The Chamber of Tax Consultants
WEBINAR ON ISSUES REGARDING SCHEDULE III ENTRIES UNDER GST

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DECEMBER 9, 2020 @ 5:30PM – 7:30PM

INTRODUCTION

Section 9: Levy and Collection:

"*(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption …* "

Section 7: Scope of Supply:

(1) For the purposes of this Act, the expression "**supply**" includes —

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business; **and**

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(d) ***** <omitted>

INTRODUCTION

Section 7: Scope of Supply: (contd.)

(1A) Where certain activities or transactions, constitute a supply in accordance **with the provisions of sub-section (1),** they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1):

(a) activities or transactions specified in Schedule III; OR

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as:

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods

ESSENTIAL INGREDIENTS : LEVY OF GST

From the above provisions, it becomes apparent that for a levy of GST:

(1) There must be a supply;

(2) supply must be for goods or services or both;

(3) such supply must be for a consideration (there are some exceptions) i.e. there must be a quid pro quo between the parties; '*consideration*': Section 2(31) of the CGST Act, 2017

(4) such supply should be in the course or furtherance of business

Schedule III

Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services

1. Services by an employee to the employer in the course of or in relation to his employment.

2. Services by any court or Tribunal established under any law for the time being in force.

3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(c)the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

Schedule III

Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services

5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

6. Actionable claims, other than lottery, betting and gambling.

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Explanation 1: For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

Explanation 2: For the purposes of this paragraph, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (52 of 1962).

CASE STUDY I : Mr. Double Role

- Mr. Double Role is a highly qualified engineer who is employed by A Ltd. since 2014. In 2020, A Ltd. enters into a 50-50 Joint Venture with B Ltd. to carry out certain complex, long-term infrastructure project.
- From 2020, Mr. Double Role's employment contract is amended to give equal control to B Ltd. The contract also provides that Mr. Double Role is equally answerable to his superiors at both A Ltd. and B Ltd. and that his performance appraisal, etc. will be done after consulting his superiors at B Ltd., also. The contract in this case will be entered as a tripartite arrangement by both A Ltd., and B Ltd., with Mr. Double Role.
- The salary and other benefits such as PF, etc. continue to be administered by A Ltd. like earlier. However, 50% of the same is reimbursed by B Ltd. to A Ltd. on a monthly basis.

Is GST payable on the amount reimbursed by B Ltd. to A Ltd.?

CASE STUDY I : Mr. Double Role

- Mr. Double Role is deeply unhappy in reporting to multiple superiors across the two organisations. He does not mind continuing to work, however, he has requested that the reporting structure be simplified to get rid of the insidious effects of internal politics within the organization.
- A Ltd. and B Ltd. accede to his request and amend the employment contract to provide that Mr. Double Role will be exclusively answerable to the COO of A Ltd.
- If any other personnel of either of the two companies have any issue with his work, they will be required to take it up with the COO of A Ltd., who alone will take any decision with regard to Mr. Double Role. The salary structure and payment thereof continues as before.

What will be the GST implication in this scenario?

DISCUSSION : Schedule III Para 1

"Activities or transactions which shall be treated neither as a supply of goods nor a supply of services:

***1.** Services by an **employee to the employer** in the course of or in relation to his employment … "*

Test: Employer-Employee Relationship

- There should be a contract of employment
- Employer should have the right to hire or fire the employee
- Payment of remuneration – directly or indirectly
- Employer should be responsible for payment/deduction of taxes and other statutory contributions
- Employer should not only have control over work to be done but also the manner in which the work is to be done

DISCUSSION : CONTROL TEST

Workmen of Nilgiri Co-Op. Mkt. Soc. Ltd. (2004) 3 SCC 514

Historically, the 'control' test, i.e., could the employer control not just what the person was to do, but also the manner of doing it. There is one single test but the following factors may be considered :

- who is the appointing authority;
- who is the pay master;
- who can dismiss;
- how long alternative service lasts;
- the extent of control and supervision;
- the nature of the job; example: whether it is professional or skilled work;
- nature of establishment;
- the right to reject.

DISCUSSION : HSN Explanatory Notes

998514 - Temporary staffing services

This service code includes supplying personnel for temporary work assignments

Note: *The temporary staffing firm hires its own employees and assigns/supplies them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects. The employees are on the payroll of the temporary staffing firm which is legally responsible for their actions, but when working they are under the direct supervision of the client. The temporary staffing firm specifies the pay, benefits, etc. of the employee.*

DISCUSSION : HSN Explanatory Notes

998515 - Long-term staffing (payrolling) services

This service code includes supplying personnel for extended work assignments

Note: *Under the terms of this arrangement, the client may recruit the person or persons hired by the staffing firm and assigned to their place of work or transfer a portion of their existing workforce to the staffing firm. Long-term employees are placed on the payroll of the staffing firm, which is legally responsible for their actions, but when working they are supervised by the client. This service includes labour leasing, staff leasing, employee leasing, extended employee staffing and payrolling. The services of Professional Employer Organizations (PEO's) are not included. (This service code does not include payroll processing services, cf. 998223)*

DISCUSSION

The present case study is in relation to **Joint Employment**

*Where an **employee** is employed with **more than one employer**.*

*****

Q. Can it be said that Mr. Double Role is jointly employed by both A Ltd. and B Ltd. and therefore, the service rendered by him to B Ltd. is covered under Schedule III?

Q. Is the salary cost reimbursed by B Ltd. to A Ltd. liable to GST?

DISCUSSION

Joint Employment : Generally

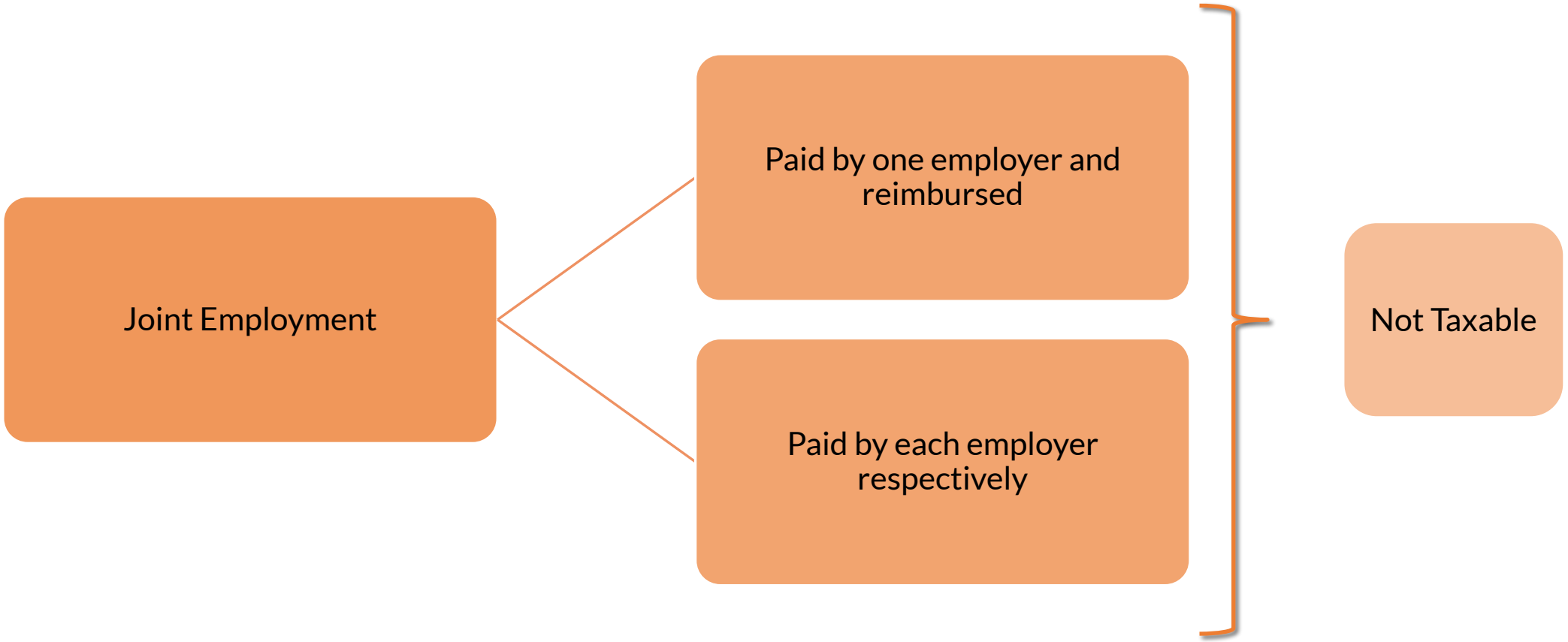
One employee is employed with more than one employer

Both the employers are able to exercise independent control

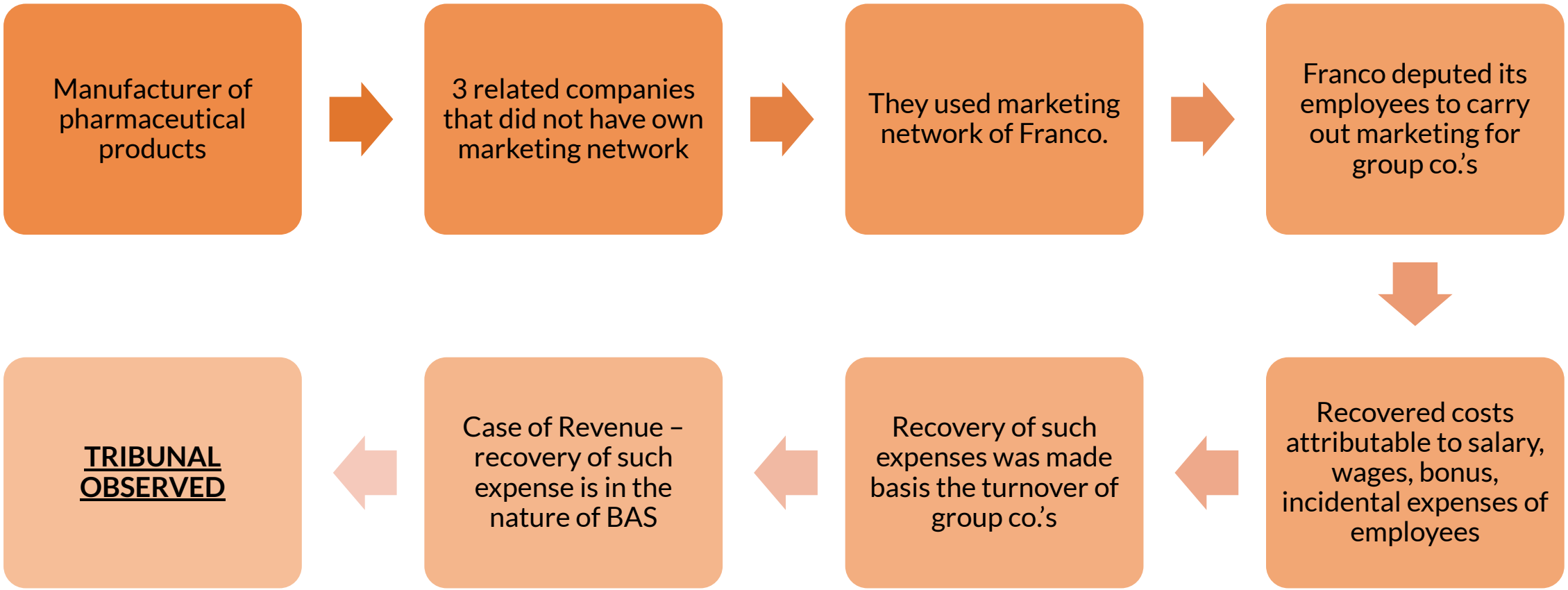
Both the employers stand to benefit from the work done by the employee

Each employer pays his share of emoluments or one of them pays on behalf of other employers and recovers the same on actuals

DISCUSSION : Joint Employment : Taxability



Franco Indian Pharmaceutical (P) Ltd. v. Commr. Of Service Tax (Part1)



Franco Indian Pharmaceutical (P) Ltd. v. Commr. Of Service Tax (Part 2)

TRIBUNAL OBSERVED

It is undisputed that products were marketed by Franco's employees sent on deputation

Agreement talks about lending of services of employees required from time to time

Deputed employees were governed by, rules, T&C, applicable to that group Co.

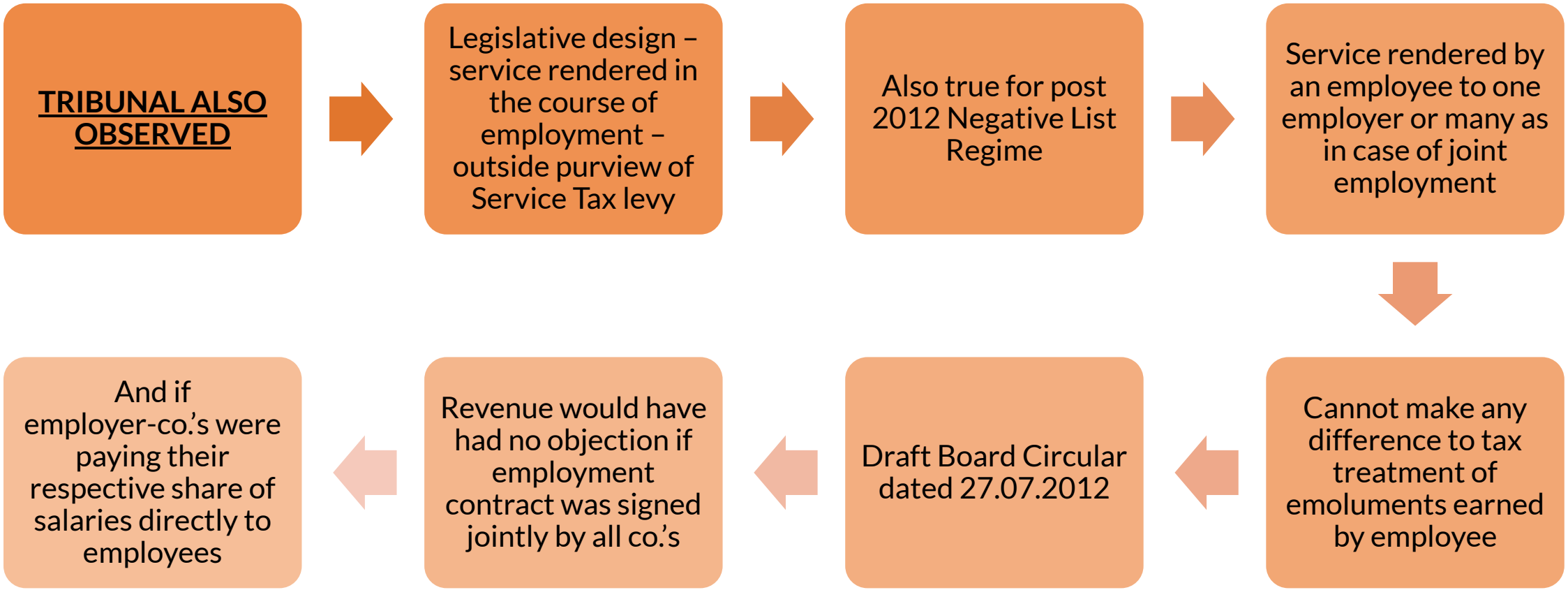
Sales made by deputed employees were considered as sales made by group co.

Complaint regarding sold product, addressed and solved by group co. and not Franco.

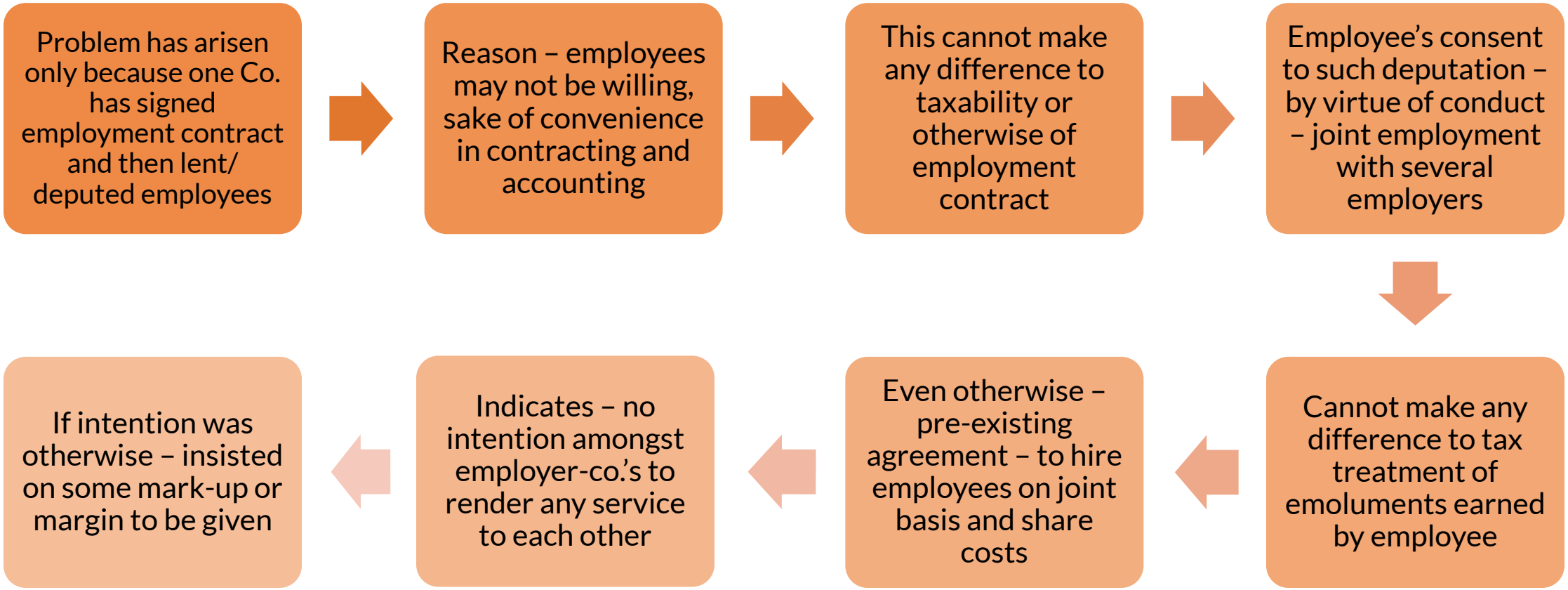
Franco is only deputing employees

Employees called back or deputed to other group Co. after job is completed

Franco Indian Pharmaceutical (P) Ltd. v. Commr. Of Service Tax (Part 3)



Franco Indian Pharmaceutical (P) Ltd. v. Commr. Of Service Tax (Part 4)



Franco Indian Pharmaceutical (P) Ltd. v. Commr. Of Service Tax (Part 5)

Absence of mark-up or margin → Payments received will not partake the character of consideration of service → Will merely represent reimbursement of shared costs → Order set aside and appeal allowed with consequential relief, if any

FRANCO DISCARDED AS IT WAS RENDERED DURING SERVICE TAX REGIME

Q: Whether activities performed by employees in the course of their employment, for the entity as a whole, from the corporate office located in a particular state, would be treated as a supply of service by the corporate office to its branches in other states?

Controversy due to ruling of Karnataka AAAR in the case **M/s Columbia Asia Hospitals Pvt. Ltd ('Columbia')**

- Columbia operates across six states, having 11 hospitals
- Employees of its Indian Management Office (IMO) i.e. corporate office in Karnataka, carry out activities like accounting, administration and maintenance of IT, the benefit of which flows across the Co.
- IMO also avails services such as renting immovable property, telephone, business consultancy etc.
- Common expenses of IMO other than employee costs are allocated to other units basis their turnover
- Columbia contended that the employee costs shall not be allocated as the employer-employee relationship is with the legal entity as a whole and not confined to location of RP.

FRANCO DISCARDED AS IT WAS RENDERED DURING SERVICE TAX REGIME

It was observed by AAAR that:

- employer-employee relationship exists only with IMO
- IMO and other units are distinct persons.
- The employer-employee relationship is to be viewed separately for every registered unit.
- Accordingly, as per section 7(1)(c) of CGST Act r.w. Entry 2 of Schedule I of the said Act, services of employees stationed at IMO which benefit other distinct persons, will be considered as a supply of service by one distinct person to another.

Columbia had cited decisions of Hon'ble Tribunal of Mumbai in the case of Franco India Pharmaceutical (P) Ltd. and Milind Kulkarni in its application

AAAR observed that the said decisions will **not** be applicable to the matter at hand since they were rendered in the context of service tax law and that the taxable event under service tax law and GST law are vastly different and the ratio of decisions cited, cannot be applied to transactions in GST regime.

Case Study I : Concluding Remarks

1. In the first scenario, it a case of joint employment where the employer B Ltd. has complete control and supervision over Mr. DoubleRole and his work. Therefore, in the existence of employee-employer relationship in undertaking the work, the cost reimbursed by B Ltd., to A Ltd., is not liable to GST.

2. In the second scenario, the control appears to be only with A Ltd. It is ultimately A Ltd., which is responsible for the work of Mr. DoubleRole as the COO of A Ltd. has assumed overall superintendence and control over Mr. DoubleRole. Thus, in the absence of the employee-employer relationship, one can argue the transaction is not covered under Schedule III

CASE STUDY II : Strategy Games Ltd.

- **Strategy Games Ltd.** runs an online portal, where players can play **two** kinds of games.
- **GAME 1**: Participate in online chess games by registering with **Strategy Games Ltd.**
- **How it Works:** A real-world chess game is scheduled to be played between Magnus Carlsen and Vishwanathan Anand. A day before the commencement of the real-world chess game, the participants need to deposit money with **Strategy Games Ltd.** towards **one** possible outcome, out of **three** : (1) Victory secured by Magnus Carlsen, (2) Victory secured by Vishwanathan Anand, (3) 'Draw' between the players.
- The online portal maintained by **Strategy Games Ltd.** provides data analytics relating to past performance of each chess player, which the participants make use of towards decision making. For example: In the present case, one can have access to Fide Ratings of both the players; their results playing against each other; Anand's advantage over Carlsen playing white pieces and vice-versa; advantage each player had in the past, when the game is played with specific openings such as Queens gambit, Sicilian defense etc.

CASE STUDY II : Strategy Games Ltd.

- At the end of each game, the total deposits are distributed among the winners.
- Out of the amount deposited towards the game, a nominal 'portal usage fee' at 10% of the deposit is deducted by **Strategy Games Ltd.** GST invoice in this regard is issued to the participants towards the 'portal usage fee' charging GST at the rate of 18%.

However, the GST Department is of the view that the GST is to be discharged on the entire amount deposited by the participants.

CASE STUDY II : Strategy Games Ltd.

Strategy Games Ltd. runs an online portal, where players can play **two** kinds of games.

- GAME 2: Participate in the online game of Ludo where 4 participants deposit Rs. 100 each with **Strategy Games Ltd.** The prize money will be distributed among the participants as follows:

  Winner will receive Rs. 200; First runner up: Rs. 80; Second runner up: Rs. 40 and the third runner up: nil.

- **Strategy Games Ltd**. deducts a nominal 'portal usage fee' of Rs. 20 from each of the participants.

CASE STUDY II : Strategy Games Ltd.

- In light of **Entry 6 in Schedule III of the CGST Act, 2017** and **Rule 31A (3) of the CGST Rules**, advise **Strategy Games Ltd.** on the following:
  - What is the **nature** of the game in each case?
  - What will be the **value of supply** in each of the above games?
  - What will be the **GST implication on the deposits** made by players?

DISCUSSION : Schedule III Para 6

"Activities or transactions which shall be treated neither as a supply of goods nor a supply of services:

***6.** Actionable Claims, other than lottery, betting and gambling"*

Effect of Entry 6 in Schedule III: When read with Section 7(2)(a) of the CGST Act, 2017, it becomes clear that activities/transactions involving sale-purchase of **actionable claims**, as long as they do not relate to lotteries, betting and gambling, shall NOT be subject to a GST Levy, since they do not constitute 'supply' under India's GST Law. In order to better appreciate the meaning of the terms used above, it would be prudent to delve into the relevant legal provisions.

ACTIONABLE CLAIMS

Section 2(52) of the CGST Act, 2017 defines 'goods' as *"every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"*

Section 2(1) of the CGST Act, 2017 defines 'actionable claim' as: "*actionable claim shall have the same meaning as assigned to it in Section 3 of the Transfer of Property Act, 1882*"

Section 3 of the Transfer of Property Act, 1882 defines 'actionable claim' as "*a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent*"

ACTIONABLE CLAIM : ESSENTIALS

Consequently, the essential ingredients of an actionable claim are:

1. It should be a claim to an unsecured debt; **OR**
2. It should be a beneficial interest in movable property; **AND**
3. The amount of the claim to unsecured debt is fixed and is known in advance; **AND**
4. The claim should be entertained in a civil court; **AND**
5. The claim to the unsecured debt should be capable of being transferred.

ACTIONABLE CLAIMS : EXAMPLES

Instances and examples of "**actionable claim**":

1. **Claim** to arrears of rent money
2. **Claim** to insurance money
3. **Claim** to the amount credited in Employee's Provident Fund Account
4. **Right** to winnings in a game or contest
5. **Claim** in profit by partner in firm

VALUE OF SUPPLY : RULE 31A

Rule 31A of the CGST Rules, 2017: Value of Supply in case of lottery, betting, gambling and horse racing:

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.

(2) The value of supply of lottery shall be deemed to be 100/128 of the face value of the ticket or of the price as notified in the Official Gazette by the Organizing State, whichever is higher.

Explanation: For the purpose of this sub-rule, "Organizing State" has the same meaning as assigned to it in Clause (f) of Sub-Rule 1 of Rule 2 of the Lotteries (Regulation) Rules, 2010

(3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

LOTTERIES, BETTING & GAMBLING

Section 65B(15) of the Finance Act, 1994: "Betting and Gambling" *means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest*, whose result may be determined by chance or accident, *or on the likelihood of anything occurring or not occurring.*

The New Encyclopedia Britannica defines gambling as *"The betting or staking of something of value, with consciousness of risk and hope of gain on the outcome of a game, a contest, or an uncertain event the result of which may be determined by chance or accident or have an unexpected result by reason of the better's miscalculation*

Black's Law Dictionary (Sixth Edition) *"Gambling involves, not only chance, but a hope of gaining something beyond the amount played. Gambling consists of consideration, an element of chance and a reward"....*

Section 13 of The Maharashtra Prevention of Gambling Act, 1887: Saving of games of mere skill: *Nothing in this Act shall be held to apply to any game of mere skill wherever played.*

GAMES OF CHANCE v. GAMES OF SKILL

- From the definitions above, it is evident that “chance” is an essential element to categorize something as “betting”, “gambling”, “wagering” or “lottery”. Consequently, games of chance can be linked to these activities. However, some scenarios and games involve ‘chance’, as well as ‘skill’.
- With respect to games of chance, judicial precedents have held that a game of chance is a game that is determined entirely by mere luck, the result of which is wholly uncertain and doubtful and, a human being cannot apply his/her mind to estimate the result.
- Whether a game is of chance or skill is a question of fact to be decided on the basis of facts and circumstances of each case. The Indian courts have recognised that no game is a game of pure skill alone and almost all games involve an element, albeit infinitesimal, of chance.
- The Hon’ble Supreme Court of India (i.e. the Apex Court) has interpreted the words “mere skill” to include games which are preponderantly of skill and even if there is an element of chance, if a game is preponderantly a game of skill, it would nevertheless be a game of “mere skill”.
- Consequently, the Courts have held that the “**PREDOMINANT**” feature (chance/skill) would determine the character of the activity/game.

SOME KEY JUDICIAL PRONOUNCEMENTS

Horse Racing: Game of Skill : "Substantially and Preponderantly of skill"

"we have no hesitation in reaching the conclusion that the horse-racing is a sport which primarily depends on the special ability acquired by training. It is the speed and stamina of the horse, acquired by training, which matters. Jockeys are experts in the art of riding. Between two equally fast horses, a better trained jockey can touch the winning-post."

K.R. Lakshmanan Vs. State of Tamil Nadu and Ors. [AIR 1996 SC 1153]

The Game of Rummy: Game of Skill : "Preponderantly of Skill"

"Rummy, on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill"

State of Andhra Pradesh v. K. Satyanarayana and Ors. (1968) 2 SCR 387

SOME KEY JUDICIAL PRONOUNCEMENTS

(Dream 11) Online Fantasy Cricket Games: Game of Skill : "Undoubtedly game of skill, not chance"

"It is undoubtedly a game of skill and not a game of chance"

Gurdeep Singh Sachar v. Union of India & Ors. (Cr.PIL) decided: 30.04.2019 by Bombay High Court, Upheld by the SC

(Dream 11) Online Fantasy Cricket Games: Game of Skill : "Involves substantial skill"

"The fantasy games of the respondent company cannot be said to fall within the gambling activities as the same involves the substantial skills"

Varun Gumber v. UT of Chandigarh & Ors. (CWP) 7559 of 2017 decided: 18.04.2017 by P&H High Court, Upheld by SC

A QUICK RECAP

BETTING AND GAMBLING

NOT BETTING AND GAMBLING

Case Study II : Concluding Remarks

1. The first game offered by Strategy Games Ltd. is a game of chance **and** a game of skill. We can argue that it is **predominantly a game of skill**, since players analyse large quantities of data to arrive at their conclusions. Better analysis would lead to better results!

2. The second game of ludo does not involve any degree of skill or even if it does, the game is predominantly a game of chance and hence, covererd in the expression of "betting or gambling"

3. Now that the *nature* of the game is clear, we may look at the *value of supply*: The money pooled by the participants in first game is in the nature of an 'actionable claim not amounting to betting & gambling'. Consequently, it is saved by Schedule III Para 6 of the CGST Act, 2017 and no GST is leviable. The Value of Supply is, therefore, limited to the value of the 'portal usage fee' and GST at the applicable rate is leviable thereon.

Case Study II : Concluding Remarks

1. The second game offered by Strategy Games Ltd. is a game of chance **and** a game of skill. We can argue that it is **predominantly a game of chance**, since no matter how much analysis the players engage in, the outcome of the Ludo match will ultimately be determined by the throw of a dice! Their 'skill' can never overpower/overcome the element of chance in this scenario. (Betting and Gambling)

2. The *nature* of the game is clear, we may now look at the *value of supply*: The money pooled by the participants is in the nature of an 'actionable claim *amounting* to betting & gambling'. Consequently, it **cannot** be saved by Schedule III Para 6 of the CGST Act, 2017. Pursuant to Rule 31A of the CGST Rules, 2017, the amount put into the totalisator forms a part of the value of supply, and GST is leviable on the total amount, *not merely the 'portal usage fee'* as in Game I.

Case Study III : Long Term lease

1. A Ltd. is engaged in the manufacture of motorcycles on a leasehold land demised in its favour by MIDC for a period of 95 years vide a lease deed 01.01.1970. As per the terms of the lease, A Ltd. inter-alia had the right to use the plot of land and construct factory building on the same. On such leasehold land, A Ltd. at its own cost constructed a factory building and started engineering activities of manufacturing and assembly of motorcycles.

2. A Ltd. now intends to transfer/assign the leasehold right in plot of land together with ownership of all structure and building thereon to B Ltd. The transfer will be with the consent of MIDC and Deed of assignment will be registered. B Ltd. will pay a consideration of Rs. 50 crores towards building as well as premium for transfer of lease. Further, B Ltd. will also pay a monthly rental of Rs. 1 Lakh to A Ltd. towards the lease hold land.

Case Study III : Long Term Lease

In terms of the clauses of the lease deed, representation is made before MIDC for grant of consent for transfer and assignment of its interest in the lease hold land in favor of B Ltd. By an order dated 1st November 2020, MIDC has granted its consent for such transfer and assignment.

What will be the GST implication on this transaction?

DISCUSSION
Schedule III Para 5 & Schedule II Para 2

"Activities or transactions which shall be treated neither as a supply of goods nor a supply of services:

***5.** Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building"*

Schedule II Para 2:

Land and Building

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

DISCUSSION
Section 7 of the CGST Act, 2017

Section 7 of the CGST Act, 2017:

(1) For the purposes of this Act, the expression "supply" includes:

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, **licence, rental, lease** or disposal made or agreed to be made **for a consideration** by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

Section 7(1A) of the CGST Act, 2017:

where certain activities or transactions, **constitute a supply in accordance with the provisions of sub-section (1),** they shall be treated either as supply of goods or supply of services as referred to in **Schedule II.**

DISCUSSION
Some relevant judicial pronouncements

Under the tenets of English Law, whatever is affixed or built on the soil becomes a part of it and is subjected to the same right of property as the soil itself or "what is annexed with the soil goes with the soil" does **not** apply in India. As a result of this doctrine applicable in English Law, buildings belong to the owner of the land in England.

India's position on the same is distinctly different from the English one above: a party constructing any building on another's land is allowed to clear the materials once the lease expires or the lease is cancelled due to some pre-determined reasons. Under Section 108(h) of the Transfer of Property Act, a lessee, before the expiry of lease, can remove all the structures and buildings erected by him on the leasehold, as long as the same is not contrary to the contract entered into between him and the lessor. Hence, **dual and several ownership of land and building** and **tenancy of land without tenancy of the buildings** is allowed in India (as decided by the Hon'ble Madras High Court in the case of **T. S. Devaraja Gramani v. Murugesan, (1966) 2 MLJ 340**

DISCUSSION

Notification 12/2017-Central Tax (Rate) dt. 28.06.2017 (S. No. 41)

Description	Rate	Conditions
Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long-term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area. Explanation.- For the purpose of this exemption, the Central Government, State Government or Union territory shall have 20 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.	**NIL**	Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area: Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard: Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty: Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub- lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.

DISCUSSION

Notification 12/2017-Central Tax (Rate) dt. 28.06.2017 (S. No. 41B)

Description	Rate	Conditions
Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 01.04.2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).	**NIL**	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner - [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation * Total carpet area of the residential apartments in the project); Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation. The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.

DISCUSSION
Is Long-Term Lease Taxable under GST?

Decision of the Bombay HC in the case of Builders Assn. of Navi Mumbai v. UoI (AIR 2018 Bom 138)

"If one refers to Schedule II, Section 7, then Item No. 2 styled as land and building and any lease, tenancy, license to occupy land is a supply of service. Any lease or letting out of a building, including commercial, industrial or residential complex for business, either wholly or partly is a supply of service. It is settled law that such provisions in a taxing statute would have to be read harmoniously in order to understand the nature of the levy, the object and purpose of its imposition. No activity of the nature mentioned n the inclusive provision can thus be left out of the net of the tax. Once this law, in terms of the substantive provisions and the Schedule, treats the activity as supply of goods or supply of services, particularly in relation to land and building and includes a lease, then the consideration therefor as a premium/one-time premium is a measure on which tax is levied, assessed and recovered. We cannot then probe into the legislation any further … We are, therefore, of the clear view that the demand for payment of GST is in accordance with the law. The said demand cannot be said to be vitiated by any error of law apparent on the face of the record."

DISCUSSION
License *versus* Lease

Section 52 of the Indian Easements Act, 1882

Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a **license**.

Section 105 of the Transfer of Property Act, 1882

A **lease** of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. Lessor, lessee, premium and rent defined. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

DISCUSSION

Should this transaction be liable for GST : Our View

A. If we read Schedule II Para 2, the term 'lease' is in the company of the following items: *tenancy*, *easement*, *license to occupy land*, *letting out of a building including commercial*, *residential or industrial* etc. Consequently, it must be argued that the term 'lease' must be understood in the context of the words that it is grouped with.

This is a commonly accepted principle of statutory interpretation, known as *noscitur a sociis*, which stipulates that the meaning of a word **must** be construed/determined according to the words immediately surrounding it.

The words immediately surrounding 'lease' all encompass arrangements, where a mere temporary right to enjoy the property has been granted, without any change in ownership/grant of interest in the property.

DISCUSSION
Should this transaction be liable for GST : Our View

B. Reliance must be placed on the decision in the case of **Greater Noida Industrial Development Authority 2015 (38) S.T.R. 1062 (Tri. - Del.)**, which was subsequently affirmed by the Allahabad HC.

The Court observed as follows:

Para 10: *Whether the Service Tax is chargeable only on the lease rent or also on one-time premium amount charged in respect of long-term leases?*

Para 10.1: A lease is a transaction, which has to be supported by consideration. The consideration may be either premium or rent or both. The consideration which is paid periodically is called rent. As regards premium, the Apex Court in the case of *Commissioner of Income Tax, Assam and Manipur* v. *Panbari Tea Co. Ltd.* reported in (1965) 3 SCR 811 has made a distinction between premium and rent observing that when the interest of the lessor is parted with for a price, the price paid is premium or salami, but the periodical payments for continuous enjoyment are in the nature of rent, the former is a Capital Income and the latter is the revenue receipt. Thus, the premium is the price paid for obtaining the lease of an immovable property. While rent, on the other hand, is the payment made for use and occupation of the immovable property leased. Since taxing event under Section 65(105)(zzzz) read with Section 65(90a) is renting of immovable property, Service Tax would be leviable only on the element of rent i.e. the payments made for continuous enjoyment under lease which are in the nature of the rent irrespective of whether this rent is collected periodically or in advance in lump sum.

DISCUSSION

Should this transaction be liable for GST : Our View

Para 10.1: **(contd.)** Service Tax under Section 65(105)(zzzz) read with Section 65(90a) cannot be charged on the "premium" or 'salami' paid by the lessee to the lessor for transfer of interest in the property from the lessor to the lessee as this amount is not for continued enjoyment of the property leased. Since the levy of Service Tax is on renting of immovable property, not on transfer of interest in property from lessor to lessee, Service Tax would be chargeable only on the rent whether it is charged periodically or at a time in advance. In these appeals, in the show cause notice dated 19-3-2012 issued by the Addl. Director, DGCEI, New Delhi, Service Tax has been demanded only on the lease rent and not on the premium amount while in the subsequent show cause notice dated 17-10-2012 issued by the Commissioner of Central Excise and Service Tax, Noida, the amount of premium has also been included in the lease rent for the purpose of charging of Service Tax for which no valid reasons have been given. Therefore, the Order-in-Original dated 30-4-2013 confirming the Service Tax demand on the premium amount is not correct and to this extent, the Service Tax demand would not be sustainable

DISCUSSION
Should this transaction be liable for GST : Our View

As a corollary, assuming without admitting that B Ltd. is liable to pay GST on the premium received by it on assignment of lease hold rights in land, (even though a consolidated premium is received towards assignment of leasehold rights in land and for transfer of ownership in building in favour of B Ltd.), a question may arise as to **what value GST is liable to be paid** since, sale of building as per Schedule III to the CGST Act, 2017 is neither supply of goods nor supply of service. It may be noted that the Legislation has not provided any mechanism to value a taxable supply which is a part of a composite supply comprising of both taxable supply and a non-taxable supply. Therefore, in the absence of any provision/machinery authorizing the taxing of such supply, the same cannot be implemented and would fail, as has been held by the Supreme Court in the case of **CIT v. B. C. Srinivasa Shetty (AIR 1981 SC 972)**

C. Further, it can be argued that the leasing of land by MIDC, and subsequently from A Ltd. to B Ltd. is a **transaction akin to sale of land**. This is because **both**, a 'lease' *and* 'sale' are leviable to stamp duty on the 'ready reckoner rate'. While other contracts are registered on the basis of the value agreed upon by the parties, the two exceptions appear to be long-term leases and deeds of sale. Therefore, such an argument can be profitably made.

DISCUSSION
Should this transaction be liable for GST : Our View

D. Additional reliance may be placed on the decision of the Hon'ble Supreme Court in the case of **All India Federation Of Tax Practitioners**, wherein this Court explained the concept of service tax and held that service tax is a Value Added Tax ('VAT' for short) which in turn is a destination-based consumption tax in the sense that it is levied on commercial activities and it is not a charge on the business but on the consumer. That, service tax is an economic concept based on the principle of equivalence in a sense that consumption of goods and consumption of services are similar as they both satisfy human needs. Today with the technological advancement there is a very thin line which divides a "**sale**" from "**service**". That, applying the **principle of equivalence**, there is no difference between production or manufacture of saleable goods and production of marketable/saleable services in the form of an activity undertaken by the service provider for consideration, which correspondingly stands consumed by the service receiver. It is this principle of equivalence which is inbuilt into the concept of service tax under the Finance Act, 1994. That service tax is, therefore, a tax on an activity. That, service tax is a value added tax.

DISCUSSION
Should this transaction be liable for GST : Our View

D. (contd.) The value addition is on account of the activity which provides value addition, for example, an activity undertaken by a chartered accountant or a broker is an activity undertaken by him based on his performance and skill. This is from the point of view of the professional. However, from the point of view of his client, the chartered accountant/broker is his service provider. The value addition comes in on account of the activity undertaken by the professional like tax planning, advising, consultation etc. It gives value addition to the goods manufactured or produced or sold. Thus, service tax is imposed every time service is rendered to the customer/client. This is clear from the provisions of Section 65(105)(zm) of the Finance Act, 1994 (as amended). Thus, the taxable event is each exercise/activity undertaken by the service provider and each time service tax gets attracted. The same view is reiterated broadly in the earlier judgment of this Court in *Godfrey Phillips India Ltd. v. State of U.P. [(2005 (2) SCC 515]* in which a Constitution Bench observed that in the classical sense a tax is composed of two elements : the person, thing or activity on which tax is imposed. Thus, every tax may be levied on an object or on the event of taxation. Service tax is, thus, a tax on activity whereas sales tax is a tax on sale of a thing or goods

Case Study IV : Exports

- A Ltd. located in Mumbai is engaged in the business of trading in chemicals. A Ltd. receives order from the customer located at Singapore for supply of chemicals. A Ltd. places an order for purchase of said chemicals from a vendor located at Vietnam and instructs the vendor to directly ship the goods to Singapore.

- The Vendor located at Vietnam would issue an invoice on A Ltd., against which payment would be made in foreign currency. In turn A Ltd. would raise an invoice on customer located at Singapore and would receive consideration in foreign currency. The above transactions are recorded in the books of account of A Ltd.

What is the GST implication in the above transaction?

Case Study IV : Exports

- Is A Ltd. entitled to take input tax credit on input services relating to the said transaction? (For example: Input tax credit on LC opening services provided by banks etc.)

- Assuming A Ltd. carries out only 2 kinds of transactions during a year (a) imports chemicals into India and thereafter, physically exports the same to countries outside India (with no domestic supplies) and (b) procures goods from a place outside India and supplies the same directly to a place outside India, how does the refund of unutilized input tax credit on input services be computed and availed by A Ltd.?

DISCUSSION : Schedule III Para 7

"Activities or transactions which shall be treated neither as a supply of goods nor a supply of services:

***7.** Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.*"

The following discussion has to be had in light of the **AAR ruling in the case of Sterlite Technologies Limited: 2020-TIOL-124-AAR-GST:** Similar facts as in the present case. The computer hardware was purchased from a place outside India and directly shipped to a place outside India.

Sterlite Technologies Limited 2020-TIOL-124-AAR-GST

Issues for determination before the Authority:

- Whether GST is payable on goods procured from vendor located outside India in a context where the goods so purchased are not brought into India?
- Whether GST is payable on goods sold to customer located outside India, where goods are shipped directly from the vendor's premises (located outside India) to the customer's premises?

Sterlite Technologies Limited 2020-TIOL-124-AAR-GST

AAR completely missed that this transaction is covered under Schedule III Para 7

- AAR treats this as 2 transactions: (1) procuring goods from vendor located outside India. Authority goes by the Customs Circular No.33/2017 dated 01.08.2017 and holds that the customs IGST under Section 3(12) is paid only when the Bill of Entry is filed and in the present case, since no BOE is filed, the question of paying IGST does not arise.

- On the second leg of the transaction, it says that “export of goods” means taking goods out of India to a place outside India, which is not the case here. Then holds that the transaction is covered under Section 7(5)(a) read with Section 10(1)(a) of the IGST Act and hence, an interstate supply liable to IGST.

DISCUSSION : Section 17 (1) of CGST Act, 2017

S. 17(1) Apportionment of credit and blocked credits: Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

DISCUSSION : Section 17 (2) of CGST Act, 2017

S. 17(2) Apportionment of credit and blocked credits: Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

DISCUSSION : Section 17 (3) of CGST Act, 2017

S. 17(3) Apportionment of credit and blocked credits: The value of exempt supply under sub-section (2) shall be such as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Explanation: For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in Paragraph 5 of the said schedule.

DISCUSSION : Section 54 (3) of CGST Act, 2017

Section 54(3): Subject to the provisions of Sub-Section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than:

(i) zero rated supplies made without payment of tax.

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

DISCUSSION : Rule 89 (4) of CGST Rules, 2017

Rule 89(4): In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of Section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

DISCUSSION : Rule 89 (4) of CGST Rules, 2017

Where:

(A) "**Refund amount**" means the maximum refund that is admissible;

(B) "**Net ITC**" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) "**Turnover of zero-rated supply of goods**" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

DISCUSSION : Rule 89 (4) of CGST Rules, 2017

(D) "**Turnover of zero-rated supply of services**" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "**Adjusted Total turnover**" means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding:

(a) the value of exempt supplies other than zero-rated supplies; and

(b) the turnover of supplies in respect of which refund is claimed under subrules (4A) or (4B) or both, if any,

during the relevant period;

(F) "**Relevant period**" means the period for which the claim has been filed.

DISCUSSION : Section 2 (112) of CGST Act, 2017

Section 2(112): "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess

DISCUSSION
"exempt supply" and "non-taxable supply"

- **Section 2(47):** "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

- **Section 2(78):** "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

CASE STUDY IV : Concluding Remarks

- There is no bar on availing credit on input services utilized in transactions covered under Schedule III.
- In an entire year, if a person only does out and out transactions and not a single physical export, then he may not be able to claim refund of those credits in the next financial year as Circular No.37/11/2018-GST, dated 15.03.2018 provides that the calendar month(s)/quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

CASE STUDY V : BONDED WAREHOUSES

- A Ltd. is engaged in the manufacture of steel and steel products at its factory at Thane. It obtained a license for its factory as a private warehouse under Section 58 of the Customs Act, 1962 and also an approval from the Commissioner of Customs to undertake manufacturing at the said private warehouse under Section 65.

- A Ltd. imports the inputs and capital goods required in the manufacture at JNPT port by filing a bill of entry for warehousing and thereafter, on receipt of the same at its factory undertakes manufacturing. It also procures other raw materials locally on payment of CGST/SGST. After the goods are manufactured, the same is exported and also cleared domestically. On some occasions, A Ltd. clears the warehoused goods to B Ltd., at Chennai, which also has a private warehousing license under Section 58 of the Customs Act, 1962.

CASE STUDY V : BONDED WAREHOUSES

What is the Customs/GST implication:

- On supply of goods manufactured for export and for domestic market ?
- On supply of warehoused goods and semi-finished goods to B Ltd. at Chennai.

DISCUSSION

Schedule III Para 8(a) Section 57, 58 of the Customs Act, 1962

"Activities or transactions which shall be treated neither as a supply of goods nor a supply of services:

8(a). *Supply of warehoused goods to any person before clearance for home consumption"*

Section 57 Licensing of public warehouses: The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a public warehouse wherein dutiable goods may be deposited.

Section 58 Licensing of private warehouses: The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

DISCUSSION
Section 65 (1) and Section 67 of the Customs Act, 1962

Section 65(1) Manufacture and other operations in relation to goods in a warehouse: With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions] as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.

Section 67 Removal of Goods from one warehouse to another: The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted

DISCUSSION
Section 68 of the Customs Act, 1962

Section 68 Clearance of warehoused goods for home consumption: Any warehoused goods may be cleared from the warehouse for home consumption, **if**:

(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

(b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; **and**

(c) an order for clearance of such goods for home consumption has been made by the proper officer.

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria;

Provided further that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon;

Provided also that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force

DISCUSSION
Section 69(1) of the Customs Act, 1962

Section 69(1) Clearance of warehoused goods for export: Any warehoused goods may be exported to a place outside India without payment of import duty, **if**:

(a) a shipping bill or a bill of export or the form as prescribed under section 84 has been presented in respect of such goods;

(b) the export duty, fine and penalties payable in respect of such goods have been paid; **and**

(c) an order for clearance of such goods for export has been made by the proper officer.

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis or risk evaluation through appropriate selection criteria.

DISCUSSION
Section 73A of the Customs Act, 1962

Section 73A Custody and Removal of warehoused goods:

(1) All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or section 58 or section 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.

(2) The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.

(3) Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.

CASE STUDY V : Concluding Remarks

Customs/GST implication on supply of goods manufactured for export:

(1) Goods that are exported from A Ltd.'s warehouse will be able to claim 'nil' rate of duty on account of being 'exports', and A Ltd. will not have to pay any BCD or IGST either! In this regard, reliance may be placed on Section 69 of the Customs Act, 1962.

Customs/GST implication on supply of goods manufactured for domestic market:

(1) Pursuant to Section 68 of the Customs Act, 1962, A Ltd. will have to discharge BCD and IGST levy (if any) on the imported goods and seek 'clearance of goods for home consumption' from the proper officer.

(2) Once sold in the domestic market, relevant CGST/IGST/SGST/UTGST will have to be discharged. A. Ltd. may also be able to claim ITC of IGST paid at the time of imports, towards the discharge of output GST liability.

CASE STUDY V : Concluding Remarks

Customs/GST implication on supply of warehoused goods/semi-finished goods to B Ltd. at Chennai:

(1) Pursuant to Schedule III Para 8(a) of the CGST Act, 2017, the supply of warehoused goods to **any person** before clearance for home consumption is **neither a supply of goods or services.** Similarly, pursuant to Section 67 and Section 73A of the Customs Act, 1962, these goods can be moved from warehouse to warehouse prior to their clearance for home consumption, or prior to their export.

(2) Consequently, we can say that there will be no duty/GST implication on such movement of goods from A Ltd.'s warehouse in Thane to B Ltd.'s warehouse in Chennai.

(3) Subsequently, when B Ltd. decides to clear the goods for export/home consumption, the relevant duty on those goods will have to discharged, and the procedure prescribed in Section 68 and Section 69 of the Customs Act, 1962 will apply.

The Chamber of Tax Consultants
WEBINAR ON ISSUES REGARDING
SCHEDULE III ENTRIES UNDER GST

Thank you for your time

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