





Place of Supply

Place of Supply : Relevance

- Jurisdiction to Impose Tax
- Transaction Specific Interpretation
- Can it be Person Specific Interpretation?
 - Genom Biotech Private Limited vs. CCE&C 2016 (42) STR 918
- What could be the anchor?
 - Origin vs. Destination
- Who could be liable to pay tax?
 - Supplier
 - Recipient
 - Stranger

PoS : Snapshot of Current Provisions

Description	Value Added Tax	Central Excise Duty	Service Tax
Principle	Origin Based	Origin Based	Destination Based
Determination	Movement of Goods	Removal of Goods	Recipient of Service*
Imports	No Jurisdiction	No Jurisdiction	Reverse Charge Mechanism
Exports	Specific Exemption	Exemption / Rebate Provision	Not Taxable at all
Fallout	Non Creditable CST Branch Transfers Sale in Transit Cash Flow Issue		Interpretation Related Issues

Welcome GST

Dual GST Concept

- CGST & SGST on Intra-State Supplies
- IGST on Inter-State Supplies

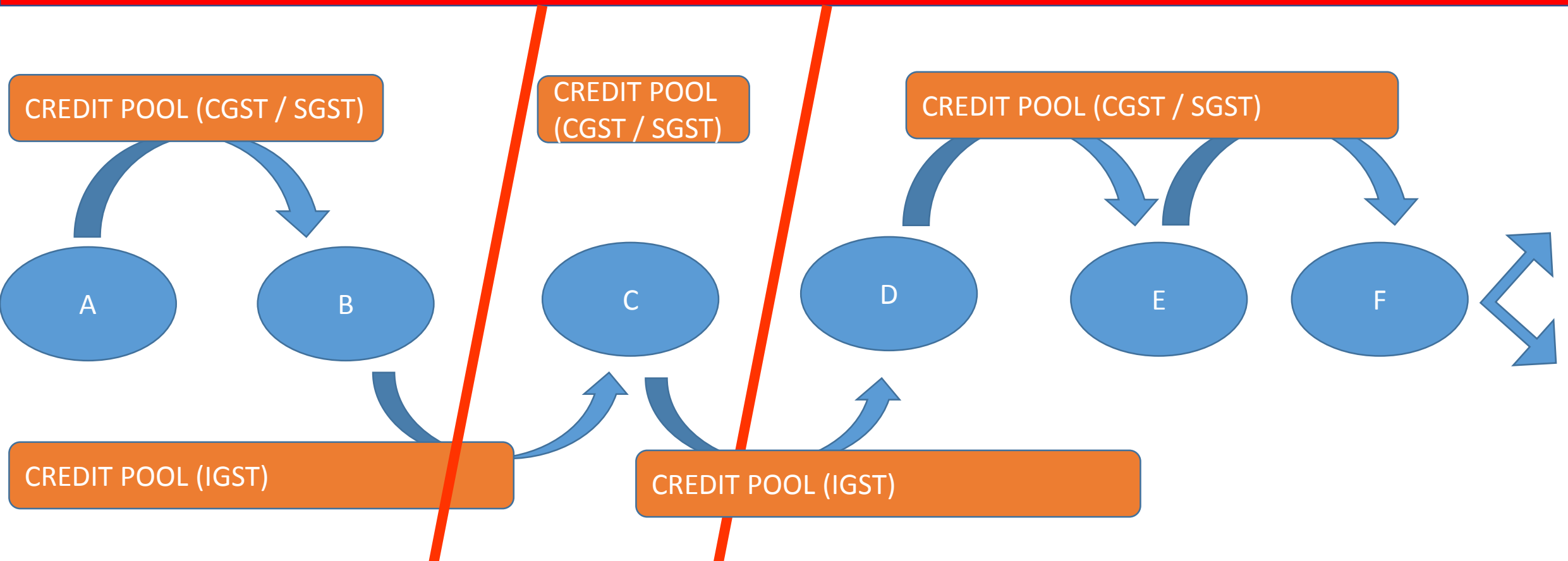
Destination Based*

- Administration : Origin (Location of Supplier)
- Enjoyment : Destination (Place of Supply)

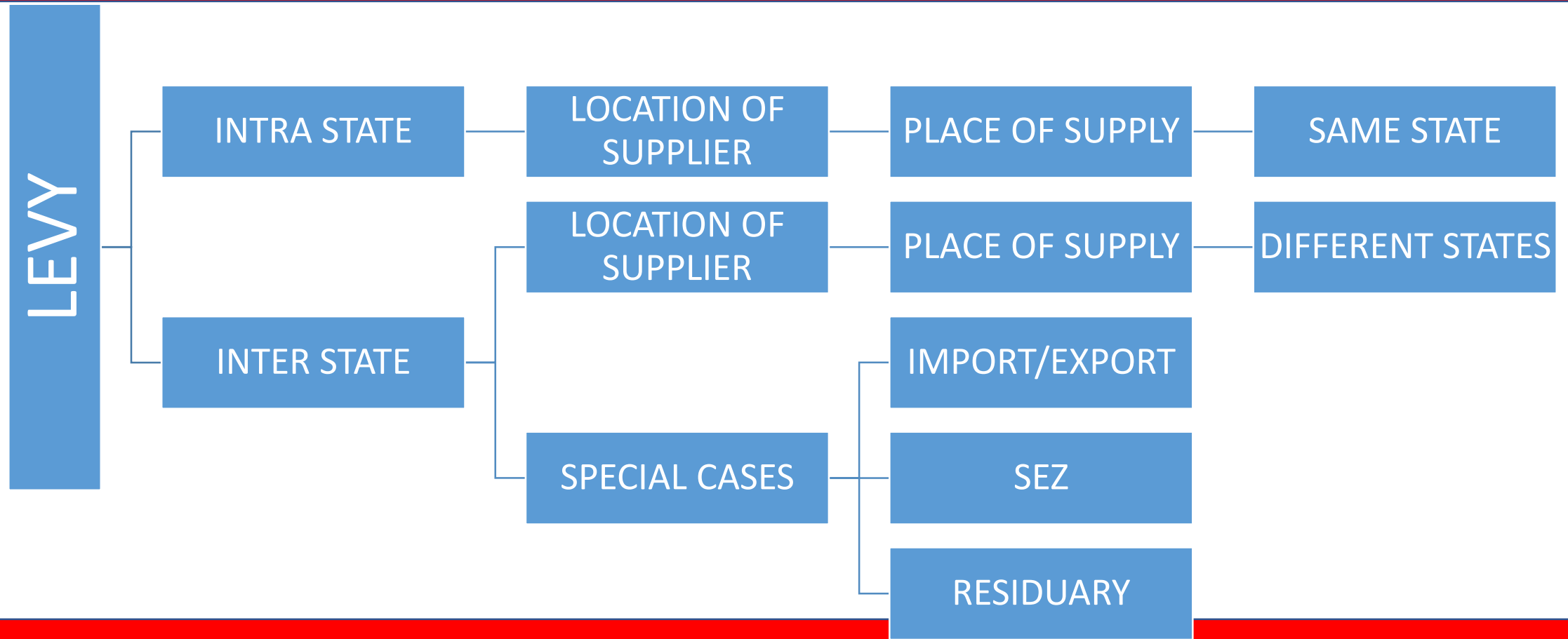
Fungibility of Credits

- CGST & SGST not inter-fungible
- IGST acts as a bridge across States

IGST – how it acts as a bridge to flow credits



IGST : The Broad Scheme



The Details

LOCATION OF SUPPLIER

- Not defined for Goods
- Defined for Services
 - Supplied from a location (Registered/Unregistered)
 - Supplied from multiple locations (Tie Breaker Test)

PLACE OF SUPPLY

	Goods	Services
Domestic	Section 7	Section 9
International	Section 8	Section 10



LOCATION OF RECIPIENT

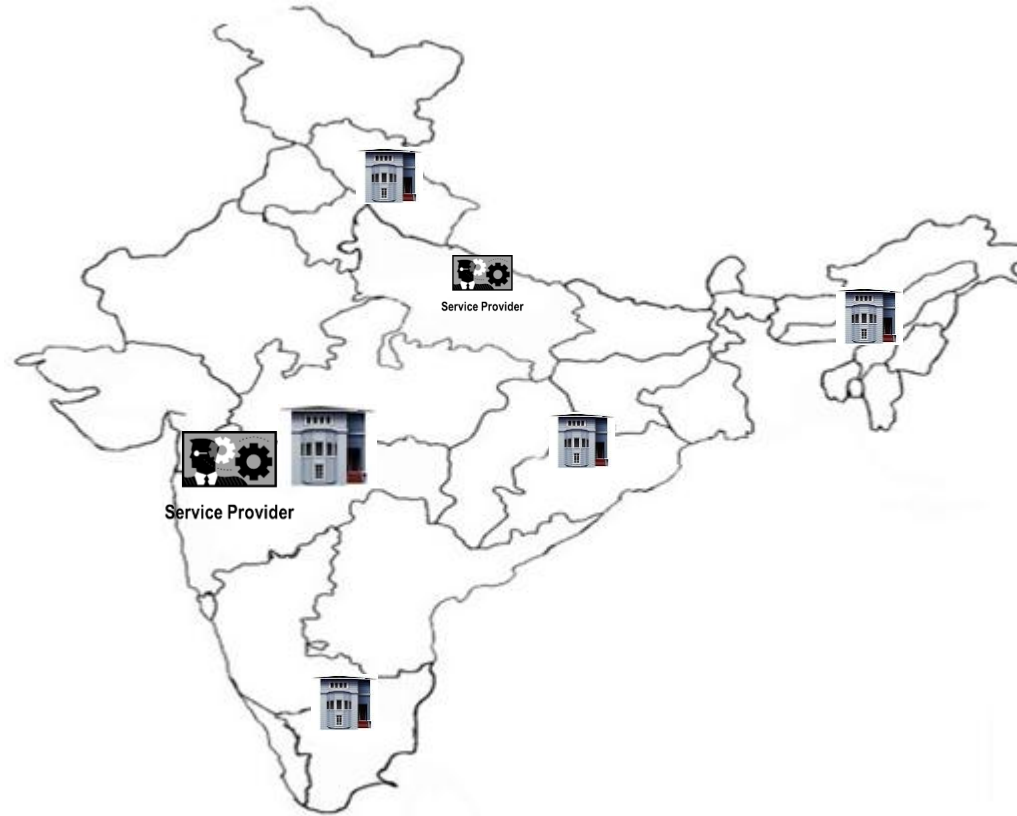
Supplier / Location of Supplier

- Section 2(94) of the CGST/SGST Act
 - “**supplier**” in relation to any goods and/or services shall mean the person supplying the said goods and/or services and shall include an agent acting as such on behalf of such supplier in relation to the goods and/or services supplied
- Section 2(18) of the IGST Act
 - “**location of supplier of service**” means:
 - (i) where a supply is made from a place of business for which registration has been obtained, the location of such place of business ;
 - (ii) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
 - (iii) 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
 - (iv) in absence of such places, the location of the usual place of residence of the supplier;

Recipient / Location of Recipient

- Section 2(81) of CGST/SGST Act, “**recipient**” of supply of goods and/or services means-
 - (a) where a consideration is payable for the supply of goods and/or services, 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;
Explanation.- The expression “recipient” shall also include an agent acting as such on behalf of the recipient in relation to the goods and/or services supplied
- Section 2(17) of IGST Act, “**location of recipient of services**” means:
 - (i) where a supply is received at a place of business for which registration has been obtained, the location of such place of business;
 - (ii) where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
 - (iii) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
 - (iv) in absence of such places, the location of the usual place of residence of the recipient;

Advertisements – Case Study



What is relevant?

- Release Order placed from Maharashtra & Received in Maharashtra
- Products manufactured in various States
- Advertisement beamed from Uttar Pradesh and telecast across the country
- Invoice raised from Maharashtra to Maharashtra
- Payment received from Maharashtra

Learnings from the past...

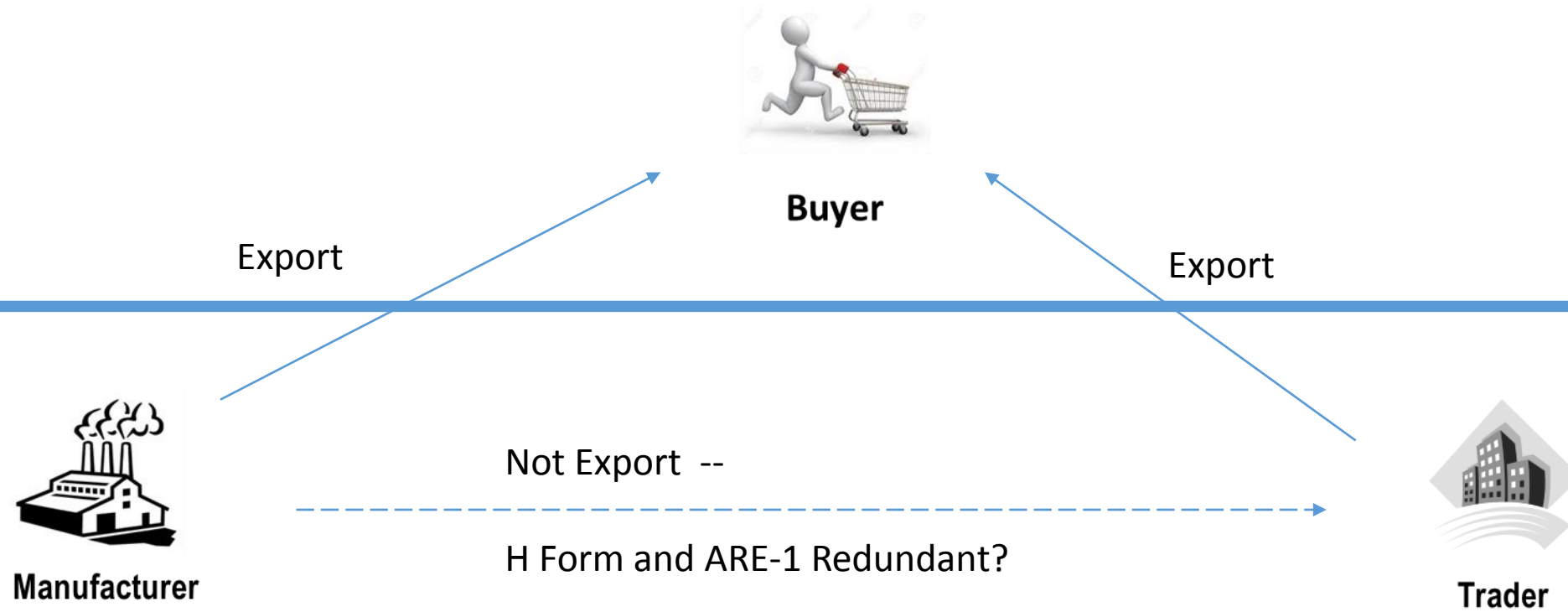
- Paul Merchants Ltd. [2013 (29) S.T.R. 257 (Tribunal)]
- Microsoft Corporation (I) Pvt. Ltd. 2014 (36) [S.T.R.](#) 766 (Tribunal)
- Vodafone India Limited [2015 (37) STR 286 (Tri – Mum)]
- British Airways [2014 (36) S.T.R. 598 (Tri. - Del.)]
- Jet Airways Ltd. [2014 (36) S.T.R. 290 (Tri. - Mumbai)]
- Infosys Ltd. [2015 (37) S.T.R. 862 (Tri. - Bang.)]
- Tech Mahindra Ltd. [2014 (36) S.T.R. 241 (Bom.)]
- Will the definition be more supportive of the interpretation now?

Export/Import of Goods

Export of Goods

- Section 2(5) of the IGST Act
 - “**export of goods**” with its grammatical variations and cognate expressions, means taking out of India to a place outside India
- Section 8(2) of the IGST Act
 - The place of supply of goods exported from India shall be the location outside India
- Section 3(5) of the IGST Act
 - Deemed Interstate Supply
- Section 16 of the IGST Act
 - Zero Rating of Exports
 - Option to export under Bond or Rebate

Example....



Import of Goods

- Section 2(10) of the IGST Act
 - “**import of goods**” with its grammatical variations and cognate expressions, means bringing into India from a place outside India
- Section 8(1) of the IGST Act
 - The place of supply of goods imported from India shall be the location of the importer
- Section 3(3) of the IGST Act
 - Deemed Interstate Supply till the goods cross customs frontier of India
- Proviso to Section 5(1) of the IGST Act
 - Levied and Collected under Section 3 of Customs Tariff Act
 - At the point when the duties of customs are levied

Export/Import of Services

Export of Service – Sec. 2(6) of the IGST Act

- “**export of services**” means the supply of any service when
 - (a) the supplier of service is located in India,
 - (b) the recipient of service is located outside India,
 - (c) the place of supply of service is outside India,
 - (d) the payment for such service has been received by the supplier of service in convertible foreign exchange, and
 - (e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 5

Export of Services – Multiple Conditions

- If all tests satisfied, then eligible for zero rating
- If all tests not satisfied
 - Inter-state as per the deeming fiction of section 3(7) of the IGST Act
 - Not Eligible for Zero Rating
 - Therefore taxable as IGST
- Examples
 - Services realised in Indian currency
 - Remittances from branches
 - Services not realised at all

Import of Service – Sec. 2(11) of the IGST Act

- **“import of service”** means the supply of any service, where
 - (a) the supplier of service is located outside India,
 - (b) the recipient of service is located in India,
 - (c) the place of supply of service is in India

Place of Supply for International Transactions

- Section 10 of IGST Act
- Broadly Similar to current Service Tax POPS
- Triggered where either
 - Location of Recipient is outside India OR
 - Location of Supplier is outside India
- Not Applicable where both are in India – Refer Section 9 dealing with domestic transactions
- General Rule – Location of Recipient (Destination Principle)

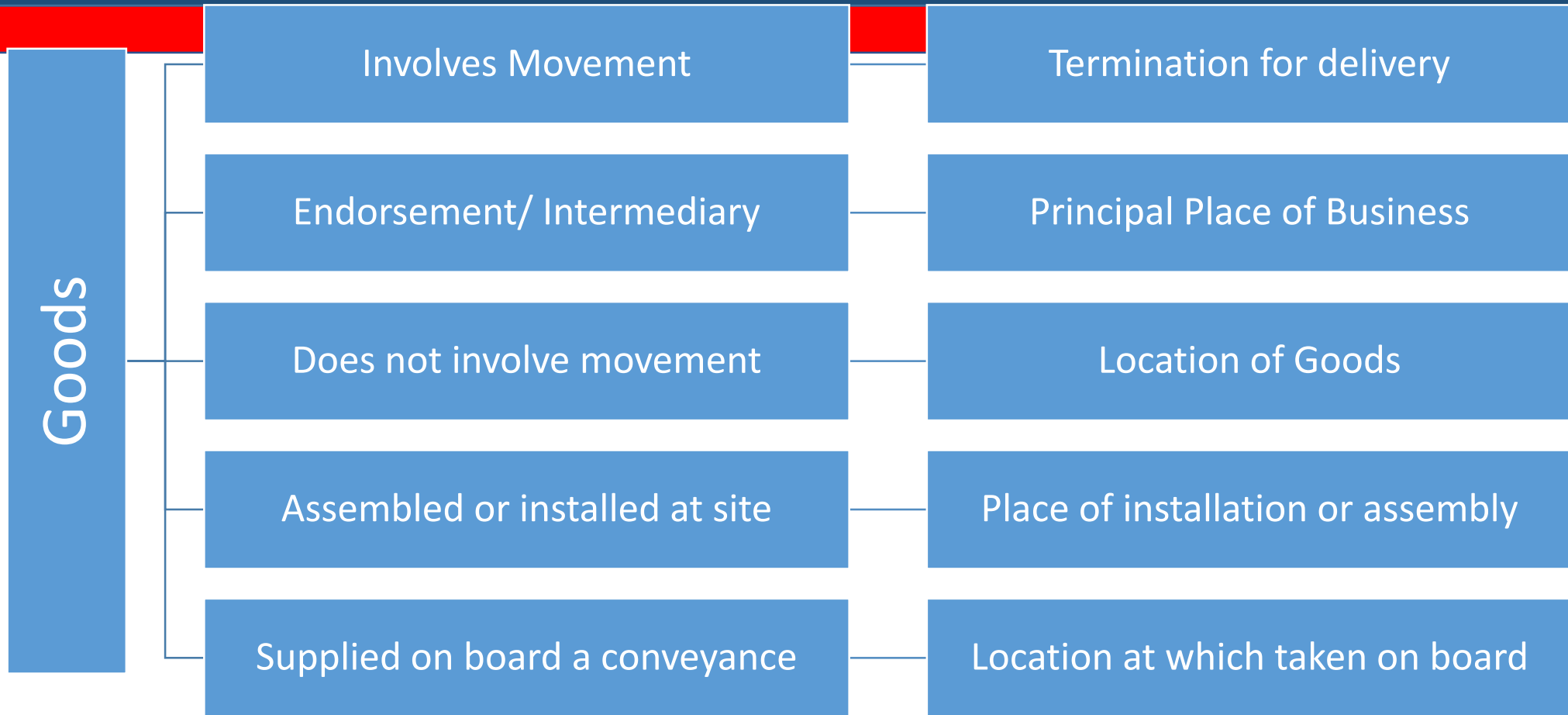
Section 10 : Exceptions to destination principle

S.S.	Situation	Place of Supply
3(a)	In Respect of Goods that are required to be made physically available	Place of Performance
3(b)	In Respect of Individuals which require physical presence of individual	Place of Performance
4	In relation to immoveable Property	Location of Immoveable Property
5	Admission to / Organisation of Events	Place where the event is held
8	Banking Services to account holders, intermediary services,, hiring services	Location of Supplier
9	Transportation of goods other than mail or courier	Destination of Goods
10	Transportation of Passengers	Place of Embarkation

Domestic Transactions

Place of Supply for Goods

Place of Supply of Goods – Bird's Eye View



Place of Supply of Goods – Sec. 7(2) (IGST)

- Revised as well as Model GST Law
 - 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.
- Informally Circulated Draft :
 - Where the supply, including a distance supply, involves movement of goods, the place of supply of such goods shall be the location at which the goods are delivered to the receiver
- The language used will need to be tested specifically for Ex-Works transactions.

Place of Supply of Goods – Sec. 7(3) (IGST)

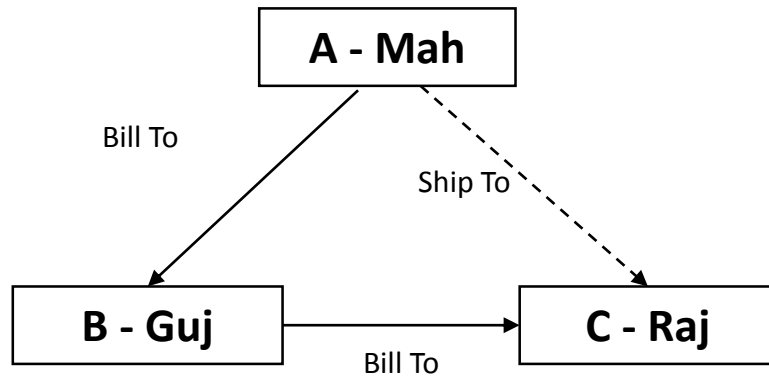
- Where the goods are delivered by the supplier to a recipient or any other person, on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said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

Sec. 7(3) : Implications

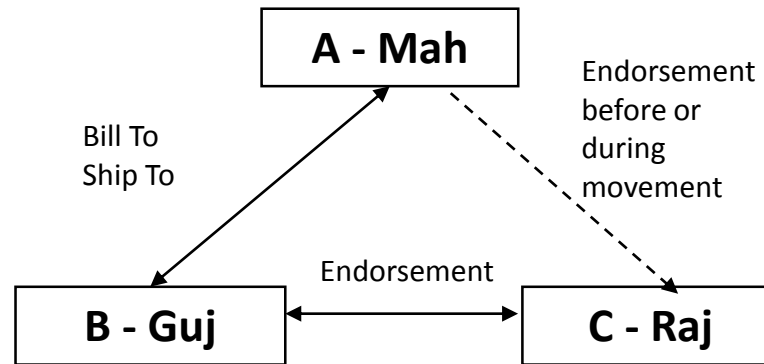
- Takes care of situations of endorsement of documents, “Bill to”, “Ship To”, etc.
- Treats the intermediary supply as made to the principal place of business.
- Principal Place of Business: Section 2(77) of the CGST/SGST Act
 - “**principal place of business**” means the place of business specified as the principal place of business in the certificate of registration
- Again, very open ended. Does it leave a choice to the assessee?

Case Studies

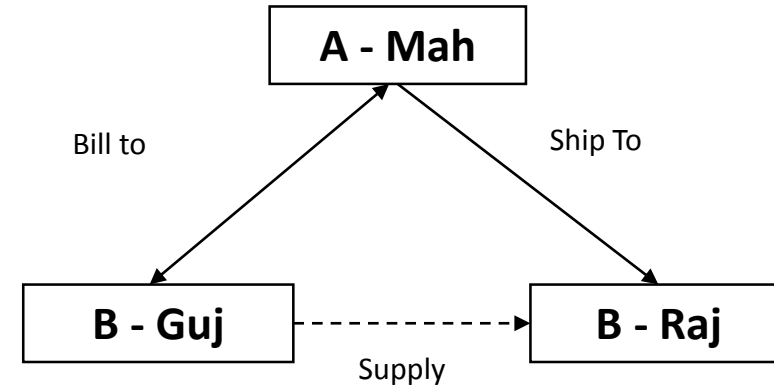
Bill to / Ship to Model



Sale in Transit



SAME ENTITY ???



Place of Supply of Goods – Sec. 7(4) (IGST)

- Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient.

Place of Supply of Goods – Sec. 7(5) (IGST)

- Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.
- Reduces controversies of situs of works contracts.

Place of Supply of Goods – Sec. 7(6) (IGST)

- Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.
- What would be meant by supply on board a conveyance?
 - Supply to the owner of conveyance or to the buyer
- Whether food supplies covered here?
- What would happen to unsold stock?

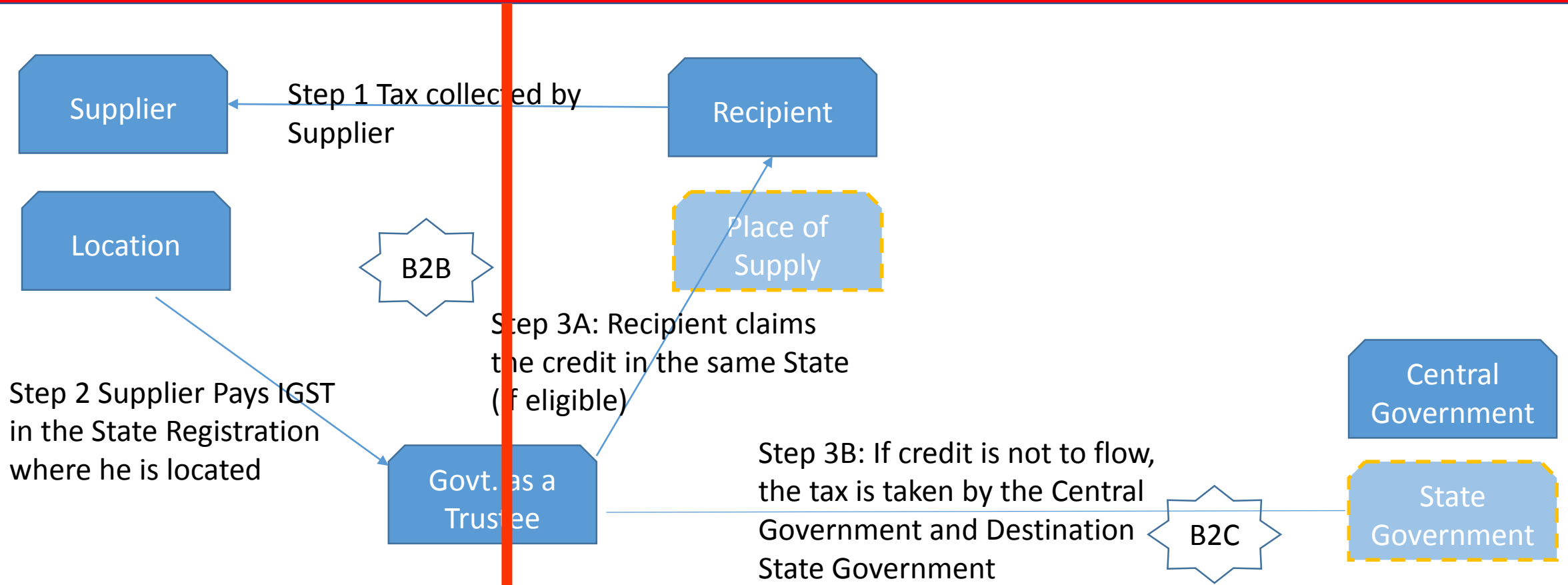
Domestic Transactions

Place of Supply for Services

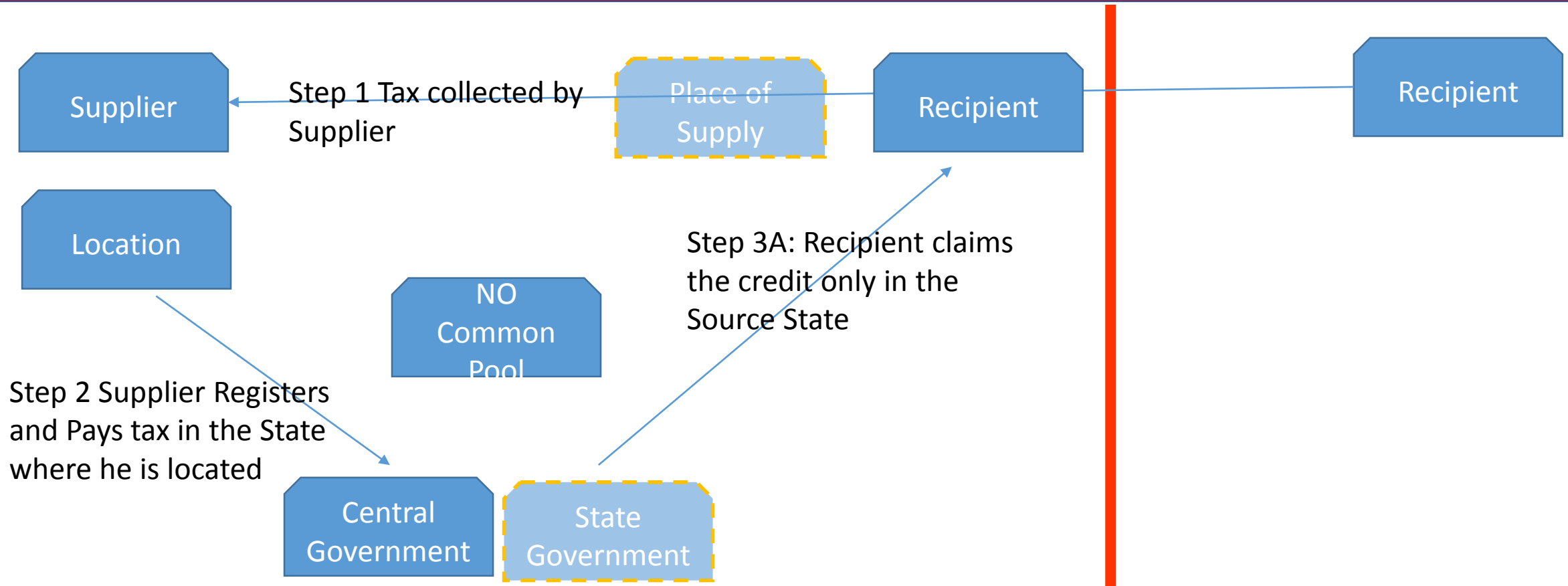
Place of Supply Rules -- Objectives

- Effectuate free flow of credit amongst Multiple States
- In case credit is not eligible (B2C Transactions) , State component to go to the consuming State

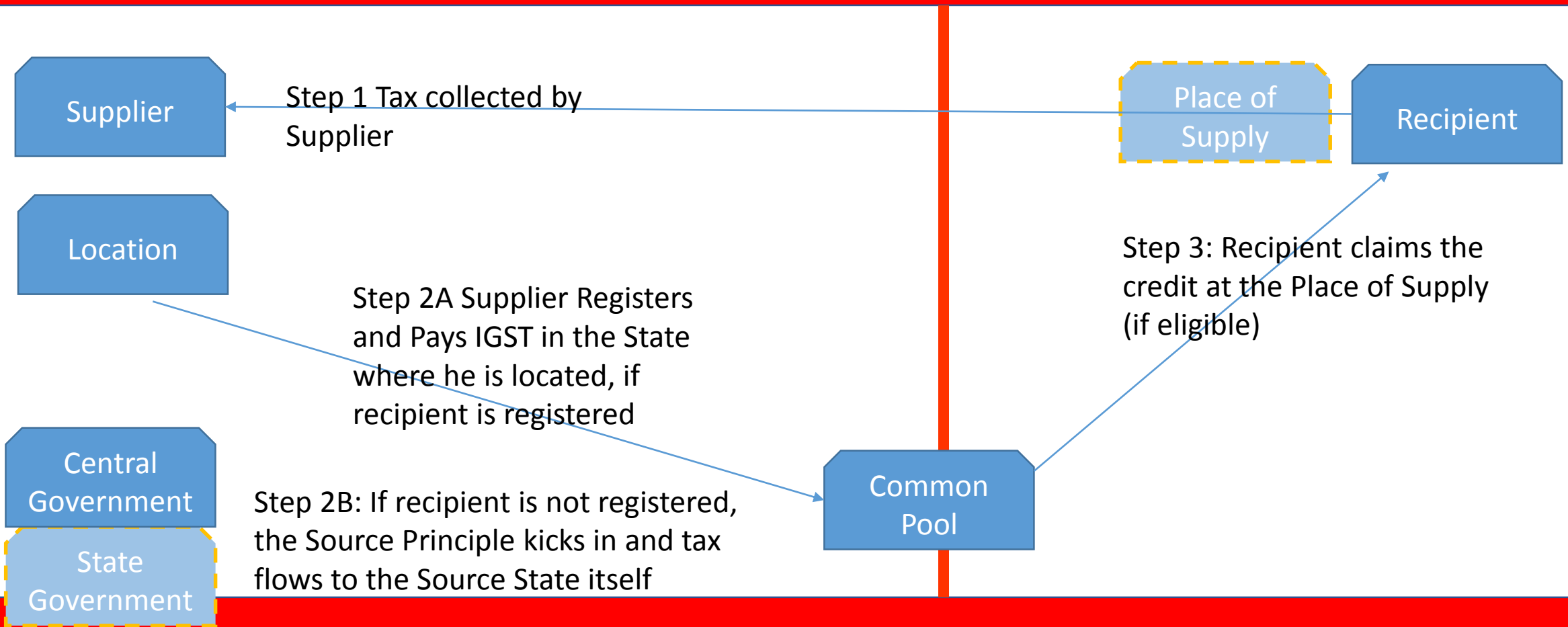
IGST -- “Wash Tax” concept for Destination Based Principle



Place of Supply – Exception - Source Principle



Exception – Hybrid Principle



Exceptions to Destination Rule

Hybrid	Source Principle
Training and Performance Appraisal	Services in relation to Immovable property
Organisation of events and ancillary services including sponsorship	Hotels , Mandap-keeper services
Transportation of Goods including mail and courier	Restaurant, catering, personal grooming, fitness, beauty treatment, health services, cosmetic and plastic surgery
Passenger Transportation Services	Services in relation to admission to an event
Banking & Stock Broking Services (not linked to an account)	Services supplied on board of a conveyance
Mobile Connection, internet service, & DTH services.	Services by way of fixed telecommunication line etc.
Insurance Services	

Immoveable Properties – Sec. 9(4) (IGST)

- The place of supply of services, -
 - (a) **directly in relation to an immovable property**, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work, or
 - (b) **by way of lodging** accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called and including a house boat or any other vessel, or
 - (c) **by way of accommodation** in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property, or
 - (d) **any services ancillary** to the services referred to in clause (a), (b) and (c),

shall be the location at which the immovable property or boat or vessel is located or intended to be located.

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

Explanation.- Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Immoveable Properties – Sec. 10(4) (IGST)

- The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

Performance Related Services

- Section 9(5) (IGST)
 - The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.
- On Board Catering – Whether covered here or under Rule 7(6) as supply on board a conveyance?

Training Services

- Section 9(6) (IGST)

- The place of supply of services in relation to training and performance appraisal to
 - (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the location where the services are actually performed.

- Section 10(3) (IGST)

- (3) The place of supply of the following services shall be the location where the services are actually performed, namely:-

- (a) services supplied in respect of goods that are required to be made physically available by the recipient of service to the supplier of service, or to a person acting on behalf of the supplier of service in order to provide the service:

- PROVIDED that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of service:

- PROVIDED FURTHER that this clause shall not apply in the case of a service supplied in respect of goods that are temporarily imported into India for repairs and are exported after repairs without being put to any use in India, other than that which is required for such repairs;

- (b) services supplied to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the recipient, with the supplier for the supply of the service.

Training Services – Snapshot

Sr. No.	Transactions	Scenario	Service Provider	Service Receiver	Where services are actually performed
1	Domestic	Same State		✓	
2	Domestic	Different State		✓	
3	Domestic	Recipient un-registered			✓
4	International	Imports			✓
5	International	Exports			✓

Event Admission Services

- Section 9(7) (IGST)
 - The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.
- Section 10(5) (IGST)
 - The place of supply of services supplied by way of **admission to, or organization of**, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held

Event Related Services – Sec. 9(8) (IGST)

- The place of supply of services provided by way of—
 - (a) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or
 - (b) services ancillary to organization of any of the above events or services, or assigning of sponsorship of any of the above events, to
 - (i) a registered person, shall be the location of such person;
 - (ii) a person other than a registered person, shall be the place where the event is actually held.

PROVIDED that if the event is held outside India, the place of supply shall be the location of the recipient.

Explanation.- Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Organizing Services – Snapshot

Sr. No.	Transactions	Scenario	Service Provider	Service Receiver	Where Event is held
1	Domestic	Same State		✓	
2	Domestic	Different State		✓	
3	Domestic	Recipient un-registered			✓
4	Domestic	Event outside India		✓	
5	International	Imports			✓
6	International	Exports			✓

Goods Transportation Services

- Section 9(9) (IGST)
 - The place of supply of services by way of transportation of goods, including by mail or courier to,
 - (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.
- Section 10(9) (IGST)
 - The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods.

Goods Transportation Services – Snapshot

Sr. No.	Transactions	Scenario	Service Provider	Service Receiver	Destination of goods	Where goods are handed over for their transportation
1	Domestic	Same State		✓		
2	Domestic	Different State		✓		
3	Domestic	Recipient un-registered				✓
4	International	Mail or courier [sec. 10(2)]		✓		
5	International	Imports			✓	
6	International	Exports			✓	

Passenger Transportation Services

- Section 9(10) (IGST)

- The place of supply of passenger transportation service to
 - (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.

Explanation.- For the purposes of this sub-section, the return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

- Section 10(10) (IGST)

- The place of supply in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

Passenger Transportation Services – Snapshot

Sr. No.	Transactions	Scenario	Service Provider	Service Receiver	Place where passenger embarks on conveyance
1	Domestic	Same State		✓	
2	Domestic	Different State		✓	
3	Domestic	Recipient un-registered			✓
4	International	Imports			✓
5	International	Exports			✓

Services on a conveyance

- Section 9(11) (IGST)
 - The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the **first scheduled point of departure** of that conveyance for the journey.
- Section 10(11) (IGST)
 - Place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey

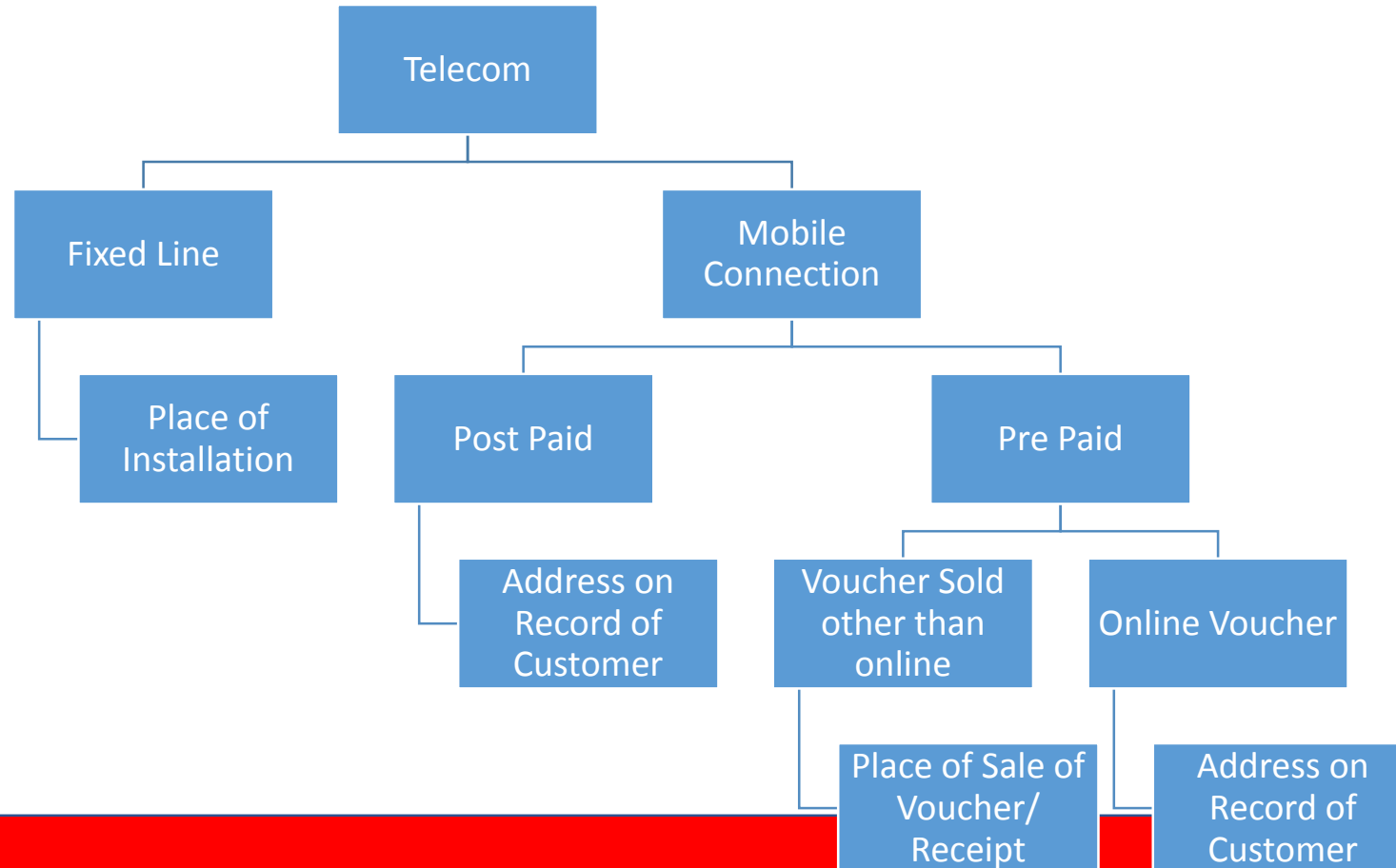
Telecommunication Services – Sec. 9(12) (IGST)

- The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall—
 - (a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
 - (b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on record of the supplier of services;
 - (c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means,
 - (i) through selling agent or a re-seller or a distributor of SIM card or re-charge voucher, shall be address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or
 - (ii) by any person to the final subscriber shall be the location where such pre-payment is received or such vouchers are sold;
 - (d) in other cases not covered in (b) and (c) above, shall be the address of the recipient as per records of the supplier of the service

Telecommunication Services – Proviso & Explanation

- PROVIDED that where address of the recipient as per records of the supplier of service is not available, the place of supply shall be location of the supplier of service.
- PROVIDED FURTHER that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on record of the supplier of services shall be the place of supply of such service.
- Explanation: Where the leased circuit is installed in more than one State and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Telecom – Snapshot..



Banking and Financial Services – Sec. 9(13) (IGST)

- Section 9(13) (IGST)
 - The place of supply of banking and other financial services including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:
 - Provided that if the location of the recipient of services is not on the records of the supplier, the place of supply shall be location of the supplier of services.
- Section 10(8)(a)
 - The place of supply of following services shall be the location of the supplier of service:-
 - (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

Insurance Services – Sec. 9(14) (IGST)

- The place of supply of insurance services shall:
 - (a) to a registered person, be the location of such person;
 - (b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

Advertisement Services – Sec. 9(15) (IGST)

- The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States, shall be taken as located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Online Information & Database Services – Sec. 10(12) (IGST)

- (a) The place of supply of the “online information and database access or retrieval services” services shall be location of recipient of service.
- (b) For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory if any two of the following non-contradictory conditions are satisfied, namely:-
 - (i) the location of address presented by the recipient of service via internet is in taxable territory;
 - (ii) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory;
 - (iii) the billing address of recipient of service is in the taxable territory;
 - (iv) the internet protocol address of the device used by the recipient of service is in the taxable territory;
 - (v) the bank of recipient of service in which the account used for payment is maintained is in the taxable territory;
 - (vi) the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory;
 - (vii) the location of the fixed land line through which the service is received by the recipient is in taxable territory.

Other relevant provisions

- Section 10(6) (IGST)
 - Where any service referred to in sub-sections (3), (4), or (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided.
- Section 10(7) (IGST)
 - Where the services referred to in sub-sections (3), (4), (5) or (6) are supplied in more than one State, the place of supply of such services shall be taken as being in each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.
- Section 10(13) (IGST)
 - In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

