



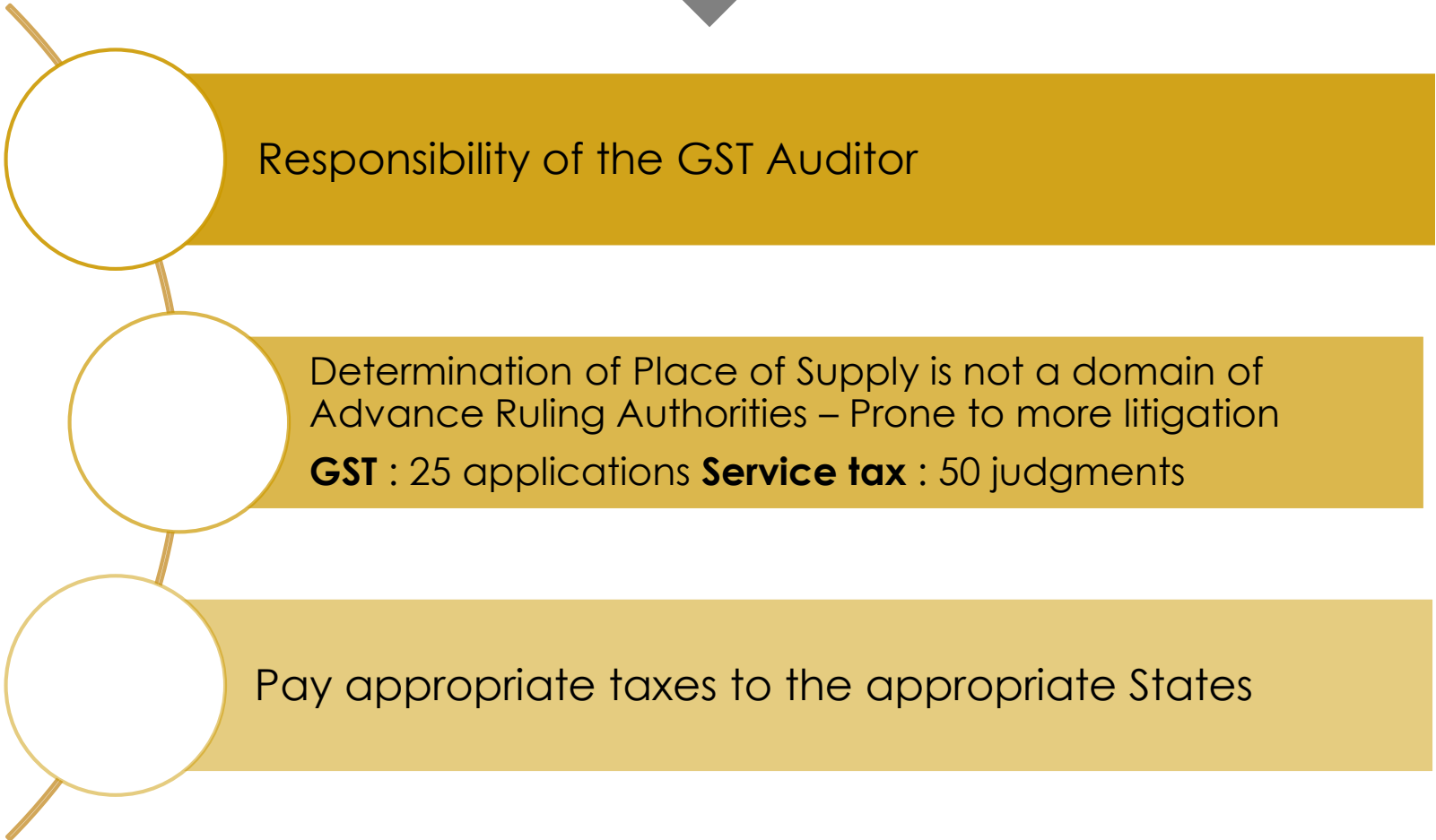
ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS

Place of Supply – Goods & Services

GST - Dnyan Satra

CA Vivek Baj

Understanding Place of Supply is important

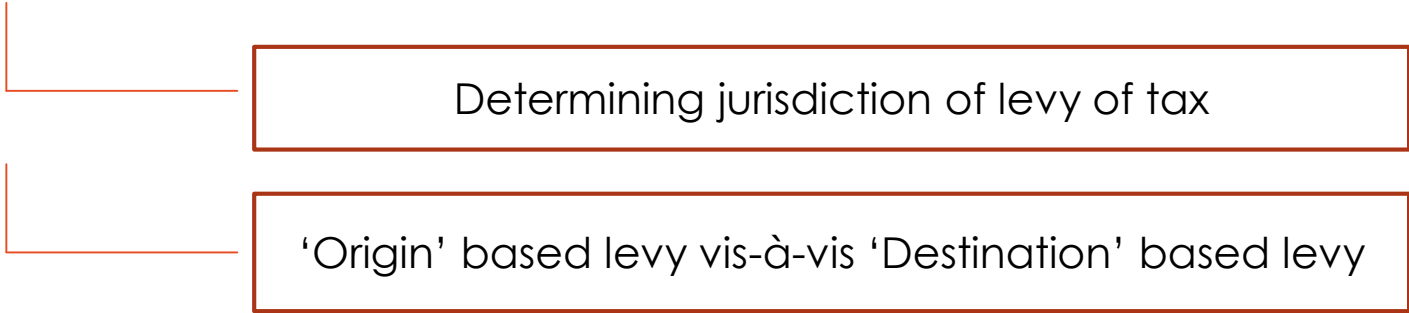


Section 2 (13) of the CGST Act

“Audit” means the examination of records, returns and other documents maintained or furnished by the registered person under the GST Acts or the rules made there under or under any other law for the time being in force **to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of the GST Acts or the rules made thereunder**

Relevance of place of supply

Need for Place of Supply provisions in a legislation?



Erstwhile laws vis-à-vis place of supply principles

Taxes	Levy	Place of supply	Principle
Value Added Tax	Sale of goods	Place of Movement	Origin based tax
Central Sales Tax	Sale of goods	Place of Movement	Origin based tax
Central Excise duty	Manufacture of goods	Place of Removal	Origin based tax
Service tax	Provision of service	Place of Recipient	Destination based tax

Challenge

Refund can be claimed within a period of 2 years from the date of payment

If mistake identified thereafter, refund cannot be claimed

Unjust enrichment clause is not applicable for refund of tax under this section – [S.54(8) of the CGST Act read with Rule 89(2)]

- States are eligible for compensation from Centre for initial period of 5 years towards loss incurred by them due to introduction of GST

IGST paid instead of CGST/SGST

CGST+SGST needs to be paid without interest [S. 77(2) of CGST Act]

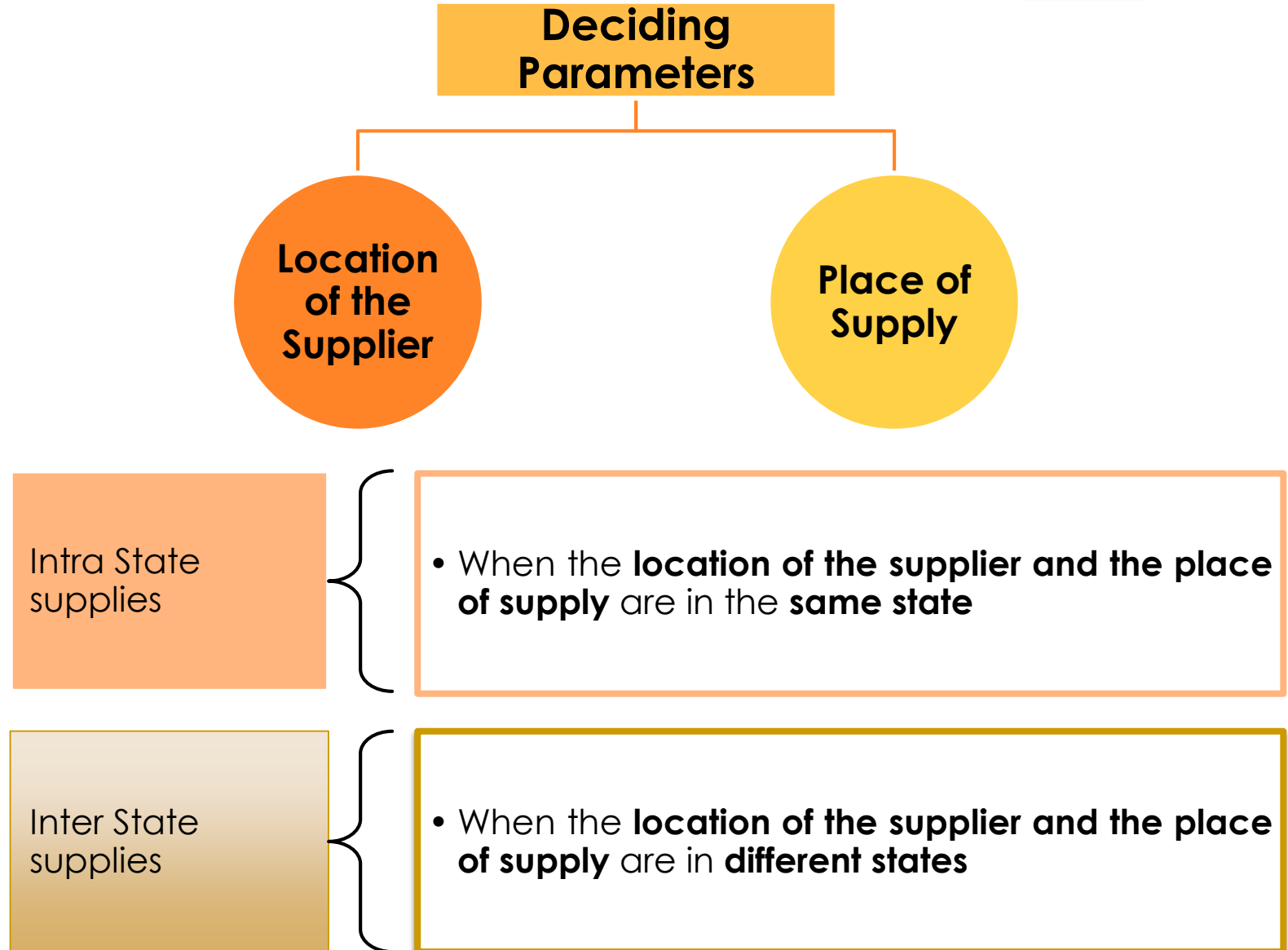
IGST paid inadvertently can be sought as 'Refund' [S. 19(1) of IGST Act]

CGST/SGST paid instead of IGST

IGST needs to be paid without interest [S. 19(2) of the IGST Act]

CGST+SGST paid inadvertently can be sought as 'Refund' [S. 77(1) of CGST Act]

Interstate Vs. Intrastate



Taxes to be levied on Supply of Goods / Services	
Intra State	CGST + SGST
Inter State	IGST
Import	IGST
Export including supplies to SEZ Developer and SEZ Unit	Zero Rated

Location of supplier of goods/services

Location of Supplier of goods

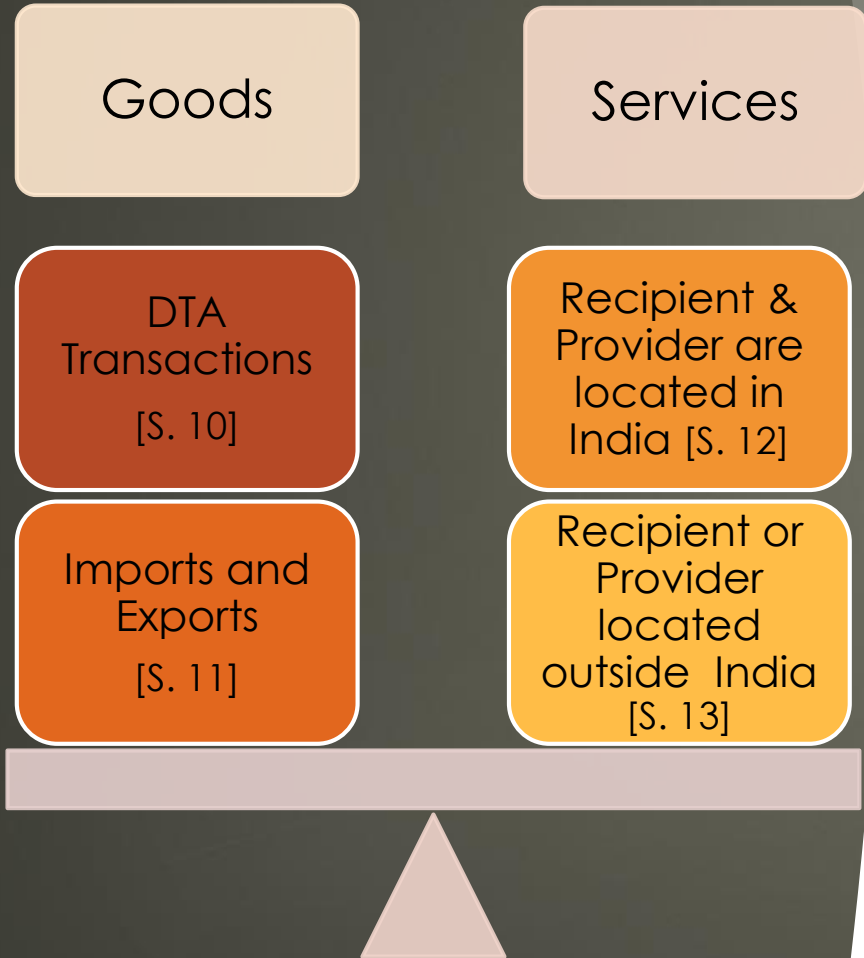
- Not defined in the GST Law

Location of supplier of services [S. 2 (15)]

(15) "location of the supplier of services" means,—

- (a) where a supply is made from a place of business for which the **registration** has been obtained, the location of **such place of business**;
- (b) 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**;
[E.g. Foreign Branch of Indian Company]
- (c) 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
- (d) in absence of such places, the location of **the usual place of residence** of the supplier;

Place of Supply – Purpose of different set of provisions



Separate set of provisions for domestic & international transactions



Domestic Transactions

- To identify which State is eligible for SGST portion of the tax

International Transactions

- Whether transaction qualifies as import or export and accordingly applicability of tax thereon

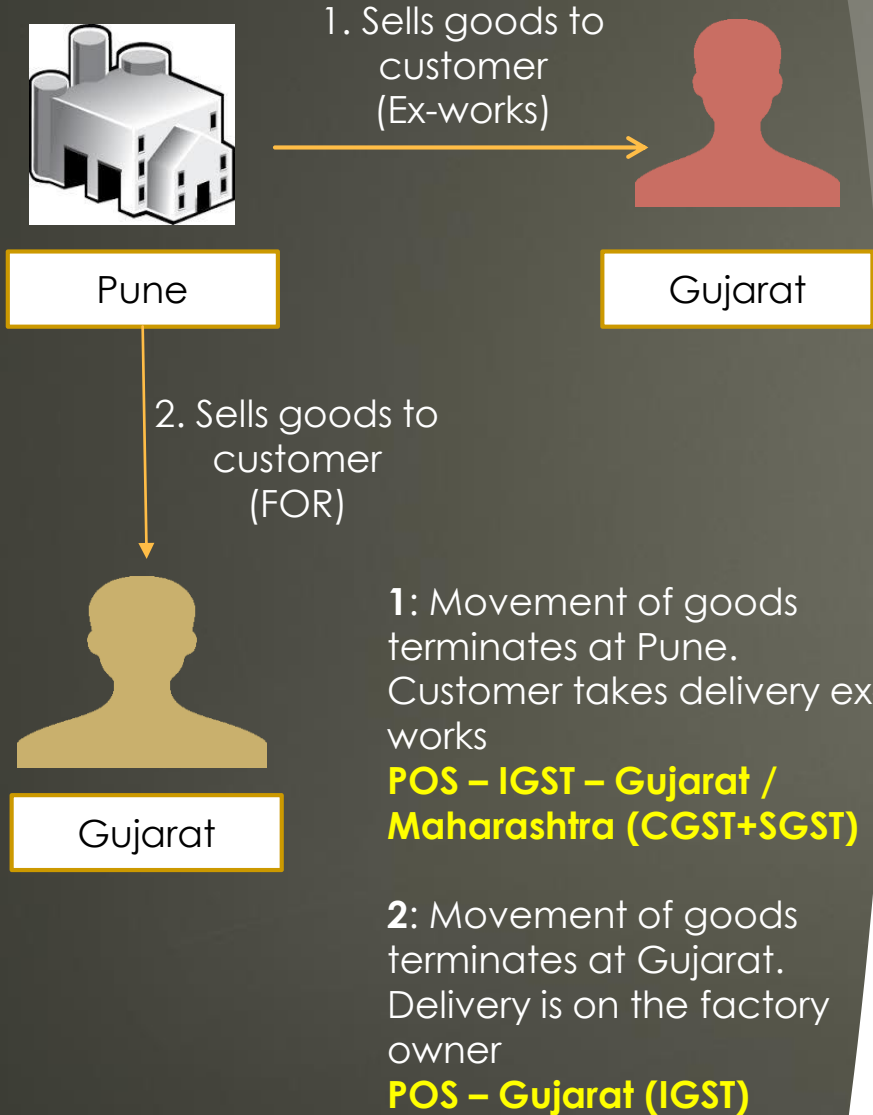
Place of Supply of Goods (Domestic)



FRAMEWORK.

Sr. No.	Scenario	Section under IGST Act
Domestic		
1	Supply involves movement of goods	10(1)(a)
2	Goods delivered on the direction of a third person	10(1)(b)
3	Supply does not involve movement of goods	10(1)(c)
4	Goods are assembled or installed at site	10(1)(d)
5	Goods supplied on board a conveyance	10(1)(e)
6	Residuary rule	10(2)
Import & Export		
1	Goods imported into India	11(a)
2	Goods exported from India	11(b)

Supply involves movement of goods [S.10(1)(a)]...



▶ **Supply involves movement** of goods:

- ▶ Either by the supplier or
- ▶ by the recipient

Place of Supply



Location where movement of goods terminates for delivery to the recipient

How do we interpret the term 'Terminates for delivery' ????

Delivery by supplier on direction of a third person [s.10 (1)(b)]...

- ▶ Where the **goods are delivered by the supplier to a recipient** (before or during the movement) on the direction of third person (agent or otherwise) by way of transfer of documents or otherwise

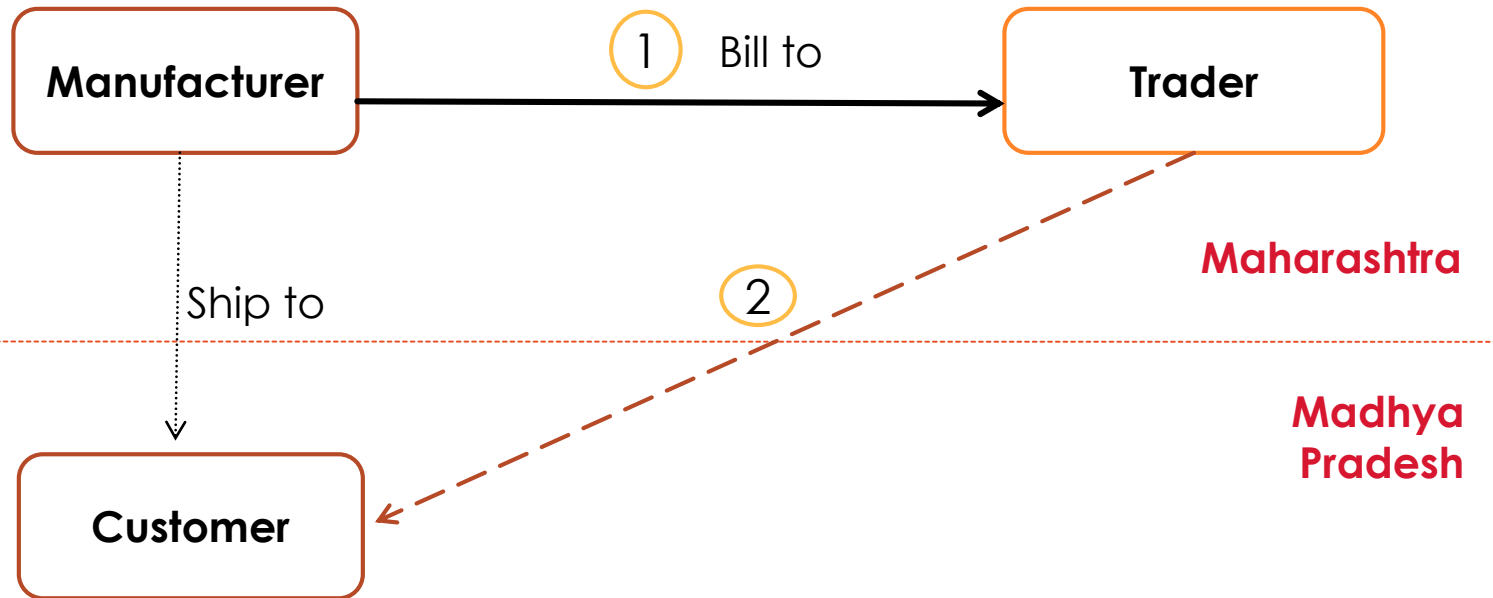
Place of Supply



Principal place of business of the person who has directed the supply

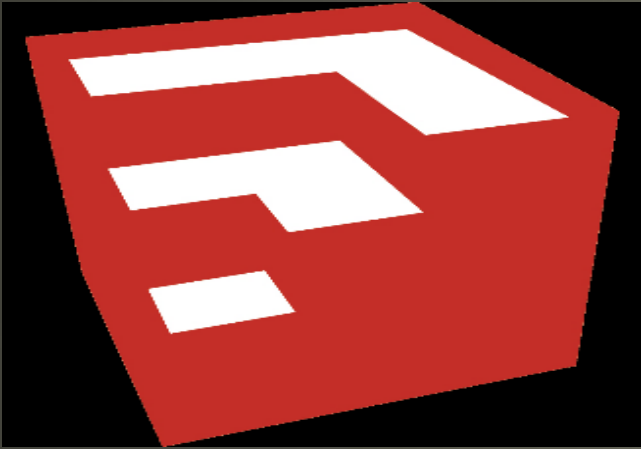
Golden Rules

- **Rule I** : First leg of transaction between Manufacturer and Trader– Place of Supply would be the location of the person who has directed the goods – **Place of delivery is not relevant**
- **Rule II** : Second leg of transaction between trader and customer – Place of supply would be as per the place of delivery



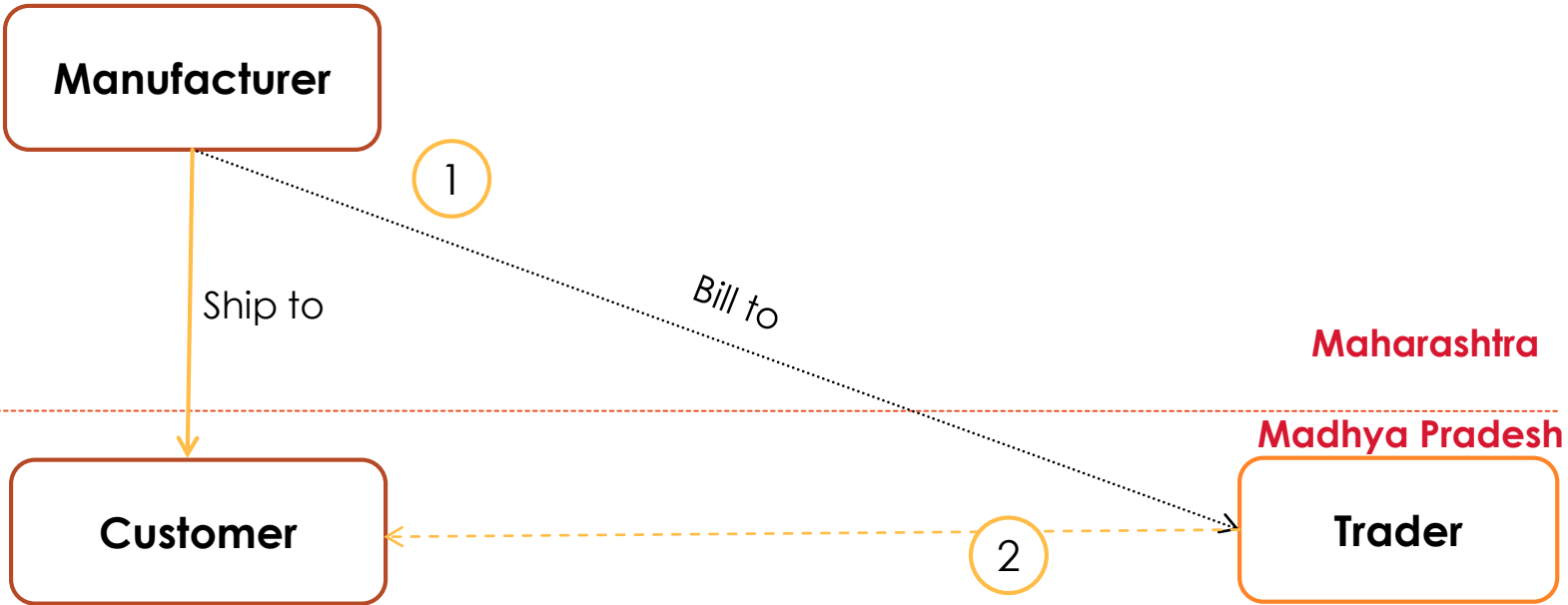
Particulars	Erstwhile Regime	GST regime
Transaction 1- On the direction of the trader, manufacturer delivers the goods	CST	POS – Maharashtra (CGST+SGST)
Transaction 2- Normal Sale	CST	POS - Madhya Pradesh (IGST)

...Illustration



Bill to Ship to transaction
One Eway Bill is required to be generated

- Either by manufacturer
- Or by trader



Particulars	Erstwhile Regime	GST regime
Transaction 1- On the direction of the trader, manufacturer delivers the goods	CST	POS – Madhya Pradesh (IGST)
Transaction 2- Normal Sale	CST	POS - Madhya Pradesh (CGST+SGST)

Supply does not involve movement of goods [S.10 (1)(c)]



► Supply **does not involve movement** of goods by the supplier or the recipient

Place of Supply



Location of goods at the time of delivery

Example



Mumbai



Sells property located in Mumbai including the furniture

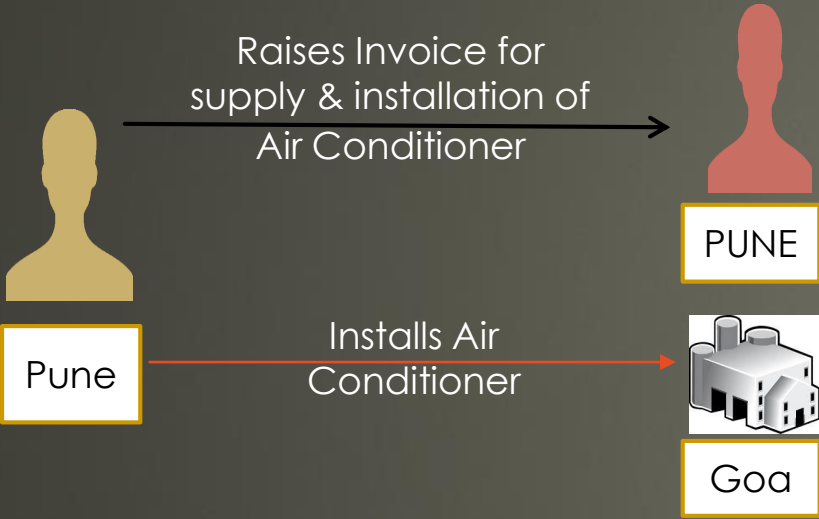


Gujarat

POS – Mumbai (being the location of goods at time of supply) – **CGST + SGST**

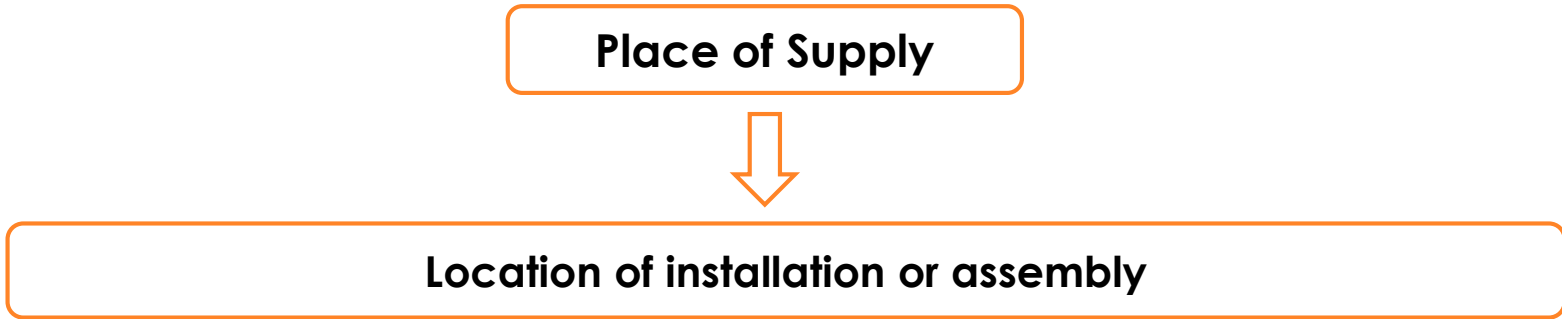
- A. Over the counter sale
- B. Job worker retaining manufactured capital goods/ moulds /dies for production of parts

Goods are assembled or installed at site [S.10 (1)(d)]



POS – Goa (location of installation) - **IGST**

- Where goods are **assembled or installed at site**



Example

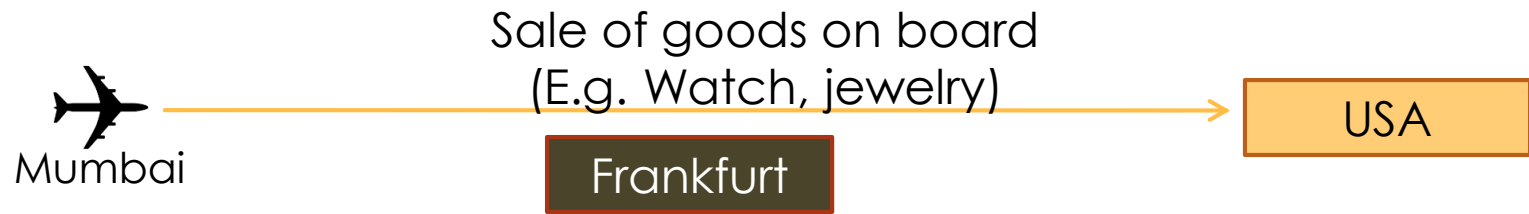
Location of the supplier	Location of the recipient	Site assembly/ restoration	Place of supply	GST	ITC to the Recipient
West Bengal	Orissa	Jharkhand	Jharkhand	IGST Jharkhand	Not available
Jharkhand	Orissa	Orissa	Orissa	IGST (Orissa)	ITC available
Jharkhand	Tamil Nadu	Jharkhand	Jharkhand	CGST+SGST (Jharkhand)	Not available

Goods supplied on board a conveyance [s.10 (1)(e)]

- ▶ Where Goods supplied onboard a conveyance, including vessel, aircraft or train or motor vehicle



Example



POS – Mumbai

Place of Supply of Goods (Import & Export)



Supplier

USA

INDIA

Imports goods to sell in Indian Market

Maharashtra



Importer

Place of supply is Maharashtra

Goods imported into India

[S. 11(a)]

❑ **Import of goods [Sec 2(10) of IGST Act]**

“Means bringing goods into India from a Place outside India”

❑ **Place of supply:**

Location of Importer

Proviso to Section 5(1) - Levy

- Provided that IGST to be levied on goods imported into India; and
- Collected as per section 3 Customs Tariff Act, 1975;
- On the value determined under the **said Act**;
- At the point** when duties of Customs are levied

Tax to be levied on the Value as determined under Customs Act
Tax (IGST) to be paid at the time of clearance of goods

Customs Authorities are raising concern with respect to payment of Customs Cess/ SWS through MEIS/SEIS scrips – Demanding Cess in cash



Foreign Buyer

USA

INDIA

Exports goods

Maharashtra



Exporter

Place of supply is
outside India
(Zero Rated)

Goods exported from India

[S. 11(b)]

Export of goods [Sec 2(5) of IGST Act]

“Means taking goods out of India to a Place outside India”

Place of supply:

Location outside India

Section 16(1) – Zero Rated Supply

Following two supplies are Zero Rated supplies:

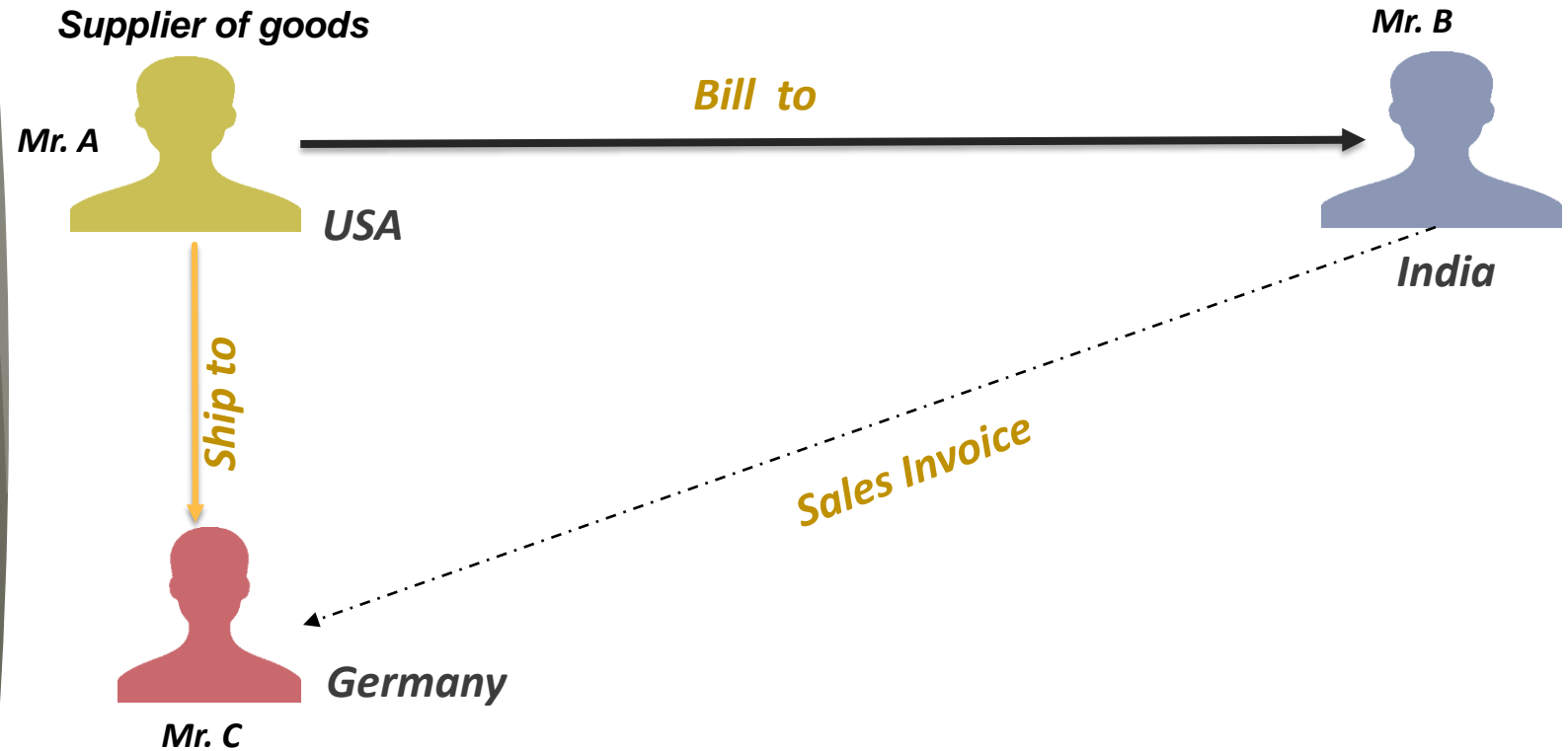
- Export of goods or services or both;
- Supply of goods or services or both to a SEZ developer or an SEZ Unit

July 1, 2017 to January 31, 2019

- Merchant trade transactions qualifies as exempt supply and required to reverse proportionate common ITC

From February 1, 2019 onwards

- Merchant trade transactions does not qualify as supply in terms of Schedule III and proportionate common ITC reversal is not applicable



Transaction between B and C

- Does not qualify as an export as goods are not moving from India
- It as an exempt supply – AAR in the case of **Enmarol Petroleum India Pvt Ltd. & Synthite Industries Limited**
- *Relevance of Section 7(5) - when supplier is in India and place of supply is outside India, it is an inter-state supply??*

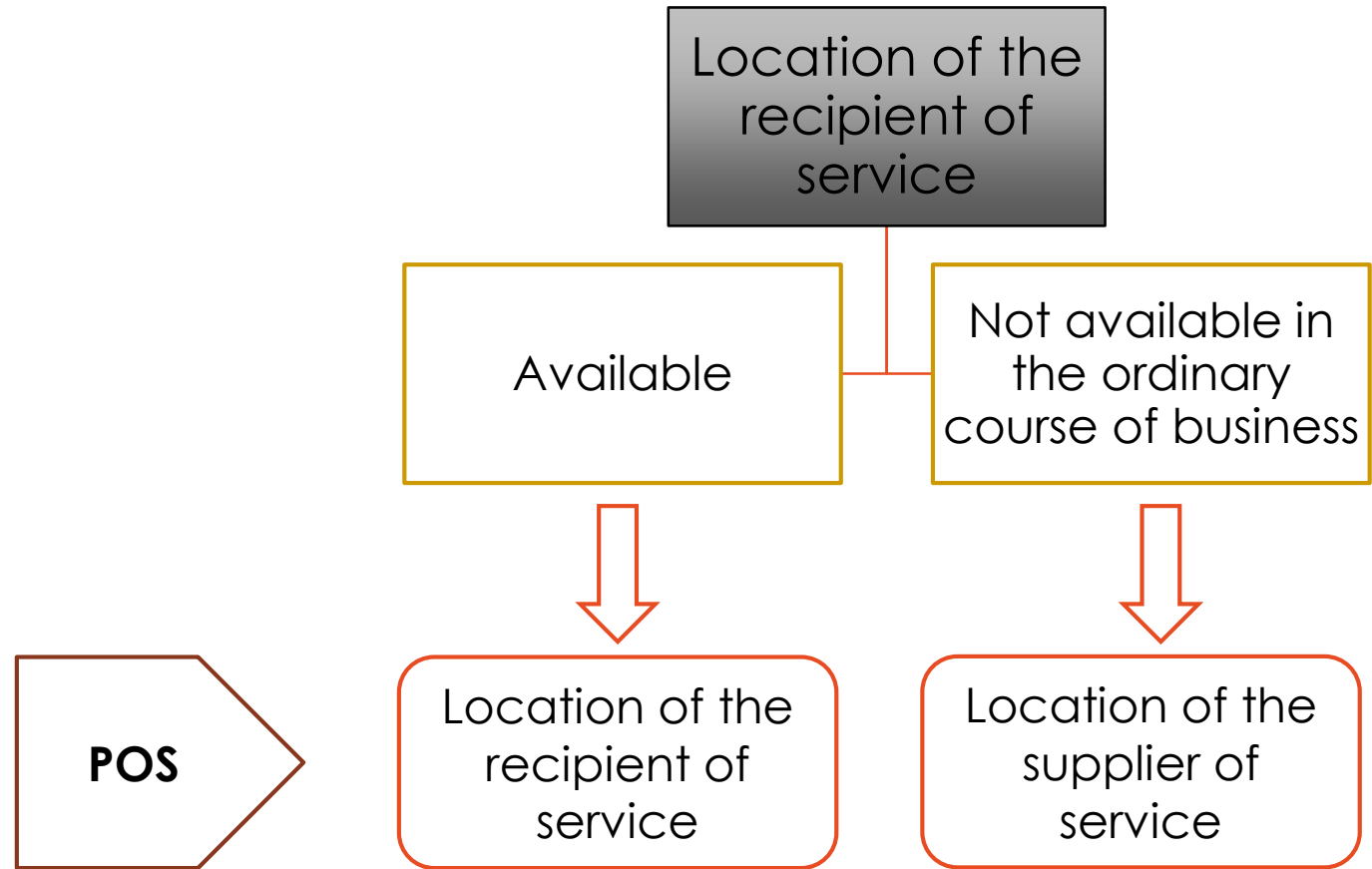
POS – Domestic Service Transactions

Place of supply for domestic service transactions were not applicable in the erstwhile regime

POS framework for services under GST

Sr. No.	Concept	Section of IGST Act
1	General Rule	12(2)
2	Services directly in relation to an immovable property	12(3)
3	Restaurant and catering services, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery	12(4)
4	Services in relation to training and performance appraisal	12(5)
5	Services provided by way of admission to various events, amusement park or any other place and ancillary services	12(6)
6	Services provided by way of organising various events and ancillary services	12(7)
7	Services by way of transportation of goods, including courier or mail	12(8)
8	Passenger Transport Service	12(9)
9	Services supplied on board a conveyance	12(10)
10	Supply of telecommunication services including data transfer, broadcasting, cable and D2h service	12(11)
11	Banking and other financial services, including stock brokering services	12(12)
12	Insurance Service	12(13)
13	Advertisement services provided to the CG, SG, statutory authority or local authority	12(14)

General rule [S.12(2)]



Immovable property related service [S.12(3)] ...

Directly in relation to immovable Property and includes services provided by

- Architects, Interior decorators,
- Surveyors, Engineers and other experts
- Real Estate agents
- Grant of right to use immovable property
- co-ordination of construction work

By way of lodging and accommodation by

- Hotels, Inns, Guesthouse,
- Home stay, Club or campsite
- Including: House boat or any other vessel

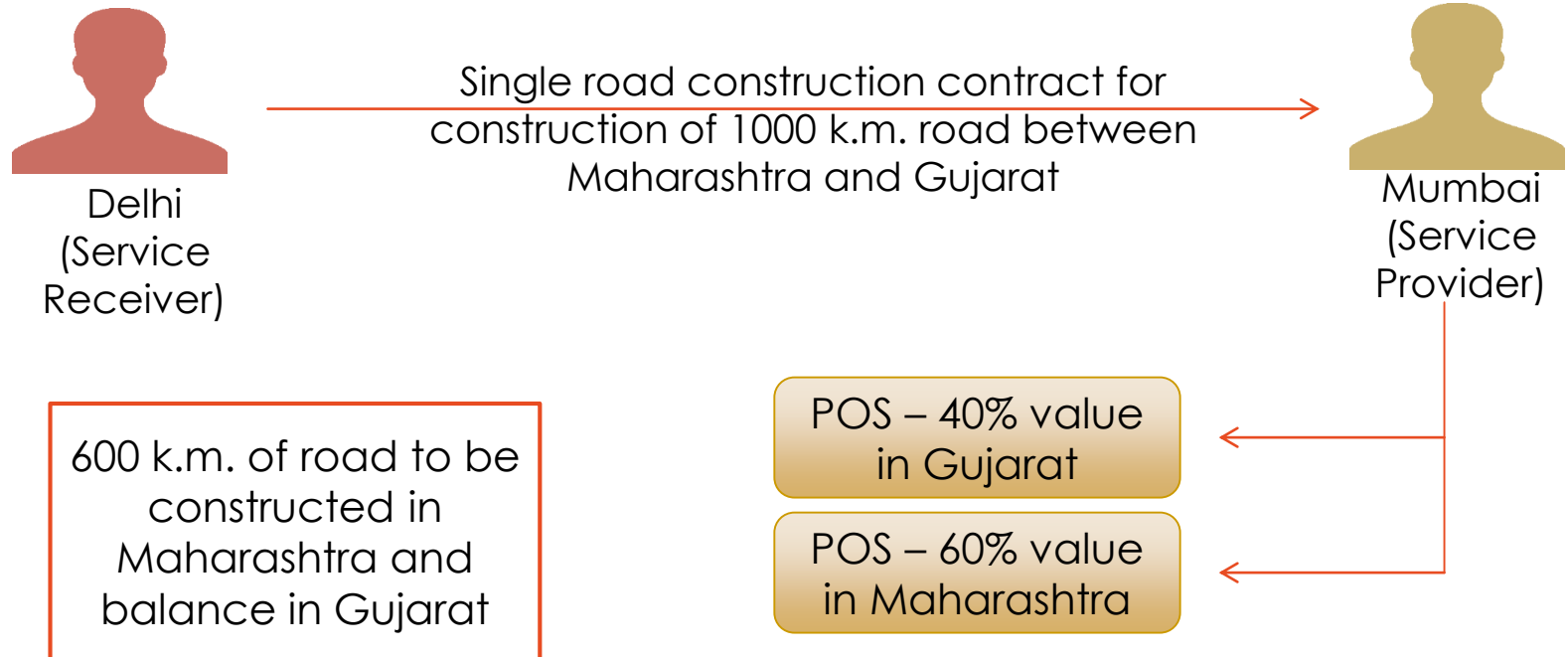
Services ancillary to these

Property located in India – POS location of immovable property
Property located outside India – POS location of service recipient

...Immovable property related service [S.12(3)] ...

If immovable property is located in more than one State

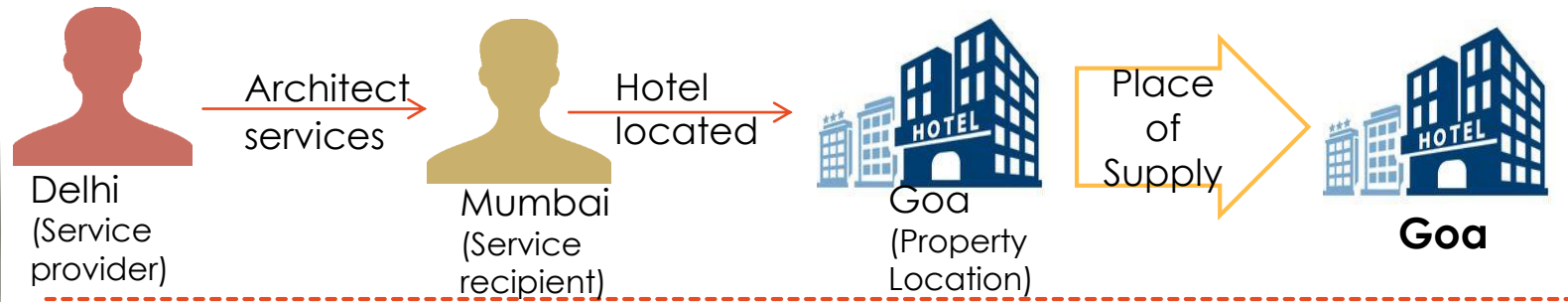
Place of supply shall be each respective States in proportion to value of services provided as mentioned in the contract as entered



... Illustration

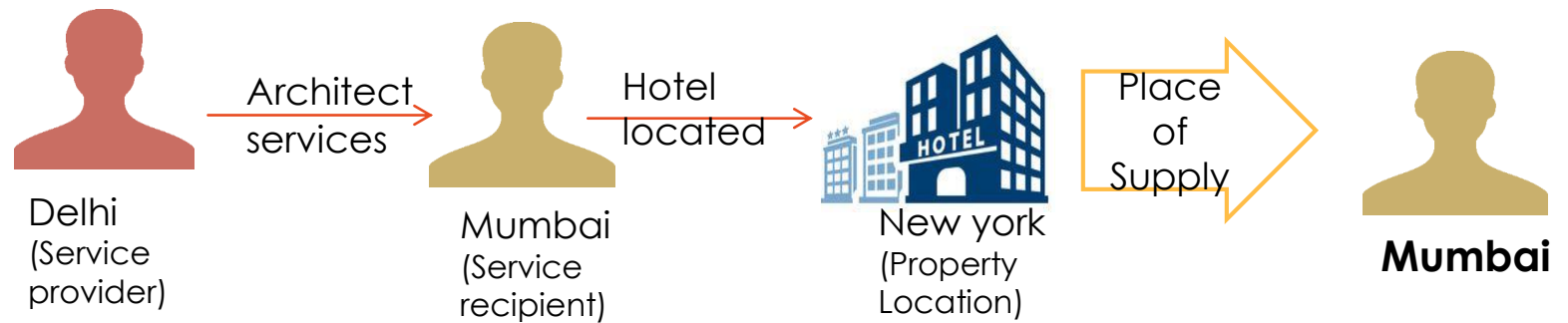
Property located in India

Location of property



Property located outside India

Location of recipient



Mahindra & Mahindra, Taj, Pancard club have their hotels across countries

Performance based service

[S.12(4)]

The section specifically lists these five services and applies to only these services

Nature of Service
Restaurant and catering
Personal grooming
Fitness
Beauty treatment
Health service (including cosmetic and plastic surgery)



Place of supply - **Location** where services are **actually performed**

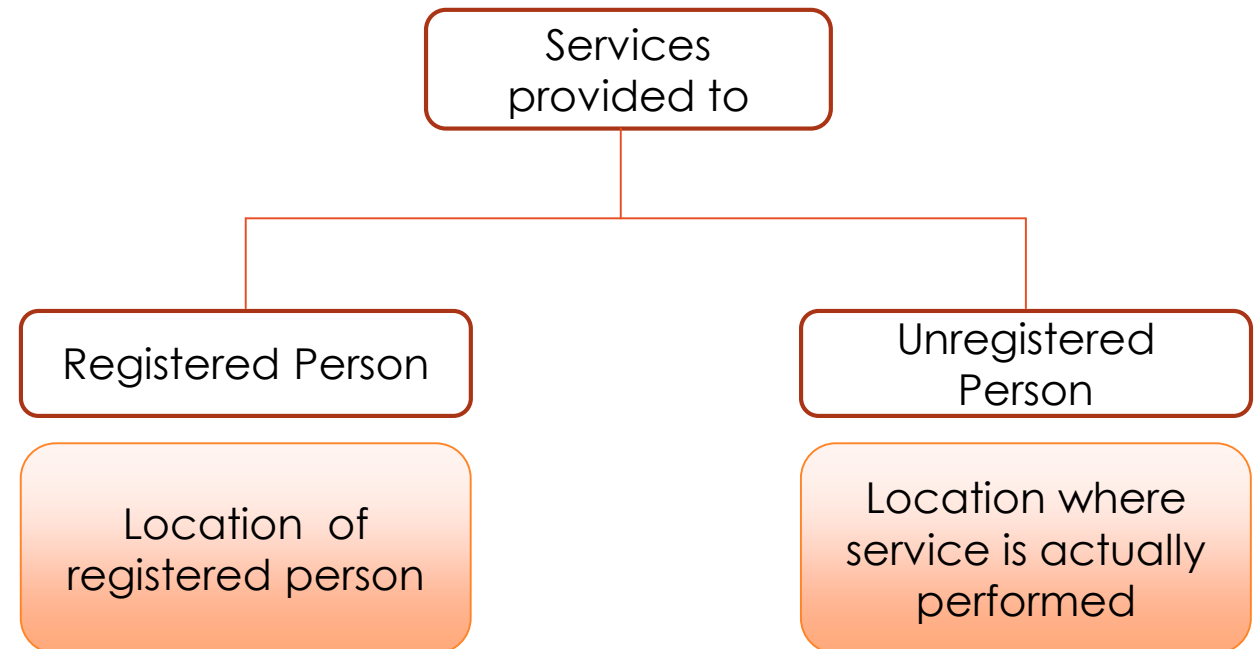
Training & performance appraisal service [S.12(5)]

Coverage :

Services in relation to:

- Training; and
- Performance appraisal

Place of Supply:



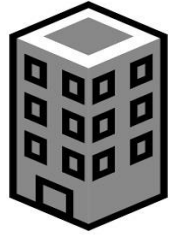
Admission to an event [s.12(6)]

Service by way of admission to

- Cultural event
- Artistic event
- Sporting event
- Scientific event
- Educational event
- Entertainment event
- Amusement park
- Any other place

Any Services ancillary thereto

Location where the **event is actually held** or such **park or place is located**



Pune Office



World cup in England

Cricket match tickets sold to

Chennai



POS - England
No Tax

Pune

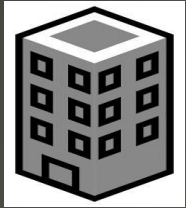


POS - England
No Tax

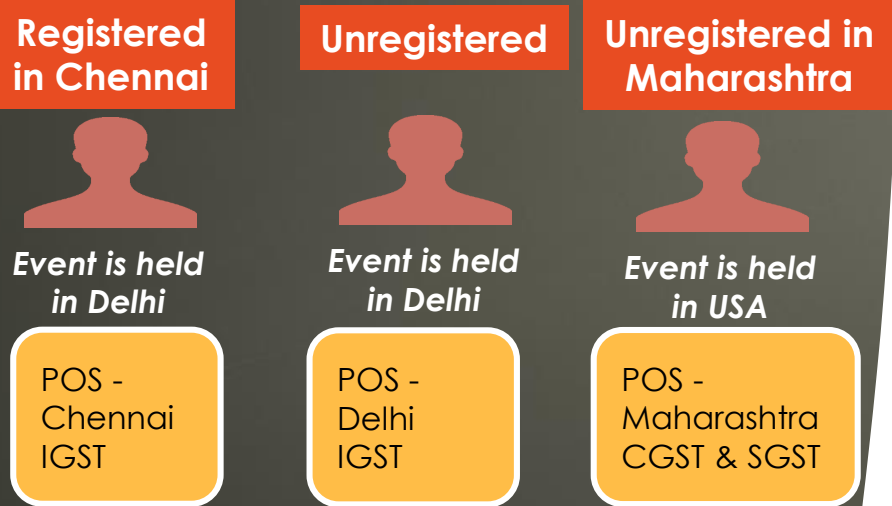
USA



POS - England
No Tax



Service provider (Maharashtra) rendering services in relation to organizing an event



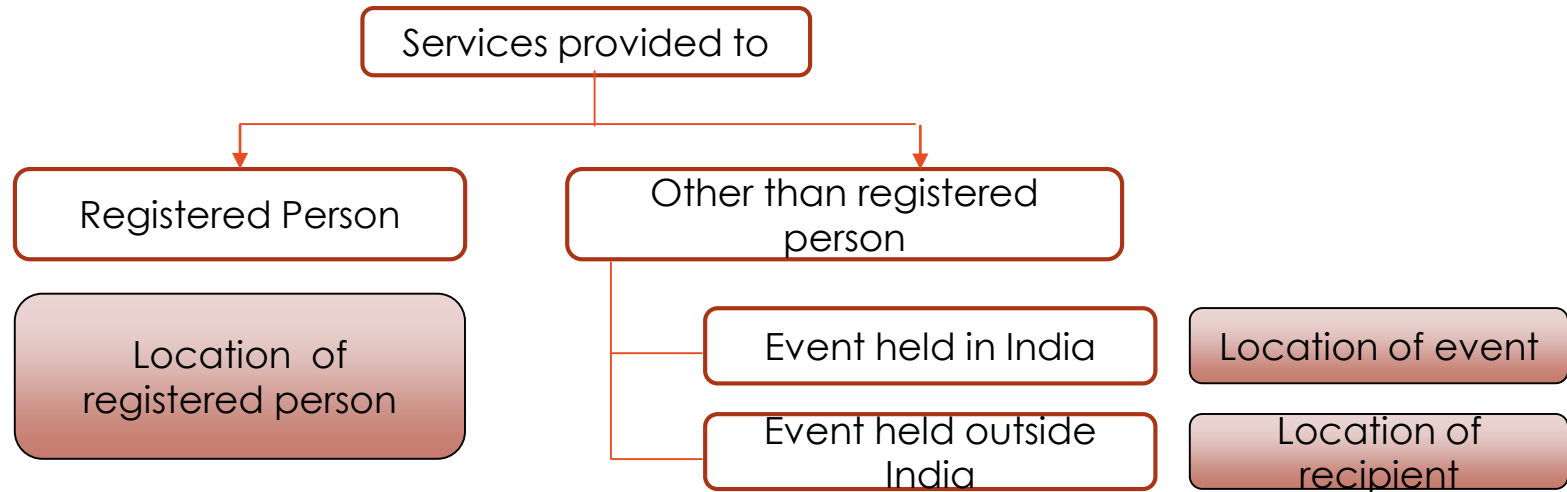
Organising an event [S.12(7)]...

Coverage :

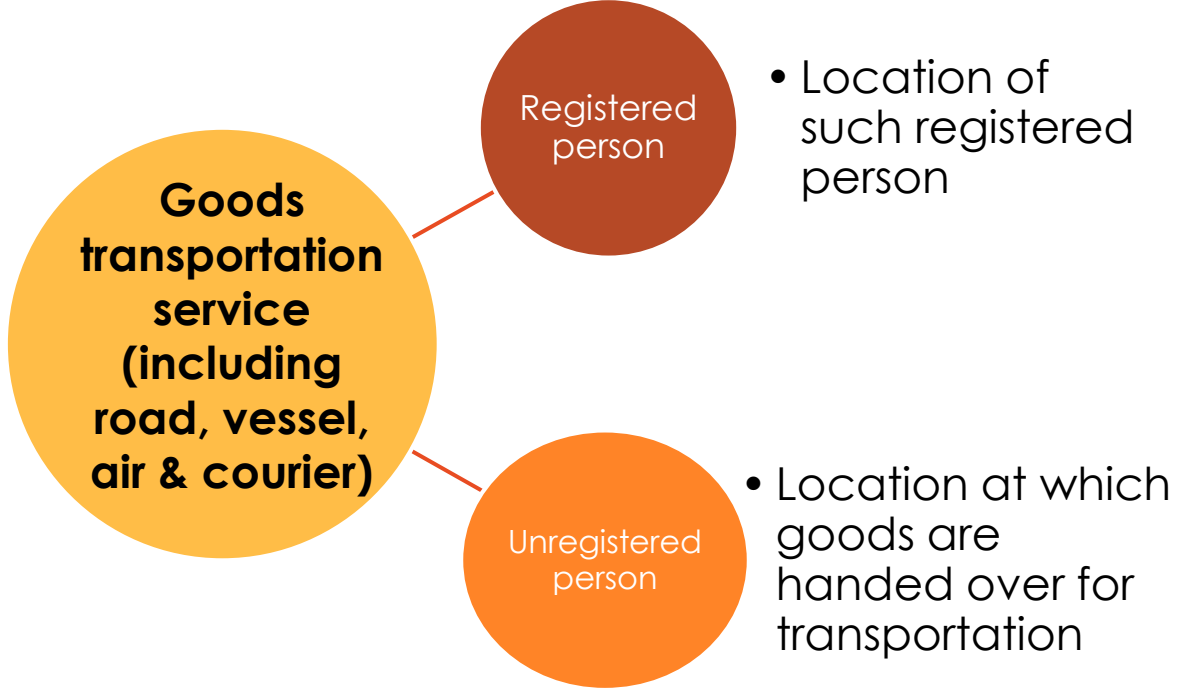
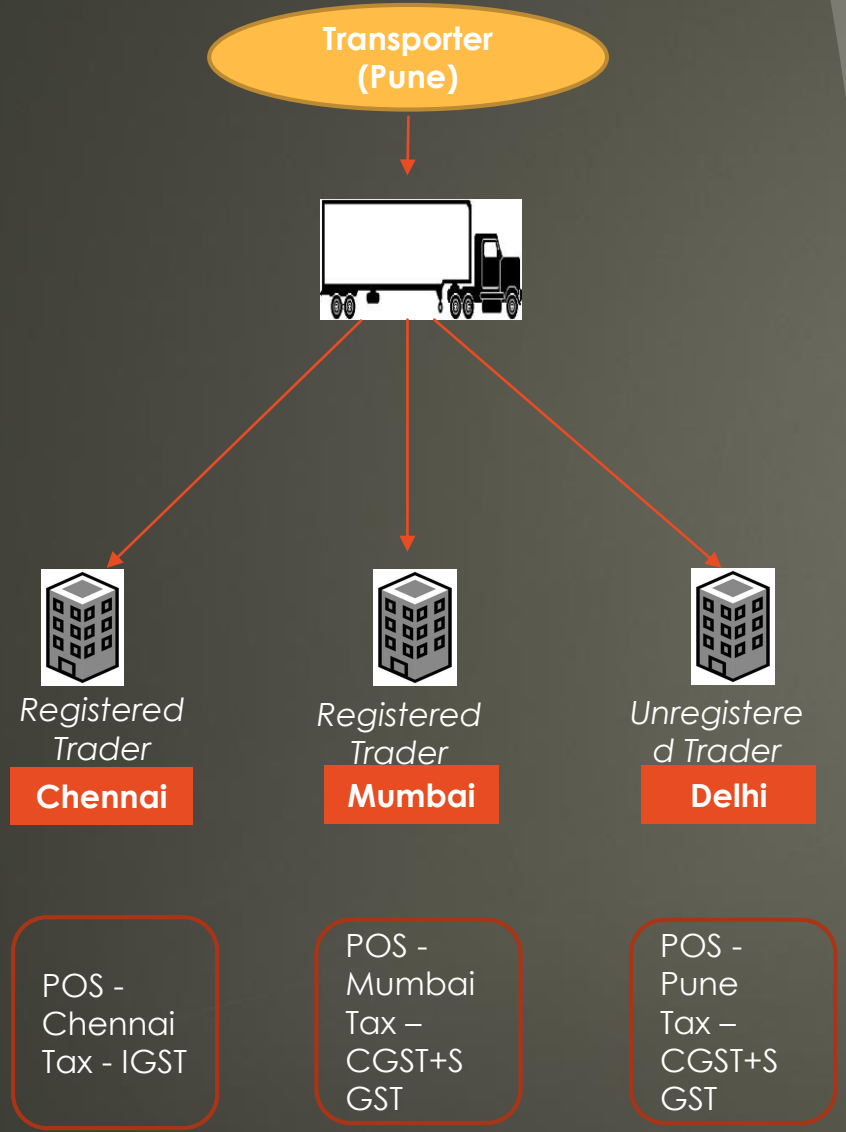
Services provided by way of <u>organizing</u> :			
Cultural Event	Artistic event	Sporting Event	Scientific event
Educational event		Entertainment event	
Including: Services in relation to conference, fair, exhibition, celebration or similar events			

Ancillary Services, Sponsorship or to such Events

Place of Supply:



Place of supply for goods transportation [S 12(8)]



Amendment - Proviso has been included with effect from Feb 1, 2019
Provided that if the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods

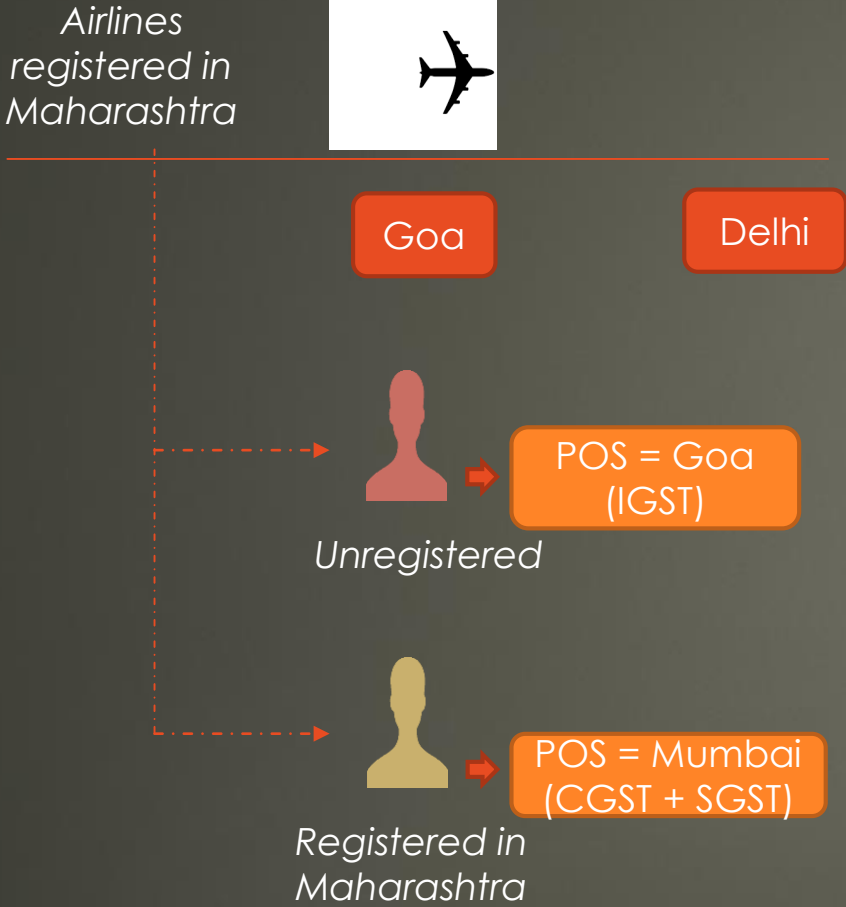
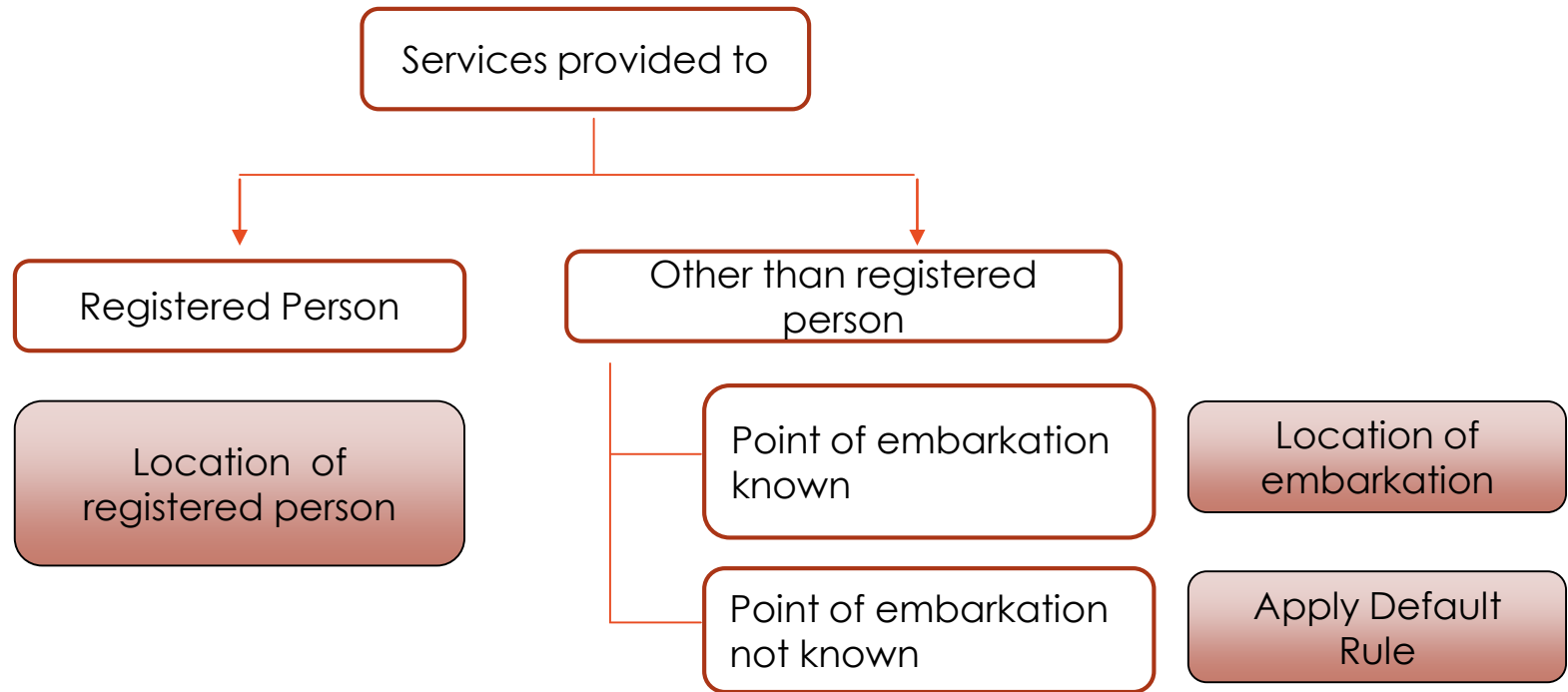
GST Auditor shall verify whether the assessee has appropriately determined the location of the supplier & place of supply and paid IGST/CGST or SGST

Passenger transportation service [S.12(9)]

Coverage :

Passenger Transportation Service

Place of Supply:





Mumbai

Delhi



Maharashtra

Airline providing breakfast to the customer

POS - Maharashtra

On-board service [S.12(10)]

Coverage :

Supply of service on board a conveyance, including:

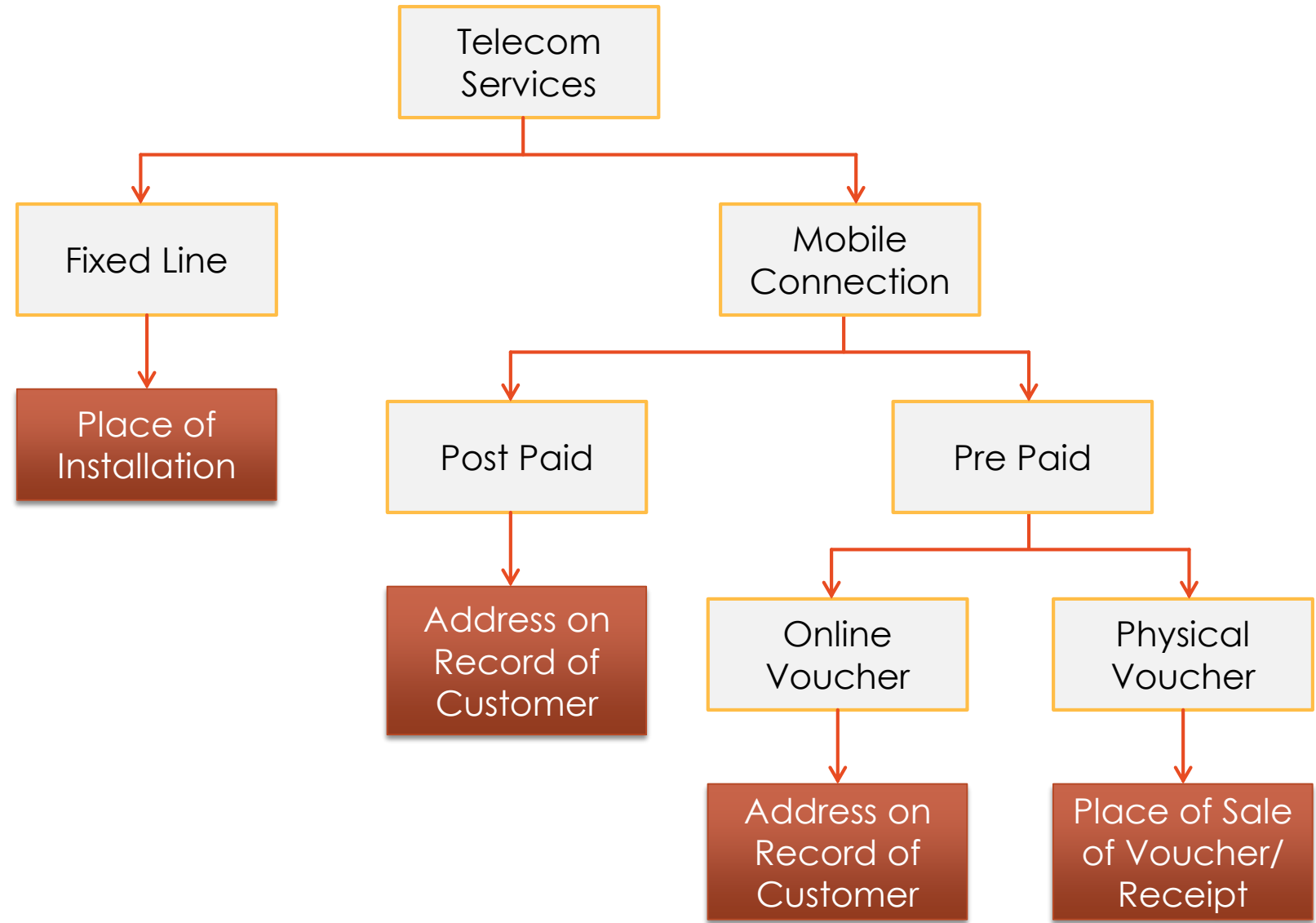
- Vessel;
- An aircraft;
- A train; or
- Motor vehicle

Place of Supply:

Location of first scheduled point of departure

Telecommunication service

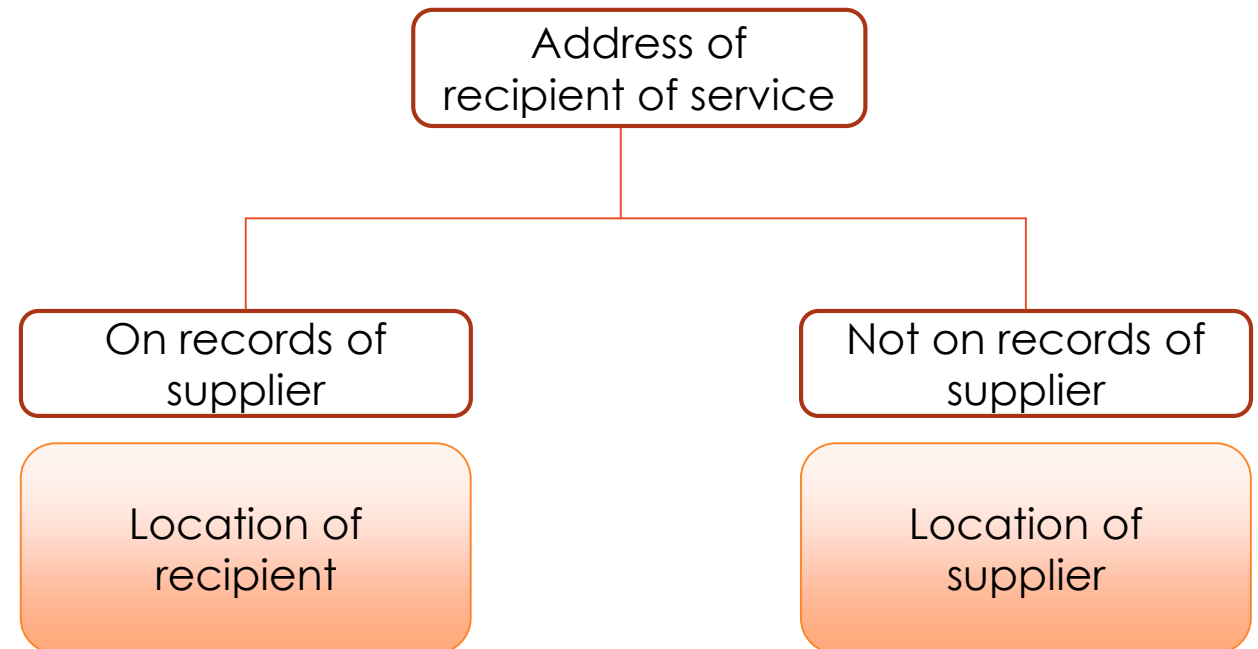
[S.12(11)]



Coverage :

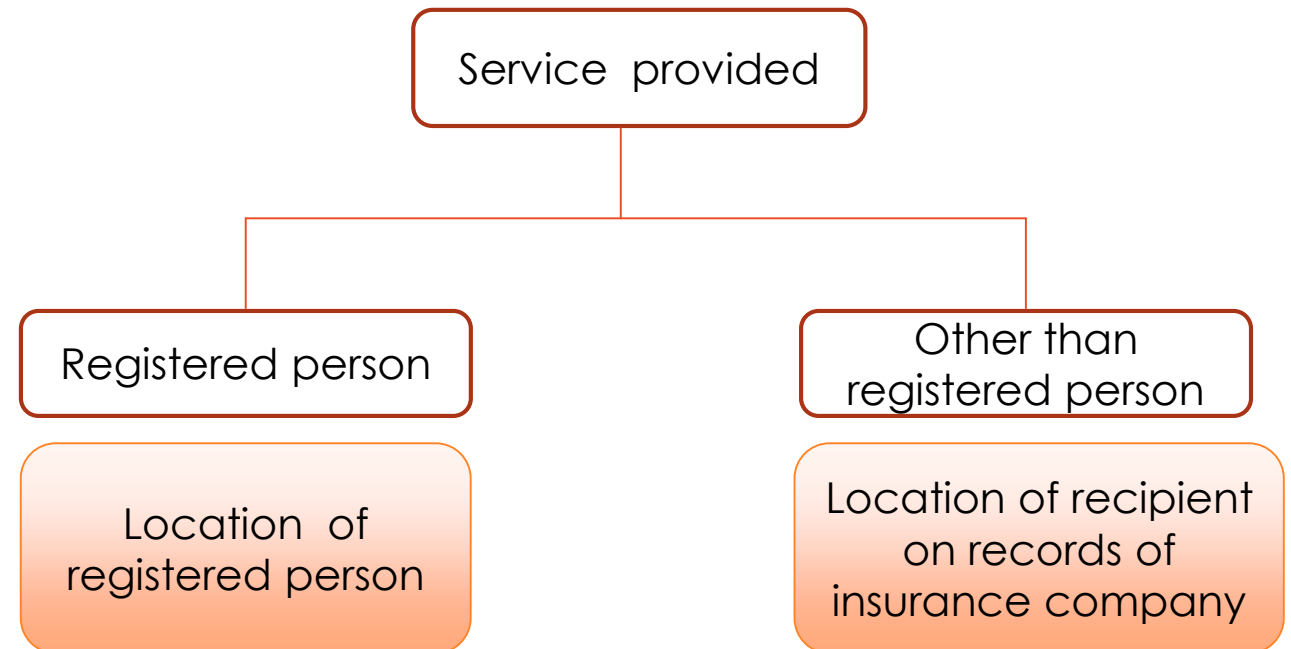
Banking and other financial services;
(Including stock broking services)

Place of Supply:



Coverage :

Insurance services

Place of Supply:

Advertisement services to Government [S.12(14)]

Example

Gujarat Tourism (*Khushbu Gujrat ki*) – Advertisement for State Government

Swaccha Bharat Campaign – Advertisement for Central Government

Coverage :

Advertisement services provided to
Central Government
State Government
Union Territory
Statutory body or local authorities for States or Union Territories

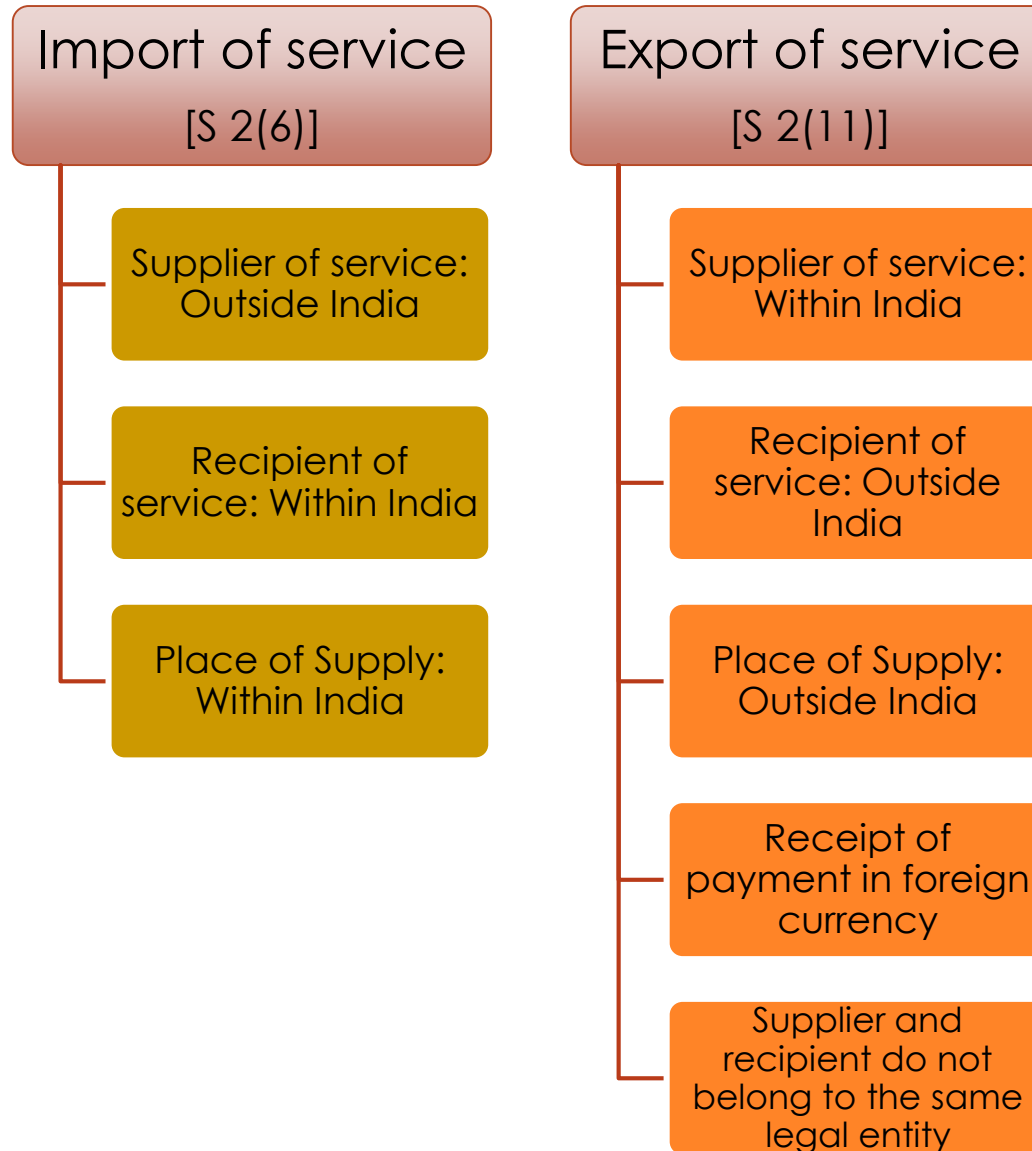
} Meant for the States or Union Territories

Place of Supply:

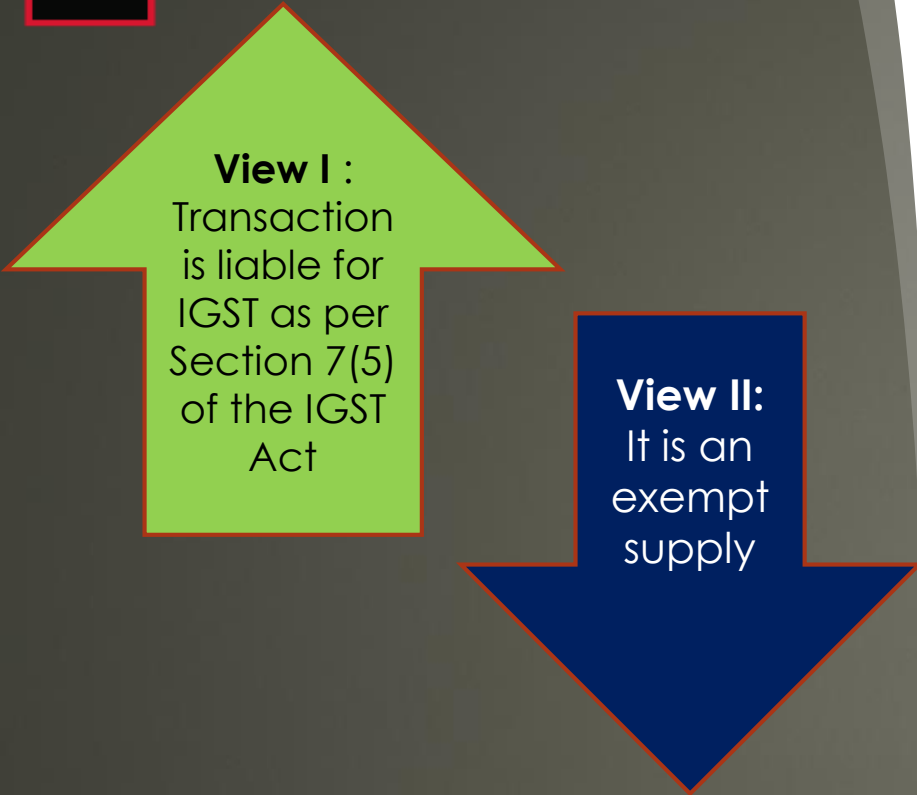
Each respective States or Union Territories in proportion to amount attributable to services provided as determined in the contract as entered

POS – International Service Transactions

Definitions- Import/Export of Service



Scenario I

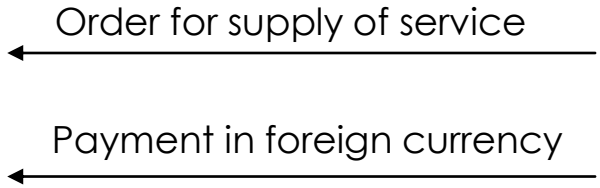


Services provided overseas

Engineering, architectural, training & education services

Examples:
Indian agents, consultancy firms engaging Indian service providers for delivering services overseas

Indian supplier of service



Indian Recipient of service - SEZ

Supplier of service- India
Place of supply- abroad
Consideration received- in convertible foreign currency
Recipient of service- India

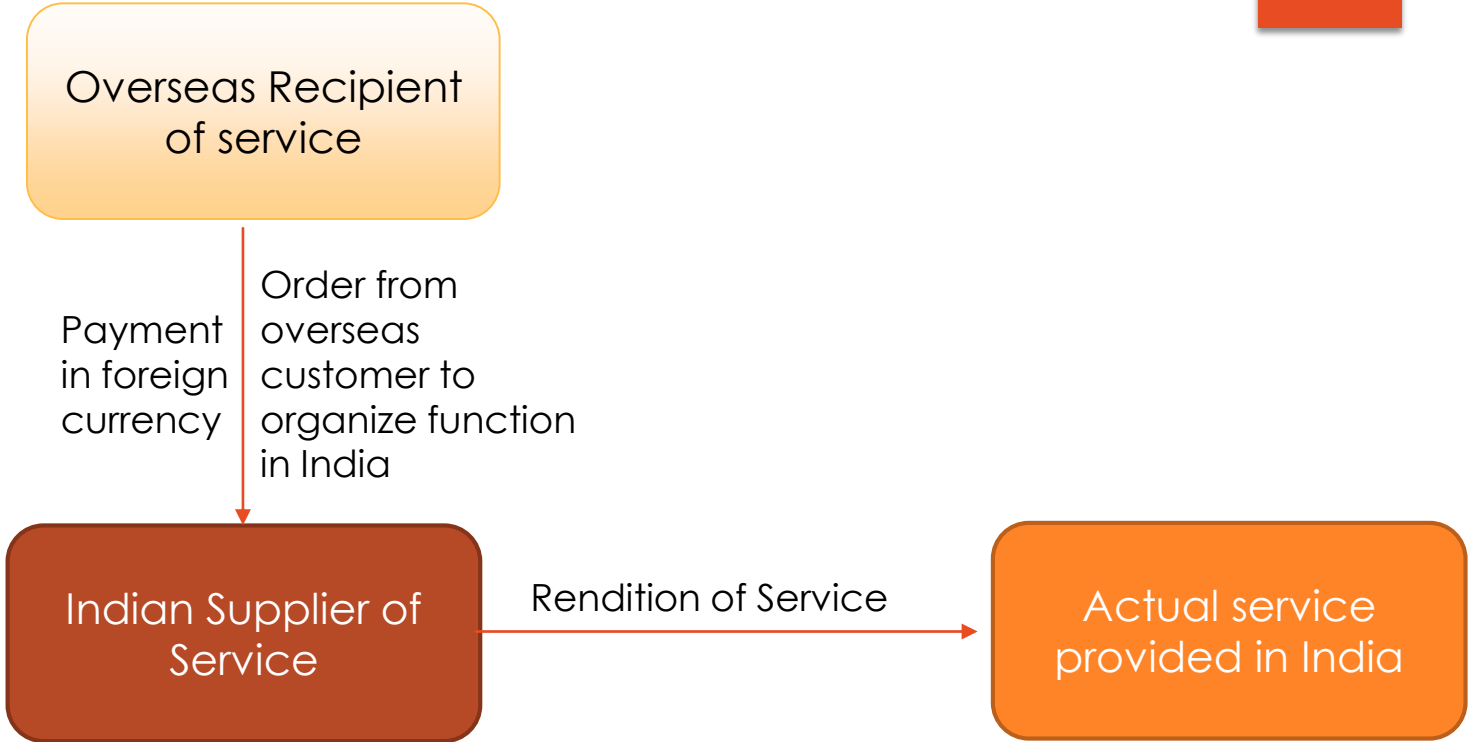
Transaction is not an Export of Service

7. Inter-state supply
(5) **Supply of goods or services or both,—**
(a) when the supplier is located in India and the place of supply is outside India” shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Scenario II

Examples:

- Renting of property in India
- Organizing a function in India for overseas client



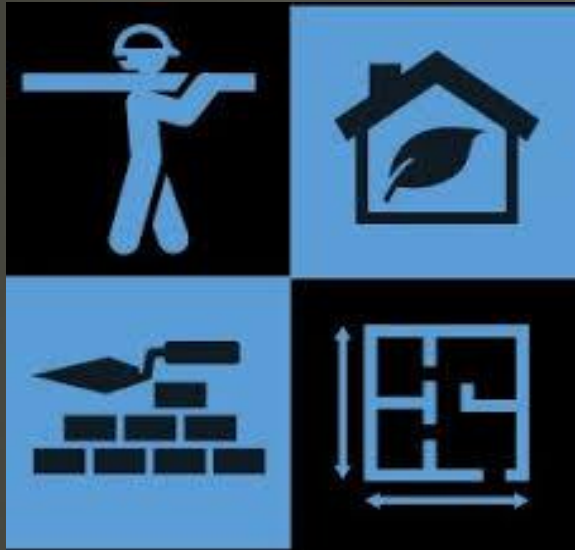
Supplier of service- In India
Recipient of service – Outside India
Consideration received- in convertible foreign currency
Place of Supply - India

Transaction is not an Export of Service

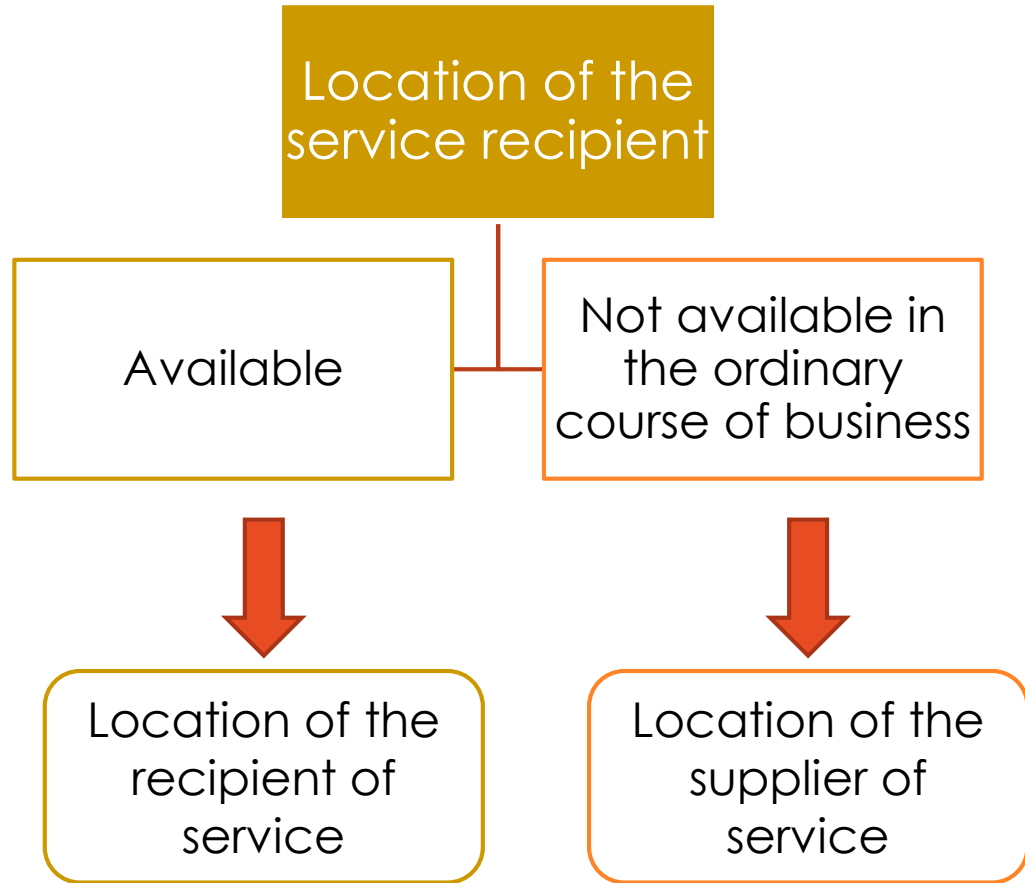
POS framework for services where SP or SR is outside India

Sr. No.	Scenario	Section
1	General Rule	13(2)
2	Services for which POS is location where the service is actually performed	13(3)
3	Services supplied directly in relation to immovable property	13(4)
4	Services by way of admission to or organisation of various events and ancillary services	13(5)
5	Services u/s 13(3), 13(4) and 13(5) when supplied at more than one location including a location in the taxable territory	13(6)
6	Services u/s 13(3), 13(4) and 13(5) when supplied at more than one State or Union Territory	13(7)
7	Services for which POS is location of the supplier of service	13(8)
8	Services of transportation of goods other than by way of mail or courier	13(9)
9	Passenger Transportation Services	13(10)
10	Services provided on board a conveyance during the course of a passenger transport operation	13(11)
11	Online information and database access or retrieval services	13(12)

General rule [s.13(2)]



Place of supply



Performance based services *qua* goods [S.13(3)(a)]...



Type of Service	Place of Supply
(a) Services supplied in respect of goods which are required to be made physically available by the Service Recipient to the Service Provider , or to a person acting on behalf of the SP in order to provide the services	Location where the services are actually performed



Type of Service	Place of Supply
Proviso to S.13(3)(a) services are provided from a remote location by way of electronic means	Location where goods are situated at the time of supply

...Performance based services [S.13(3)]



Type of Service	Place of Supply
2 nd Proviso to S.13(3)(a) services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process* and are exported after repairs without being put to any other use in India, than that which is required for such repairs	As per General Rule , location of the recipient of service

Customs duty implications

- Goods imported into India for repairs and sent back – Customs duty exemption **Notification No. 158/95**
- Goods imported into India which were sent for repairing outside India – No upfront exemption

Immovable property related service [S. 13(4)]

Ambit of the Section:

Directly in relation to immovable Property including services supplied in this regard by:

Experts and Estate agents

Architects

Interior decorators

Grant of right to use immovable property

Accommodation by hotel, inn, guest house, club or campsite,

Carrying out co-ordination of construction work

Place of supply:

Location of Immovable property

It is important to note, that **organizing** as well as **admission** to an event both are covered in this section (i.e. when Service Provider or Service Recipient are outside India)

In section 12 (i.e. when Service Provider or Service Recipient are in India), there are different place of supply provisions for organizing and admission to an event

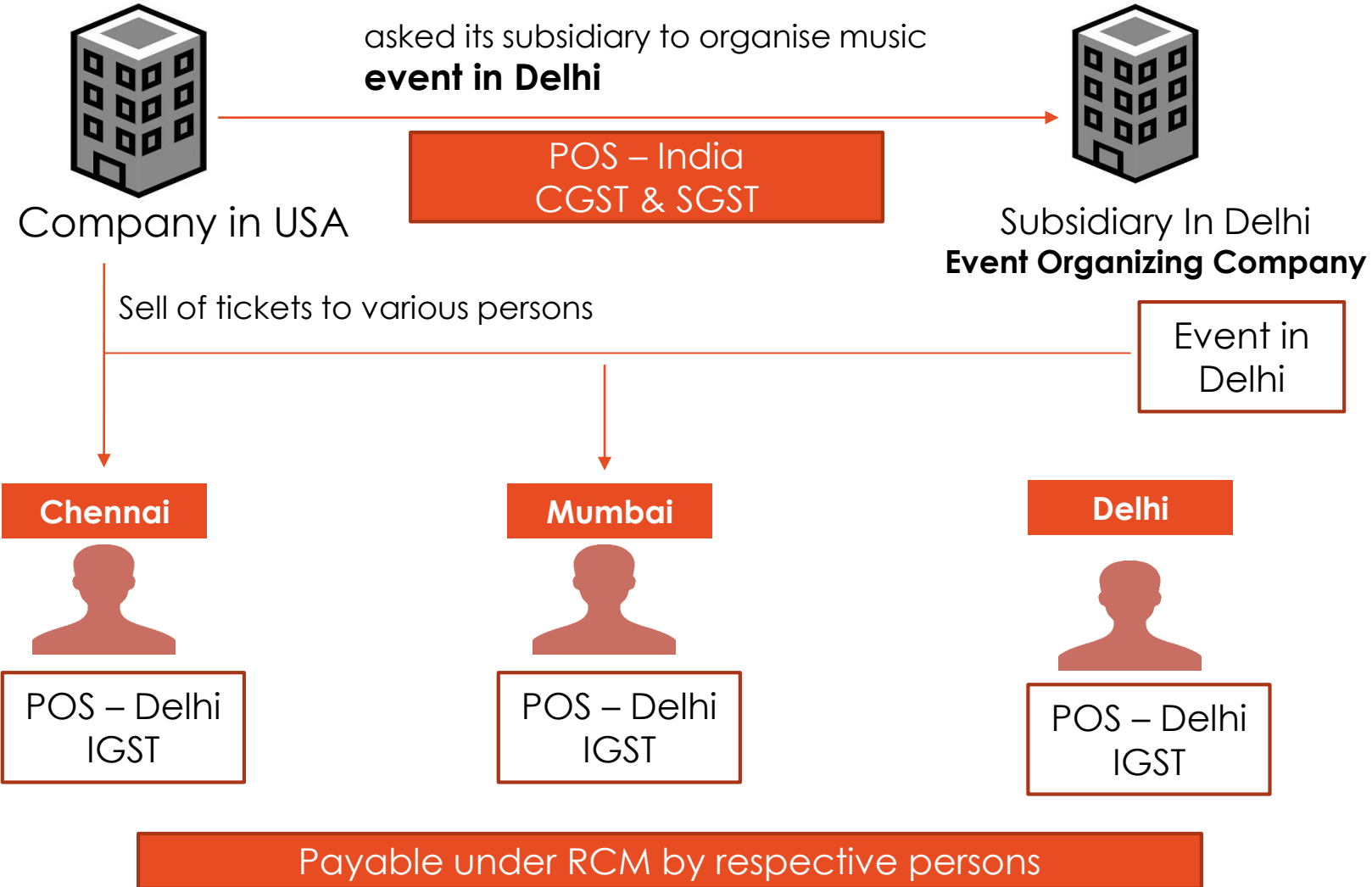
Ambit of the Section:

Services provided by way of admission to/or <u>organizing</u> of:			
Cultural event	Artistic event	Sporting event	Scientific event
Educational event		Entertainment event	
Services in relation to conference, fair, exhibition, celebration or similar events			
Any Services ancillary to admission or organization of above events			

Place of supply:

Location where event is actually performed

...Event based service- Illustration



Various services supplied [S.13(6 & 7)]...

Ambit of the Section 13(6):

When supply is in more than one location **including a taxable territory [E.g. Performance based, Immovable property or Event based services]**

Place of supply: →

Location of such taxable territory

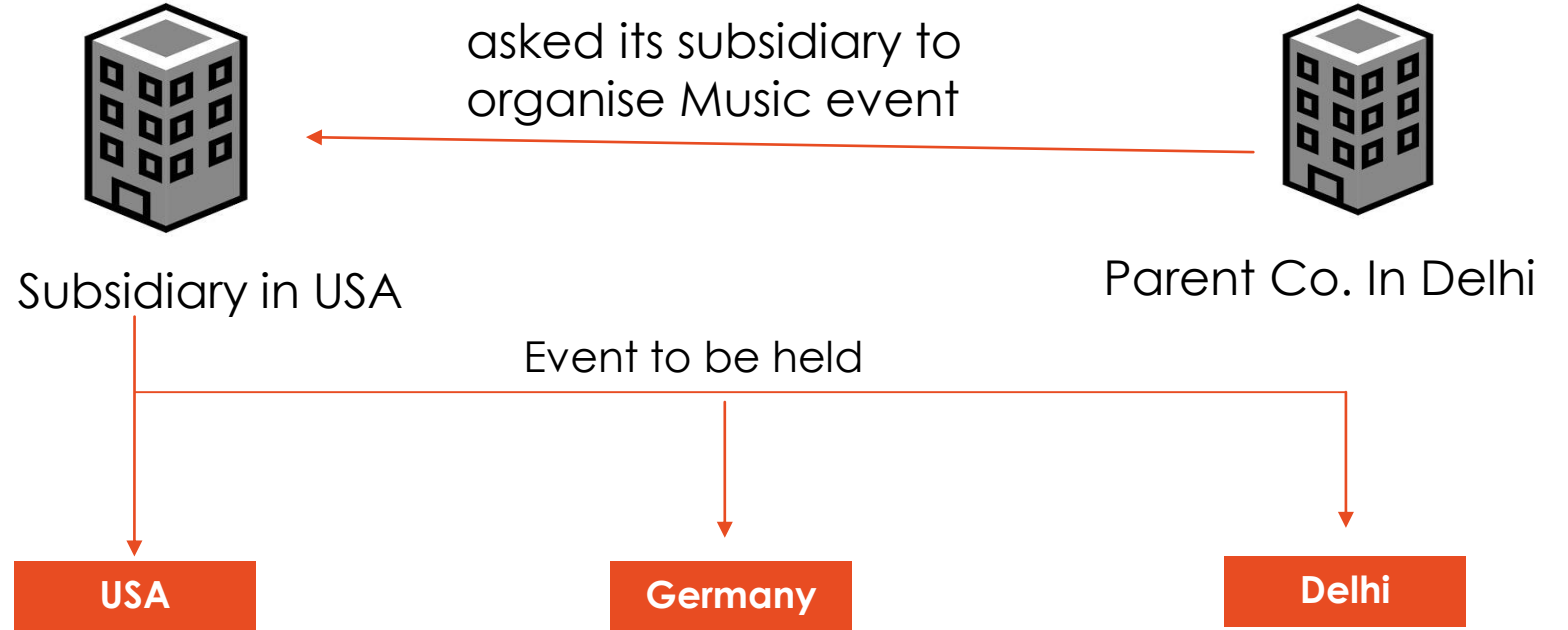
Ambit of the Section 13(7):

When supply is in the outside the taxable territory along with **more than one State [E.g. Performance based, Immovable property or Event based services]**

Place of supply: →

Each respective States or Union Territory in proportion to value of services provided as mentioned in the contract as entered

...Section [S.13(6) – Illustration...



Event to be performed in USA, Germany and Delhi

POS - Delhi

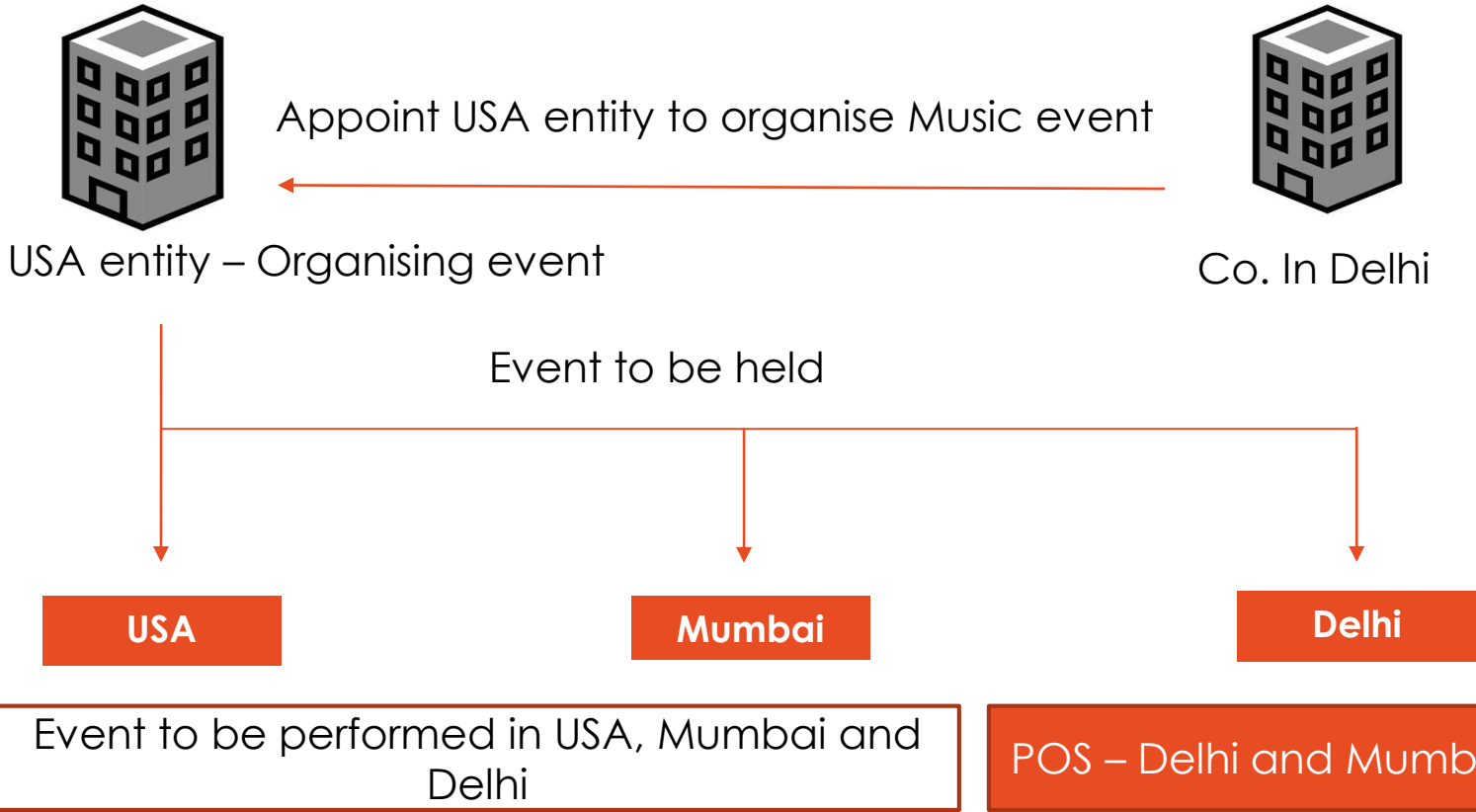
IGST to be paid on entire amount by the Company in Delhi under RCM

... Various services supplied [S.13(7)]

How to apportion the value of service??
Entire amount (incl. USA fees) to be apportioned between Mumbai and Delhi??
- 50% / 50%

Whether Company in Delhi is required to take registration in Mumbai to discharge its liability ?

May be not –
unregistered to
unregistered



Banking and other financial service [S.13(8)(a)]

Ambit of the Section:

Service provided by:

- Banking company; or
- Financial Institution; or
- Non banking financial institution



To its account holders

Place of supply:

Location of supplier of service

'Account holder' is defined to mean an account bearing interest to the depositor and *includes NRE and NRO account*

- *What about non-interest bearing account??* Ex. Current Account – default rule

Intermediary services...

[S.13(8)(b)]...



“Intermediary”

Means; **a broker, agent or any other person** 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

Place of supply:

Location of supplier of service



AAR under GST

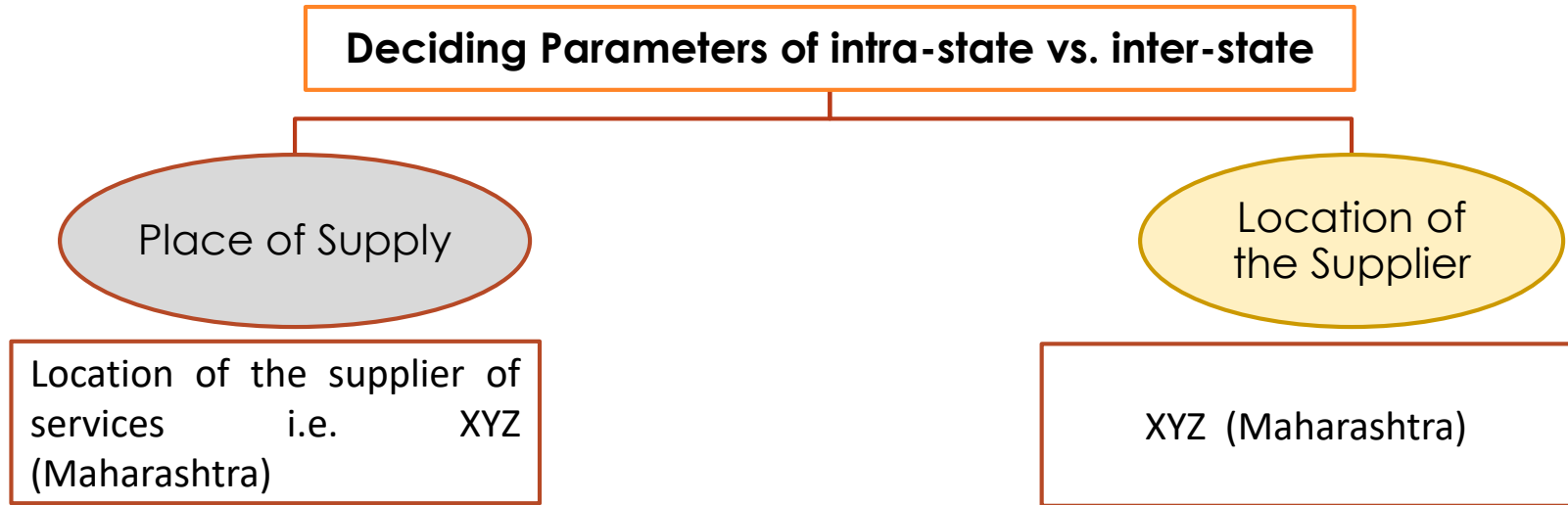
- There is no thumb rule to decide the scope of intermediary
- Every transaction involving three parties cannot be considered as 'intermediary'
- As a part of GST Audit, each transactions needs to be analyzed independently to decide whether transaction is export of service or not?

Notices are being issued by the Authorities on all the BPO's treating their activity as intermediary

Party	Ruling
Services provided by branch offices/ agents are considered to be 'intermediary services':	
V Serv Global Private Limited – Maharashtra	Back office support services such as administration, accounting, co-ordination and liasoning with the clients
Esprit India Private Limited – Haryana	Support services provided by back office in India to a parent company in Hongkong
Sabre Travel Network India Private Limited – Maharashtra	Marketing, promotion and distribution services are provided by the Applicant to the clients
Global Research Education Services Private Limited- West Bengal	Applicants are working as an marketing agents for foreign universities, assisting the students in the admission process
Five Star Shipping – Maharashtra	Services provided to foreign shipping companies which involves market research
Toshniwal Brothers (SR) Private Limited - Karnataka	Promotion and marketing services
Services provided by branch offices/agents are not considered as 'intermediary services':	
NES Global Specialist Engineering Services Private Limited – Maharashtra	Applicant provides general advice & assistance in relation to the administrative support services to the client located outside India

Intermediary – which tax to pay?

Location of the supplier as well as place of supply being Maharashtra, transaction qualifies as intra-state and attracts 'CGST+SGST'



Short term hiring services

[S.13(8)(b)]

Ambit of the Section:

Service consisting of:

- Hiring of means of transport (*including yachts*); but
- Excluding aircrafts and vessels

Upto
the
period
of one
month

Place of supply:

Location of supplier of service

Example:

Bus taken on hire for 4-5 days

Car taken on hire (*ex. Zoomcar*)

If the hiring is
for more than
a period of 1
month – POS
would be the
location of the
service
recipient

On board services [S.13(11)]


Ambit of the Section:

Supply of service on board a conveyance during the course of passenger transportation, including:

- Services **intended to be wholly or substantially consumed** while on board;

Place of supply

Location of first scheduled point of departure

 USA Airline (not registered in India)



USA airline not registered in India - liability under RCM to be discharged by Service recipient



After I die, cremate me and send all my ashes to tax office and on the envelope write – “NOW YOU HAVE EVERYTHING”





ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS

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Thank You

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