

**OFFENCES & PENALTIES  
PROSECUTION & COMPOUNDING  
AUTHORITY FOR ADVANCED RULING**

By  
Indirect Taxes Committee  
The Institute of Chartered Accountants of India

# OFFENCES

# Offences by Taxable Person

## Offences relating to invoices

- *Supplies any goods and/or services without issue of any invoice or*
- *Issues an incorrect or false invoice with regard to any such supply;*
- *Issues any invoice or bill without supply of goods and/or services*

## Collection and Non Payment of taxes

- *Collects tax but fails to pay the same within 3 m from due date of payment*
- *Collects tax in contravention of provisions of GST and fails to pay the same within 3 m from due date of payment*

## TDS & TCS

- *Fails to deduct tax, deducts lower tax, fails to pay tax deducted*
- *Fails to collect tax, collects lower tax, fails to pay tax collected*

# Offences by Taxable Person

## ITC

- *Avails and/or utilizes ITC without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;*

## Refund

- *Fraudulently obtains refund of any CGST/SGST under this Act;*

## ISD

- *Avails or distributes ITC in violation of S. 21*

## Registration

- *Is liable to be registered under this Act but fails to obtain registration;*
- *Furnishes false information at the time of registration or subsequently*

# Offences by Taxable Person

## Falsification/ Cooking of Records

- *Falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;*

## Obstruction to Officers

- *Obstructs or prevents any officer in discharge of his duties*

## Handling of Goods

- *Transports taxable goods without the cover of documents*
- *Supplies, transports or stores any goods which he has reason to believe are liable to confiscation*

## Suppression

- *Suppression of turnover leading to evasion of tax*

# Offences by Taxable Person

## Books of Accounts

- *fails to keep, maintain or retain books of account and other documents*

## Proceedings before officer

- *fails to furnish information and/or documents called for by a CGST/SGST officer*
- *furnishes false information and/or documents during any proceedings*

## Impersonation

- *issues any invoice or document by using the identification number of another taxable person*

## Tampering

- *tampers with, or destroys any material evidence*
- *disposes off or tampers with any goods that have been detained, seized, or attached*

# PENALTIES

# Penalty for Aforesaid Offences

PENALTY IS

HIGHER OF:

- *Amount equivalent to tax evaded;*
- *TDS/ TCS not deducted/ not paid/ short deducted/ short paid;*
- *ITC wrongly availed/ passed on/ distributed;*
- *Refund wrongly claimed;*
- *OR*
- *Rs.10,000/-*



# Offences by Any Person

## Aiding & Abetting

- *Aids or Abets any of the Offences committed by taxable person*

## Offence Relating to Goods

- *Acquires possession of, concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or*
- *Deals with goods which he knows/ has reason to believe are liable to confiscation*

## Offence Relating to Service

- *Receives or is in any way concerned with the supply of, or*
- *Deals with any supply of services*
- *which he knows/ has reason to believe are in contravention of provisions of this Act*

# Other Offences

## Failure to Enter Appearance

- *fails to appear before the CGST/SGST officer, when issued with a summon*

## Fails to Issue Invoice

- *fails to issue invoice or*
- *fails to account for an invoice*

Penalty in the all the aforesaid cases – Up to Rs.25,000/-

# General Principles Relating to Penalty

No substantial penalty

- for minor breaches of tax regulations/ procedures
- Minor Breach - *Tax involved is less than Rs.5,000/-*

No penalty for documentation mistake which is

- *Easily rectifiable*
  - If mistake is error apparent on record
- *Made without fraudulent intent*
- *Made due to gross negligence*

# General Principles Relating to Penalty

*Audi Altrem Partem, Reasoned order*

- *No penalty without SCN and opportunity of being heard*

Whether penalty imposable if A'ee declares circumstance of breach of law before discovery by department?

General Principles not applicable, where penalty is fixed sum or expressed as a fixed percentage

# Other Penalty Provisions

What is the Penalty for a contravention, which is not specifically provided by the Act?

What is the penalty when demand and recovery initiated u/s 66 and 67 for fraud cases and other than fraud cases?

Where proceedings does not relates to

(a) scrutiny of returns, (b) assessment of non filers, unregistered persons, (c) summary assessment, (d) demand and recovery, (e) detention and confiscation of goods and conveyance, *such* penalty shall be levied after issue of SCN.

# DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES

# Detention of Goods & Penalty

Where *any person*

- *transports any goods or stores such goods while they are in transit*

Goods, Conveyance,  
documents relating  
thereto

- *Liable for detention and seizure*

Release

- *On payment of tax and penalty equal to 100% of tax - where owner comes forward for payment*
- *On payment of tax and penalty equal to 50% of value of goods, reduced by tax paid thereon - where owner does not com forward for payment*

# Detention of Goods & Penalty

SCN

- Proper officer detaining goods to issue notice and pass order for payment of tax and penalty

Failure to pay  
tax, penalty

- Within 7 days of detention
- Further proceedings for confiscation and release on payment of bond



# Confiscation of Goods & Penalty

## If any person

- *Supplies or receives any goods in contravention of provisions, with intent to evade*
- *Does not account for goods on which he is liable to pay tax*
- *Supplies goods liable to tax under this Act without having applied for registration*
- *Contravenes of the provisions this Act with intent to evade payment of tax*
- **Uses any conveyance for transport of taxable goods, in contravention of provisions, unless the owner of conveyance proves that conveyance was used without his knowledge or connivance**

# Confiscation of Goods & Penalty

## Consequence

- *Such goods liable for confiscation. Tax payable, Penalty u/s 85*
- *SCN to be issued – owner of goods/ conveyance.*
- *Title of goods upon confiscation?*

## After adjudication, officer shall grant

- *Option to pay fine in lieu of confiscation*
- *Max fine = Market price of goods – GST chargeable thereon*
- *Aggregate fine and penalty = Not less than penalty u/s 89 (1)*

# Confiscation of Conveyance

## Conveyance liable for confiscation

- *Any conveyance used for transportation of taxable goods*
- *In contravention of provisions of the Act*

## Exception

- *Owner of conveyance, person in charge proves*
- *Conveyance was used without his knowledge/ connivance*

## Option to pay in lieu of confiscation to owner of conveyance

- *Fine equal to tax payable on goods transported*

## Confiscation or penalty not to effect other punishments under this/ other law

# Disposal

## Confiscated Goods/ Conveyance

- Not required in any other proceedings
- After granting reasonable time, not exceeding 3 months
- To pay fine in lieu of confiscation
- Dispose off such goods/ conveyance
- Deposit sale proceeds with government

# PROSECUTION & COMPOUNDING

# Offences liable for Prosecution

## Offences relating to invoices (eligible for Compounding)

- *Supplies any goods and/or services without issue of any invoice or*
- *Issues an incorrect or false invoice with regard to any such supply;*
- *Issues any invoice or bill without supply of goods and/or services*

## Offence of Collection and Non Payment of taxes (eligible for Compounding)

- *Collects tax but fails to pay the same within 3 m from due date of payment*
- *Collects tax in contravention of provisions of GST and fails to pay the same within 3 m from due date of payment*

## Offence relating to ITC (eligible for Compounding)

- *Avails and/or utilizes ITC without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;*

# Offences liable for Prosecution

## Offence relating to Refund (Compounding)

- *Fraudulently obtains refund of any CGST/SGST under this Act;*

## Offence Relating to Goods

- *Acquires possession of, concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or*
- *Deals with goods which he knows/ has reason to believe are liable to confiscation*

## Offence Relating to Service

- *Receives or*
- *Is in any way concerned with the supply of, or*
- *Deals with any supply of services*
- *which he knows/ has reason to believe are in contravention of provisions of this Act*

# Offences liable for Prosecution

## Falsification/ Cooking of Records (Compounding)

- *Falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;*

## Obstruction to Officers/ Tampering

- *Obstructs or prevents any officer in discharge of his duties*
- *Tampers or destroys material evidence*

## Proceedings before officer

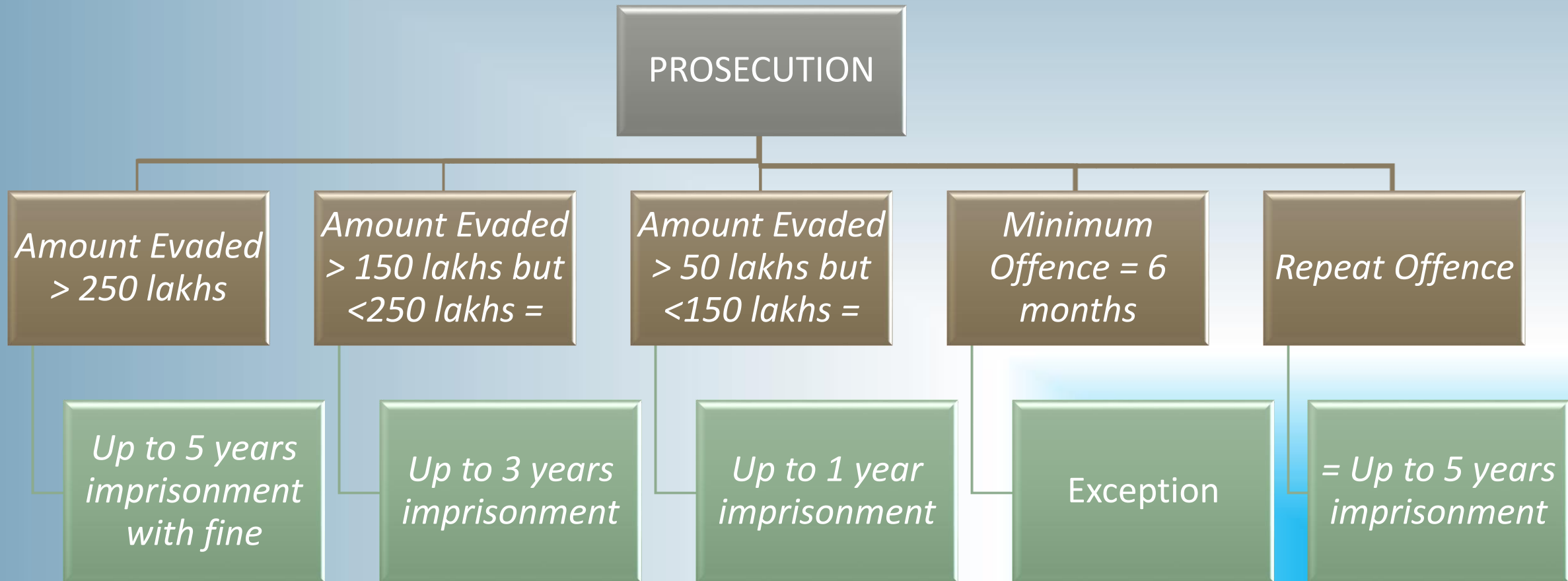
- *fails to furnish information and/or documents called for by a CGST/SGST officer*
- *furnishes false information and/or documents during any proceedings*

## Aiding & Abetting (Compounding)

- *Aids or Abets any of the Offences previously enumerated*



# Offences liable for Prosecution



# Cognizable Offences

## *Cognizable and Non Bailable*

- Following Offences where tax evaded, ITC availed, refund taken > 150 lakhs
- (a) Offences relating to invoice
- (b) Offence of Collection and Non Payment of taxes
- (c) Offence relating to ITC

## All other offences

- *Non Cognizable and Bailable*

No prosecution except with previous approval of 'Designated Authority'

Presumption of Culpable Mental State

# Offence by Companies

Where Offence is committed by Company

- *Every person, who at the time of committing of offence*
- *Was in charge and was responsible for conduct of business*
- *Shall be deemed to be guilty*
- *And be liable to be proceeded against and punished*

Where Offence is committed by Company

- *It is proved that offence committed*
- *With Consent/ Connivance or Attributable to negligence of*
- *Director, Manager, Secretary, or Other Officer of Company*
- *They shall also be deemed guilty*
- *And be liable to be proceeded against and punished*

# Offence by LLP, Firm, HUF

Where Offence is committed by LLP, Firm, HUF or Trust

- *Partner, Kartha and Managing Trustee*
- *Shall be deemed to be guilty*
- *Liable to be proceeded against and punished*

Person liable for punishment - Innocent

- *Proves that offence was committed*
- *Without his knowledge or*
- *That person had exercised due diligence*
- *To prevent commission of such offence*
- *Then such person shall not be liable for punishment*

# Compounding of Offences

Any Offence under the Act



Either before or after the institution of prosecution



Can be compounded by a 'Competent Authority'



On payment by person accused of the Offence



Compounding Amount

# Compounding of Offences

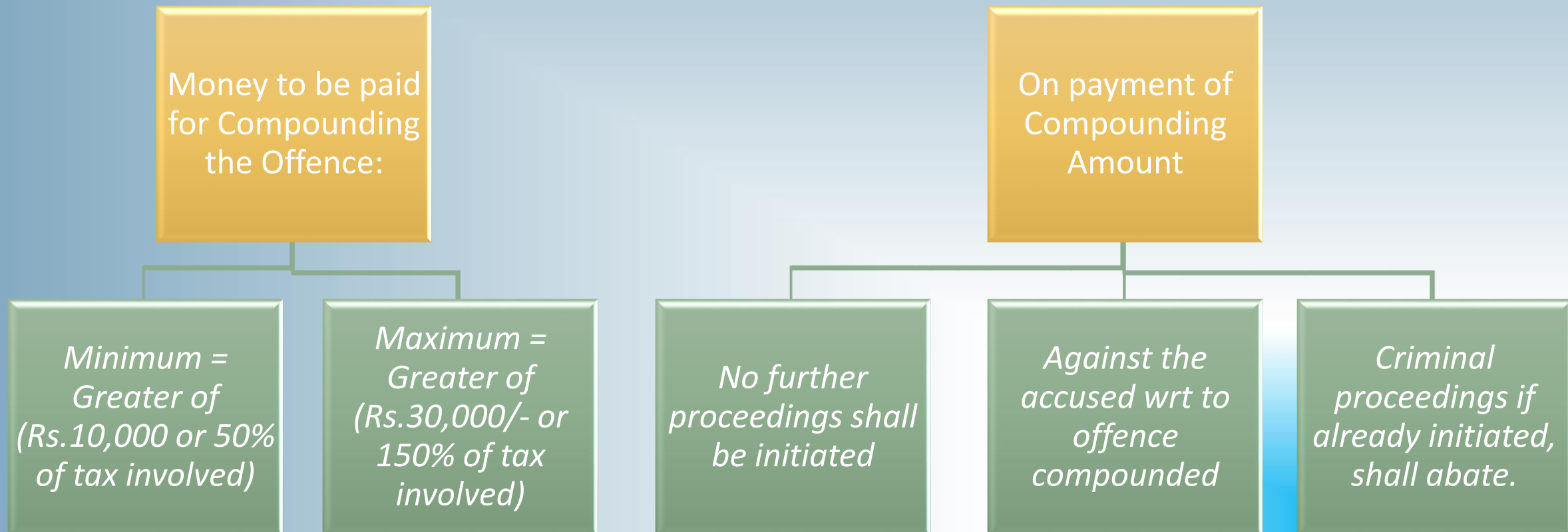
## Compounding Benefit not available to:

- *A person who has already been allowed to compound offence u/s 92(1)(a) to (g) and (m)*
- *A person who has been allowed to compound offence*
  - Other than offences mentioned above
  - Under the provisions of CGST/ SGST/ IGST
  - In relation to supplies of value exceeding 1 Crore.
- *A person accused of committing an Offence under this Act and*
  - NDPS Act, 1985
  - FEMA, 85
- *Any other class of persons as may be prescribed*

Compounding of offence under this Act will not affect proceedings under other Acts

Compounding allowed only after paying tax, interest and penalty.

# Compounding of Offences



# AUTHORITY FOR ADVANCED RULINGS

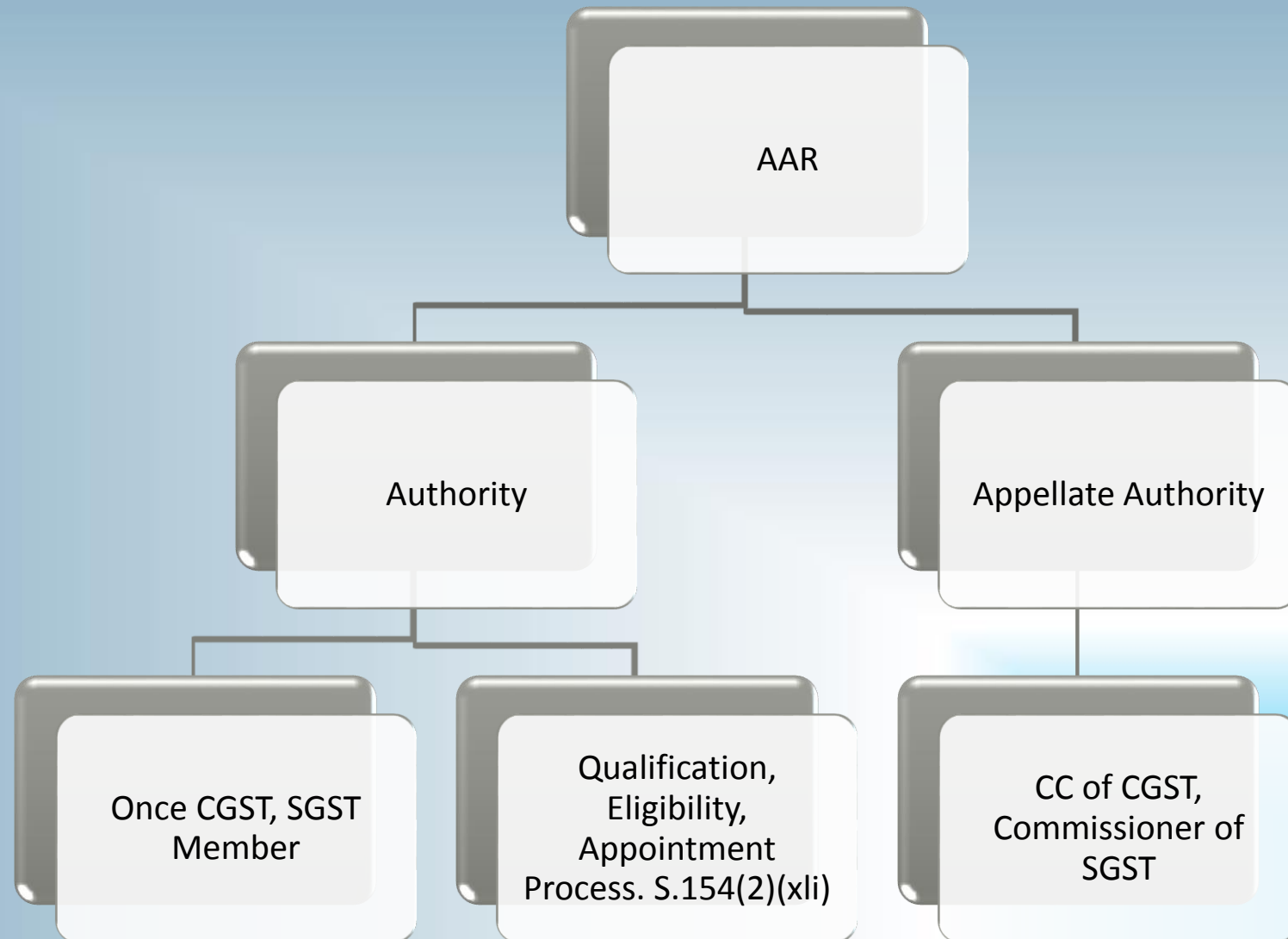


# S. 113 of CGST/ SGST Act – Meaning

## Meaning & Applicability

- Written Decision
- By Authority/ Appellate Authority
- On Questions of Applicant
- In relation of supply of goods/ services
  - Proposed to be undertaken
  - Being undertaken
- Whether AAR applicable to IGST? – S.27 of IGST

# S.114 & 115 – AARs & Its Constitution



# S.116 -Application for Advance Ruling

Applicant

```
graph TD; A[Applicant] --> B[Desirous of obtaining ruling]; B --> C[Application in such form/ manner as prescribed]; C --> D[Question on which ruling sought]; D --> E[Fee];
```

Desirous of obtaining ruling

Application in such form/ manner as prescribed

Question on which ruling sought

Fee

# S. 116 - Question of Ruling

Registration



```
graph TD; A[Registration] --> B[Whether amounts to Supply]; B --> C[Classification]; C --> D[Applicability of Notification]; D --> E[Valuation]
```

Whether amounts to Supply

Classification

Applicability of Notification

Valuation

# S. 117 -Procedure on Receipt of Application

Forward Copy to  
Prescribed Officers

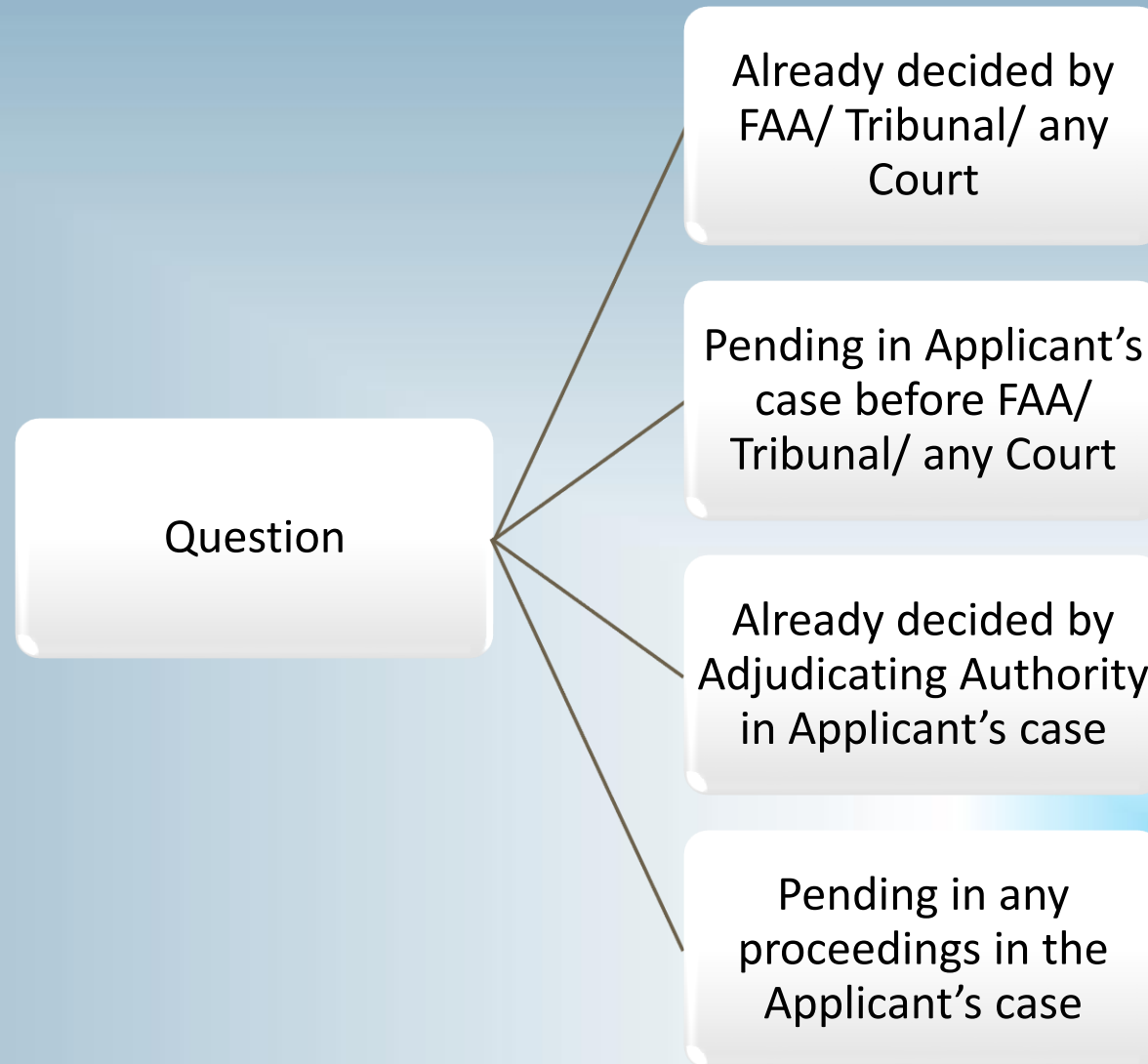
Call upon Officer to  
furnish records

Examination of  
application, records

After Hearing Applicant  
& Department

By Order – Admit/  
Reject Application

# S. 117 – Rejection of Application



# S. 117 – After Admission of Application

Examine such further material



Hearing of both Applicant & Department



Pronounce Ruling

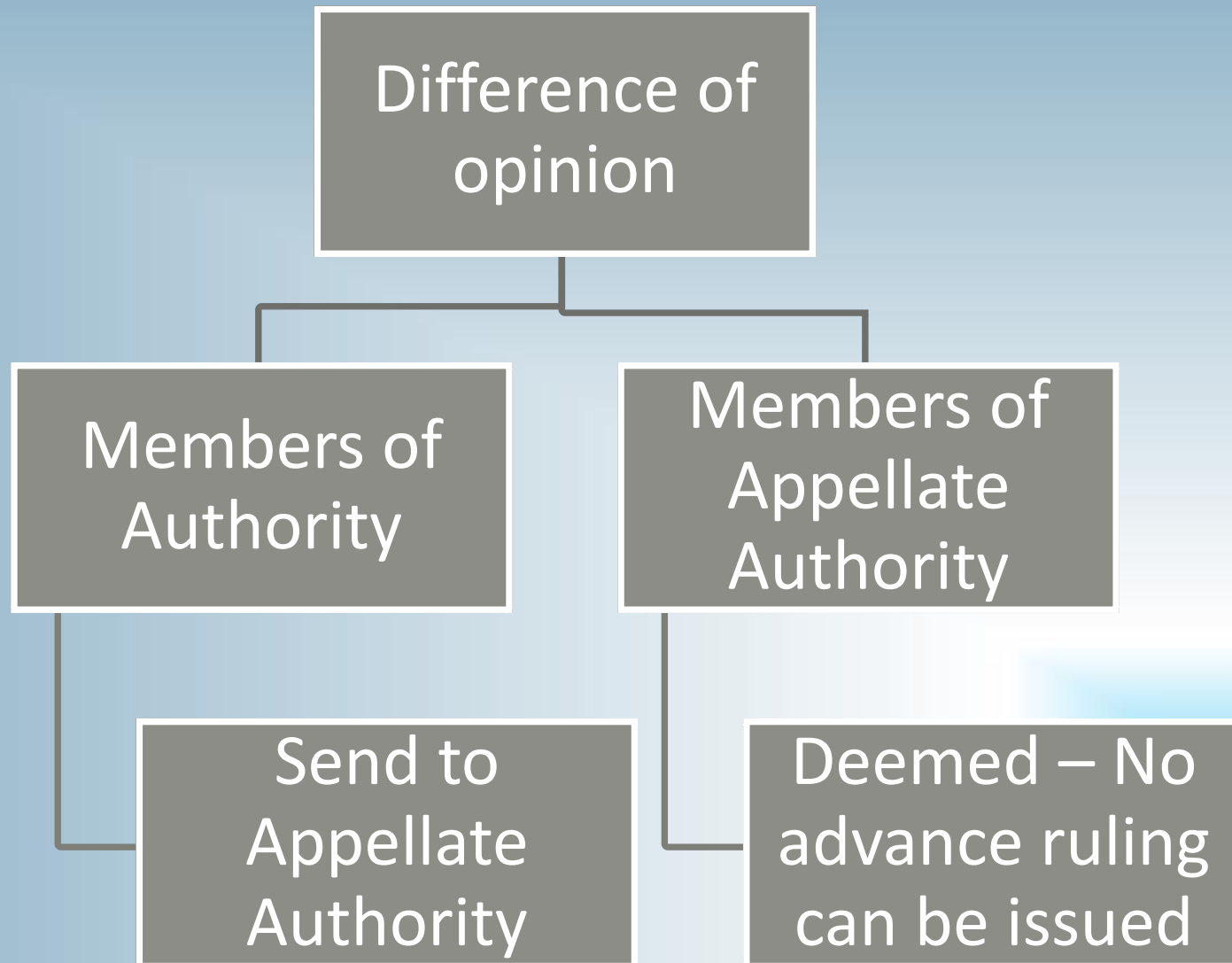


If members differ?



Answer - Next Slide

# S.117(5)&(7) - Difference of Opinion





# S.117(5) – Difference of Opinion by Members of Authority

Differ on any Question



State points of difference

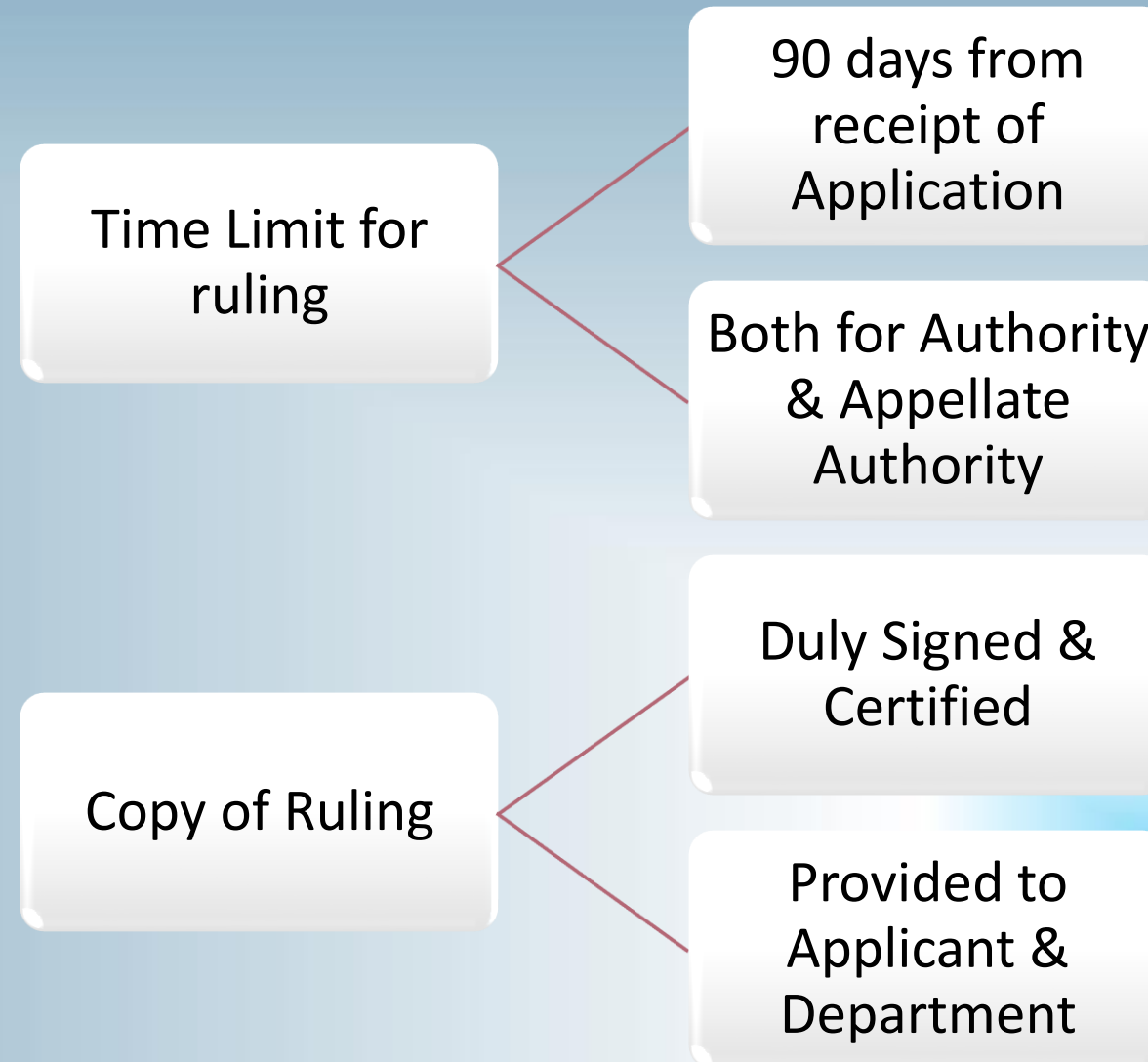


Make reference to Appellate Authority

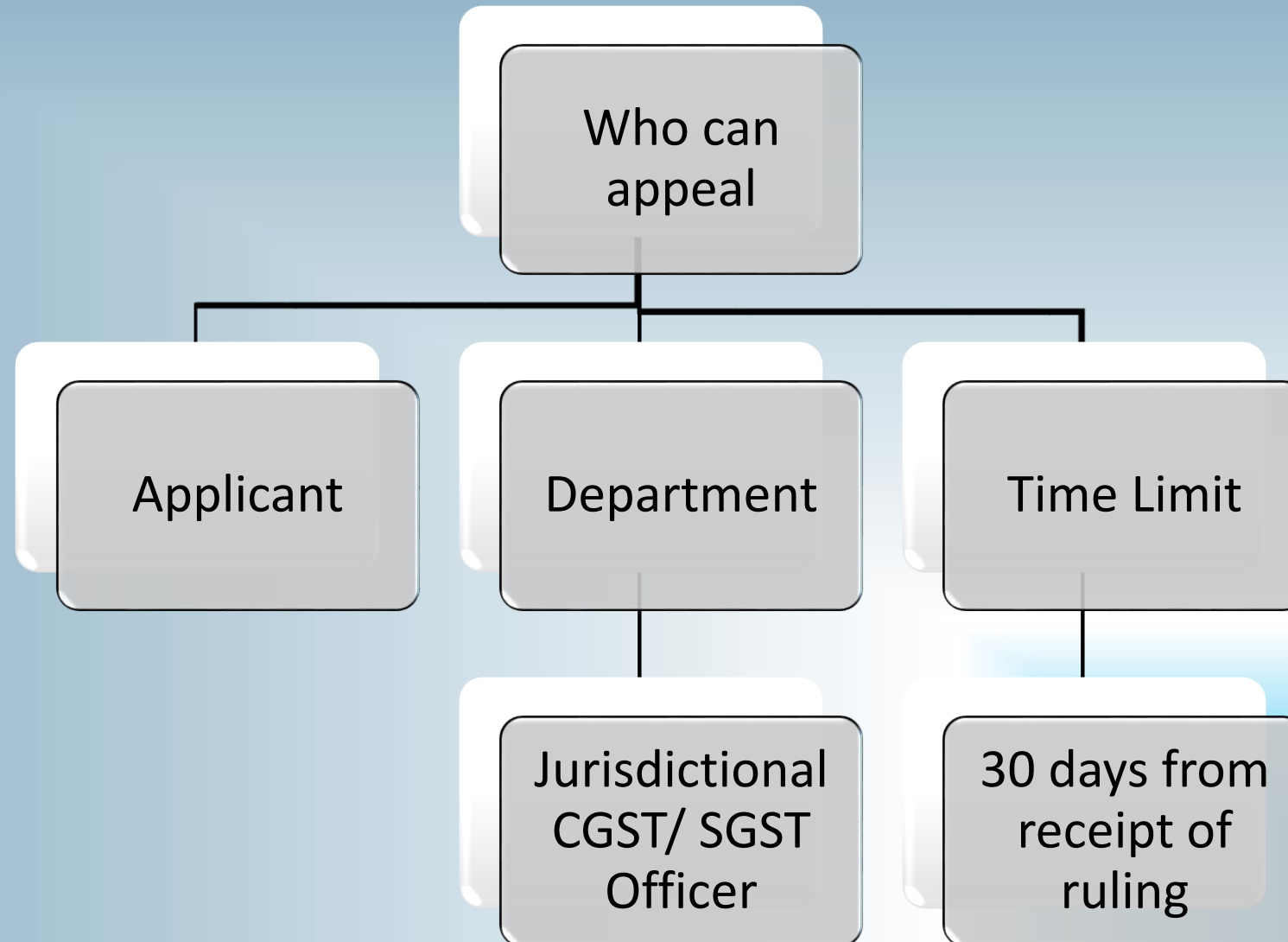


Hearing & Decision on such Question by Appellate Authority

# S. 117 - Procedure on Receipt of Application




# S.118 – Appeal to Appellate Authority

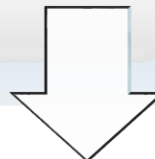


# S.119 – Order of Appellate Authority

## Procedure

- After hearing both parties
  - Confirm/ Modify the ruling
- 

## Time limit to pass order

- 90 days from date of filing
- 

What if members of Appellate Authority differ?



Copy of Order - Applicant & Department  
Duly signed & Certified

# S. 120 – Rectification of Advance Ruling

## Who Can rectify ?

- Authority & Appellate Authority

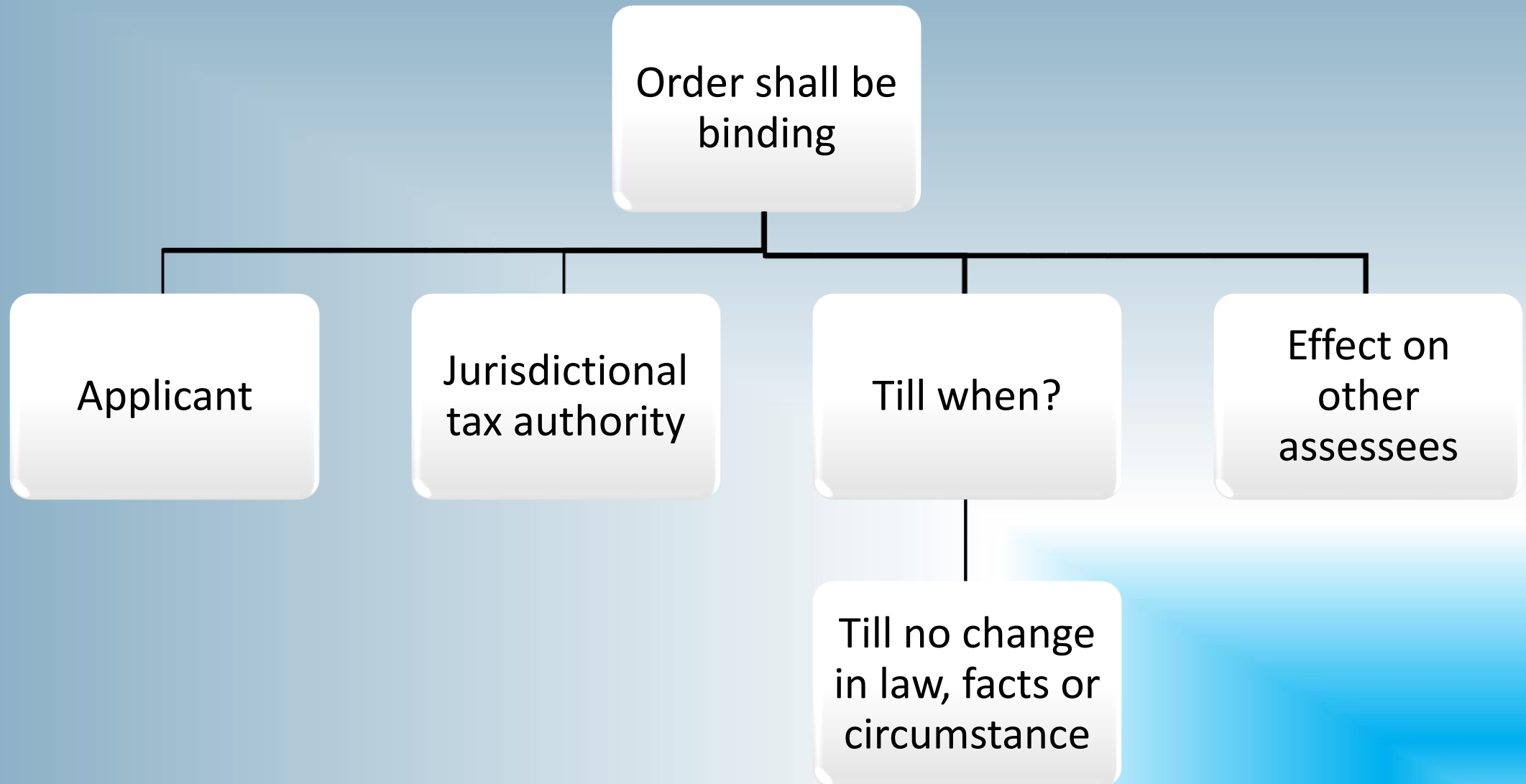
## What can be rectified?

- Mistake apparent on record
- Can rectification have effect of enhancing tax liability?
- Can rectification be of substantive part of order?

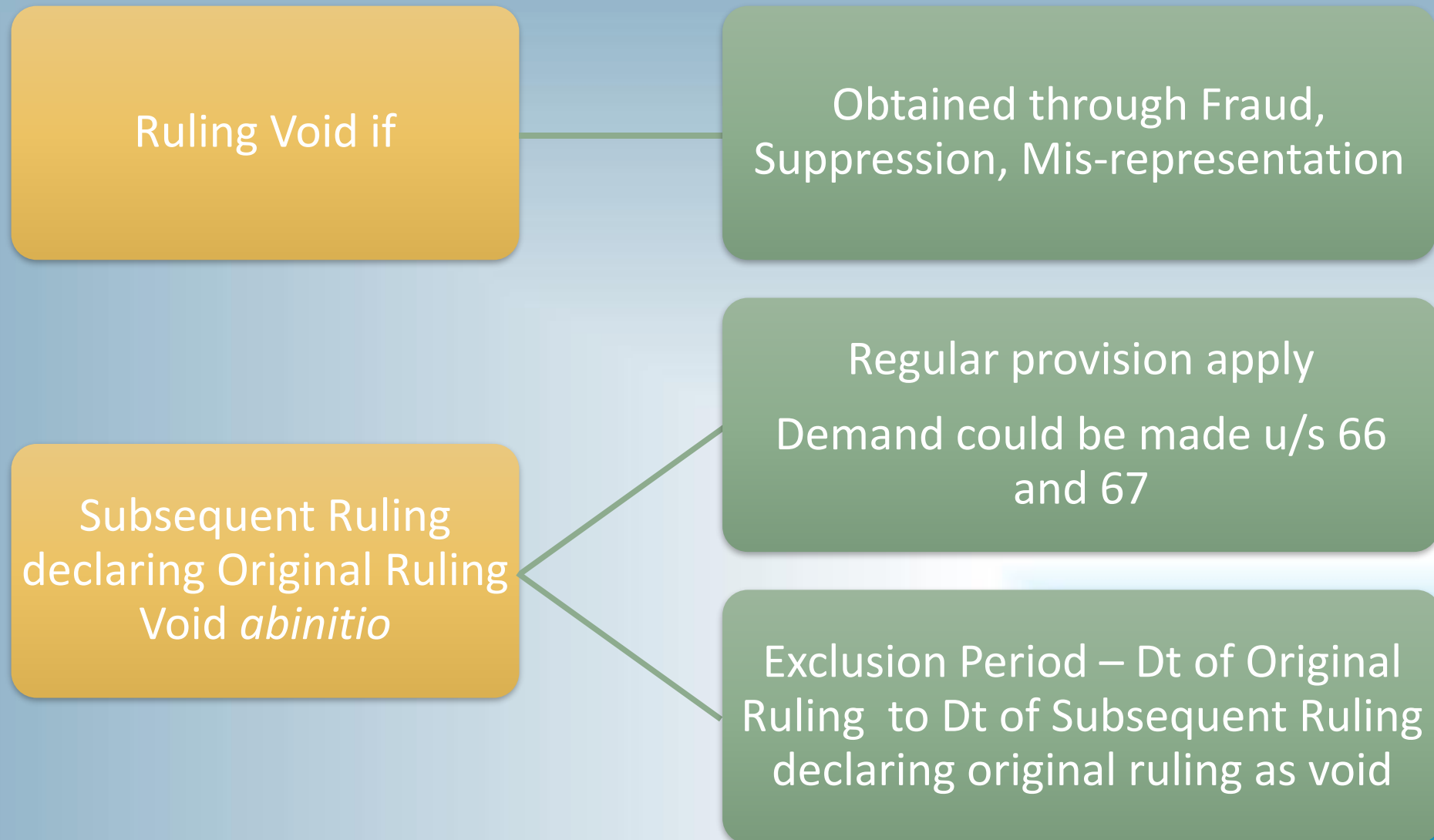
## When can they rectify

- Within 6 months from order date

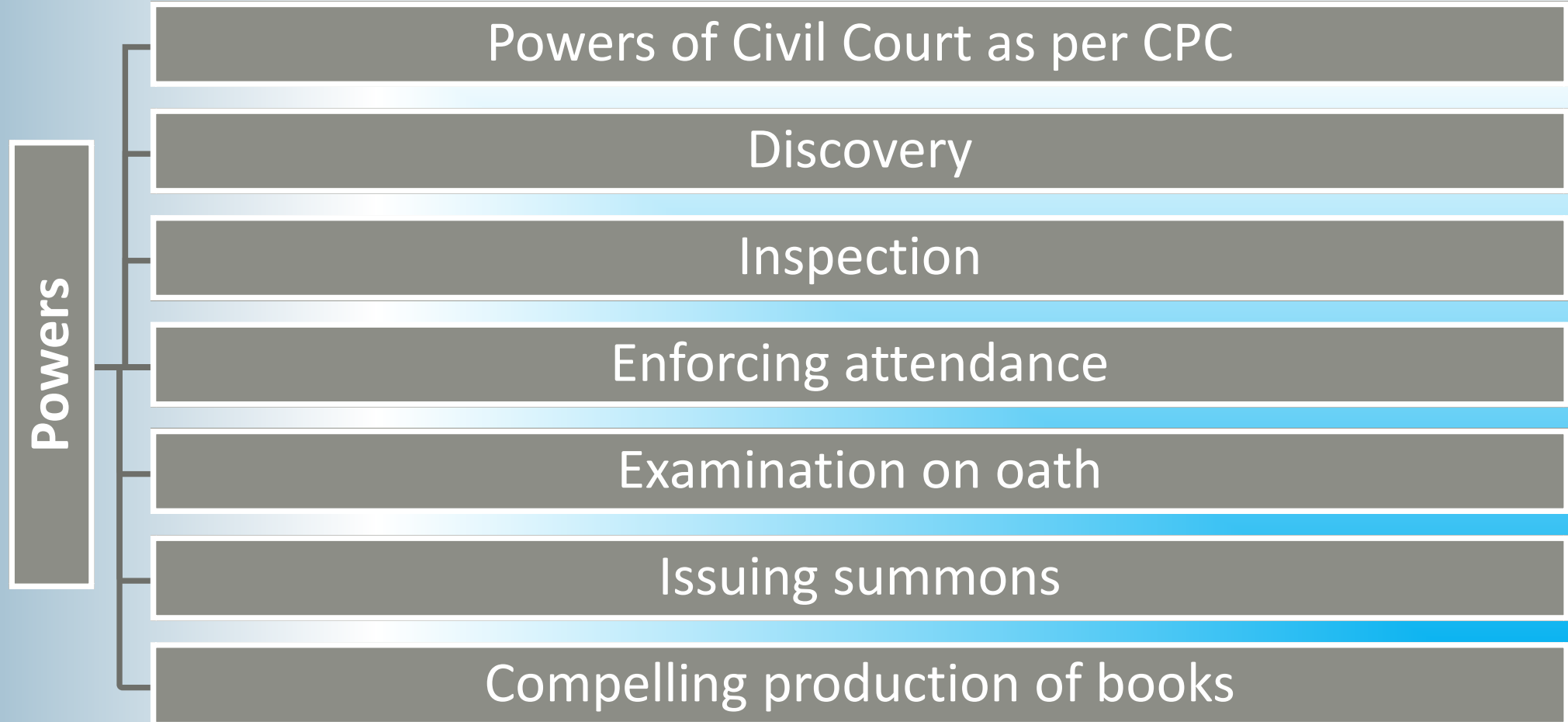
# S. 121 – Applicability of Advance Ruling



# S. 122 – Advance Ruling when void



# Power of SC, AAR & Appellate Authority





# Thank you



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