



Lakshmikumaran  
& Sridharan  
attorneys

exceeding expectations  
since 1985



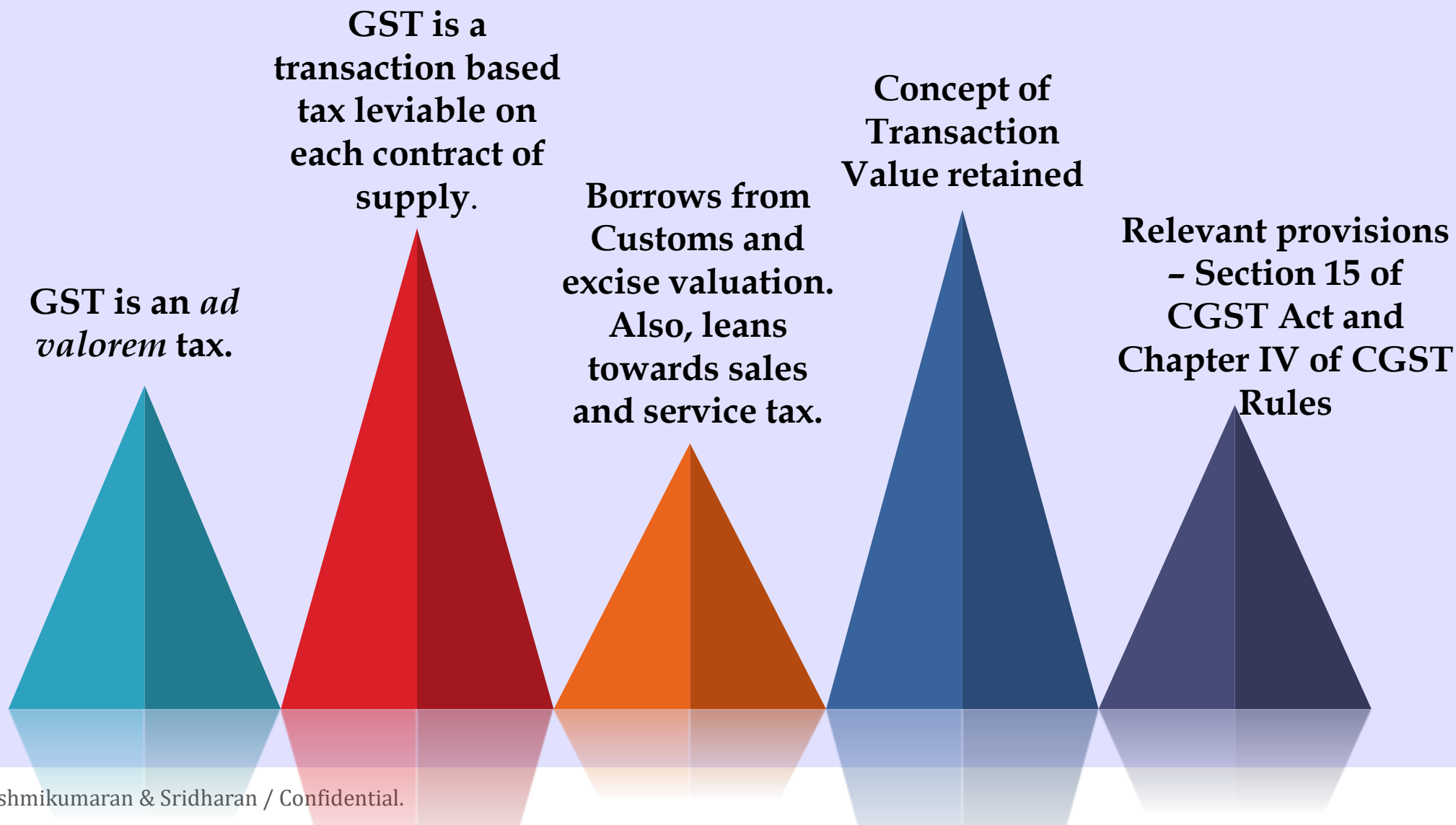
**B Venkat Ramanan,  
Senior Associate, Lakshmikumaran and Sridharan**

# Topics for discussion

- **Valuation**
- **Recent Advance Ruling**
- **Audit, Inspection, Search and Seizure, Arrest**

# Valuation under GST

# Scheme of valuation under GST



# Section 15 of the CGST Act

- ▶ Value of taxable supply = Transaction Value
  - ▶ Price actually paid or payable
  - ▶ 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 ?



# Important concepts

# Consideration for a Supply

- ▶ Consideration – Inclusive definition
    - ▶ payment by recipient of the supply or any other person
    - ▶ nexus between the payment and the supply (Tolsma Case)
  - ▶ Any payment in money or otherwise
  - ▶ Monetary value of any act or forbearance
    - ▶ in respect of
    - ▶ in response to
    - ▶ for the inducement of
- } New Zealand Refining Company Vs CIR
- ▶ Excludes subsidy given by Central or State Government.

# Nexus - Indian Jurisprudence

## Service Tax

### Commissioner of Service Tax v. M/s. Bhayana Builders Pvt. Ltd.

Held - An amount charged which has no nexus with the taxable service is not a consideration for the service provided and does not become part of the value.

Cost of free supply goods provided by the service recipient to the provider has no nexus with the taxable services.

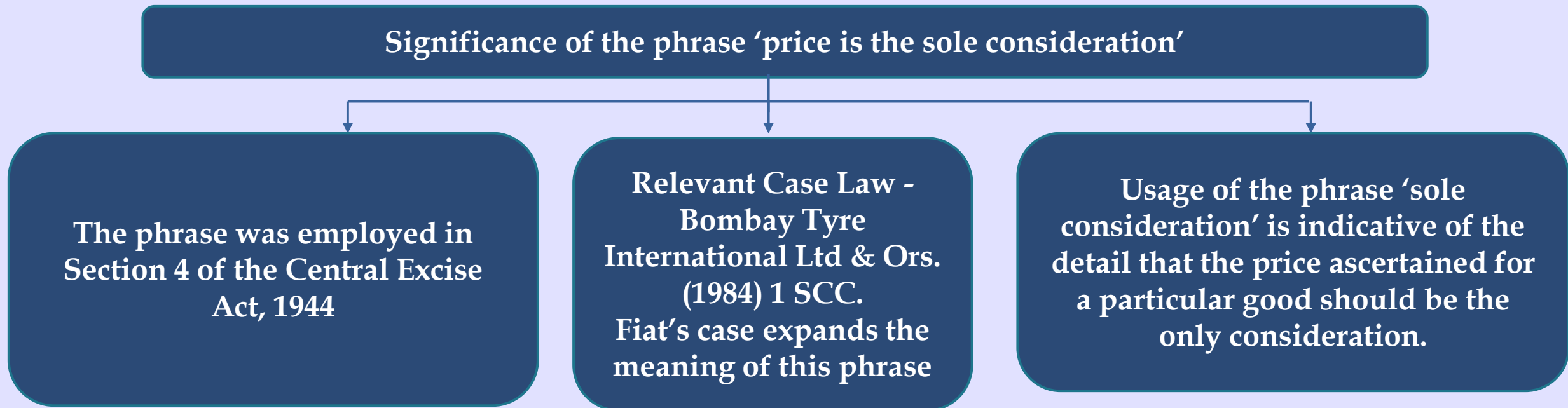
### D. J. Malpani vs. CCE

Held - If an amount is paid at the time of the sale transaction for a purpose other than the price of the goods, it cannot form part of the transaction value.

Charitable donation paid by customers at the time of procuring goods will not amount to consideration paid.

## Excise

# Price: sole consideration



# Price 'actually paid or payable'

**GATT Customs Valuation Code by Sherman interprets the phrase 'actually paid or payable' :-**

The phrase 'actually paid or payable' expresses the intention that the customs value is to include the entire price, whether it has or has not yet been paid, in whole or in part. The entire agreed contract price remains the basis for Transaction Value and the assessment of customs duty even if the buyer defaults and fails to pay. What matters is that it must be the price agreed between the parties. **The phrase 'actually paid or payable' really adds nothing to the meaning, telling us only that the factors mentioned in the first two sentences of this paragraph make no difference. We therefore generally speak simply of 'the price' or 'the agreed price'.**

# Case Study -I

- ▶ A (OEM) entered into a contract with B (component manufacturer) wherein B agreed to manufacture 1000 components as per specifications given by A for an agreed price of Rs. 100 per component. Total Contract Price = 10,000
- ▶ As per the contract, A agreed to provide the tools (of value 5,000) to be used for undertaking the manufacturing activity free of cost.
- ▶ Whether the notional value of tools will be includable in the value of supply made by B to A?
- ▶ In other words, whether total consideration will be Rs. 10,000 or Rs. 15,000.

- ▶ Total Consideration will be Rs. 10,000.
- ▶ Notional value of tools need not be added. GST is a contract based levy. Tools are made available by A only as a condition of the contract to manufacture the components and not a consideration for any supply. Reliance can be placed on Bhayana Builders - SC

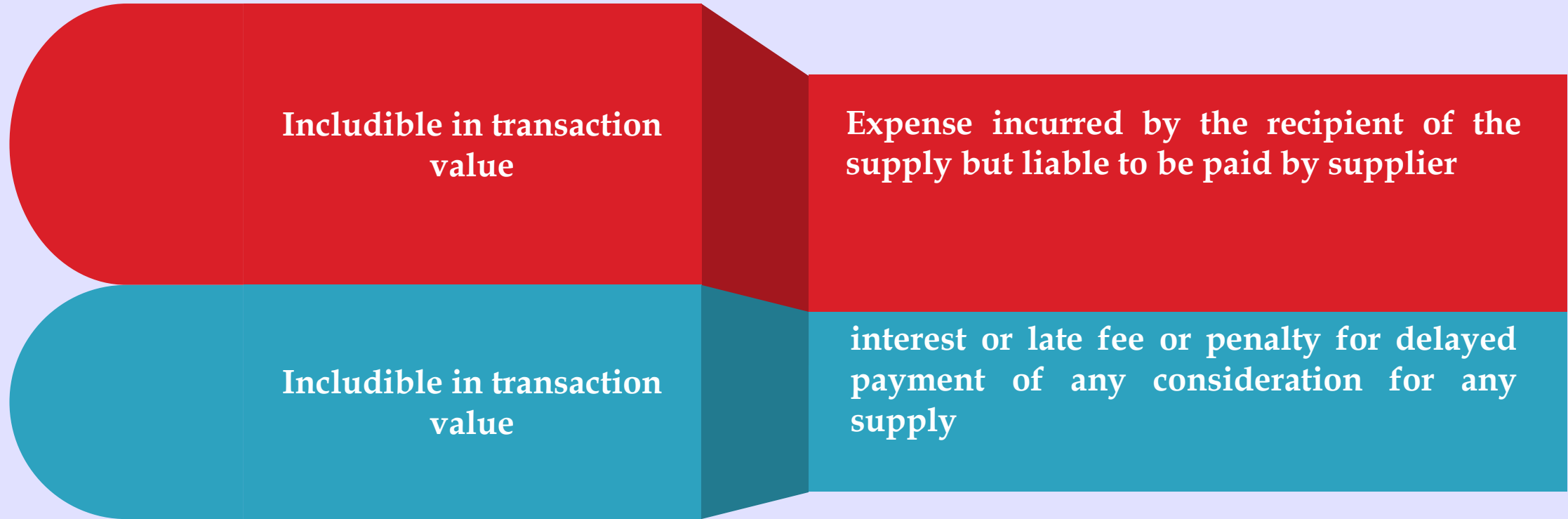
# Case Study - II

- ▶ A purchases 90% of the goods produced by B.
- ▶ A entered into a contract with B wherein B agreed to supply goods to A at a discount of 40% of the normal sale price
- ▶ However, for other customers, B generally offers 5 to 7% discount.
- ▶ B collected 100% of the contract price as advance from A.
- ▶ Whether the notional interest earned on the advance deposit made by A to B to be added to taxable value?

- ▶ Issue is debatable.
- ▶ One view is that giving a discount is a commercial consideration keeping in mind the fact that A purchases 90% of the goods and price at which goods are sold to other parties are not comparable to sales made to A.
- ▶ Other View: price is not the sole consideration. The interest cost needs to be loaded onto the price.
- ▶ Metal Box's case 1995 (75) ELT 449(SC)

# Inclusion in transaction value

# Inclusions in Transaction Value



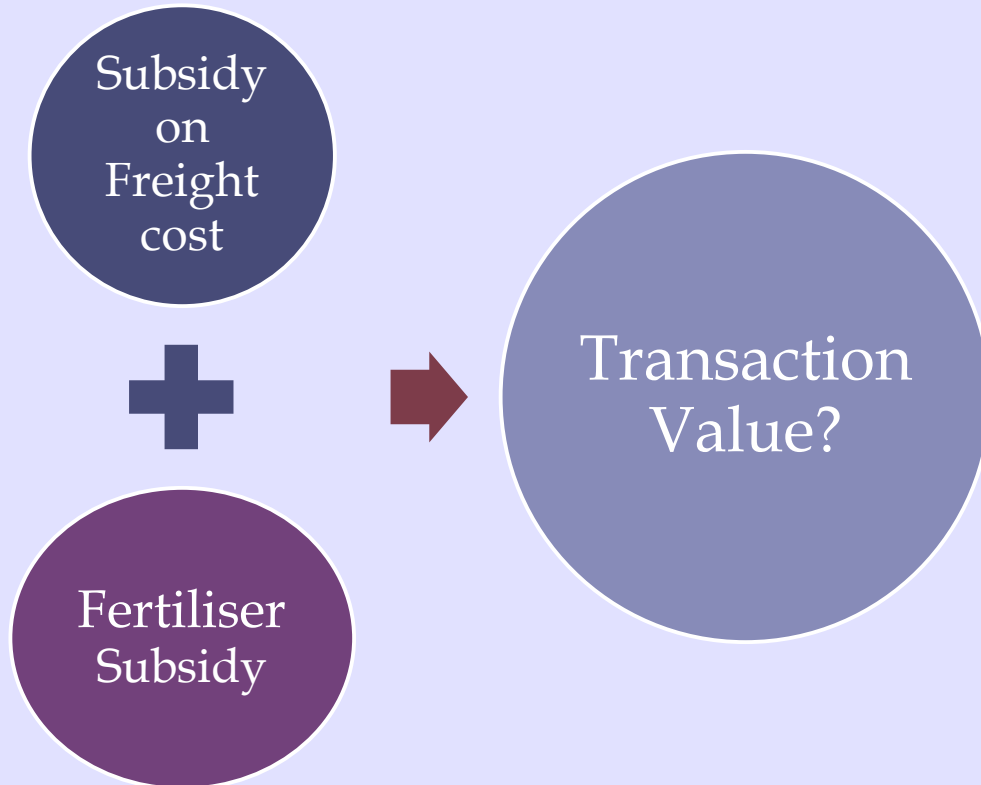
# Case Study - III

- ▶ X is a developer. Y has appointed X to construct a villa.
- ▶ The price agreed between the parties for constructing the villa is INR 50 lakhs.
- ▶ The price is inclusive of cost of materials required by X to construct the villa.
- ▶ X has entered into agreements with various vendors for procurement of cement, steel etc. The vendors supply the materials directly to the villa site.
- ▶ X requests Y to directly pay an amount of INR 10 lakhs to the vendors for the materials supplied and deducts the cost of the same from the price payable for the construction activity.
- ▶ Y pays a net amount of INR 40 lakhs to X.
- ▶ Whether GST has to be paid by X for the construction service rendered at INR 50 lakhs or INR 40 lakhs?

- ▶ GST will have to be paid at 50 lakhs. It will fall under the following inclusion:-

*‘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’*

# Inclusions in Transaction Value



## Transaction Value (Section 15(2)(f))



Includes Subsidies (except government subsidy)



Must be linked to the supply

# Case Study - IV

- ▶ X is engaged in the business of supply of sugar. Y has placed an order for purchase of sugar from X. The parties have agreed to a per kg price of Rs. 20 for the sale of sugar.
- ▶ In addition to the price agreed, Y is also providing a lump-sum subsidy of Rs. 10,000 for ensuring that a particular variety of seed is purchased and used by X for growing the sugarcane. These seeds ensure that the sugar which is extracted from the sugar cane is of high quality.
- ▶ Whether the subsidy given by Y in respect of the seeds to be used in the sugar cane will be includible in the price of the sugar?

- ▶ It is possible to take a stand that subsidy for sugar cane has no direct nexus with the supply of sugar. The subsidy will be paid irrespective of the quantity of sugar manufactured or supplied using the sugarcane. Therefore, subsidy is not linked to the price.
- ▶ TV shall include:-  
*subsidies directly linked to the price excluding*

# Incidental Expenses

- Reimbursable expenditure or cost incurred by or on behalf of the supplier.
- Commission and packaging charged by the supplier to the recipient
- Any amount charged for anything done by the supplier in respect of the supply at the time of or before the delivery of the goods or services.



Includible  
in the  
Transaction  
Value

# Case Study – V

- ▶ X, a leasing company supplies equipment on lease.
- ▶ As per the lease contract, the equipment must remain insured all the time, hence X procures insurance from insurance company.
- ▶ X recovers two amounts from the lessee,
  - ▶ (1) Lease Rent – Rs. 50,000/-
  - ▶ (2) Insurance amount – Rs. 1,500/-

Issue :

What is the value of supply?

- Insurance amount includible in value of leasing services?

- ▶ GST to be payable at Rs. 51,500. It will be covered by the following inclusion:
  - ▶ *(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;*

Any taxes, duties, fees and charges levied under any statute other than the GST Acts

Surcharge or any kind of cess which is not levied under the GST Acts (RTO permits/registration fees).

# Discounts – Treatment under the GST Act

Post Supply  
incentive/discount -  
includible

Discount known before  
supply and is linked to  
invoices – not includible

Discount given before or  
at the time of supply –  
not includible

# Case Study - VI

- ▶ X sells cars to customers through its dealers
- ▶ As a part of its promotional campaign to boost its sales, X enters into the following incentive/discount arrangements with its dealers for the month of June 2019.

## Scenario 1

- ▶ An incentive of Rs. 5,000/- per vehicle would be given if the dealer purchases a minimum of 100 vehicles from X from June to August 2019.

## Scenario 2

- ▶ X instructs the dealers to pass on a discount of Rs. 20,000/- for every vehicle sold. The sale can be from existing stock or new purchases. The dealers sell 5 cars from existing stock and 10 cars are freshly purchased and sold to customer.

# Case Study - VI

- ▶ At the end of June 2019, it is revealed as under:

Particulars	Quantum of incentive/discount to be given by X
Scenario 1	Rs. 15,00,000 (Rs. 5000 * 100)
Scenario 2	Rs. 3,00,000 [Out of which Rs. 1,00,000 relates to vehicles sold out of the old stock lying with Dealer]

- ▶ In which of the scenarios will X would be eligible to claim abatement?

- ▶ Scenario 1: Rs. 5,000 can be claimed as an abatement from TV
- ▶ Scenario 2: Abatement will only be available for fresh purchases made from X after the scheme is announced. For goods sold by dealers which are already in their stock, abatement will not be available as these are post supply discounts.

*The value of the supply shall not include any discount which is given –*

*(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*

*(b) 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.*

# Valuation Rules

# Rule 27 – When consideration not wholly in money

**1**

**Open Market Value of the supply**

**2**

**When open market value not determinable - sum total of consideration in money and any further amount in money that is equivalent to the consideration not in money**

**3**

**When 1 & 2 not determinable, value of supply of like kind and quality**

**4**

**When 1, 2 & 3 not determinable, apply cost based/residual method in that order**

# Rule 28 – Supplies between distinct/related persons

**1**

**Open Market Value of the supply**

**2**

**When 1 & 2 not determinable, value of supply of like kind and quality**

**3**

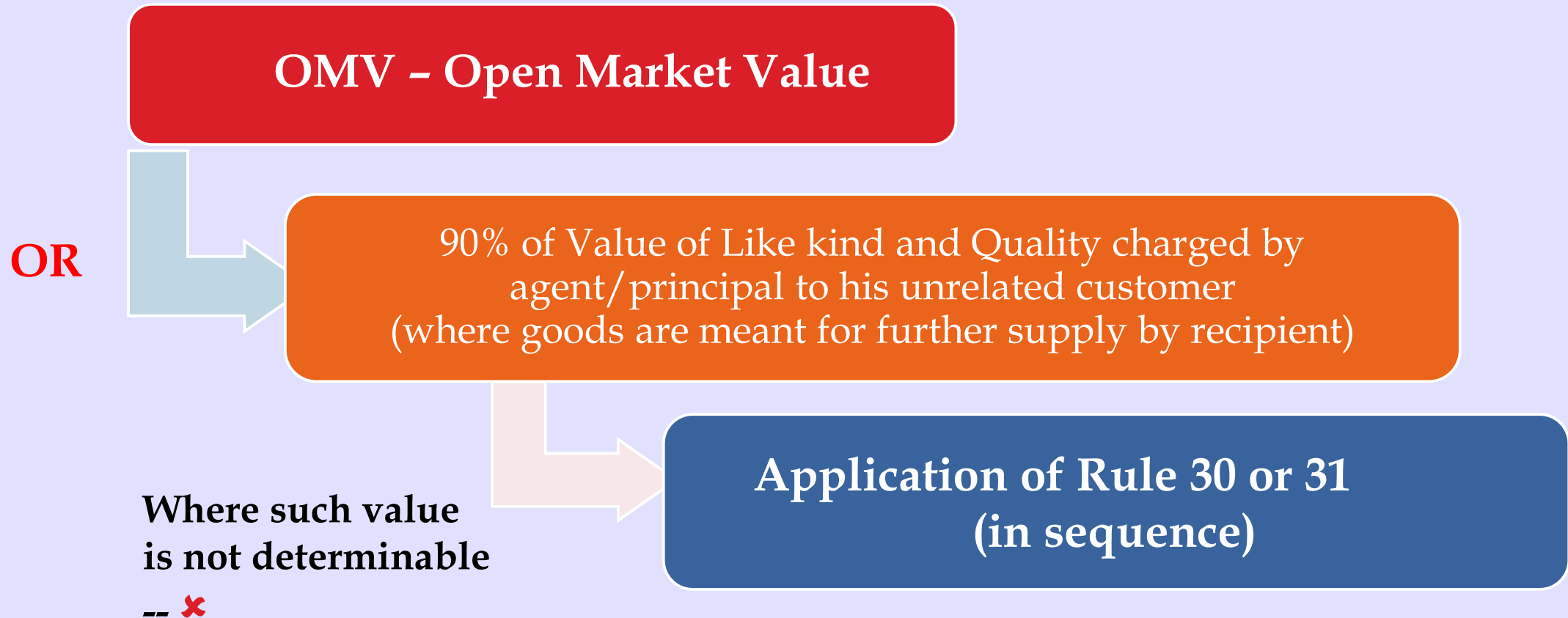
**When 1, 2 & 3 not determinable, apply cost based/residual method in that order**

**4**

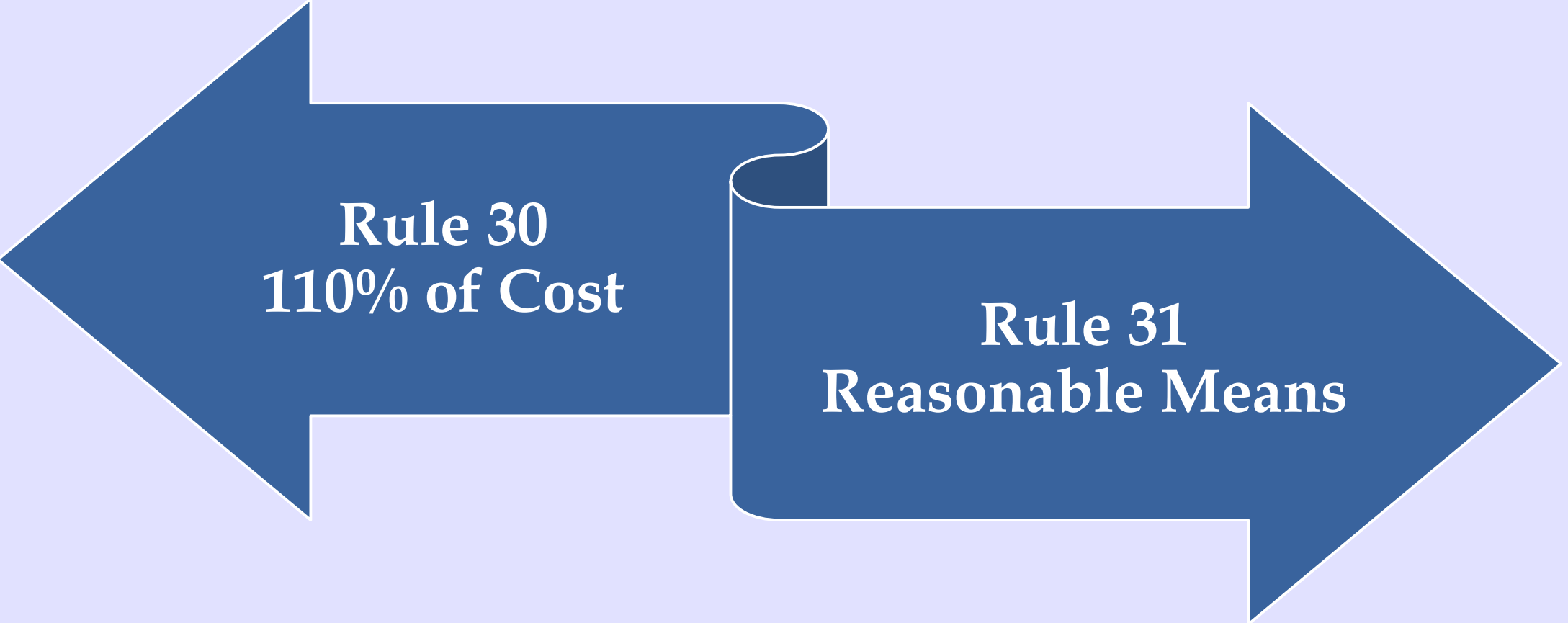
**However, if the recipient is eligible to full ITC, the value declared in the invoice shall be deemed to be the Open market value.**

# Rule 29: Valuation of supplies between Principal and Agent

Value of supply shall be :



# Where value cannot be determined as per previous rules



**Rule 30**  
**110% of Cost**

**Rule 31**  
**Reasonable Means**

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

# Pure Agent- Definition

Receives only the actual amount incurred to procure such goods and/or services

Does not use the goods and/or services procured

Does not hold or intend to hold title to the goods and/or services procured or provided

Contractually agrees to act as the pure agent of the recipient and incurs costs in the course of providing service

# Case Study - VII

- ▶ Company A provides legal consultancy services to B. Fees for such services is Rs. 1,00,000/-
- ▶ Apart from professional fees, Co. A recovers certain out of pocket expenses (towards travel, accommodation) amounting to Rs. 10,000/-
- ▶ Also, Co. A incurs expenditure amounting to Rs.1,000/- in the nature of form filing fees (statutory payments). These are later reimbursed by B.

Issues :

What is the value of supply?

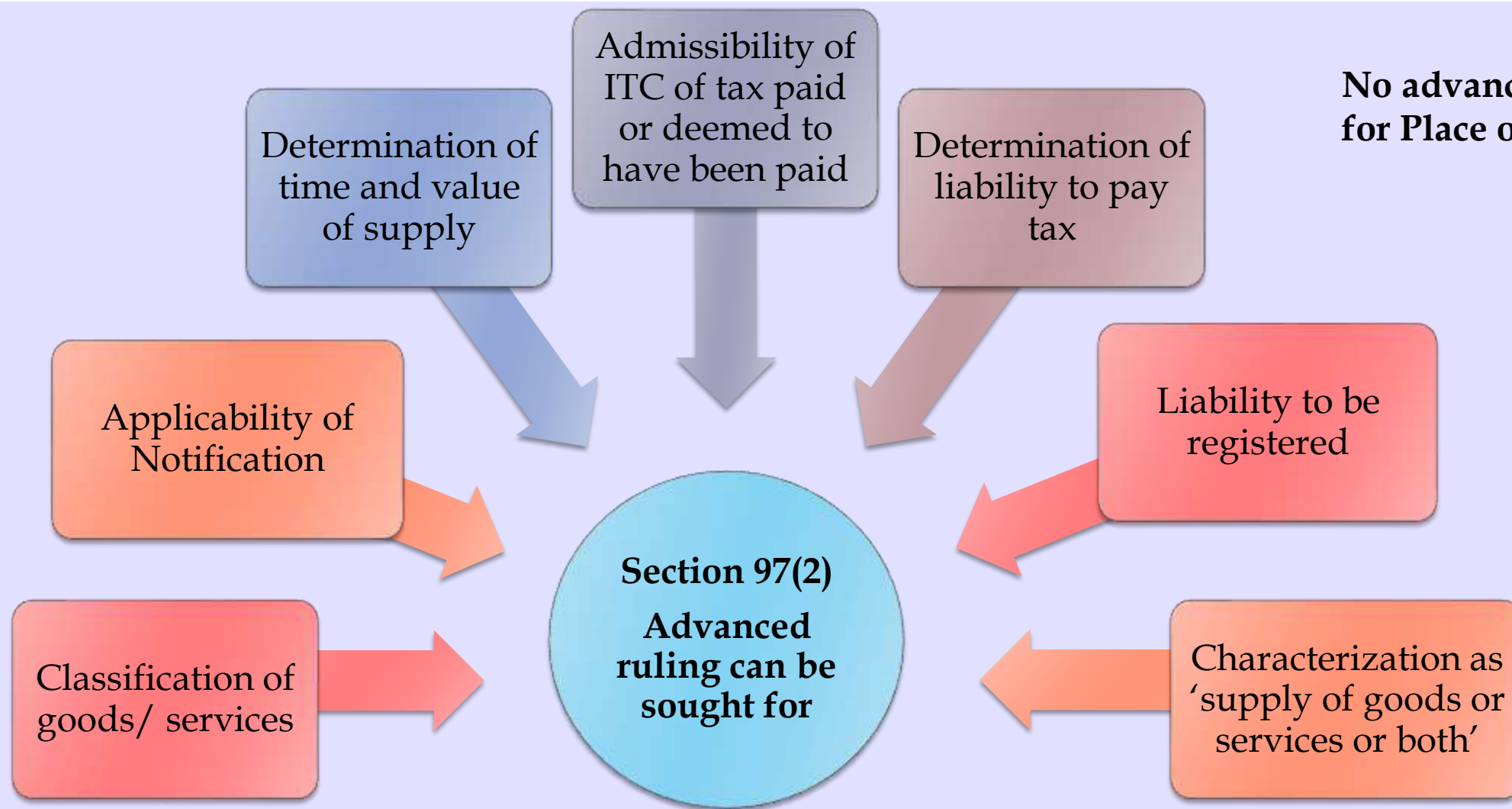
- Recovery of travel and accommodation charges includible in value of legal service?
- Reimbursement of statutory payments includible in value of legal service?

- ▶ Discussion on Pure Agent will be required.
- ▶ Reimbursement of statutory payment can come under the exception of pure agent.
- ▶ However, reimbursement in respect of services used by the supplier will be includible in TV.

*(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;*

# Advance Ruling

# Application for Advanced Ruling



**No advance ruling  
for Place of Supply.**



# Important Rulings

# 1. Sanghvi Movers Ltd AAR (2019-VIL-234-AAR)

- ▶ Sanghvi Movers Ltd (“SML”), SML were in the business of operating cranes on wet lease basis. Cranes were delivered to their branches in other states for further supply to customers.
- ▶ **MOU:** For facilitation of delivery of crane and its components to their customers, SML had entered into a MOU with their other registrations in different states.
- ▶ **Consideration clause:** Consideration in the form of hire charges was agreed as a part of the MOU between the branch and HO.

Whether the branch office can avail input tax credit on the IGST paid by the head office for supply of crane to its customers.

- ▶ **Schedule I not applicable:** Payment to be made by branch office to head office will partake the character of consideration.
- ▶ **First proviso of Rule 37 of CGST Rules, 2017 not applicable:** Branch office will be required to pay the value of supply along with its tax payable within 180 days from the date of issuance of invoice from head office as consideration separately agreed
- ▶ **Sanghvi Movers Ltd (receiver registration) will not be eligible for ITC:** According to the AAR, since the branch office failed pay the value of supply along with its tax payable within 180 days from the date of issuance of the invoice by the head office, they will not be eligible for ITC.

**AAAR – Favorable to the applicant**

# TN AAAR- Held in favour of the assessee.

- ▶ Supply between branch offices is covered under Schedule I
- ▶ Proviso to Rule 37 provides for deemed payment of consideration.

## 2. MRF Limited - 2019-VIL-71-AAR

### Facts:

- The suppliers agreed to provide cash / additional discounts to the recipient for prompt payment which was not agreed before or at the time of supply.
- The said discount was routed through their system which was installed at both the buyer and seller's end.
- As agreed between both the parties to contract, the supplier under the said system would voluntarily accelerate the payment and receive early payment with appropriate discount.
- Such discount will be offered on the said platform through issuance of financial/commercial credit notes.
- The said payment of the invoices would be processed by the recipient of the goods or services after considering the discount offered by the supplier at that time.

Whether recipient is eligible to take full ITC of the GST charged on the supply by the supplier or proportionate reversal of the same is required in case of post-supply discount which is given by the supplier through issuance of financial/commercial credit notes?

- As per proviso to Section 16 of the CGST Act, 2017, if the recipient fails to pay the supplier, the value and tax amount, within 180 days from the date of issue of the invoice, the recipient shall have to pay output tax proportionate to the ITC availed on the unpaid amount.
- Hence, the AAR ruled that in the present case the ITC to the extent of value of supply not paid by the recipient could not be availed as ITC.

## 2. MRF Limited (AAAR-TN)

### Findings in the MRF Judgement – Persuasive Value

The plain language of the proviso to Section 16 of the CGST Act /TNGST Act only requires that ‘the amount towards the value of supply along with tax payable thereon be paid within 180 days’. This only means that the

- (i) full commercial price should be paid to the supplier, and
- (ii) the GST should be paid on the value of supply as determined under the CGST ACT / SGST ACT.

The proviso only requires the amount contractually/commercially agreed upon by the recipient to be paid to the supplier. The tax alone has to be paid on the valuation as per Section 15 of the CGST Act. There is no requirement to pay the value of supplies as per value determined under Section 15 of the CGST Act.

## 2. MRF Limited (AAAR-Tamil Nadu) – Contd.

**Intention of the law-** As per minutes of the GST Council Meeting, Section 16(2) was introduced as an anti-evasion measure. Further discussions in the 29th GST Council meeting also establishes the intention of the provision as an anti-evasion measure and a provision to facilitate the prompt payment to suppliers.

**Circular No. 122/3/2010 dated 30.4.2010** in the context of Rule 4(7) of the CCR has clarified that 'In the cases where the receiver of service reduces the amount mentioned in the invoice/ bill/ challan and makes discounted payment, then it should be taken as final payment towards the provision of service.'

### 3. Specsmakers Opticians Pvt. Ltd. (2019-VIL-233-AAR)

#### Facts:

- The applicant imports as also procures locally and re-sells lenses, frames, sun glasses, contact lenses and reading glasses.
- The goods procured are transferred to branches for subsequent sale to customers (unrelated).
- For supply to branches, applicant intends to adopt second proviso under Rule 28 directly (i.e. where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the OMV) and not adopt the market price or first proviso under Rule 28 (90% of sale price of the recipient unit).

#### Issue:

- What is the value to be adopted in respect of transfer made to branches outside the state (i.e. distinct persons with the same PAN)?

### 3. Specsmakers Opticians Pvt Ltd (2019-VIL-233-AAR)

#### Ruling:

- ▶ Option under Rule 28 to be sequentially applied.
- ▶ The value of the goods **shall** be the open market value as per Rule 28 (a)
- ▶ However, first proviso gives option to adopt an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality to unrelated person
- ▶ **Second proviso to be read along with first proviso** i.e. if applicant opts for value as per first proviso, the value in such a case would not be OMV. Further, where recipient is eligible for full ITC the value after exercising the option in the first proviso, will now be deemed to be the OMV.
- ▶ Hence, applicant cannot directly opt for second proviso.

# TN AAAR- set aside TN AAR

- ▶ There is nothing to show that the second proviso is subordinate to the first. It independently deals with a scenario where the recipient is eligible for ITC.
- ▶ Applicant can adopt the value for supply to distinct persons provided under Proviso 2 to Rule 28 of the CGST Act 2017

## 4. Spacelance Office Solutions Pvt Ltd (2019-VIL-241-AAR)

### Issue:

- Can GST registration be obtained for same address by multiple companies, provided they follow all GST rules related to "Principal place of business" (PPOB)?

### Ruling:

- Separate GST registration allowed for companies functioning in co-working space which provides services.
- The rental agreement must be uploaded and in case there is a sub-lease the lease agreement must also be uploaded as proof of address of PPOB of respective suit or desk number assigned to them and a monthly utility bill can also be uploaded.

## 5. Chennai Port Trust (2019-VIL-245-AAR)

### Issue:

- Whether GST is payable in respect of interest/ late fee/ penalty where invoices are raised and payment received during service tax regime while interest/ late fee/ penalty are received in the GST regime?

### Ruling:

The amounts received on or after 01.07.2017 towards interest/ late fee/ penalty relating to services, due to delayed payment of consideration for the services rendered before 01.07.2017, are liable to GST.

## 6. Santhosh Distributors (2019-VIL-416-AAR)

### Issue

- Whether the discount provided by the Principal Company to their dealers through the applicant (distributors) attracts GST?
- Whether the amount shown in the Commercial Credit note issued to the applicant by the Principal Company attracts proportionate reversal of ITC?
- Is there any tax liability under GST on the applicant for the amount received as reimbursement of discount or rebate provided by the Principal Company as per written agreement between the Principal Company and their dealers and also an agreement between the Principal Company and distributors?

## 6.Santhosh Distributors (2019-VIL-416-AAR)

### Ruling:

- The additional discount reimbursed by the Principal Company to the Applicant is in the nature of additional consideration and liable to be added to the consideration payable by the customer to the Applicant.
- With respect to commercial credit notes, since the Principal Company is not eligible to reduce its original tax liability to the extent of value of credit note, the Applicant shall not be liable to reverse the ITC attributable to the value of commercial credit notes.
- GST shall be levied and payable at applicable rate by the Applicant on the amount of reimbursement of discount/ rebate from the Principal Company.

# 7. Surfa Coats (India) Private Limited

**Facts** - The applicant company is in the business of manufacturing decorative paints and offers incentive schemes for their dealers such as providing goods like appliances and services such as free foreign trips.

**Issue** - Whether ITC shall be available to the applicant on goods and services procured to provide incentives to its dealers which is in the course and furtherance of business.

**Ruling** - The authority ruled that ITC on the goods/ services procured for providing incentives without consideration shall not be available as the procurements are in the nature of gifts.

## 8. Jotun India Pvt Ltd (2019-VIL-296-AAR)

**Facts** - The applicant company has entered into an agreement with an insurance company for purchase of “parental medical policy” for its employees. 50% of the cost is subsequently recovered from the employees.



**Issue** - Whether recovery of cost of policy from the employees will attract GST?



**Ruling** - No, the applicant company is not rendering any service of health insurance to their employees and hence, there is no supply of services in the course and furtherance of business.

# 9.Embassy Industrial Park Pvt. Ltd. (2019-VIL-389-AAR)

## Issue:

- Whether ITC can be availed by the applicant on the inputs i.e. Electrical Works, Pumps, Pumping systems and tanks, Lighting system, Physical security system and Fire System?

## Ruling:

- The items do not have independent existence and are part and parcel of the whole building.
- Merely accounting of an immovable property as a movable property in the books of accounts of the applicant does not divest the exact nature of the item.
- Items are immovable in nature and covered under exclusion clause of Section 17(5).

## 10. Vista Marine & Hydraulics (2019-VIL-417-AAR)

### **Issue:**

Whether the supply of spare parts/accessories and repair service can be considered as composite supply wherein the principal supply is repair service and hence the rate of tax for all supplies, consisting of spare parts/accessories and repair service, be taken as 18%?

# 10.Vista Marine & Hydraulics (2019-VIL-417-AAR)

## Ruling

The supply of spares parts/accessories and repair service are distinct and separately identifiable supplies for which the rates are quoted differently and work orders are issued separately specifying the spares/accessories to be supplied and the services to be rendered and the rates applicable thereon are quoted in the Repair Rate Contract. Hence, not a composite supply.

Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

(Para 2.2 of CBIC Circular no. 47/21/2018-GST dated 08.06.2018)

# 11. VSERVGLOBAL PRIVATE LIMITED (2018-VIL-270-AAR)

## **Facts:**

The applicant is engaged in providing back office support to its overseas clients. The services include the following:

- ▶ Maintenance of records of employees of clients
- ▶ Payroll Processing
- ▶ Processing payments for clients
- ▶ Co-ordination with clients' suppliers/customers for execution of purchase/sale contracts
- ▶ Liaising with suppliers/customers on behalf of the clients
- ▶ Arranging transportation of goods between buyers/suppliers
- ▶ Troubleshooting

# 11. VSERVGLOBAL PRIVATE LIMITED (2018-VIL-270-AAR)

## Issue:

- ▶ Whether the above activities qualify as “export of service” in terms of IGST Act?

## Ruling:

- ▶ All the above activities indicate applicant as a person who arranges or facilitate supply of goods or services or both between the overseas client and customers of the overseas client, and therefore applicant is clearly covered and falls in the definition of an intermediary as defined under the IGST Act
- ▶ Thus, the services proposed to be rendered by the applicant do not qualify as 'export of services' and thus not a 'zero rated supply'
- ▶ **The above ruling has been upheld by Maharashtra AAAR.**



# Audit

# Types of audit

## Section 35

- **Audit by CA/CWA for registered persons having turnover more than Rs. 2 Crores**

## Section 65

- **Departmental Audit/Audit by tax authorities**

## Section 66

- **Special Audit**

# Audit by tax authorities

Commissioner of CGST / SGST or any officer authorized

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Audit - for a particular period, at particular frequency

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To be conducted at the place of business of registered person or in their office

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Notice to be issued to registered person at least 15 working days prior to audit [Form GST ADT-01]

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Audit to be completed within 3 months (can be extended for 6 months by Commissioner) – “ from date of commencement of Audit”

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Registered person to provide the required information and facility

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Result of audit and finding to be intimated within 30 days [Form GST ADT-02].

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In case the tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised is detected then action can initiated by issuing SCN.

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# Special audit

At any stage of scrutiny, inquiry, investigation or any other proceedings pending before AC or above

Reasons:  
Correct value not declared and / or ITC claimed not within normal limits

Prior approval of the Commissioner of CGST / SGST

Direct registered person to get his records and books of a/c audited [Form GST ADT-03]

Audit to be done by CA / CWA nominated by the Commissioner of CGST / SGST

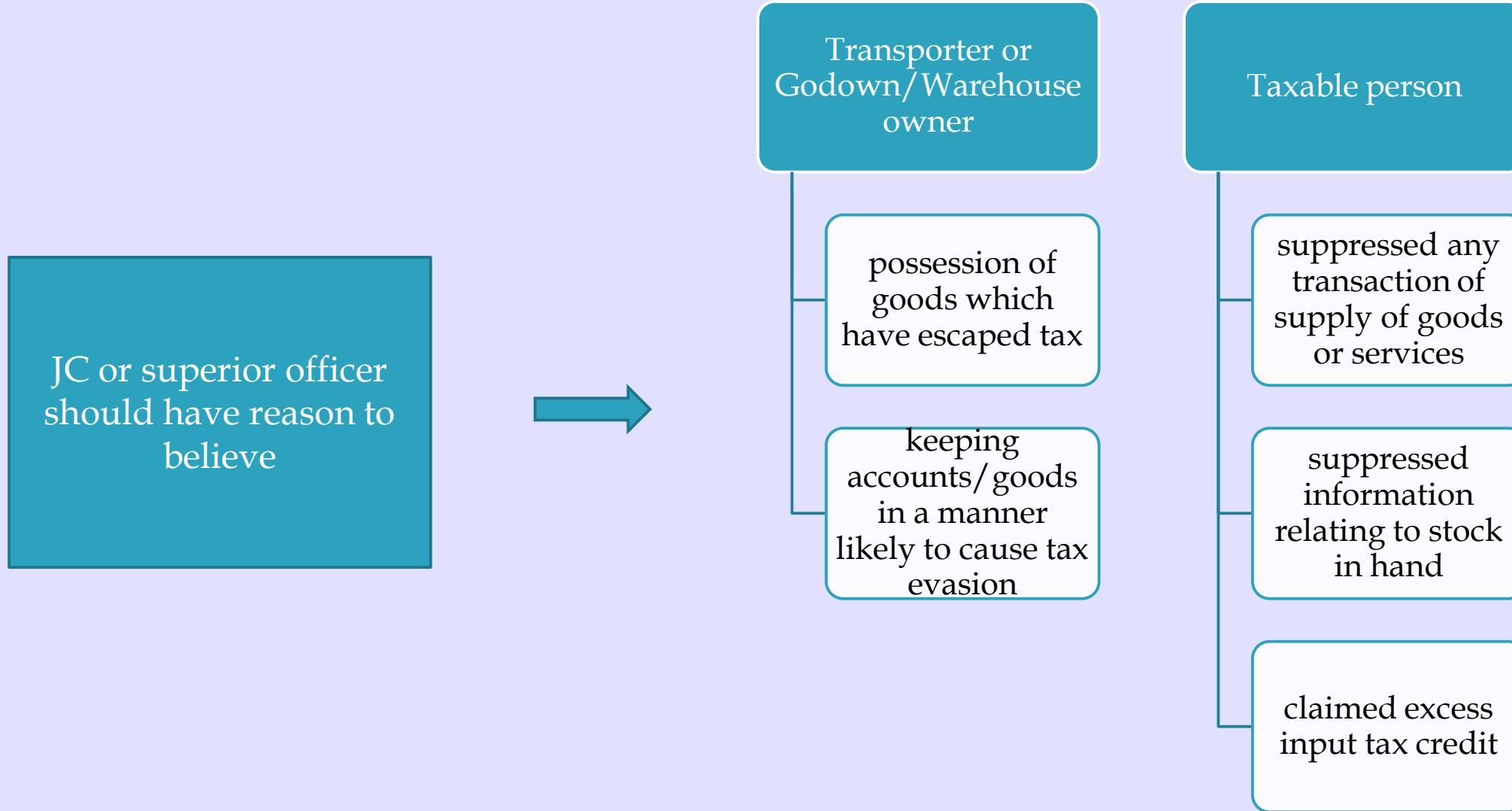
Audit Report to be submitted within 90 days (can be extended by further 90 days)

In case the tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised is detected then action can be initiated by issuing SCN



# Inspection, search and seizure

# Power to inspect



# Power to search and seizure

Who	Proper officer not below rank of Joint Commissioner
When	Reason To Believe/Pursuant to an inspection
That	Goods liable to confiscation, documents, books or things relevant to any proceedings are secreted
Carry out	Search and seizure

# Inspection of goods in movement

1. **Government may require a conveyance carrying goods to carry such documents as may be prescribed**
2. **Details of documents being carried may be validated in such manner as may be prescribed**

3. **When a vehicle is intercepted, he may require the person in charge of the vehicle to produce such documents/ devices required to be carried and also allow inspection of goods**



# Other provisions

## Powers of Officer

1. Authorise officer to inspect, search and seize
2. Power to lock and seal the door/ premises of the assessee
3. Power to break open any almirah, electronic storage device, box where the books, documents, etc. are suspected to be concealed/secreted

## Duties and Responsibilities of officer

1. Issue notice within 6 months from the date of seizure; Else return the goods
2. Shall prepare inventory of any hazardous or perishable goods seized and disposed of.
3. Return the books/ documents/ records not relevant within 30 days of issuance of notice

## Rights of Assessee

1. Can make copies of the documents seized
2. Take back the seized goods on a provisional basis upon furnishing of security or bond and payment of tax, interest and penalty

# Arrest

# Offences liable for arrest

When Commissioner has reasons to believe

Supply without invoice in violation of law with an intent to evade payment of tax

Issuance of invoice without supply resulting in wrongful availment or utilisation of credit or refund of tax

Availment of input tax credit using the invoice referred above

Tax collected but not paid to the Govt. beyond a period of 3 months from the date on which it became due

&

Where the amount of tax evaded/ITC wrongly availed or utilised/refund wrongly taken > 500 lakhs: Imprisonment upto 5 years with fine [Cognizable and non-bailable]

Where the amount of tax evaded/ITC wrongly availed or utilised/refund wrongly taken > 200 lakhs but upto 500 lakhs: Imprisonment upto 3 years with fine [Non-cognizable and non-bailable]

## ▶ **Vimal Yashwantgiri Goswami [2019-VIL-391-GUJ]**

- ▶ **Facts:-** The Petitioner approached the Court to mandate that the Department should not exercise its power to arrest before adjudication.
- ▶ **Held:-** The powers of arrest under Section 69 of the Act, 2017 are to be exercised with lot of care and circumspection.
- ▶ Prosecution should normally be launched only after the adjudication is completed.
- ▶ There must be in the first place a determination in first place
- ▶ Till that point of time, the entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee.

- ▶ **P.V. Ramana Reddy [2019 (25) G.S.T.L. 185 (Telangana)]**
  - ▶ Arrest and prosecution for offences for which provisions have been made under CGST Act are not dependent on completion of assessment or determination of duty
  - ▶ Appeal filed by Petitioner in Supreme Court– SLP Dismissed
  
- ▶ **Ferrous Enterprises [2019 (6) TMI 102 - Telangana]**
  - ▶ Followed PV Ramana and noticed that SLP has been dismissed

Exceptions to the rule of assessment are only those cases where the assessee is a habitual offender, that/ who has been visited consistently and often with penalties and fines for contraventions of statutory provisions. It is only in such cases that the authorities might be justified in proceedings to pre-empt the assessment and initiate criminal action against the assessee.

- ▶ The opinion expressed by Telangana High Court cannot be made applicable to each and every case and cannot be treated an authority to conclude that officers have the power to arrest in every case during investigation.
- ▶ Persons against whom there is no concrete evidences to establish direct involvement in the evasion of huge amounts of tax, should not be arrested prior to determination of liability
- ▶ Arrest of Chartered Accountant or Advocates who had filed returns or otherwise assisted in business but are not beneficiary or part of fraud merely on the basis of statement without any corroborative evidence linking the professional with alleged offence should be avoided.

## Background and Issue

- ▶ **Bombay High Court interim order** – petitioner was granted pre-arrest bail and was directed cooperate with the Department
- ▶ Department field an Appeal against the interim order was filed to S.C.

# Supreme Court - Held

SC declined to interfere in the Bombay High Court proceedings.

In future, HCs are required to exercise caution in granting relief in light of P.V. Rama Reddy case (Telangana) in which SLP was dismissed by SC

Observed that divergent views in various HCs. Thus matter has been referred to 3 judge bench

# Questions





Lakshmikumaran  
& Sridharan  
attorneys

THANK YOU