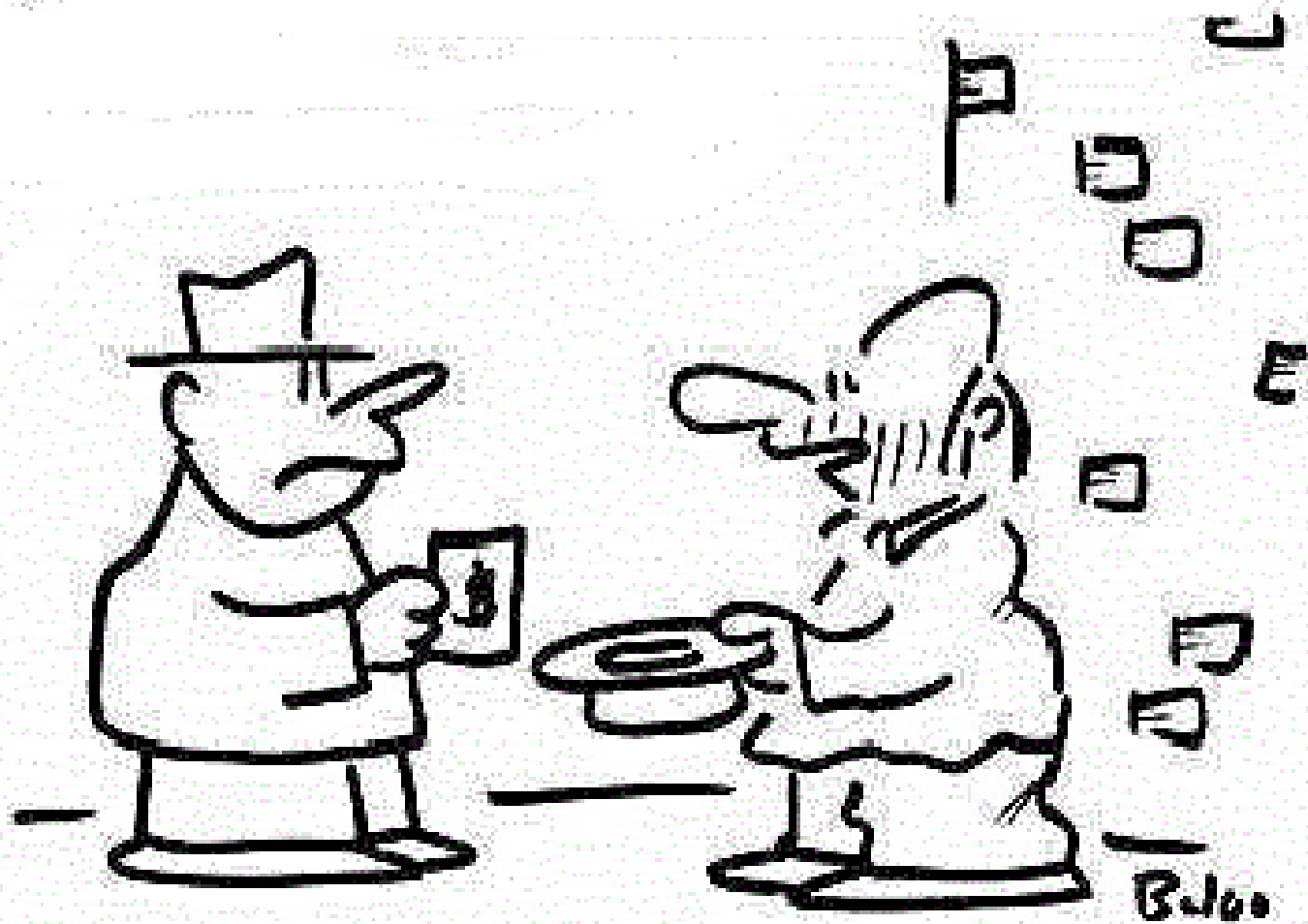


NEGATIVE LIST & RCM under **SERVICE TAX**


CA. Mil ind PAtel

Dt. 15.06.13 at ICAI Bhawan, Nagpur

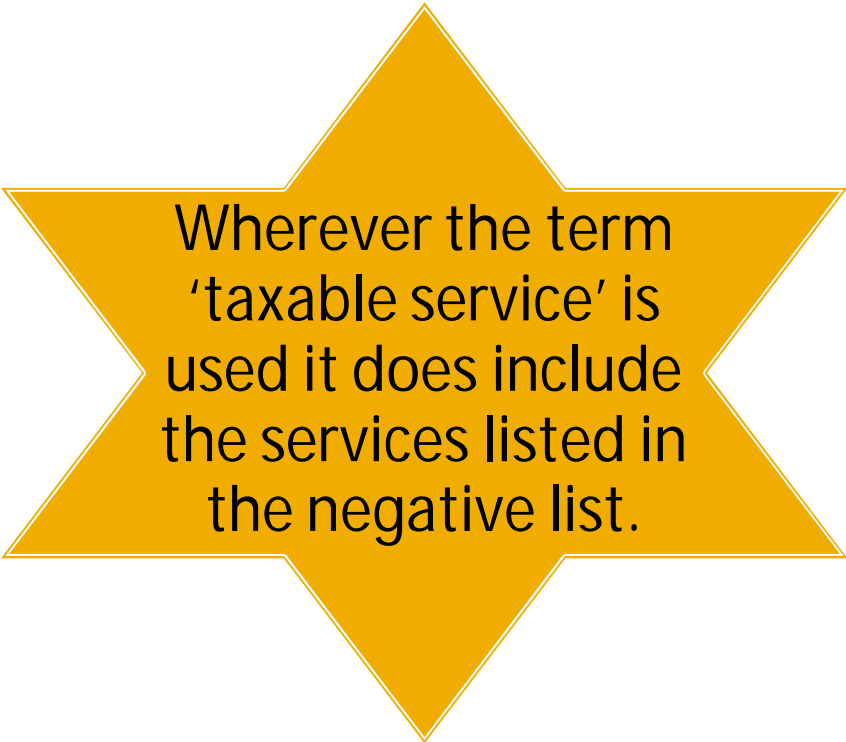


"Could you make it a dollar and four cents, sir? —
The Government says I have to collect **Service Tax**

LIST OF NEGATIVE SERVICES



Sec 65B , it
specifically
excludes services
listed in the
negative list.



Wherever the term
'taxable service' is
used it does include
the services listed in
the negative list.

LIST OF NEGATIVE SERVICES

Services by Govt. or
Local Authority..
Excluding –

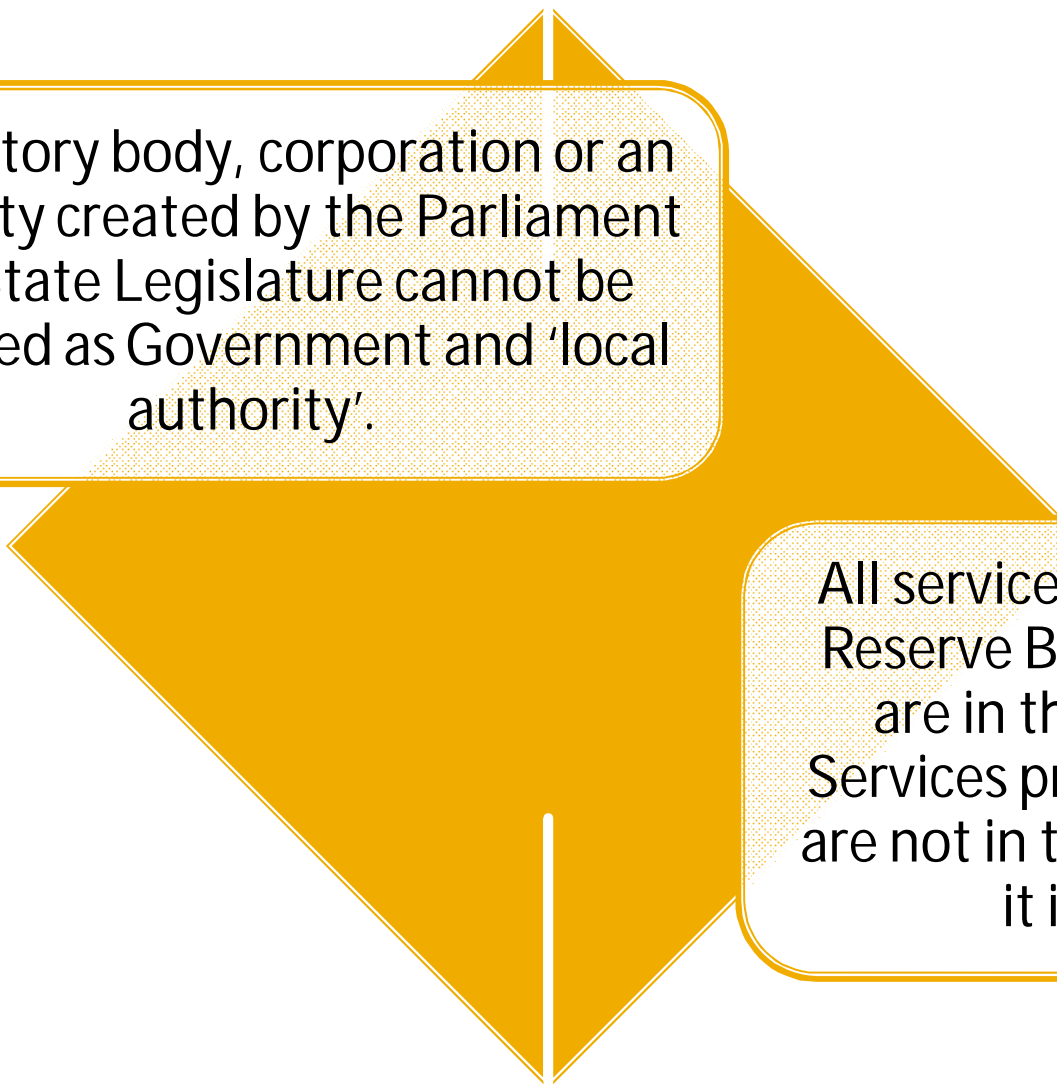
- Services by post Department such as Speed post, express parcel post, life insurance provided to a person other than Govt..
- Transport of goods or passengers
- Services in relation to aircraft or vessel, port or airport
- Support Services provided to business entity.

LIST OF NEGATIVE SERVICES

Meaning of 'Government and Local Authority'

- The phrase 'Government' has not been defined in this Act. As per General Clauses Act, 1897 'Government' includes both Central Government and any State Government.
- Local Authority is nothing but Panchayat, Municipality, Cantonment Board, development board and regional council.

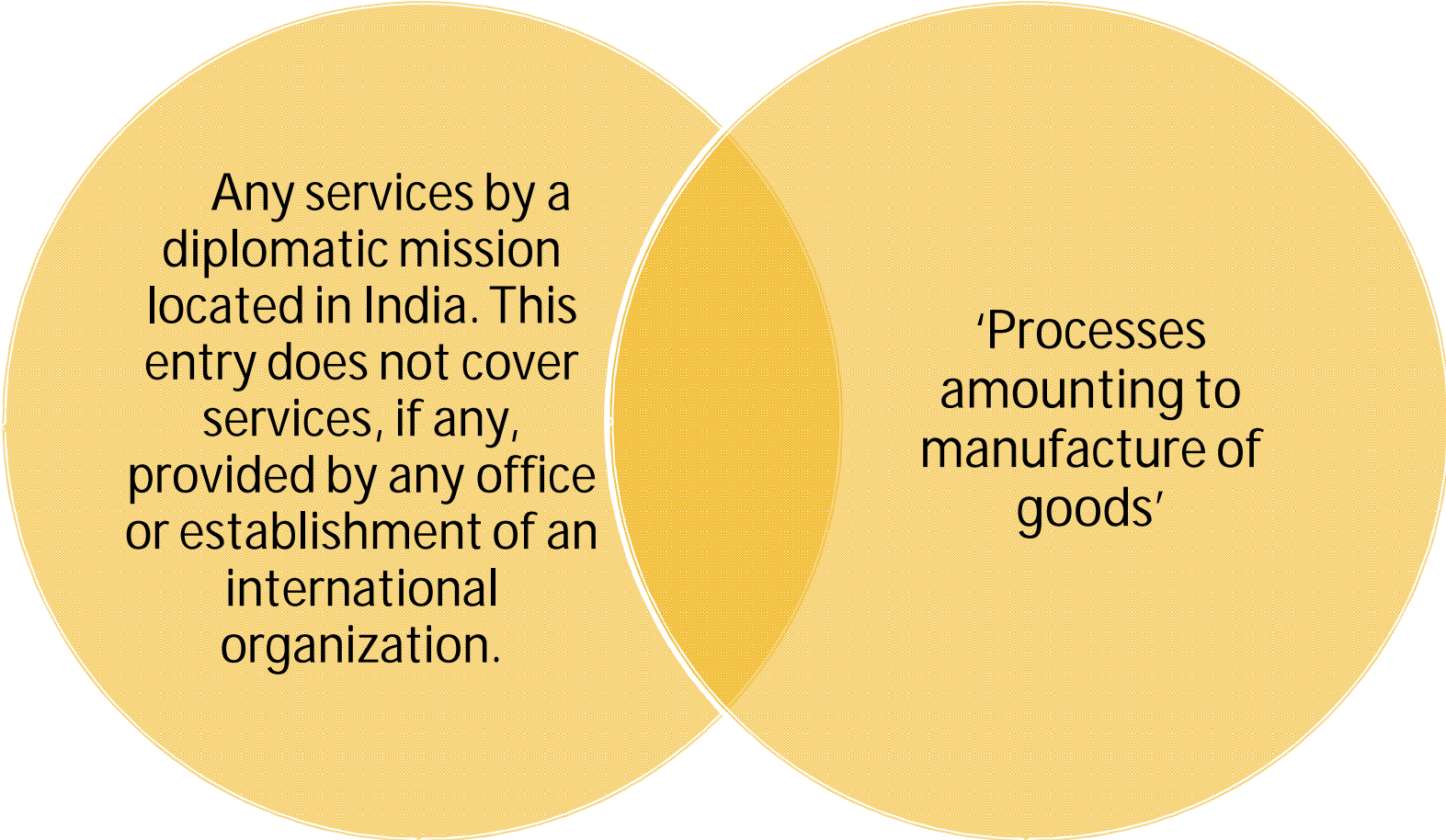
LIST OF NEGATIVE SERVICES



A statutory body, corporation or an authority created by the Parliament or a State Legislature cannot be regarded as Government and 'local authority'.

All services provided by the Reserve Bank of India (RBI) are in the negative list. Services provided to the RBI are not in the negative list so it is taxable.

LIST OF NEGATIVE SERVICES



Any services by a diplomatic mission located in India. This entry does not cover services, if any, provided by any office or establishment of an international organization.

'Processes amounting to manufacture of goods'

LIST OF NEGATIVE SERVICES

Services relating to agriculture or agricultural produce..

Including cultivation, harvesting, seed testing etc..

Supply of farm labour

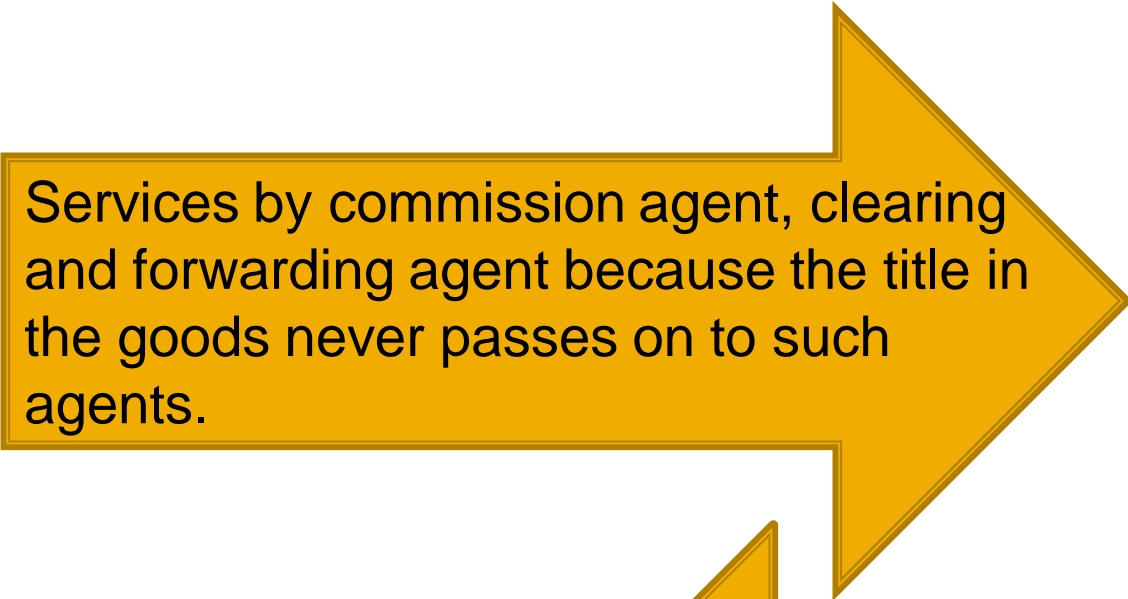
Renting or leasing of agro machinery or vacant land

Loading or unloading, packing, storage or warehousing of agricultural produce.


Services of marketing Committee by a commission agent for Sale of Agricultural produce.

Agricultural extension services Like scientific research & knowledge to farmer through education

LIST OF NEGATIVE SERVICES



Services by commission agent, clearing and forwarding agent because the title in the goods never passes on to such agents.



Betting, gambling or lottery except services that are used for organizing Such events are not covered in this service.

LIST OF NEGATIVE SERVICES

- Selling of space or time slot for advertisement other than TV or Radio.

Taxable	Non-taxable
Sale of space or time for advertisement to be broadcast on radio or television	Sale of space for advertisement in print - media
Sale of time slot by a broadcasting organization.	Sale of space for advertisement in boards public places, buildings, conveyances, cell phones, automated teller machines, internet.

LIST OF NEGATIVE SERVICES

Service by way of access to a road or a bridge on payment of toll charges

It may be National Highway or state highway

Collection charges or service charges paid to any toll collecting agency are not covered in the entry

Admission to 'Entertainment events and access to amusement facilities'.

Entertainment events such as exhibition of films, circus, sporting events, award functions, dance performances, musical performances

Amusement facilities where fun is provided by means of amusement parks, amusement arcades, water parks, theme parks etc.

LIST OF NEGATIVE SERVICES

The Central Electricity
Authority

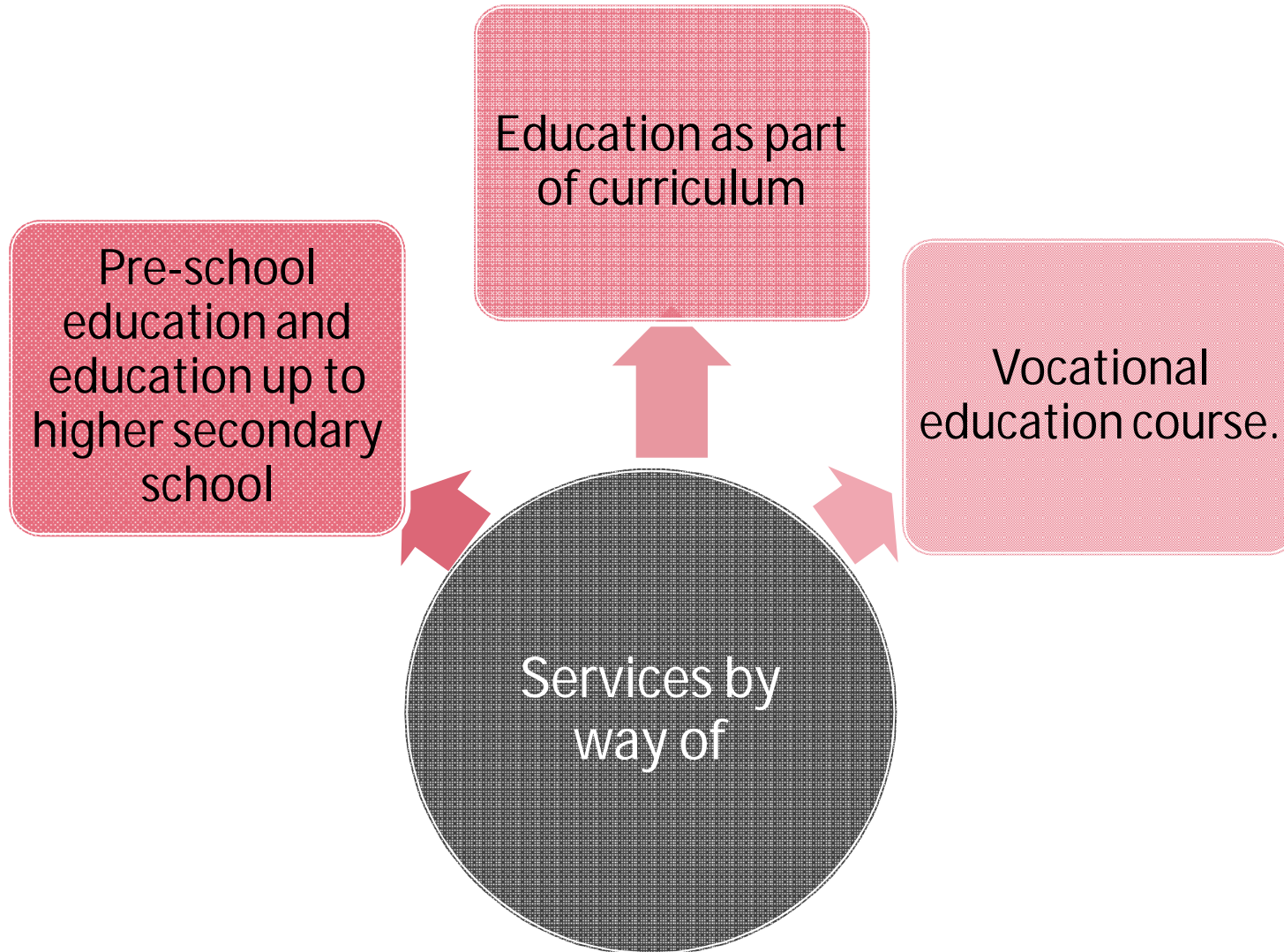
A State Electricity Board

Transmission or distribution of
electricity by an electricity
transmission or distribution
utility.

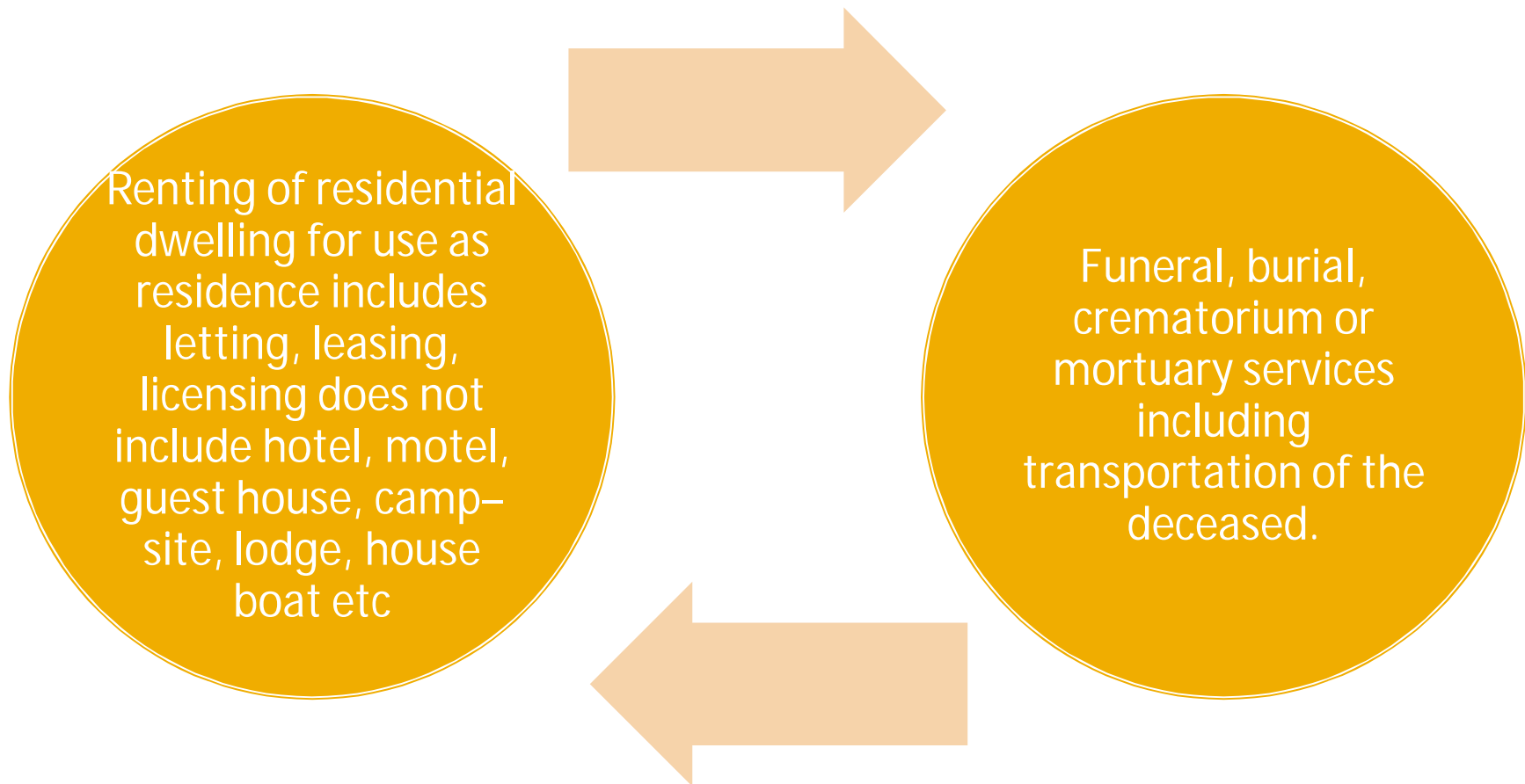
The Central Transmission
Utility (CTU)

A State Transmission Utility
(STU)

LIST OF NEGATIVE SERVICES



LIST OF NEGATIVE SERVICES



LIST OF NEGATIVE SERVICES

Such As- Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.

Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.

Finance Services

Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.

Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

LIST OF NEGATIVE SERVICES

Transportation
Service to
passengers, with
or without
accompanied
belongings, by-

- A stage carrier.
- Railway other than first or air conditional coach.
- Metro or monorail.
- Public transport other than predominantly for tourism purpose.
- Meter cabs or auto rickshaws.

LIST OF NEGATIVE SERVICES

- Services by way of transportation of goods (except GTA and Courier) including vessel or aircraft waterways

Nature of service relating to transportation of goods	Whether covered in the negative list entry?
By railways	No
By air within the country or abroad	No
By a vessel in the coastal waters	No
By a vessel on a national waterway	Yes
Services provided by a GTA	No

A Presentation on Reverse Charge & Joint Charge

Section 68 of Finance Act, 1994

- Sec 68 (2) is worded as follows:-
 - *"In respect of such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66B and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.*
- *Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider."*

Brief History of Reverse Charge

- The Reverse Charge was introduced in Service Tax vide Budget of the year 2005-2006. At that point of time there was only one service which was covered under Reverse Charge. However, with the passage of time this list has been expanded and at present this list contains 11 services into it which covers both Reverse Charge and Partial Reverse Charge.

Notification.No 30/2012-ST, dated 20th June, 2012

- The notification no. 30/2012-ST provides for the list of service that will be taxable under reverse charge mechanism.

List of Services under RCM

S. No.	Description of Services	Provided By	Provided To	% of ST payable by Provider	% of ST payable by Receiver
1	Insurance Auxiliary Services	Insurance Agent	Person carrying on insurance business	NIL	100%
2	Sponsorship Service	By any service Provider	Body Corporate Or Partnership Firm	NIL	100%
3	Transport of goods by Road	Good Transport Agency	Consignor or consignee in organized Sector	NIL	100%

List of Services under RCM

S. No.	Description of Services	Provided By	Provided To	% of ST payable by Provider	% of ST payable by Receiver
4	Legal Service	Arbitral Tribunal	Business Entity	NIL	100%
5	Legal Service	Individual advocate or firm of advocates	Business Entity	NIL	100%
6	Support Service by Government or local authority	Government or Local Authority	Business Entity	NIL	100%
7	Any Service	Person in Non Taxable Territory	Person in Taxable Territory	NIL	100%

List of Services under RCM

S. No.	Description of Services	Provided By	Provided To	% of ST payable by Provider	% of ST payable by Receiver
8	Any Taxable Service	Director of the company	Company	NIL	100%
9	Renting or hiring of motor vehicle to carry passenger on abated value. (60% abatement)	Individual, HUF, Firm, AOP, BOI	Business Entity registered as body corporate	NIL	100% (i.e. 40% of liability)
10	Renting or hiring of motor vehicle to carry passenger on non abated Value	Individual, HUF, Firm, AOP, BOI	Business Entity registered as body corporate	60%	40%

List of Services under RCM

S. No.	Description of Services	Provided By	Provided To	% of ST payable by Provider	% of ST payable by Receiver
11	Supply of Manpower	Individual, HUF, Firm, AOP, BOI	Business Entity registered as body Corporate	25%	75%
12	Security Service	Individual, HUF, Firm, AOP, BOI	Business Entity registered as body Corporate	25%	75%
13	Work Contract Service	Individual, HUF, Firm, AOP, BOI	Business Entity registered as body Corporate	50%	50%

Other Relevant Aspects

- Business Entity and Body Corporate
- Business Entity – means any **person** ordinarily carrying out any activity relating to industry, commerce or any other business or profession.
[Government, charitable organization is not a “business entity”].
- Body Corporate – Company is a Body Corporate – Firm, HUF, Trust is not a body corporate.
[Society registered under Societies Act is legally not ‘a body corporate’].

Other Relevant Aspects

- Partial RC on Manpower Supply Service
 - “Supply of manpower” means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control. [Rule 2(g) of Service Tax Rules, inserted w.e.f 01.07.2012].
 - *Security Service, cleaning service, piece basis or job basis contract* can be ‘manpower supply service’ only if the labour works under superintendence or control of Principal Employer.
 - Service tax in such cases shall be payable on – SALARY + PF + ESI + Commission of labour contractor.

Other Relevant Aspects

- Partial RC on Renting or Hire of Motor Vehicle designed to carry passengers
 - Reverse charge when renting to a person **who is not engaged in similar line of business**
 - Service Provider should be HUF, Individual, firm.
 - Service Receiver – Business entity registered as body corporate
 - If motor vehicle is taken on hire without driver it is 'transfer of right in goods'. It is deemed sale of goods VAT will apply – Service Tax will not be charged.

Utilization of CENVAT credit by Service Provider

Under Full Reverse Charge

CENVAT Credit available with the service provider will remain unutilized since the liability to pay service tax has been shifted to service receiver .

The Service provider have the option – **either to take refund of unutilized credit as per Rule 5 B or make it the part of cost and increase the price.**

Under Partial Reverse Charge

Service Provider can utilize 100% of CENVAT credit available, as per rules, despite the fact that liability to pay service tax has been reduced.

Utilization of CENVAT credit by Service Receiver

Under Full Reverse Charge

Service tax on input services can be availed/utilized only after making the payment of value of service & service tax.

Under Partial Reverse Charge

Part amount of Service tax on input services can be availed/utilized after making the payment of value of service & service tax.

Part amount of Service tax on input services can be availed/utilized as and when the invoice is received.

Can the Service Receiver use CENVAT to pay tax under reverse charge?

Explanation to Rule 3(4) - Service Receiver cannot use the CENVAT credit to dispose off his liability. He is required to pay the amount in cash only.

RCM in relation to Point of Taxation Rules, 2011

- Rule 7 of POT Rules provides for the Payment under Reverse Charge Mechanism.
- As per Rule 7, where the service tax is payable by the recipient of service like GTA service, POT would be the date of payment of value of service, if made within 6 months from the date of invoice. In case, value of service is not paid within prescribed 6 months period, service tax would become payable as per rule 3 of POT rule.
- Illustration:- Mr. X provided services to Mr. Y under RCM. The date of invoice is 01.01.2013.

POT- Contd..

- **Situation 1: Mr. Y made payment to Mr. X on 01.04.2013** – Since the payment is made within 6 months from the date of invoice i.e. payment made before 01.07.2013. Therefore, the liability to pay service tax on part of Mr. Y will arise from the date of payment to Mr. X .i.e. from 01.04.2013. Mr. Y is liable to pay service tax by 06.05.2013 (if he pays electronically otherwise 05.05.2013 is the due date)

POT- Contd..

- **Situation 2: Mr. Y made payment to Mr. X on 01.08.2013** – Since the payment is NOT made within 6 months from the date of invoice i.e. before 01.07.2013. Therefore, the liability to pay service tax will arise from 01.01.2013. Mr. Y will now be liable to pay interest @ 18% along with service tax to the department.

Do SSI Exemption is available to Service Receiver?

Notification No. 33/2012-ST

- ***Notification No. 33/2012-ST*** which provides that whereby *the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:*
- *Provided that nothing contained in this notification shall apply to,-*
- *(i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or*
- *(ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.*

Do SSI Exemption is available to Service Provider?

- In case the service provider is claiming threshold exemptions, then whether the service receiver is still liable to tax under reverse charge?
- In case of SR/ SP defaults in making payment? Repercussions?
- Can SP and SR adopt different methods for valuation of same services?
- Applicability of partial reverse charge provisions in case services were provided before 1-7-2012?

Under Partial RCM, what amount do service provider is required to show on the invoice?

- The service provider is required to charge only that on the invoice for which he is liable to pay. For e.g. If the service providers liability is of 25% and the remaining liability is of service receiver. Then the service provider is required to charge only 25% of the service tax amount in the invoice.

If service provider has agreed to pay entire payment of service tax liability. He is willing to give an undertaking in that regard. In that case, do service receiver is liable to pay service tax?

Only person who is liable to pay service tax should pay the same.

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Thank You