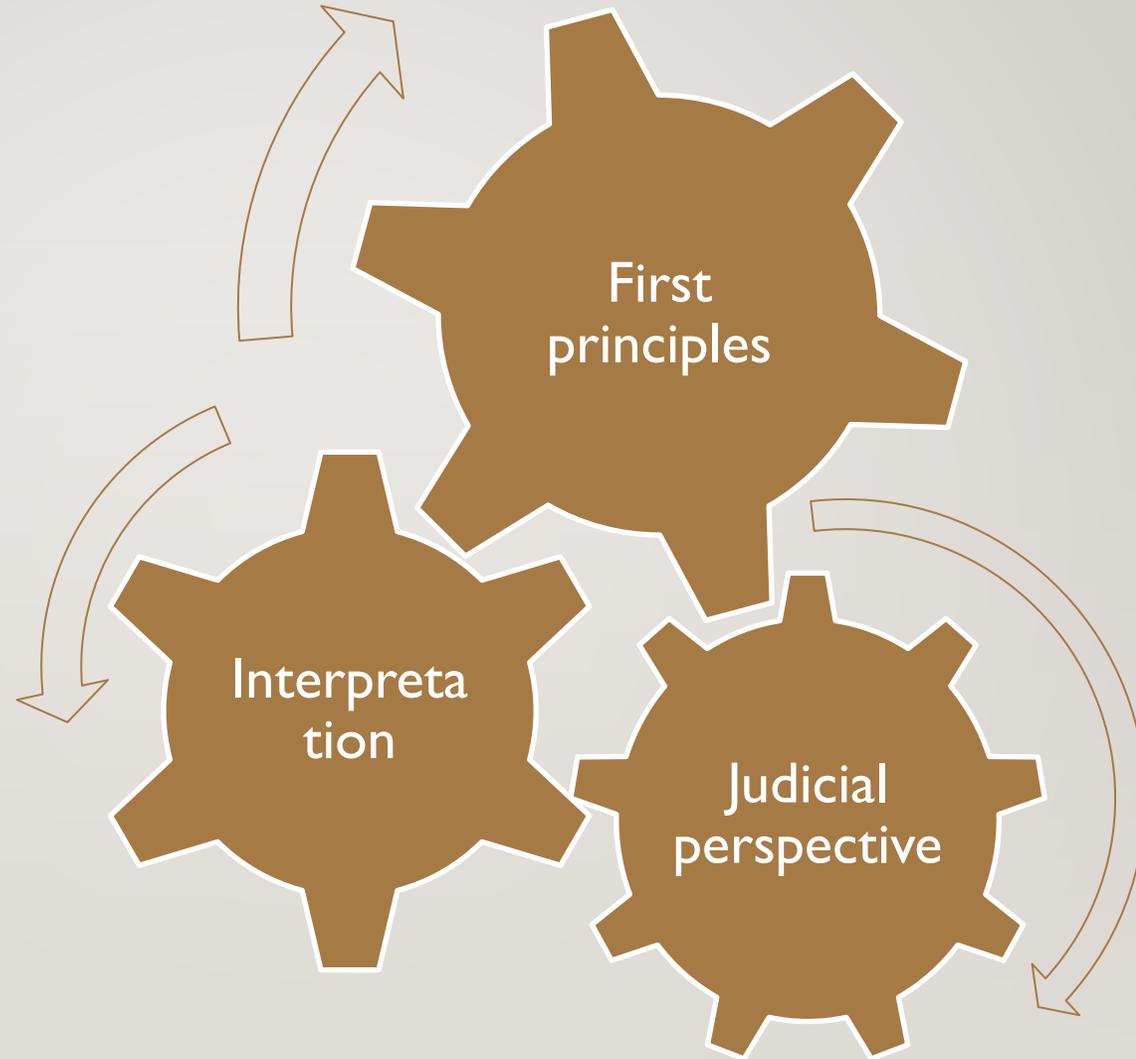


INPUT TAX CREDIT – CASE STUDIES

SOUTHERN INDIA REGIONAL COUNCIL (SIRC), THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA (ICAI)

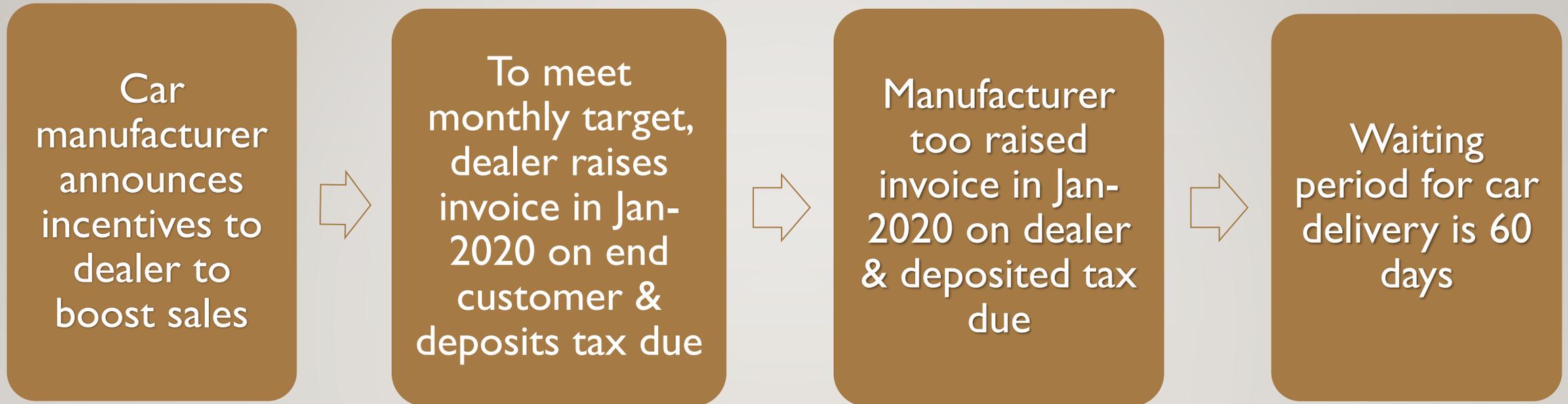
FEBRUARY 21, 2024

SCOPE



ELIGIBILITY

3



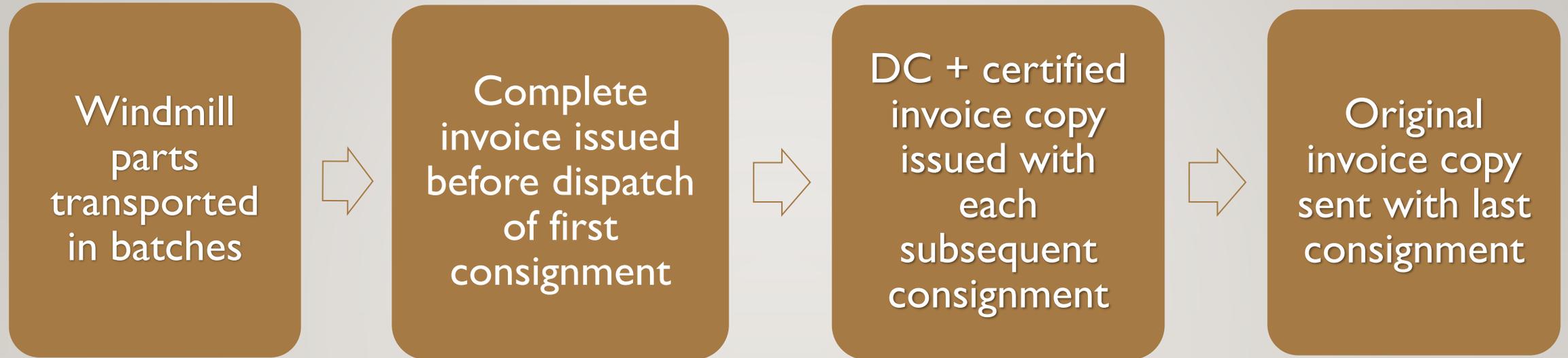
Can ITC be claimed by dealer (on invoice raised by manufacturer) before depositing tax due?

S.16(2)(b): Recipient not entitled to ITC unless goods / services received

Mere presence in GSTR-2B does not entitle recipient to ITC

ELIGIBILITY

4



When can ITC be claimed by recipient?

S.16(2) 1st proviso: Where goods against invoice are received in lots / instalments, RP entitled to ITC upon receipt of last lot / instalment

Mere presence in GSTR-2B does not entitle recipient to ITC

ELIGIBILITY

5

Supply made during FY 2017-18

Supplier failed to report in GSTR-I

Recipient claimed ITC vide GSTR-3B filed for October 2018

Will the Proper Officer allow ITC claim?

Will your answer change if ITC was claimed vide GSTR-3B filed for September 2018 within the due date?

Will your answer change if supplier reported in GSTR-I filed for April 2019?

Circ. 183 provides relaxations only for specified circumstances

Para 4.2 of Circ. 183 specifies exception to the relaxations

NON-PAYMENT OF FULL CONSIDERATION

6

Mah. HO
invoiced TN
Branch for crane
hire (say, Rs. 1
lakh)

In turn, TN Branch
invoiced Mah. HO
for crane
maintenance (say,
Rs. 10k)

TN Branch paid Mah. HO
in net (viz., Rs. 90k),
knocking off receivables
against payables, within
180 days

Is ITC available to TN Branch on Rs. 1 lakh or Rs. 90k?

Sch. I: Supplies
between distinct
persons, even
without
consideration, is
leviable

R.37: Value of
supplies without
consideration under
Sch. I deemed to be
paid

S.2(31):
'consideration'
includes payment,
whether in money
or otherwise

Manufacturer issues invoice (for Rs.58k + GST) to distributor.

Distributor issues invoice (for Rs.29k + GST) to dealer (viz., net of discount mandated by manufacturer)

Manufacturer issues non-GST credit note to distributor, compensating discount and margin

Is the distributor entitled to full ITC or only to the extent of payment to manufacturer?

Manufacturer not entitled to reduce its tax liability

S.16(2) is an anti-evasion measure & to facilitate payments to MSME suppliers

Disclosure of non-GST credit notes by manufacturer in books of account indicates intent

RETENTION MONEY

8

Delta supplied a lift to Epsilon Ltd. & issued a GST invoice for Rs.10 lakh

Epsilon Ltd. paid Rs.9 lakh, apart from GST, with retention money of Rs.1 lakh to be paid after 2 years

Can Epsilon claim ITC on retention money at the time of payment?

S.16(2) restricts ITC in case of failure of pay within 180 days

Can payment of retention money as per schedule (viz., after 2 years) be termed as 'failure of pay'?

TIME LIMIT TO CLAIM ITC

9

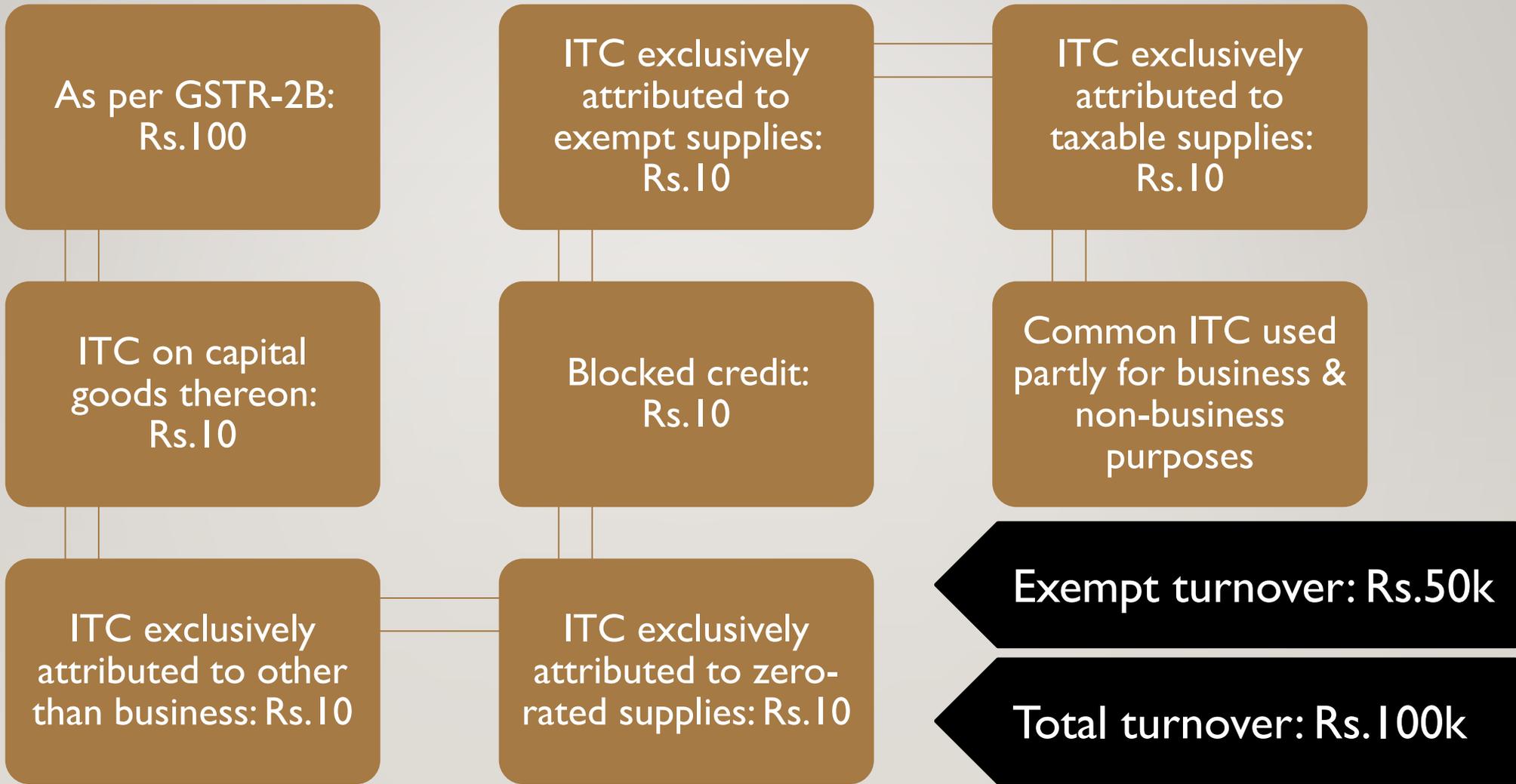
Can RCM ITC be claimed after the time limit specified us. 16(4)?

Will your answer differ for FY18?

Will non-disclosure of RCM self-invoices in GSTR-1 impact ITC claim?

Is there a time limit to avail ITC on import of goods?

COMMON INELIGIBLE ITC UR.42?



CONDITIONAL TAX RATE



Freight forwarder currently earns income from sea import and sea export freight, conditionally chargeable to tax at 5%

Are there any ITC implications?

What if sea export freight was earned in July 2023?

R.43 Expl. (omitted from 04-08-23): Exempt supplies shall exclude value of sea export freight

NN 8/17 sl.9(ii) condition: ITC on goods (...) used in supplying the service has not been taken

NN 8/17 Expl.5(iv): ITC exclusively used in supplying such service cannot be availed. ITC partly used for supplying such service and partly for other eligible supplies to be reversed as if such service is exempt.

EXEMPT SUPPLY CONSTITUENTS

12

Warehoused goods are supplied before clearance for home consumption

Are there any ITC implications?

Will your answer change if such supply happened in Jan.19 or in Sep.23?

S.17(3) Expl.: (from 01-02-19) Exempt supplies shall not include Sch.III txns. except L/B

S.17(3) Expl.: (from 01-10-23) Exempt supplies shall not include Sch.III txns. except L/B & supply of warehoused goods

Assessee purchased motor car & supplied it on rent to business entities



Is ITC admissible on purchase of motor car for the supply of renting service?



S.17(5): ITC not available on motor car except when used for, *inter alia*: (a) further supply of such motor vehicles; or (b) transportation of passengers

Renting service vs. Passenger transport

Is renting a 'further supply'?

Can sale of car as scrap after usage be treated as 'further supply'?

Manufacturers' association conducts a conference for upliftment of industry and charges fee from its members

Is ITC eligible on composite supply of hotel (accommodation and food/beverages)?

Is ITC admissible on supply of food/beverages by outdoor caterer?

Is ITC available on rent-a-cab service by event manager (like pickup, drop)

S.16(1): Entitlement to ITC on supplies used in the course or furtherance of business

S.17(5): ITC available if inward supply is used for outward taxable supply of same category of goods/services or as element of taxable composite / mixed supply

TARGET-BASED GIFTS

15

Assessee has fixed target based sales incentives for its dealers

It gives gold coins for achieving stipulated sales / payment criteria

Can ITC be claimed by assessee on procurement of gold coins?

'Gift' not defined in GST law. Means transfer of any property voluntarily & without consideration



S.17(5): ITC not available on goods disposed as gift



Else, it can be treated as consideration for service by dealer

QUANTITY DISCOUNTS

16

Assessee is seller of cigarettes. Instead of supplying 100 packs for Rs. 5k, it supplies 110 packs without recovering any additional cost from distributors.

Assessee would pay GST and Cess on Rs. 5k at applicable rate.

Should ITC be reversed on the quantity discount offered?

Are the extra packs of cigarettes considered as exempt supplies or free samples?

Cir.92: BOGO not an individual supply of free goods. ITC available to supplier.

Assessee constructs a warehouse on 30-year leasehold land using pre-fabricated technology. It is engaged in supplying warehousing services.

Is ITC admissible on inward supplies used for construction of such warehouse?

Is the warehouse intended to be a permanent structure?

Does the technology used for construction involve civil work for supporting the pre-fabricated structure?

Can the warehouse be conceived without beneficial enjoyment of the civil structure embedded on earth?

“Immovable Property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth

Assessee engaged in providing shared workspace

Is ITC eligible on detachable sliding & stacking glass partitions, capitalised as “furniture & fixtures”?

ITC eligible on detachable wooden flooring, capitalised as “furniture & fixtures”?

Are the glass partitions (fixed to building, which separates office space given on rent) essential for letting out?

Do the glass partitions offer certain degree of permanence that office space of one tenant can be separated from another?

Can the wooden flooring be easily detached without damage to either floor / building & re-used without altering the office space?

Assessee is developing a shopping mall

GST paid on procurement of goods / services for installation of chillers, air handling unit, lift, escalator, traveller, water treatment plant, sewage treatment plant, etc.

Can assessee avail ITC?

Definition of P&M:

means apparatus, equipment, and machinery fixed to earth by foundation / structural support that are *used for making outward supply*

includes such foundation and structural supports

Excludes: (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

Are provision of aforesaid facilities essential for a mall?

Can they be considered separate from the building / civil structure?

Employer hires cars for transport of employees



Is employer eligible to claim ITC on such car hire?



S.17(5): ITC available if inward supply is used for outward taxable supply of same category of goods/services or as element of taxable composite / mixed supply

Would the position vary for health insurance taken by employer for employees' welfare?

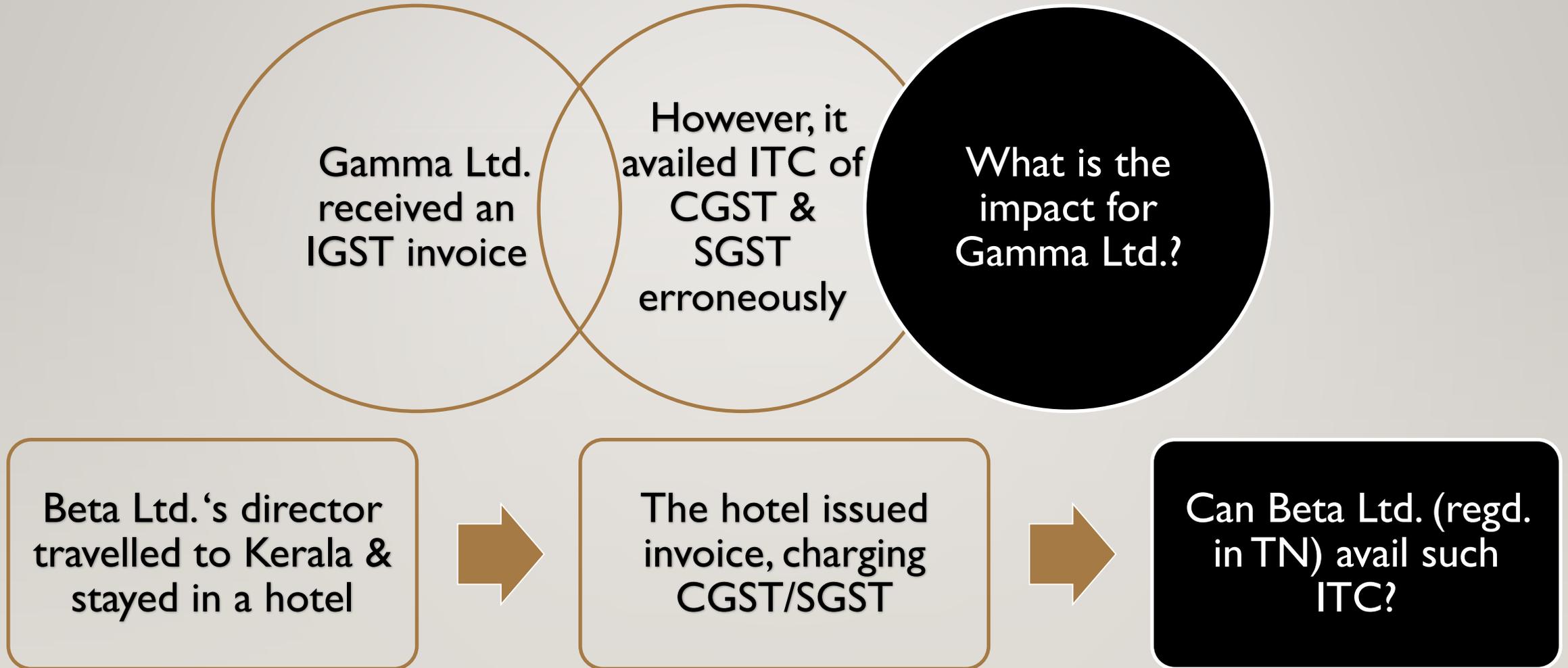
Employer operates canteen for its employees, mandated by law



Is employer eligible to claim ITC on canteen expenses?



S.17(5): ITC available, where it is obligatory for employer to provide the same to its employees under law



Kappa Ltd. distributed electrical items like, switches, fan, cables, to flood affected people



No amounts were collected. These were accounted as CSR expenses



Can ITC be claimed on such CSR expenditure, which is mandatory in nature?



Can CSR be termed as 'gift' till 30-Sep-23?

GOODS DESTROYED

24

Assessee, part of Govt. of India, manufactures commercial explosives

It procures inputs and manufactures samples.

Samples of finished goods are sent for testing

The samples are destroyed during, and as part of, the tests

Should ITC be reversed for normal loss during manufacture ?

Should ITC be reversed for such goods destroyed?

Alpha Ltd. purchased raw materials / capital goods (from regd. dealer) & goods were transported to its leased factory in Jan-2018

It commenced business & registered under GST law on 01-Apr-2018

Can assessee claim ITC on inputs, input services & capital goods received prior to registration?

R.36(2): ITC cannot be claimed if invoice does not contain GSTIN of recipient

S.18(1)(a): Person who applied for registration within 30 days of becoming liable entitled to ITC only on inputs in stock

Thank You

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Advocate

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