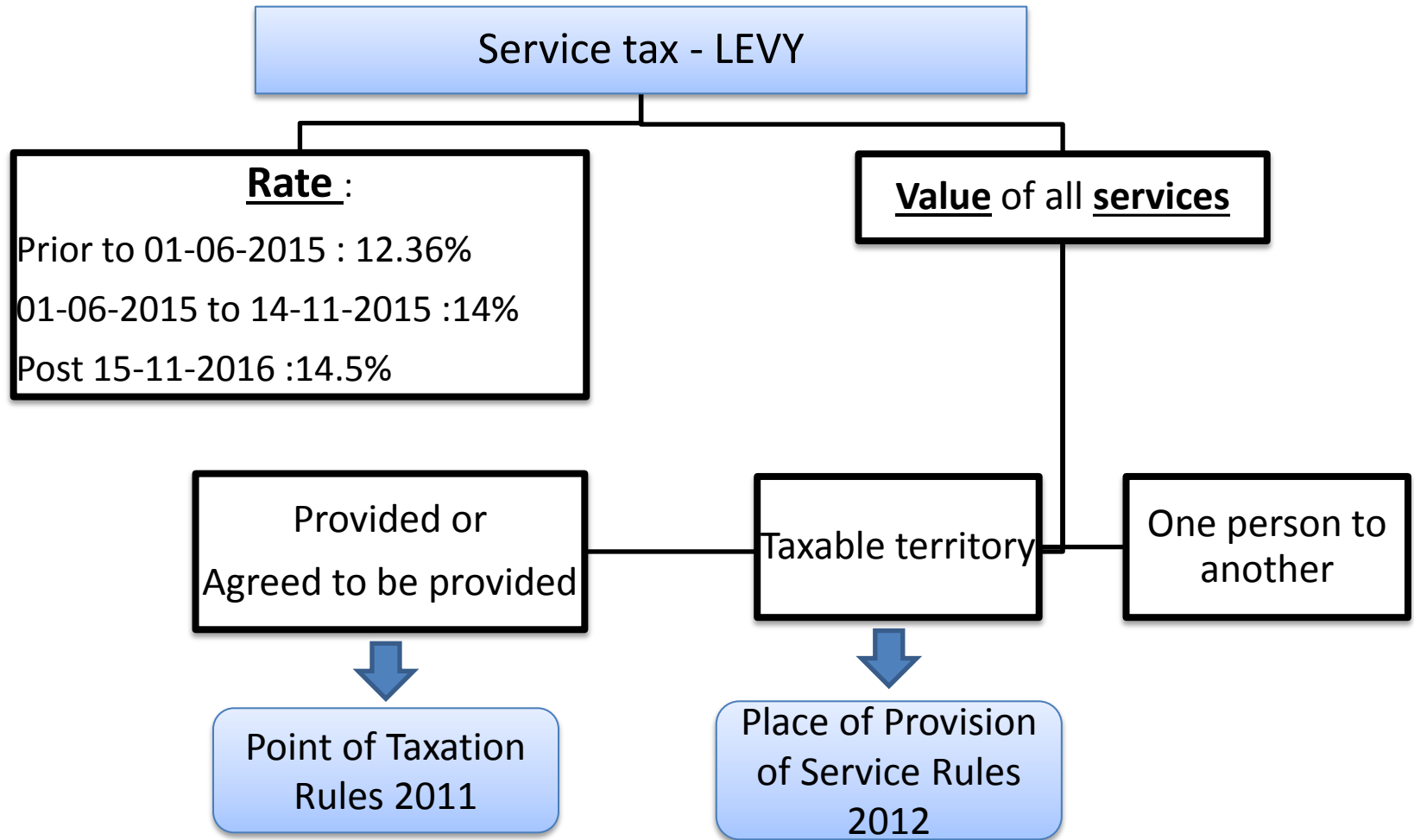
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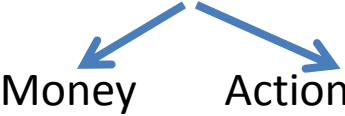
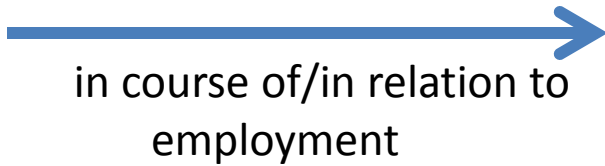
# CHARGING SECTION 66B



# Sec 65B(44) : Service

MEANS	<ul style="list-style-type: none"><li>• Any activity for consideration (Issues..?)</li><li>• Carried out by one person for another (Issues..?)</li></ul>
INCLUDES	<ul style="list-style-type: none"><li>• Declared services</li></ul>
EXCLUDES	<p>A) <u>Merely</u>, an activity :</p> <ul style="list-style-type: none"><li>• Trading – Transfer of title (Sale, gift,etc) <ul style="list-style-type: none"><li>Goods</li><li>Immovable property</li></ul></li><li>• Deemed sales – Article 366 (29A) <ul style="list-style-type: none"><li>transfer/delivery/supply – Goods</li></ul></li></ul>

# Sec 65B(44) : Service(cont...)

EXCLUDES	<ul style="list-style-type: none"> <li>Transaction               <div>  </div> </li> </ul>
	B) Employee  Employer
	C) Court / Tribunal fees
EXCLUSIONS AS PER EXPLANATON 1	<ul style="list-style-type: none"> <li>Functions performed by MPs, MLAs etc</li> <li>Duties performed by Constitutional functionaries</li> <li>Duties performed by Chairperson/Members of Govt. Bodies</li> </ul>

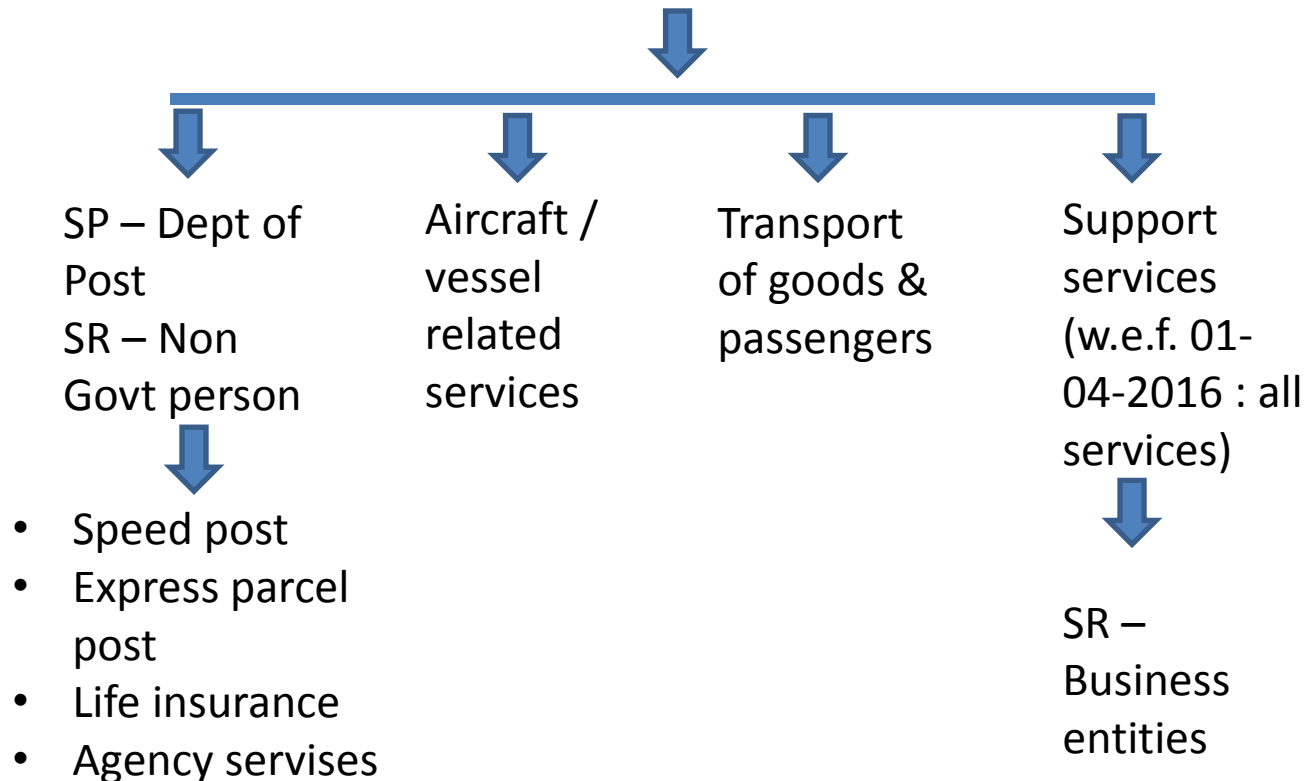
## Whether “service” or not?

- Advances received
- Security deposits returnable on completion of provision of service
- Composite transactions - Sale of plots with assurance of lay out approval, development of infrastucture/amenities etc by seller as part of package of fully developed plots – *Narne Constructions Pvt Ltd. (2013) 29 STR (SC)*
- Deposits/ withdrawals of principal amounts from bank or giving loans
- Non competing fees / fees for premature termination of contract of employment
- Casual workers Vs. Contract workers
- Employees deputation by holding company to subsidiary on cost sharing basis - *CST v. Arvind Mills Ltd (2014) STR (Guj)*
- Supervision of storage of liquor undertaken by State Excise Officers as per State Excise laws – *CCEx. & Cus. v. State of Madhya Pradesh (2015) STR (MP)*

# Sec. 66D Negative list

- Services by Govt/Local Authority (“LA”) – Generally in Negative List

**Exceptions** i.e. taxable services in following cases:



\* Meaning of Govt –Sec 65B(26A) - Depts of CG,SG and Union Territory

## Negative list (Cont...)

- SP – RBI
- SP – Foreign Diplomatic Mission located in India
- Specified service directly relating to agriculture and agricultural produce (Agriculture includes animal husbandry too)
- Trading of goods
- Services by way of carrying out manufacture or production of goods excluding alcoholic liquor for human consumption (w.e.f . 01-06-2015)
- Selling of space for advertisement in print media
- Service by way of access to road/bridge on payment of toll charges
- Betting, gambling, lottery
- ~~Admission – entertainment events/ amusement facilities (w.e.f. 01-06-2015)~~

## Negative list (Cont...)

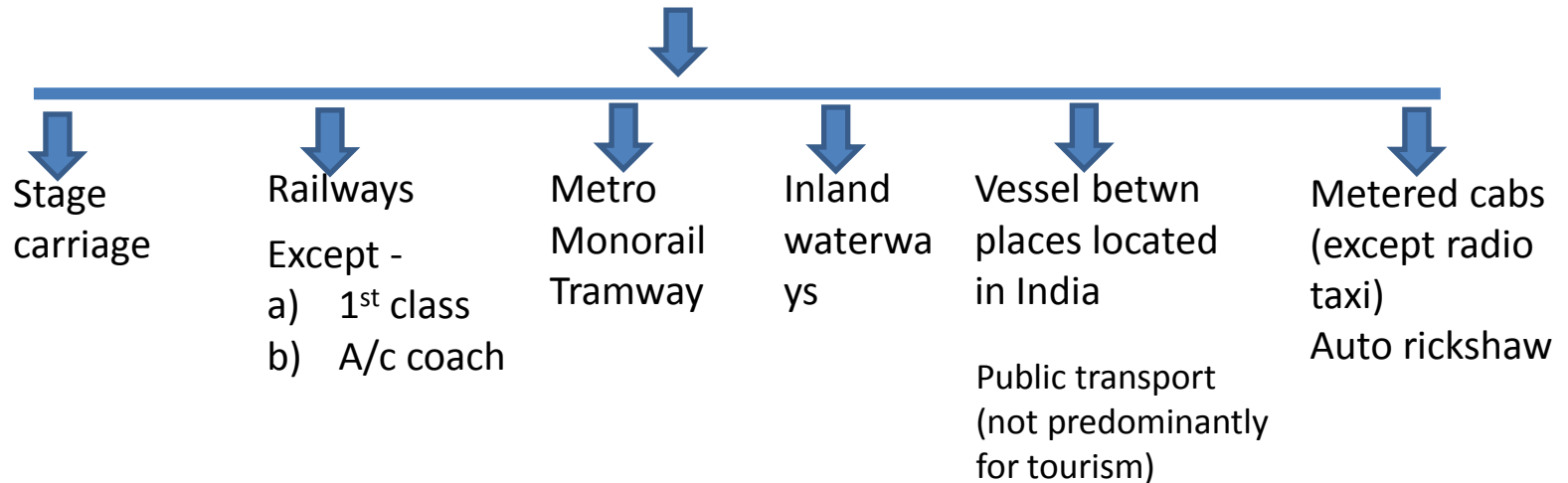
- Transmission/distribution of electricity by electricity transmission/distribution utility
- Services by way of –
  - i. Pre-school education and education up to higher secondary school or equivalent
  - ii. Education as part of curriculum for obtaining a qualification recognised by law for the time being in force
  - iii. Education as part of an approved vocational education course
- Service by way of renting of residential dwelling for use as residence
- Services by way of extending loans, deposits and advances in so far as the consideration is represented by way of interest/ discount – Inter se sale/purchase of foreign currency amongst banks/authorised dealers of forex/among banks and such dealers



## Negative list (Cont...)

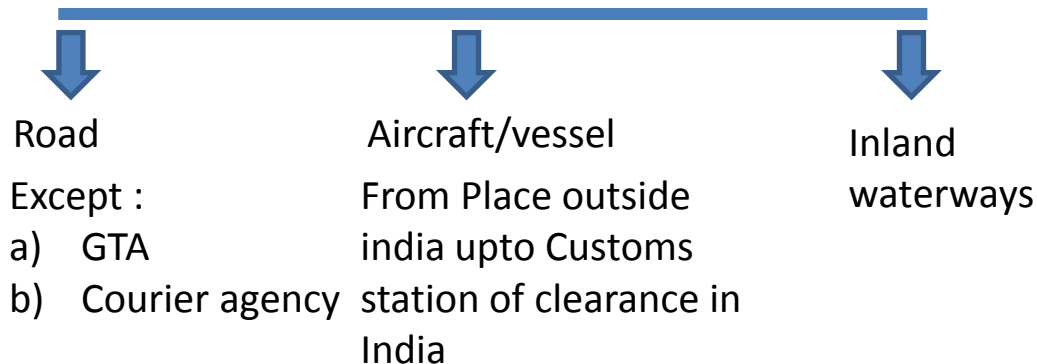
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### Transport of passengers



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### Transport of goods



- Funeral, burial, crematorium or mortuary services including transportation of deceased

# Declared Services

- Renting of immovable property
- Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority
- Intellectual property right - Temporary transfer or permitting the use or enjoyment
- Information technology software related services - Development, design, programming, customization, adaptation, upgradation, enhancement, implementation
- Agreeing to obligation – Refraining/ tolerating/ doing an act
- Hiring, leasing, licensing related services - Transfer of goods without transfer of right to use such goods
- Activities in relation to delivery of goods on hire purchase or any system of payment by installments
- Service portion in the execution of a works contract
- Restaurant and Outdoor catering services

# Mega Exemption N.No.25/2012

## **Some relevant provisions :**

- Tour operator service
- Legal services
- Health care services
- Sports related services
- Services provided to UN/Specified International org
- Services by Charitable Institutes
- Religious services
- Art related services
- Service by unincorp./non profit entity to members
- Agency services
- Organizing Business Exhibition Outside India
- Import of services
- Transfer of Going concern
- Services related to fruits/vegs
- Services by way of admission to museum/national parks etc
- Movie exhibition
- Admission to Entertainment event/amusement facility

# Small Service Provider ('SSP') exemption

N.No. 33/2012 – ST dated 20-6-2012

- Who is a SSP?
- Meaning of “Aggregate Value”



## Mean

Total value of taxable services provided

## Exclude

Wholly exempt services

- Example : Mr. A taxable services details :  
FY 2014 – 15 : Rs. 10 lakhs  
FY 2015 – 16 : Rs 18 lakhs (out of which Rs. 6 lakhs wholly exempt under Mega Exemption)
- Conditions to be fulfilled

# Valuation of Taxable service

- Composition schemes available in certain cases eg. Works contract services
- Inclusion / Exclusion of expenses as per Rule 5 of STR
- Pure agent expenses
- Cost recharges / Sharing of expenses between establishments
- Transactions with associated enterprise – Rule 7 POT
- Remittance to Branch/HO
- Taxable services – services provided/received by Govt
- TDS to include or not?
- Annual Info return (AIR) ... for FY 15-16 .. By Dec 16

# Pure agent

- Payment to third party on behalf of service provider under authority
- Amount to be separately indicated in Invoice
- Only actual amount should be recovered
- Title in goods and services not held by pure agent

# POINT OF TAXATION, 2011 ('POT Rules')

Sec. 67A – Date for determining



- Rate of Service Tax
- Value of taxable service
- Rate of exchange



Date – Taxable services provided or agreed to be provided



Rule 2(e) of POT Rules – Point in time when service shall be deemed to have been provided (i.e. deeming provision to decide the due date for payment of tax)

# Due dates for payment of service tax

Individual / Proprietary firm /  
Partnership firm/LLP

Quarterly payment

5<sup>th</sup> / 6<sup>th</sup> of month following  
quarter as deemed under  
POT Rules

Quarter ending 31 March –  
by 31<sup>st</sup> March

**Exception** : On Receipt basis  
[Proviso 3 to Rule 6(1) STR]

Other assessee

Monthly payment

5<sup>th</sup> / 6<sup>th</sup> of month following  
month as deemed under  
POT Rules

Month of March – by 31<sup>st</sup>  
March



## Sec 68 Person liable to pay Service tax

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graph TD; A[Sec 68 Person liable to pay Service tax] --> B[Generally - Service provider]; A --> C[Cases notified by Central Govt]; C --> D["Person other than Service provider - Reverse charge Mechanism ('RCM')  
N.No. 30/2012 r/w Rule 2(1)(d) of STR,1994"]; D --> E[Total RCM]; D --> F[Partial RCM];
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Generally - Service  
provider

Cases notified by Central  
Govt

Person other than Service provider –  
Reverse charge Mechanism ('RCM')  
N.No. 30/2012 r/w Rule 2(1)(d) of STR,1994

Total RCM

Partial RCM

# Total RCM

**Person liable to pay – Other than SP – 100%**

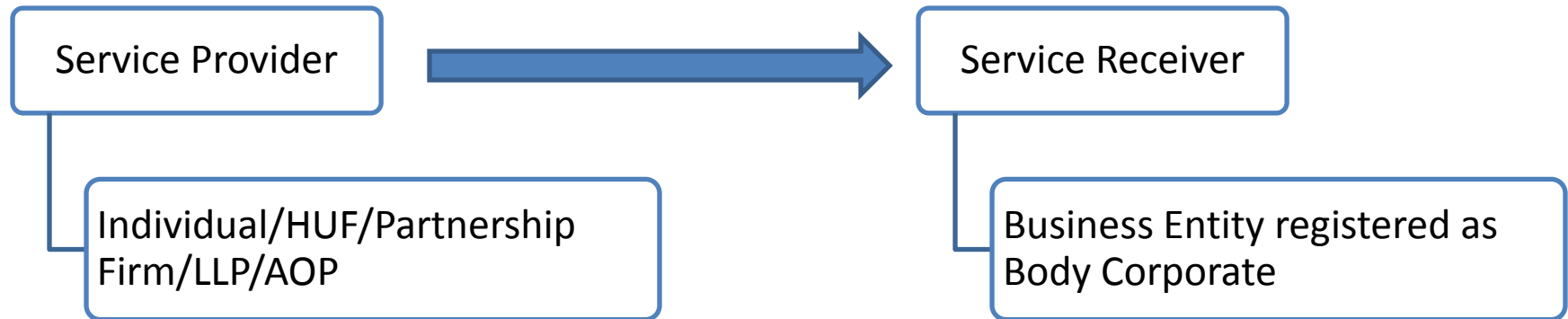
Service Provider ('SP')	Service receiver ('SR')	Nature of service
Insurance agent	Person carrying Insurance business	NA
GTA	(i) Person liable to pay freight : <ul style="list-style-type: none"> <li>• Reg factory</li> <li>• Reg/coop society</li> <li>• Dealer</li> <li>• Body corporate</li> <li>• Partnership firm</li> <li>• AOP</li> </ul> (ii) Taxable territory	NA
Any person	(i) Body corporate / partnership firm (ii) Taxable territory	Sponsorship
(i) Arbitral tribunal (ii) Individual/firm advocate – legal services	(i) Business entity (ii) Taxable territory	For (i) – any services For (ii) – legal services

# Total RCM

**Person liable to pay – Other than SP – 100%**

<b>Service Provider ('SP')</b>	<b>Service receiver ('SR')</b>	<b>Nature of service</b>
Govt/LA	Business entity – taxable territory	Support services ; except – (i) Renting of immov property (ii) Sec. 66D – (i), (ii), (iii)
Director – body corporate/company	body corporate/company	NA
Person located in non taxable territory	Person located in taxable territory	NA
Recovery agent	Banking co/FI/NBFC	NA
MF agent/distributor	MF/AMC	NA
Selling/mrktng agent – lottery tickets	Lottery distributor/selling agent	NA
Person involving an aggregator	Any person	Services involving an “Aggregator”

# Partial RCM



Nature of service	% liable to be paid by SP	% liable to be paid by SR
Renting of motor vehicle (to service receiver not in same line of business)		
• On Abated value	-	100%
• On Non abated value	50%	50%
• Supply of manpower	-	100%
• Security services		
Works contract	50%	50%

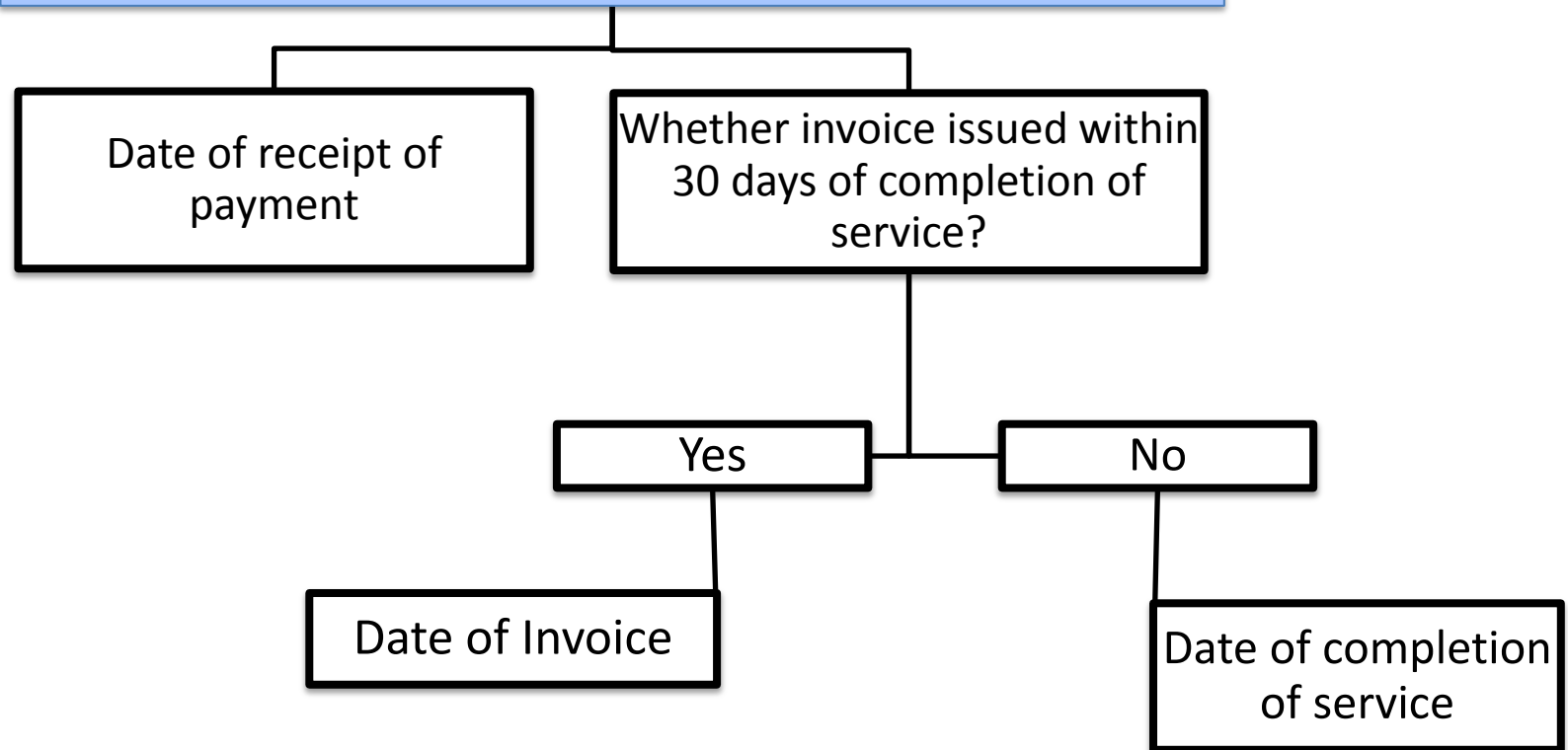
# Partial RCM

Important pointers:

- Point of taxation as per Rule 7 of POT Rules
- Assessable value = payments + reimbursements
- Method of valuation by SP and SR
- SSP exemption – NA to SR
- Payment of Service tax liability – cash or CENVAT credit??
- Whether CENVAT credit can be taken?
- Cases where refund of CENVAT credit available : Rule 5B of CENVAT Credit Rules, 2004 ('CCR')
- Can liability be shifted from SP to SR by way of a specific clause in contract?
  - Rashtriya Ispat Nigam Ltd v. Dewan Chand Ram Saran (2012) 26 STR 289 (SC)
  - Delhi Transport Corporation v. CST [2015] 38 STR 673(Del.)

# POT Rules – Cont..

RULE 3 : General Rule – POT shall be  
**EARLIER OF**



# Continuous supply of services('CSS')

- Meaning
- Circular No. 144/2011 – ST dated 18-07-2011 : CSS covers all auxiliary activities but doesn't cover irrelevant grounds of delay
- Example :

Completion stage	Milestone date	Invoice date	Payment date	Rs (lakhs)
Advance token	09-10-2015	09-10-2015	09-10-2015	50
50% completion	20-03-2016	25-03-2016	29-03-2016	150
75% completion	20-06-2016	21-07-2016	25-07-2016	125
100% completion	30-09-2016	20-10-2016	07-10-2016	175

## POT Rules – Cont..

### RULE 4 : Change in effective rate of tax ('CERT')

- CERT [Rule 2(ba)] – change in portion of value on which tax is payable in terms of NOG
- Departmental clarification :

The expression 'CERT' covers :

- a) Any notification – issued/rescinded/amended – altering taxability of any service
  - b) Change in abatement rate – grant/withdrawal
  - c) Change in rate of Service tax
  - d) Change in composite rates for payment of Service tax under Rule 6 of STR 1994
- Rule 4 has overriding effect over Rule 3 provisions



## POT Rules – Cont..

### RULE 4 : Change in effective rate of tax ('CERT')

<b>Date of provision of service</b>	<b>Invoice date</b>	<b>Payment date</b>	<b>POT</b>
Before CERT (B)	After CERT (A)	After CERT (A)	Earlier of : a) Invoice date b) Payment date
Before CERT (B)	Before CERT (B)	After CERT (A)	Invoice date
Before CERT (B)	After CERT (A)	Before CERT (B)	Payment date
After CERT (A)	Before CERT (B)	After CERT (A)	Payment date
After CERT (A)	Before CERT (B)	Before CERT (B)	Earlier of : a) Invoice date b) Payment date
After CERT (A)	After CERT (A)	Before CERT (B)	Invoice date

## POT Rules – Cont..

RULE 5 : Payment of tax in case of new services i.e. services taxed for 1<sup>st</sup> time

Invoice date	Payment date	POT
Before levy	Before levy	No Service tax payable
Within 14 days from levy	Before levy	No Service tax payable

## POT Rules – Cont..

### Application of Rule 2A and Rule 4/Rule 5 of POT Rules

- **Example :**

Invoice value & date : Rs. 10 lakh on 01-05-2015

Cheque received & accounted in books : 15-05-2015

Credited in bank : 06-06-2015

Service made liable to tax i.e “new levy”: 01-06-2015

Date of payment as per POT Rules ??

Credit in bank = after 01-06-2015 + 4 days

Hence, date of payment = date of credit in bank i.e. 06-06-2015

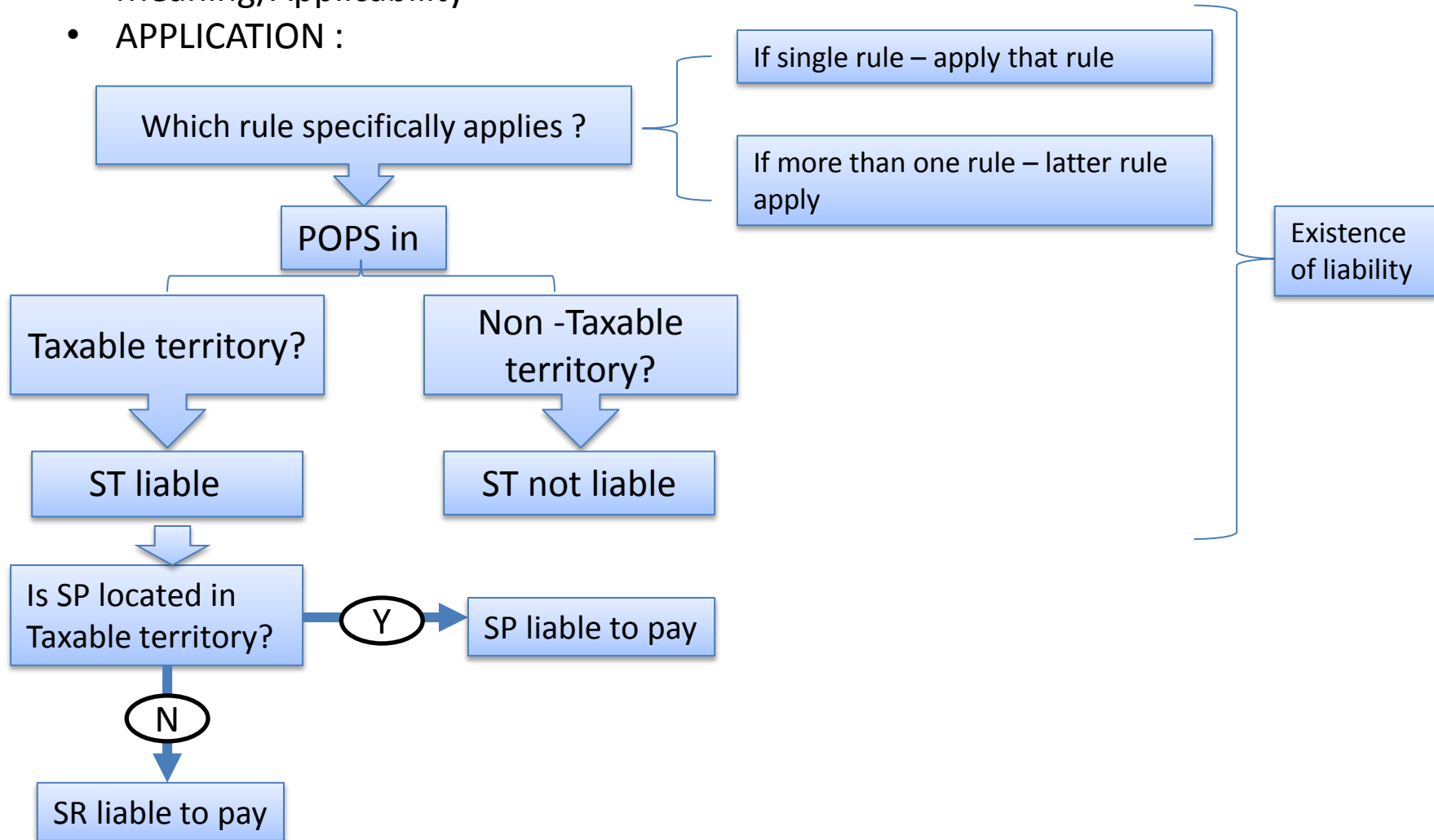
## SWACH BHARAT CESS:

- a) Services before 15-11-2015 : No liability as per Sec 67A (irresp. Of invoice and payment date)
- b) For services on or after 15-11-2015 :

Date of credit in book of a/c	Date of credit in bank account	Date of raising of invoice	POT	SBC Available
10.11.2015	12.11.2015	17.11.2015	10.11.2015 (date of credit in books of account)	No
12.11.2015	10.11.2015	17.11.2015	10.11.2015 (date of credit in bank account)	No
12.11.2015	10.11.2015	30.11.2015	30.11.2015 (invoice raised after 14 days)	Yes
14.11.2015	17.11.2015	17.11.2015	14.11.2015 (payment received within four days of new levy)	No
14.11.2015	20.11.2015	17.11.2015	20.11.2015 (payment received after 4 working days from levy)	Yes
10.11.2015	17.11.2015	14.11.2015	10.11.2015 (payment within four days of levy)	No

# Place of Provision of Service Rules ('POPSR')

- Meaning/Applicability
- APPLICATION :



# Place of Provision of Service Rules ('POPSR')

Rule	Nature of service	POPS
Rule 3	(i) Residuary rule (ii) Residuary rule + Location of SR not traceable in ordinary course of business	Location of SR  Location of SP
Rule 4	Performance based services (goods & person – physical presence)	Location where service performed
Rule 5	Directly related – Immmovable property	Location where property located/intended to be located
Rule 6	Event related – admission/organization + services anciliary to admission	Location where event held
Rule 7	Rule – 4,5,6 – provided in more than one location	Location – Taxable territory where greatest proportion of service provided
Rule 8	Rule – 4,5,6 : POPS – Non Taxable Territory but SP & SR located in Taxable Territory	Location of SR
Rule 9	Specified services: (i) Banking/FI/NBFC – to account holders (ii) Online info. & database access/retrieval (iii) Intermediary services (iv) Hiring of transport means – up to 1 month	Location of SP

# Place of Provision of Service Rules ('POPSR')

Rule	Nature of service	POPS
Rule 10	Goods transport service: (i) Other than mail/courier (ii) GTA services	Destination of goods Location of person liable to pay tax
Rule 11	Passenger transport services	Place of embarking – continuous journey
Rule 12	Services – on board a conveyance	1 <sup>st</sup> scheduled point of departure
Rule 14	Order of application	Latter among rules having equal merit

# Export of services

## RULE 6A OF SERVICE TAX RULES, 1994

### **Rule 6A(1)**

- Service provider - located in the taxable territory
- Service recipient - located outside India
- Service not in the Negative List (Sec. 66D of the Act)
- POPS - outside India
- Payment received - in convertible foreign exchange
- Service provider and service recipient - not merely establishments (i.e. branch, agency or representational office) of a distinct person in accordance with Explanation 3(b) to Sec. 65B(44) of the Act - *Tech Mahindra Ltd. V. CCEx. [2014] 36 STR 241 (Bom.)*

**Rule 6A(2)** – Grant of rebate of Service tax or duty paid on input services or inputs, as the case may be, used in providing such export service (Subject to safeguards, conditions, restrictions)



# Sec. 66F Bundled services

- Meaning
- Naturally bundled v. Artificially bundled

# CENVAT Credit Rules, 2004

## **Important Definitions :**

- Output service
- Final product
- Exempted services
- Exempted goods
- Inputs, Input services, CG

## **Rules for discussion:**

- Rule 3 – Eligible credit (Education cess, SHEC??)
- Rule 4 – Availment provisions
- Rule 6 – Treatment of credit relating to exempted goods and services (Trading goods,etc)
- Rule 9 – Documents on the basis of which credit availed

# Rule 2(a) : Capital Goods



(A)

- (i) Specific chapters /headings under Sch. I – CETA
- (ii) Pollution Control Equipmnt
- (iii) CSA of (i) & (ii)
- (iv) Moulds,dyes,jigs,fixtures
- (v) Refractory & ref. material
- (vi) Tubes/pipes/fittings
- (vii) Storage tank
- (viii) Motor vehicle

Exclude :  
MV for  
goods/pass  
engers

Include –  
dumpers/tip  
pers

USED

Mfgr:  
In factory  
(except **office**)

OSP :  
For OS



(B)

- Motor vehicle
- Transport of goods
- Registered in name of SP



USED for :

- OS – renting of MV
- Transport of inputs/CG – for OS
- OS – Courier agency



(C)

- Motor vehicle
- Transport of passengers
- Registered in name of SP



USED for :

- OS – renting of MV
- Transport of passengers
- Motor driving skills

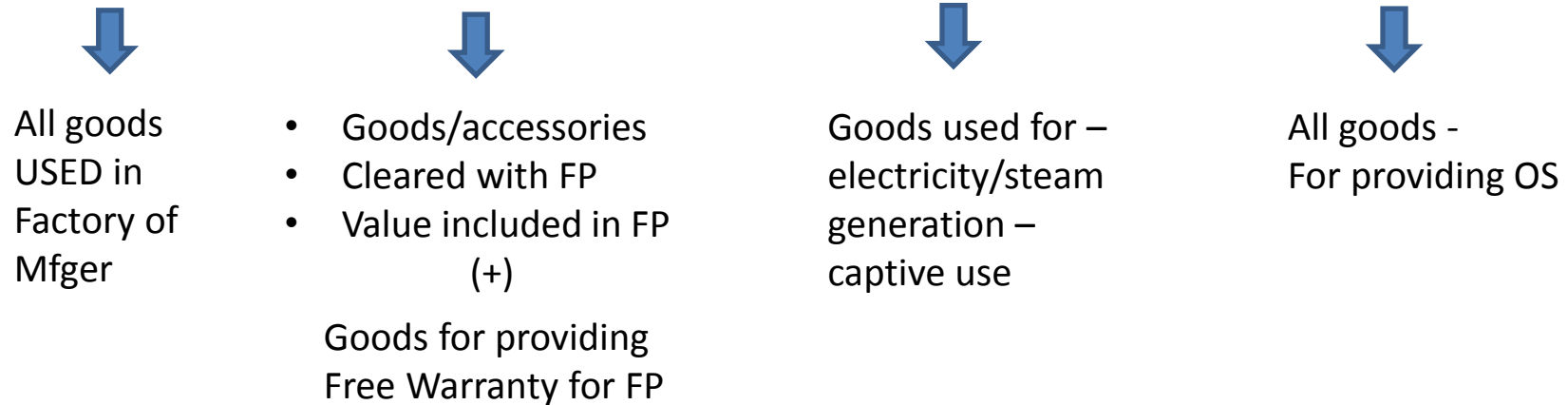


(D)

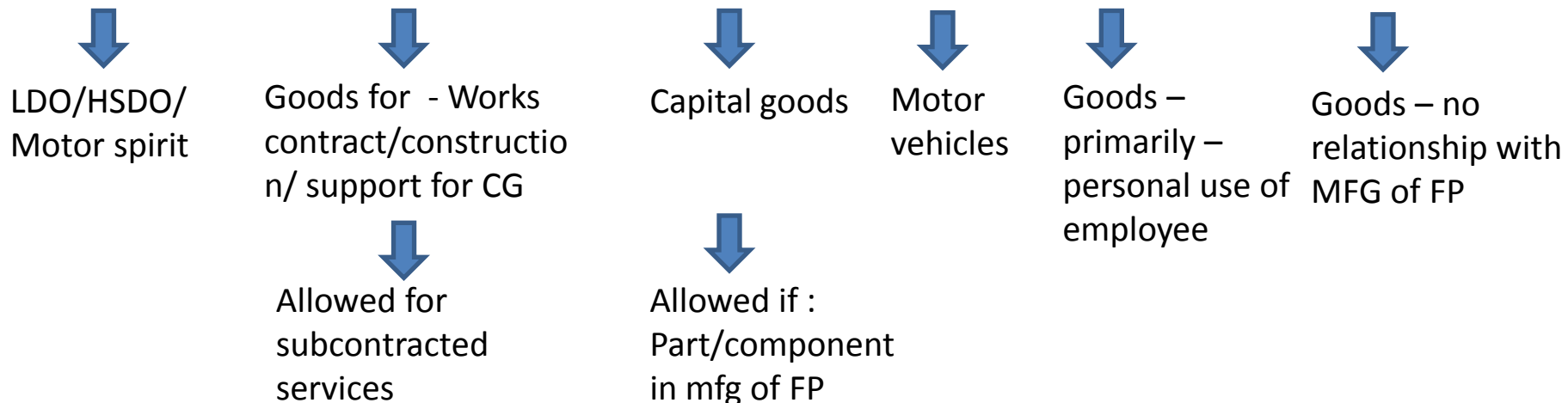
CSA  
of MV  
which are  
CG

# Rule 2(k) : Input

## MEANS



## EXCLUDES



# Rule 2(l) : Input services

## MEANS

For OSP :  
Any service -  
For providing OS

For Mfger :  
• Service used by Mfger  
• Directly/indirectly  
• In/in relation to  
• Mfg of FP + Clearance UPTO  
place of removal ('POR')

## INCLUDES

Specified list :

- Modernisation/renovation/repairs
- Advt/mrkt research
- Accounting/financing/legal services
- Business exhibition
- I/w transportation of I/CG
- O/w transportation UPTO POR

## EXCLUDES

Services for - Works  
contract/construction/  
support for CG

Allowed for  
subcontracted  
services

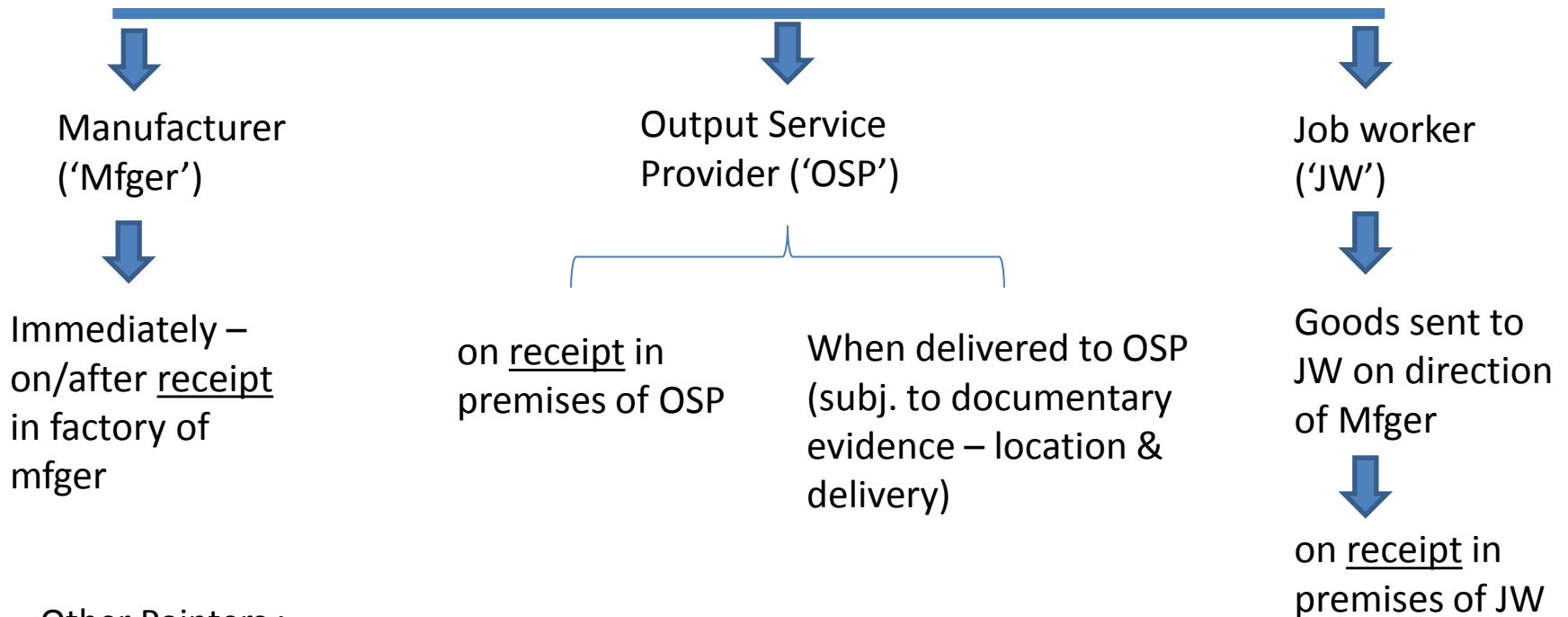
Renting of MV  
(not CG)

- General insurance
- Servicing/R&M  
Of MV

Exception :  
Mfger of MV  
Insurance co in respect of MV

Services –  
primarily –  
personal use of  
employee

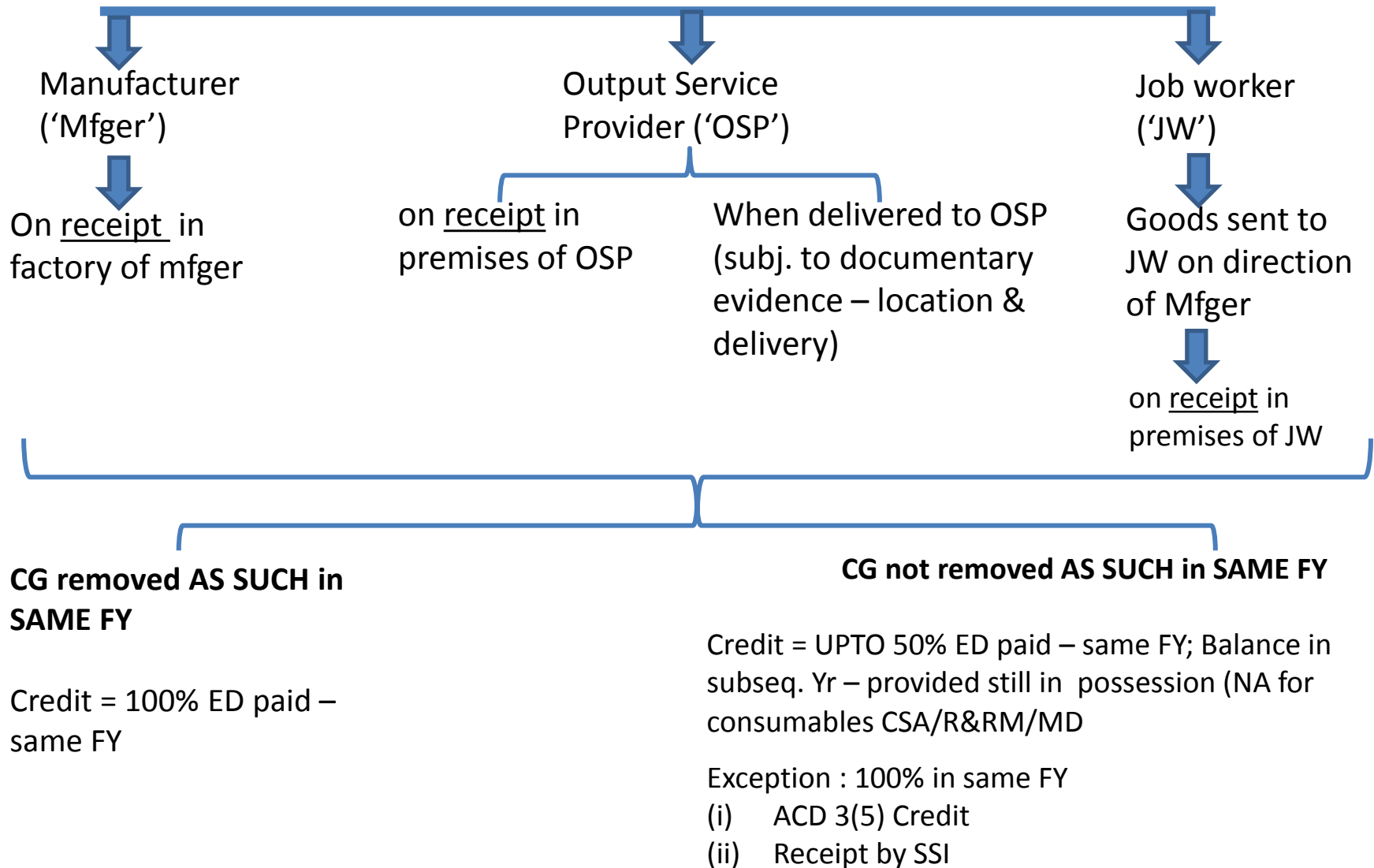
# Rule 4(1) Inputs



## Other Pointers :

- a) Credit allowed irrespective of actual utilisation in mfg/payment to supplier
- b) W.e.f. 01-09-2014, max time limit = 1 year from date of invoice (only for 1<sup>st</sup> time ; NA for re-credit of amount reversed)

# Rule 4(2) Capital goods



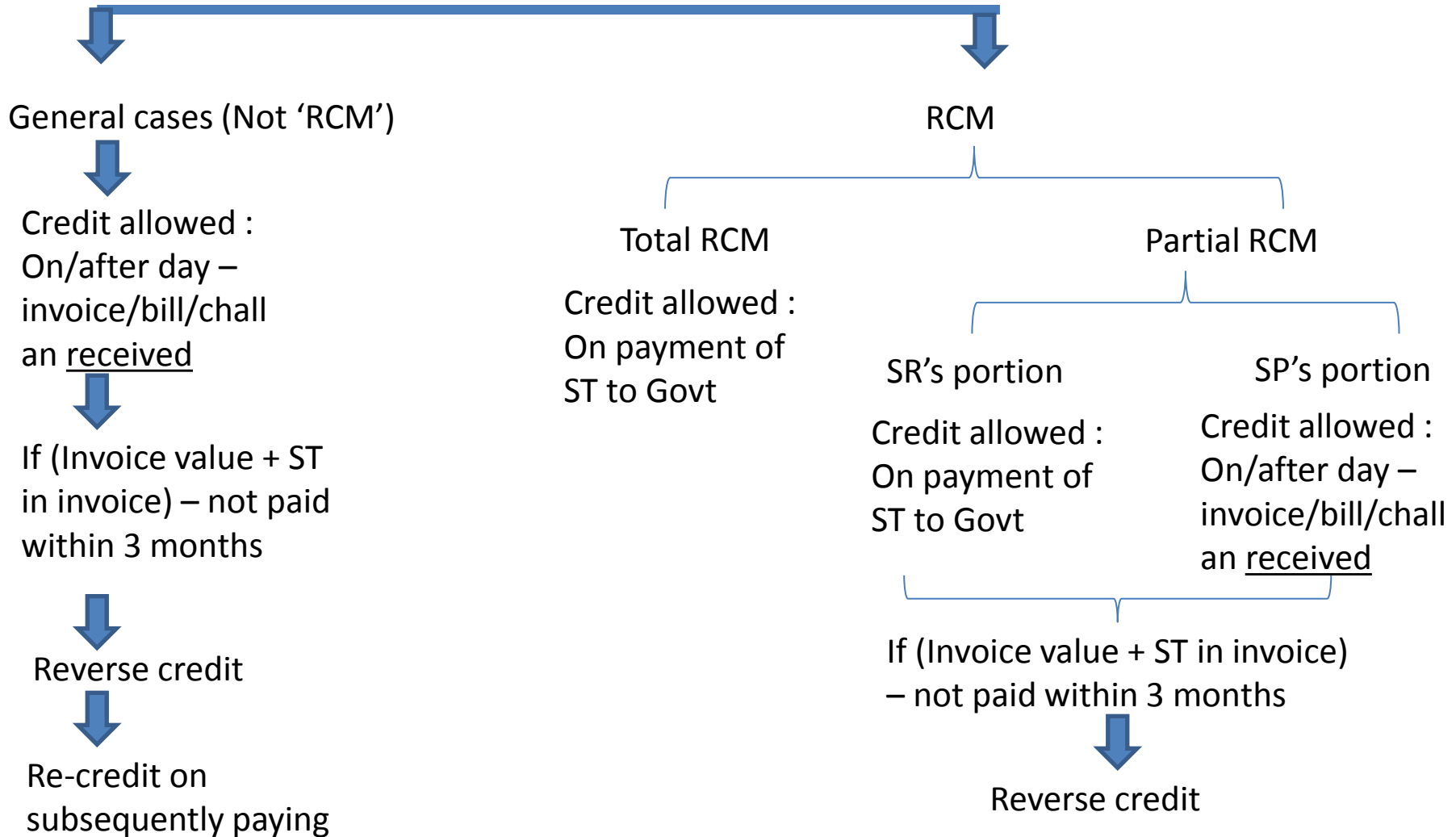
# Rule 4(2) Capital goods

Other Pointers :

- a) Rule 4(3) : Credit on CG acquired on lease/HP/loan : whether ownership relevant??
- b) Rule 4(4) : Depreciation or CENVAT benefit?



# Rule 4(7) Input service



# Abatements

Sr. No	Description of taxable service	Abatement	Conditions (Eligibility of CENVAT Credit)		
			Input	Input Services	Capital Goods
1	Financial leasing including hire purchase	90	Yes	Yes	Yes
2&3	Transport of goods/passengers by rail	70	No	No	No
4	Bundled service by way of supply of food/drink in premises (hotel/ pandal/ shamiana etc) along with renting of such premises	30	No credit of food items	No	No
5	Transport of passengers by air, (i) economy class (ii) other than economy class	60 40	No	Yes	No
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	40	No	Yes	No

# Abatements

Sr. No	Description of taxable service	Abatement	Conditions (Eligibility of CENVAT Credit)		
			Input	Input Services	Capital Goods
7	Services of GTA in relation to transportation of goods	70	No	No	No
			By Service Provider		
9	Renting of any motor cab designed to carry passengers	60	No	No	No
			However, credit on renting of motor cab: available w.e.f. 1.10.2014		
9A	Transport of passenger, with or without accompanies belongings, (i) by a contract carriage other than motor cab (11-07-2014) or (ii) by radio taxi. (01-10-2014)	60	No	No	No
10	Transport of goods in a vessel	70	No	No	No

# Abatements

Sr. No	Description of taxable service	Abatement	Conditions (Eligibility of CENVAT Credit)		
			Input	Input Services	Capital Goods
11	Services by a tour operator in relation to,- (i) a package tour (ii) solely arranging or booking Accommodation (iii) any services other than specified at (i) and (ii) above.	75 90	No	No	No
		60	However, CENVAT credit on input service of another tour operator, used for providing the taxable service is allowed		
12	Construction of complex/building/civil structure/part thereof (i) For residential unit having carpet area less than 2000 sq. ft AND amount charged is less than Rs. 1 crore (ii) Other than (i) cases	75%	No	Yes	Yes
		70%	Land value included in amount charged from service receiver		

# Works Contract (Valuation rules)

Sr.No		Abatement
2A (i)	Where value of transfer of property in the goods available	Gross amount charged (-) Value of goods
2A(ii)	Ad-hoc/deemed basis valuation	
	(a) Original works : <ul style="list-style-type: none"> <li>• New construction</li> <li>• Additions/alterations – damaged structures</li> <li>• ECI – plant/machinery/equipment</li> </ul>	40% of total amount charged for WC
	(b) Other than (a) cases : <ul style="list-style-type: none"> <li>• Maintenance/Repair/reconditioning/restoration/servicing – goods</li> <li>• Maintenance/repair/completion finishing services/installation of electrical fittings – immovable property</li> </ul>	70% of total amount charged for WC
Credit	<ul style="list-style-type: none"> <li>• No credit of inputs allowed (IS,CG allowed)</li> </ul>	

# Service Tax Rules, 1994 (relevant)

RULES	PROVISION
Rule 6(1A)	Optional payment of Service tax
Rule 6(2)	Epayment mandatory
Rule 6(3)	Case where service not provided/ invoice renegotiated – credit of excess Service tax already paid – provided payment refunded/credit note issued <i>Whether applicable for Bad Debts?? – Instruction no. 341/34/2010 – TRU dated 31-03-2011</i>
Rule 6(4A)	Adjustment of excess payment of Service tax <ul style="list-style-type: none"> <li>Reasons : interpretation of law, taxability, valuation or applicability of exemption notification</li> </ul>
	W.e.f. 01-06-2015 : if non-payment of self-assessed tax, then direct recovery of tax permitted without first issuing SCN

# Interest provisions

Period of delay	Rate of Simple Interest w.e.f. 01-10-2014 *
Upto 6 months	18% p.a.
More than 6 months but up to 1 year	1 <sup>st</sup> 6 months delay: 18% p.a (+) Period beyond : 24% p.a
More than 1 year	1 <sup>st</sup> 6 months delay: 18% p.a(+) Next 6 months : 24% p.a (+) Beyond 1 year : 30% p.a

\* Reduce rate by 3% where value of taxable services not exceeding Rs. 60 lakhs during any of the years covered by notice or during last preceeding FY

## Interest provisions (cont..)

Example :

Amount of Service tax	Rs. 20,00,000
Due date of payment	06-10-2015
Actual date of payment	06-05-2016
No. of days delay	6 months 30 days

Interest payable :

a) 1 <sup>st</sup> 6 months (upto 06-04-2016) @ 18%	Rs. 1,80,000
b) Balance 30 days (07-04-2016 to 06-05-2016) @ 24%	Rs. 39,452
Total Interest payable	Rs. 2,19,452



# Penalty provisions

Sr.No	Contraventions	Penalty (Rs.)
A)	Failure to <ul style="list-style-type: none"> <li>• take registration</li> <li>• Maintain books of accounts/documents as per law</li> <li>• Pay tax electronically</li> <li>• Account for an invoice</li> </ul> Issue of incorrect/incomplete invoice	Rs. 10,000/-
B)	Failure to furnish information, produce documents or appear before Central Excise Officer when summoned to give evidence, etc	<b>Higher of:</b> a) Rs. 200 per day from date after due date till date of actual compliance b) Rs. 10,000/-
C)	Specified offences by Director, manager, any other officer of company, in charge of or responsible at the time of contravention	Upto Rs. 1,00,000/-

*Excellence has always been achieved by those who dare to believe that something inside them is superior than circumstances!!!!*

# THANK YOU

BY:

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