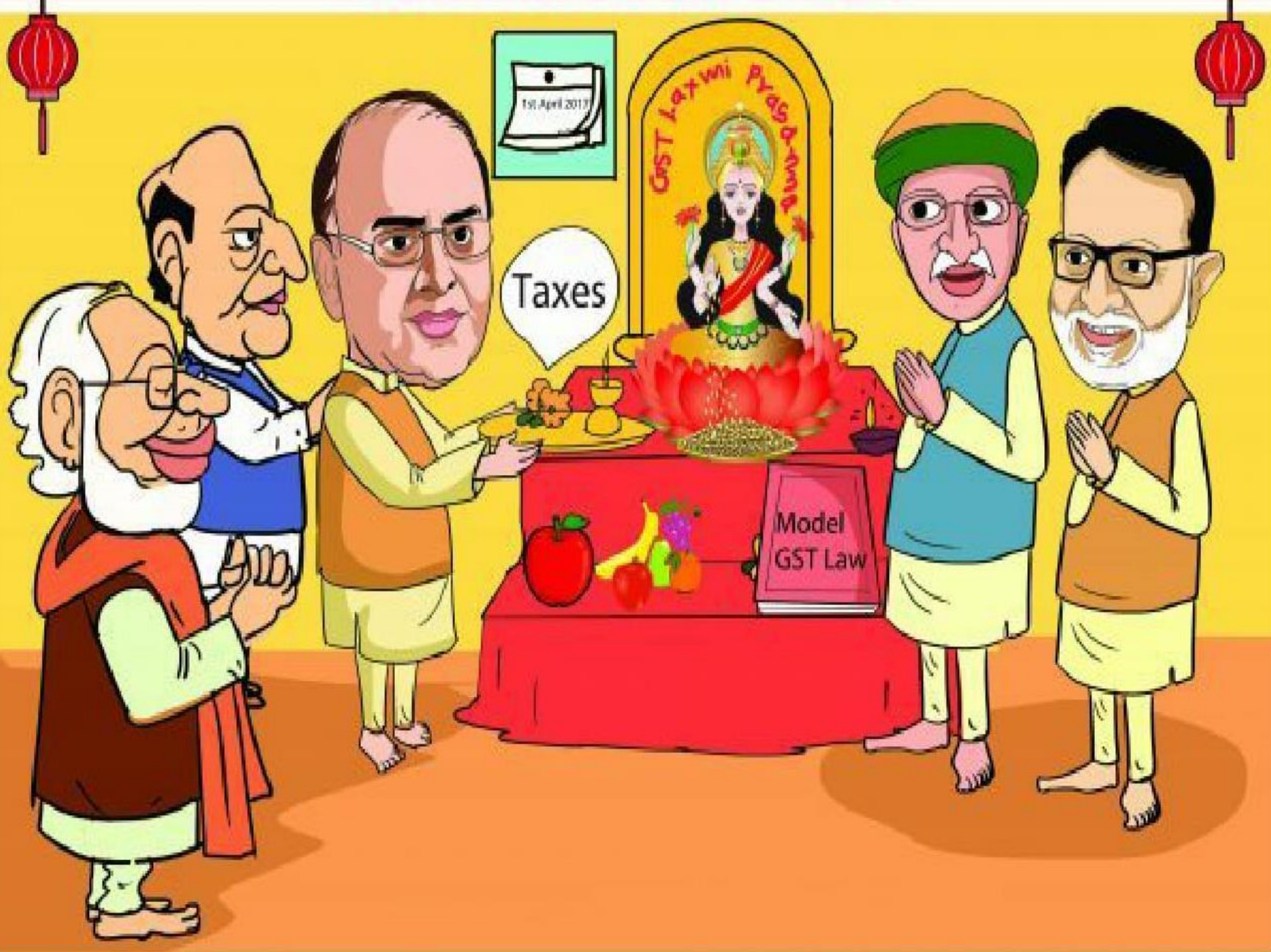


TRANSITIONAL PROVISIONS UNDER GST (NEW ERA OF PRACTICE)





Taxes

GST Laxmi Prasad

Model
GST Law

CARRYING FORWARD OF CREDIT



- Section 140(1) allows c/f of CENVAT Credit shown in the Return to be furnished for the period ending 30th June, 2017.
- Disputed Credits and Re-Credits, Credits availed only after payment, Invoices for services received late, Service Tax payment under Reverse Charge (specifically when POT falls after the appointed date).
- Under SGST, any claim related to Sec. 3, 5(3), 6,6A or 8(8) of CST read with Rule 12 of CST Rules – shall not be eligible to be credited in Electronic Credit Ledger rather to be refunded under the existing law when the claims are substantiated in the manner specified. Other State Credits and Entry Tax Credits as c/f in Return furnished not later than 90 days shall be allowed.
- All the Returns under the respective Act for the period from January 2017 to June 2017 must have been filed.
- The Govt. to come out with various exemption Notifications.
- Credit must be eligible as ITC under GST Law.
- Un-availed CENVAT Credit of Capital Goods to be c/f [140(2)]



ADMISSIBLE AS ITC UNDER GST

- Key issue involved is how to interpret the expression ‘unless the said amount is admissible as ITC under this Act.’
- Accumulated CENVAT as on 30th June, 2017 – Rs. 1,50,000/- (3 input services – X, Y and Z)
- Liability of ST discharged for June Month or Qtr – Rs. 75,000/-
- Balance – Rs. 75,000/-
- Assume Y is ineligible for ITC under GST
- Eligibility – Rs. 25,000/- or Rs. 75,000/-??



SECTION 140 (5): INPUTS OR INPUT SERVICES RECEIVED AFTER GST

- Inputs or Input Services received on or after 01st July, 2017.
- Excise/Service Tax is paid under existing laws. Let's say advance for services to be provided received on 01st June, 2017.
- Invoice / Tax / Duty paying Document must be recorded by 31st July, 2017.
- Statement in the manner to be prescribed must be furnished.

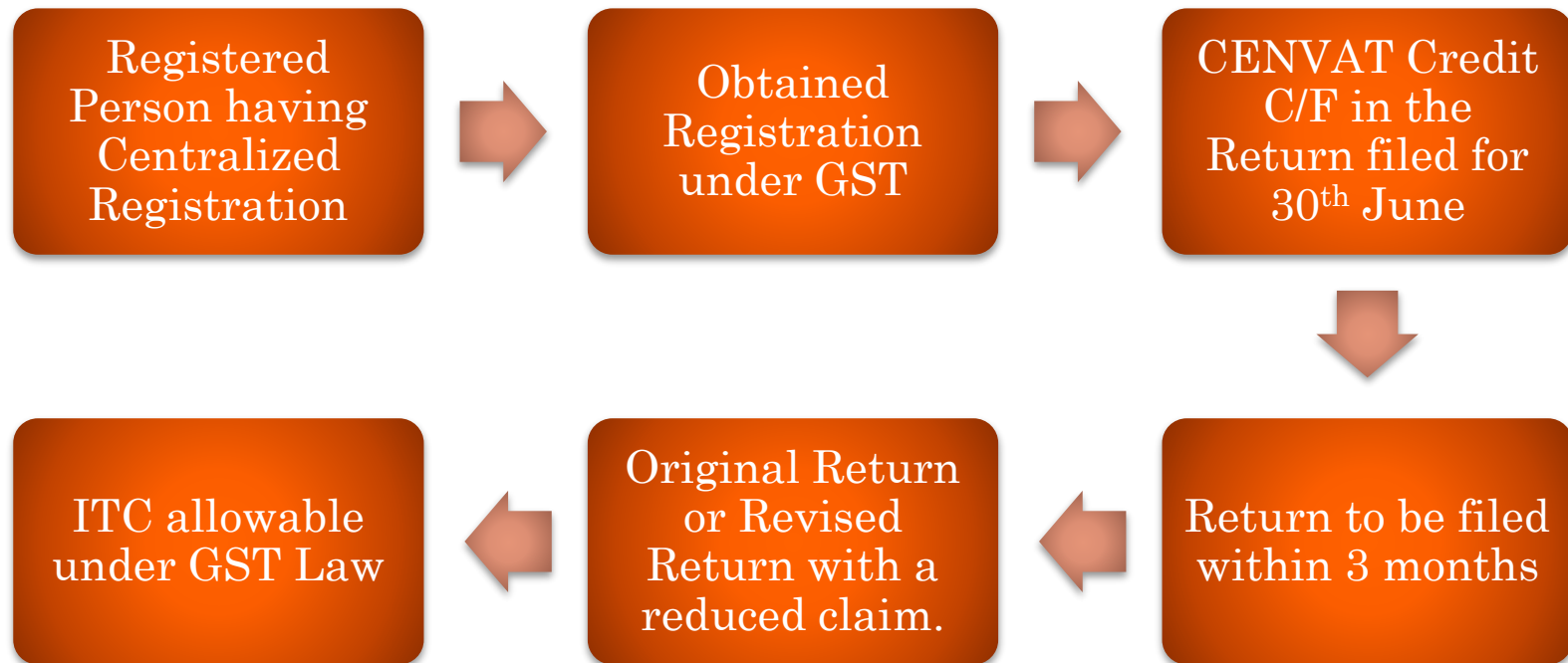


ISSUE WITH PROCUREMENTS IN TRANSIT

- Sub-Section (5) of Section 140 – Credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day, but tax or duty is paid under the existing law, subject to condition that invoice is recorded in the books within 30 days.
- What about Capital Goods in Transit?



CREDIT ELIGIBILITY IN CASE OF PERSONS HOLDING CENTRALIZED REGISTRATION



ONLINE CENTRALIZED REGISTRATION



ITC DISTRIBUTION BY INPUT SERVICE DISTRIBUTOR

- ITC on account of Services received prior to appointed date.
- Invoices received on or after the appointed date.



TAX HOLIDAY TO TAX COMPLIANT – REGISTERED PERSON UNDER GST

Category 1

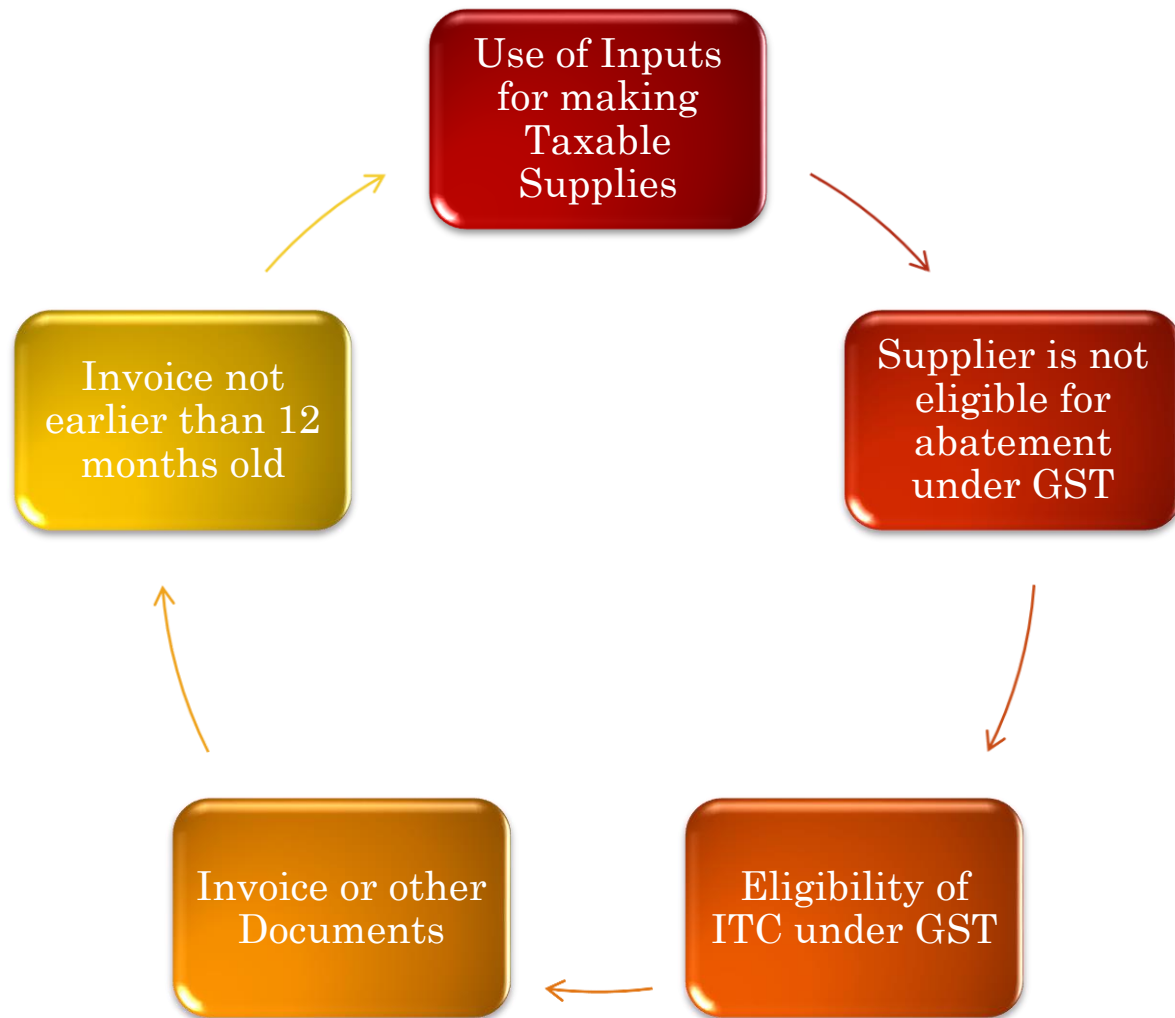
- Person not liable to be registered under existing laws.
- Engaged in manufacture of exempted goods or provision of exempted services.
- Works Contractor availing benefit of Notification 26/2012-ST
- Registered as FSD or SSD or Importer or Depot of the Manufacturer.

Category 2

- Manufacturer
- Service Provider engaged in provision of output service.



CONTINUED.....



DEEMED CREDIT

- Essential Condition – Possession of Duty Paying Document
- Proviso – Person other than Manufacturer or Supplier of Service not in possession of Invoice or Duty Paying Document.
- Credit to be allowed at 40% of the CGST applicable on supply after the appointed date.
- Credit shall be available only after paying above CGST amount and also the Goods must be sold within 6 months from the appointed date.
- State offering Tax on MRP Schemes – The above deemed Provision of SGST Credit shall be available on the Stock in hand on the appointed day.



ISSUE UNDER WORKS CONTRACT

- Service and Material Element involved in WC would be subjected to both CGST and SGST respectively.
- Eligibility of carry forward of Credit is extended to Works Contractor availing benefit under Notification No. 26/2012-ST dated 20th June, 2012 and not to other Works Contractor.



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CONTINUED....

- Similar Benefit of ITC should also be conferred on other Service Providers like Service provider engaged in provision of Service under the category of 'Restaurant,' 'Outdoor Catering' etc.



PROBABLE POSITION OF DEALERS AND RETAILERS IN TRANSITIONAL PHASE

- Dealers and Retailers who doesn't have the excise bills issued by the manufacturers in their name. – only 40% Credit for Central GST.
- Major Impact on the pockets of dealers and retailers.
- If the draft Transitional Provisions are issued as they are, litigation will start from day one where the Honorable Courts may quash and take a view that double taxation should not be permissible.
- CII : “It would be practically impossible for any dealer to bear loss of 60% of excise duty already paid. This will result in unbearable extra cost and loss of genuine input tax paid.”



CONTINUED...



- Dealers, Distributors and Retailers to pay 60% CGST on excise (duty) paid Goods first from their own pocket and then the credit of 40% be admissible.
- Two options should be there : (As per FINMIN official)
 1. Open CGST free window for clearance of stock in hand for 6 months period, or
 2. Allow 100% of CGST payable as credit on deemed basis subject to giving of stock declaration and the details of the manufacturer of goods in stock.

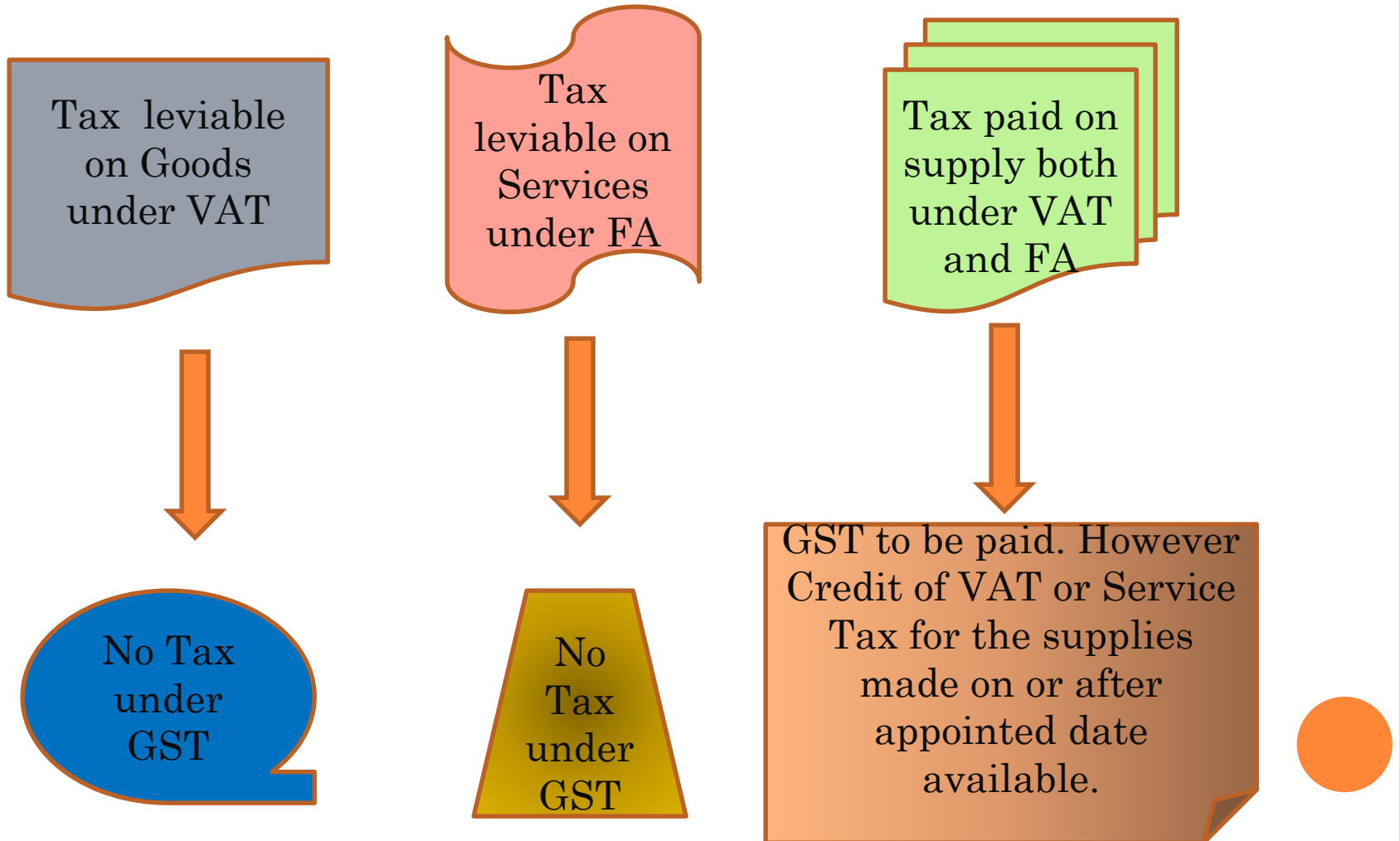


CREDIT OF EXCISE DUTY OR ADDITIONAL CUSTOMS DUTY

- Probably the most critical provision of transition under GST.
- Presently, no credit of Excise or SAD to a Dealer.
- Supply under the new regime will fall under GST however, no ITC of Excise Duty or Additional Customs Duty.
- Cascading and distortion of picture.
- Situation of Stock Returns from Dealers and Traders to the Manufacturers on or before 30th June, 2017 along with new purchase on or after 01st July, 2017 would be witnessed.



POINT OF TAXATION AFTER THE APPOINTED DATE



GOODS ON APPROVAL BASIS – NO GST

Goods sent
between 01st
Jan and 30th
June

Rejection by
Buyer and
Return
between 01st
July and 31st
December

No GST even
if Goods
returned
within
further
extended
period

CHECKED

DECLINED

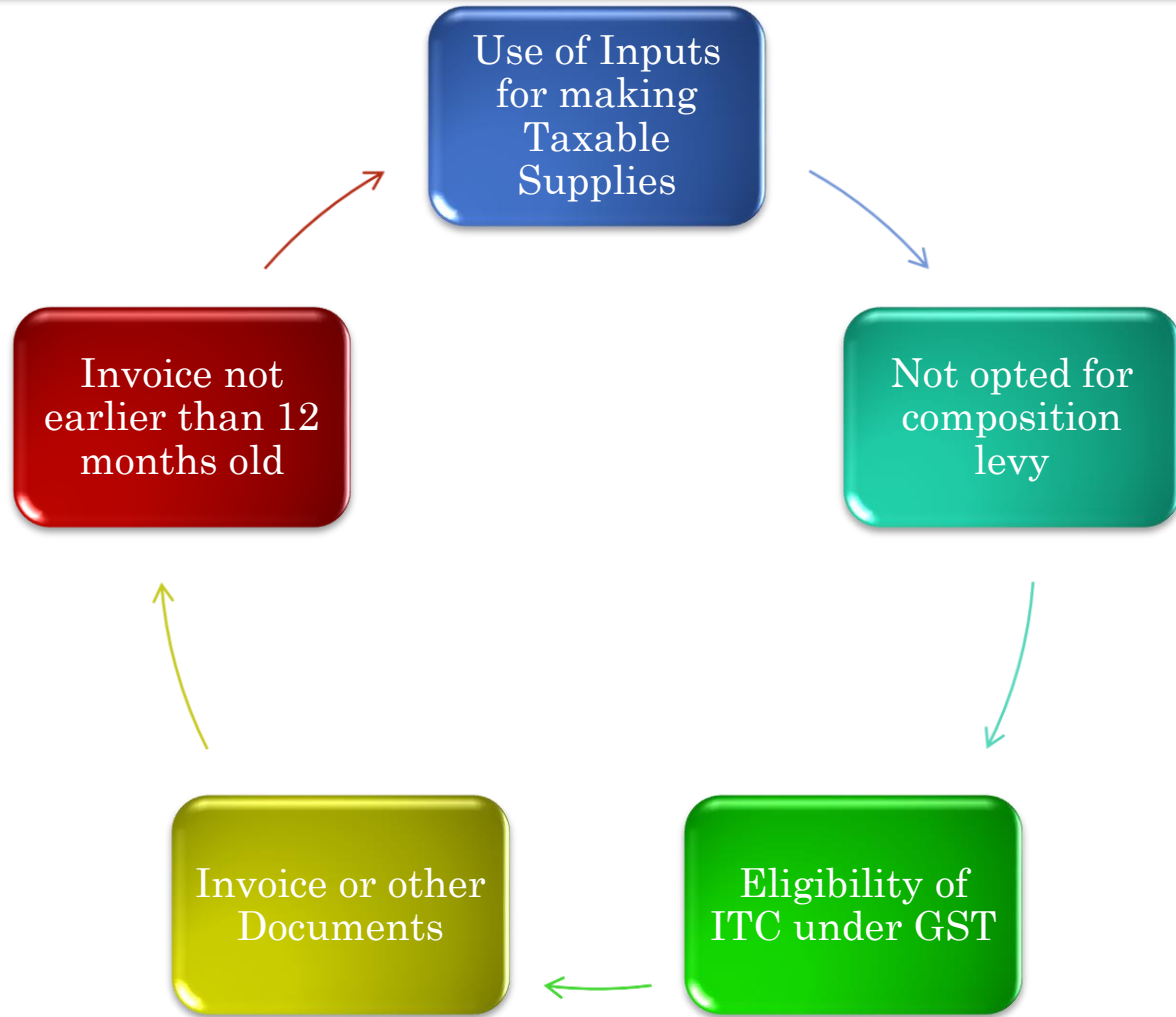
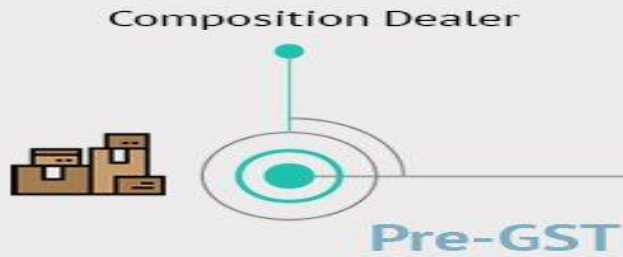
CERTIFIED

PASSED

REJECTED

APPROVED





UPWARD OR DOWNWARD PRICE FLUCTUATION

- Section 142 (2) (a) & (b):



**Price revised upward
or downward on or
after appointed date**

**Debit/Credit Note or
Supplementary
Invoices**

**Time Limit – 30
Days**

**Reduction in ITC /
Debit Note
deemed to be
issued under GST**

**Outward Supply /
Reduction in
Liability**



TREATMENT OF LONG TERM CONTRACTS

- Section 142(10) – Goods or services or both supplied after the appointed day in pursuance of the contract entered into prior to the appointed day shall be liable to tax under GST.
- Hope for exemptions like the addition and deletion of entries in Notification No. 25/2012-ST dated 20th June, 2012.



TREATMENT OF CENVAT REVERSAL DUE TO NON-PAYMENT OF CONSIDERATION SEC 140(9)

- Under the existing laws of CENVAT Credit, the Service Recipient is obliged to make payment to the Service Provider within a period of 3 months from the date of invoice to safeguard himself from reversal of CENVAT Credit.
- What about a case where payment is not made within a period of 3 months from the date of invoice and CENVAT is reversed before the appointed date?
- What if CENVAT Credit is at all not availed as the assessee follows a consistent method of availing CENVAT only after payment of consideration to service provider and the said payment is made on or after the appointed date?





EXEMPTED AND NON EXEMPTED

- Registered Person involved in manufacture of exempted Goods as well as non-exempted goods or Service Provider providing exempted as well as non-exempted services.
- 1. CENVAT c/f in Return
- 2. CENVAT of eligible duties in respect of Inputs in Stock, Semi-Finished Goods or Finished Goods held in stock related to exempted goods or services.
- Similar Provisions for VAT Credits as well.



GOODS RETURNED ON OR AFTER 01ST JULY, 2017 : SEC 142(1)



Registered Person



Other than
Registered Person

Registered Person
/ Non Registered
Person



Registered Person





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REFUND CLAIM

- Sub-Section (3), (4) & (5) of Section 142 takes care of Refund.
- Pending Applications as on 30th June, 2017.
- Applications to be disposed off in terms of the provisions of the existing laws.
- Amount to be refunded in Cash only **(even if duty has been paid by utilization of CENVAT Credit)**.
- Principle of Unjust Enrichment to be satisfied.
- **First and Second Proviso to be understood very carefully.**



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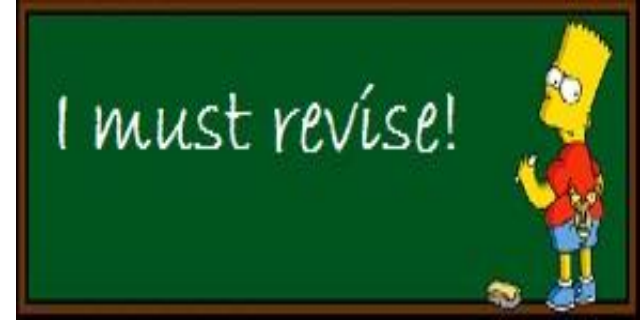


REFUND



- 1st Proviso – Where the claim of Refund of CENVAT Credit is fully or partially rejected, *the amount so rejected shall lapse.*
- 2nd Proviso – *No Refund if Credit is carried forward.*
- Refund claim on *export of goods / services* (whether supplied / provided on or before or on or after the appointed date) filed after the appointed date shall be refunded in accordance with the provisions of the existing law. (Cash refund and above two proviso shall also apply)
- Refund of tax paid under existing law in respect of *services not provided* shall be disposed of in accordance with the prov. of existing law.





REVISION IN RETURN

- Return furnished under the existing law.
- Revision after the appointed date. (*Time limit to be adhered to in case of beneficial revision*)
- Recovery of Tax or inadmissible CENVAT – Tax arrears under GST and ITC shall not be available.
- Refund of admissible CENVAT Credit – Cash Refund.
- Rejected Amount not to be allowed as ITC under GST.




JOB WORK AND TRANSITIONAL PROVISIONS

- Section 141 of the CGST Law deals with the situation. The Transitional Provisions are required because Job Work is a continuous process.
- Inputs sent as such or after being partially processed to a Job Worker for further testing, repairing, processing, reconditioning or any other purpose prior to the appointed date and such inputs are returned to the said place on or after the appointed day, no Tax is payable if inputs as such or after completion of Job Work are returned **within 6 months from the appointed day or further extended period.**
- The said provision along with the defined time limit equally applies to Semi Finished Goods as well as Finished Goods.



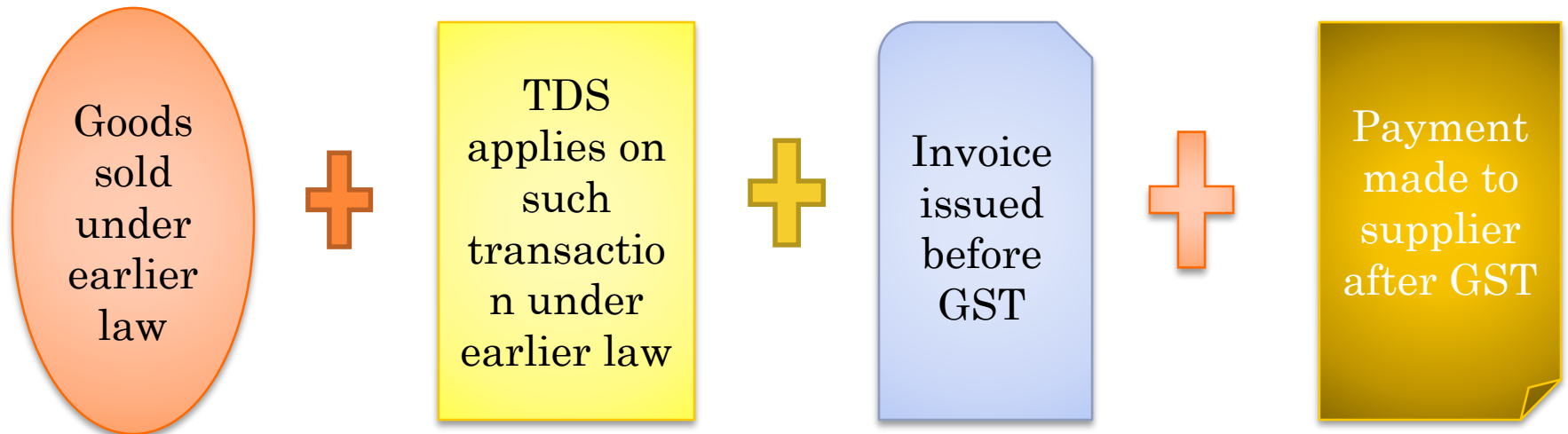


GST & JOBWORK

- Tax shall not be payable only if the manufacturer and Job Worker declares the details of Inputs or Goods held in Stock by the Job Worker on behalf of the Manufacturer on the appointed day as per Rule 2 of the GST Transition Rules. **(GST TRAN-1 within 60 days)**
 - As per the existing laws, the Manufacturer may transfer the Semi Finished Goods to the premises of any registered person and Finished Goods from the said other premises for the purpose of supplying there from on tax payment in India or without Tax Payment for exports within 6 months or further extended period.
- 

TRANSITIONAL PROVISIONS – SECTION 142(13)

- What about TDS on goods sold under the earlier law??



BLOCKED CREDITS – SECTION 17

- Motor Vehicles and other conveyances except when they are used for:



Further Supply of
such Vehicles or
Conveyances



Transportation of
Passengers



Imparting Training on
Driving, Flying,
navigating such
vehicles or
conveyances



Transportation of
Goods



NO ITC ON INWARD SUPPLY OF GOODS AND SERVICES

- Food and Beverages
- Outdoor Catering
- Beauty Treatment
- Health Services
- Cosmetic and Plastic Surgery





Health Insurance



Life Insurance

Protect Your
Family and
Yourself

Get Quote



- Club Membership

- Membership of Health and Fitness Centre

- Rent-A-Cab, Life Insurance, Health Insurance except obligation by Government on employers to provide to its employees.

- Travel Benefits extended to employees on vacation such as leave or Home Travel Concession

ITC IN WORKS CONTRACT AND CONSTRUCTION

- Works Contract Service when supplied for construction of Immovable Property, other than Plant and Machinery, except when it is an Input
- Goods or Services received by a taxable person for construction of an immovable property on his own account, other than Plant and Machinery,





BAR ON ITC



- Goods / Services on which Tax has been paid under Section 10.
- Goods / Services used for personal consumption.
- Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
- Any tax paid in terms of Section 74, 129 or 130



THANKING YOU ALL



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