

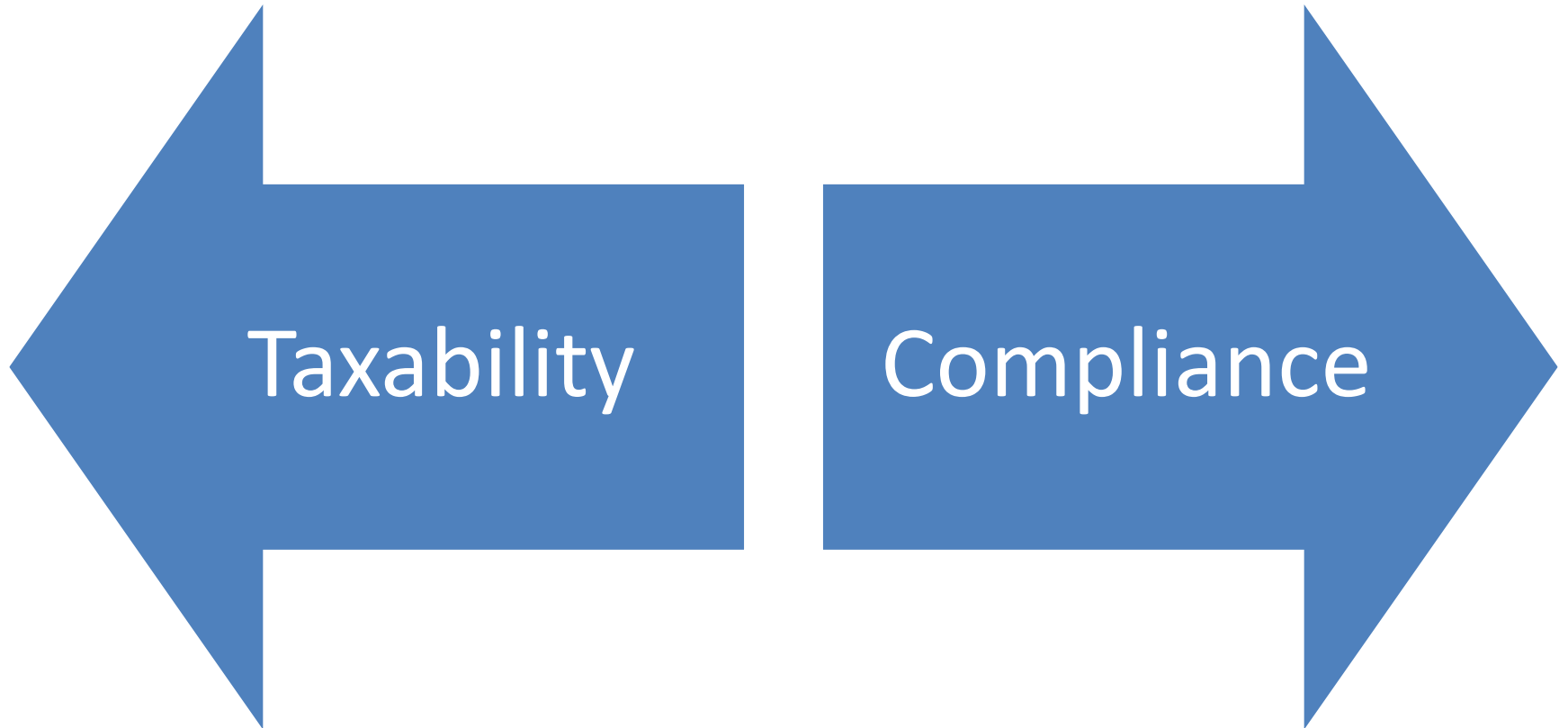
# Analysis of Service Tax Provisions

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# Contribution of Taxes in GDP

- Direct Tax Contribute around 5 Lakhs Crore every year
- Indirect Taxes (Proposed GST which will cover Excise + Service Tax + VAT) is presently collecting 17 Lakh Crore of Rupees.

# Service Tax contributing 180000 Crores



# Compliance Part

Service Tax  
Rules 1994

Determination  
of Valuation  
Rules 2006

Point of  
Taxation Rules  
2011

Place of  
Provision  
Rules 2012

CENVAT Credit  
Rules 2004

# Service Tax Rules 1994

- C.C. Patel & Associates Pvt. Ltd. vs. Union of India 2013 (32) STR 392 (Gujarat High Court)

# Determination of Value Rules 2006

- Commissioner vs. Balaji Tirupati Enterprises 2013 (32) STR 530 (Allahabad High Court)
- G. D. Builders vs. Union of India 2013 (32) STR 673 (Delhi High Court)
- Prakash Retail P. Ltd. vs. Dy. Commr. of Commercial Tax (Audit), Udupi 2013 (32) STR 388 (Karnataka High Court)

# CENVAT Credit Rules 2004

- KPMG vs. CCE 2013 TIOL 761 CESTAT DEL
- CCE vs. Tata Auto Comp Systems Ltd. 2012 (27) STR 338
- CCE vs. Stanzen Toyotetsu 2011 (23) STR 444
- LG Electronics (India) vs. CCE 2010 TIOL 1048
- Toyota Kirloskar Motor vs. CCE 2011 TIOL 941 HC  
Karnataka
- CCE vs. Cadila Healthcare 2013 TIOL 12 HC  
Ahemedabad
- Deepak Fertilizers & Petrochemicals vs. CCE 2013 (32)  
STR 532

# Classification

- State of Andhra Pradesh vs. Rashtriya Ispat Nigam Ltd. 2013 (31) STR 513
- Sports Club of Gujarat Ltd. vs. Union of India 2013 (31) STR 645
- CCE vs. Technical Associates Ltd. 2013 (31) STR 538
- Tirumala Tirupati Devasthanams vs. Superintendent of Customs 2013 (30) STR 27



# Aim To discuss in this Session

- How to Assess Taxability of Activity prior to and after Negative List Regime

# Position Prior to 1<sup>st</sup> July 2012

- Positive List
- 119 Services taxable
- 60% Contribution from Service Sector in GDP
- What about Rest of Services contributing in GDP

# Scenario Prior to 1.7.2012

Assume we have  
300 Services  
contributing 60%  
in GDP



Taxable Services =119

Taxable but Exempted  
Services =89

Non Taxable (300-119-  
89)= 92 Services

# What is Position after 1<sup>st</sup> July 2012 ?

- On 16<sup>th</sup> March in Finance Bill 2012, a list of 17 Services were introduced as Negative List under Section 66D.
- But what will happen with Exempted services which were exempted due to reasons like Education, Social, Charitable, Philanthropic or Development of Infrastructure.

# New Scenario

300 Services

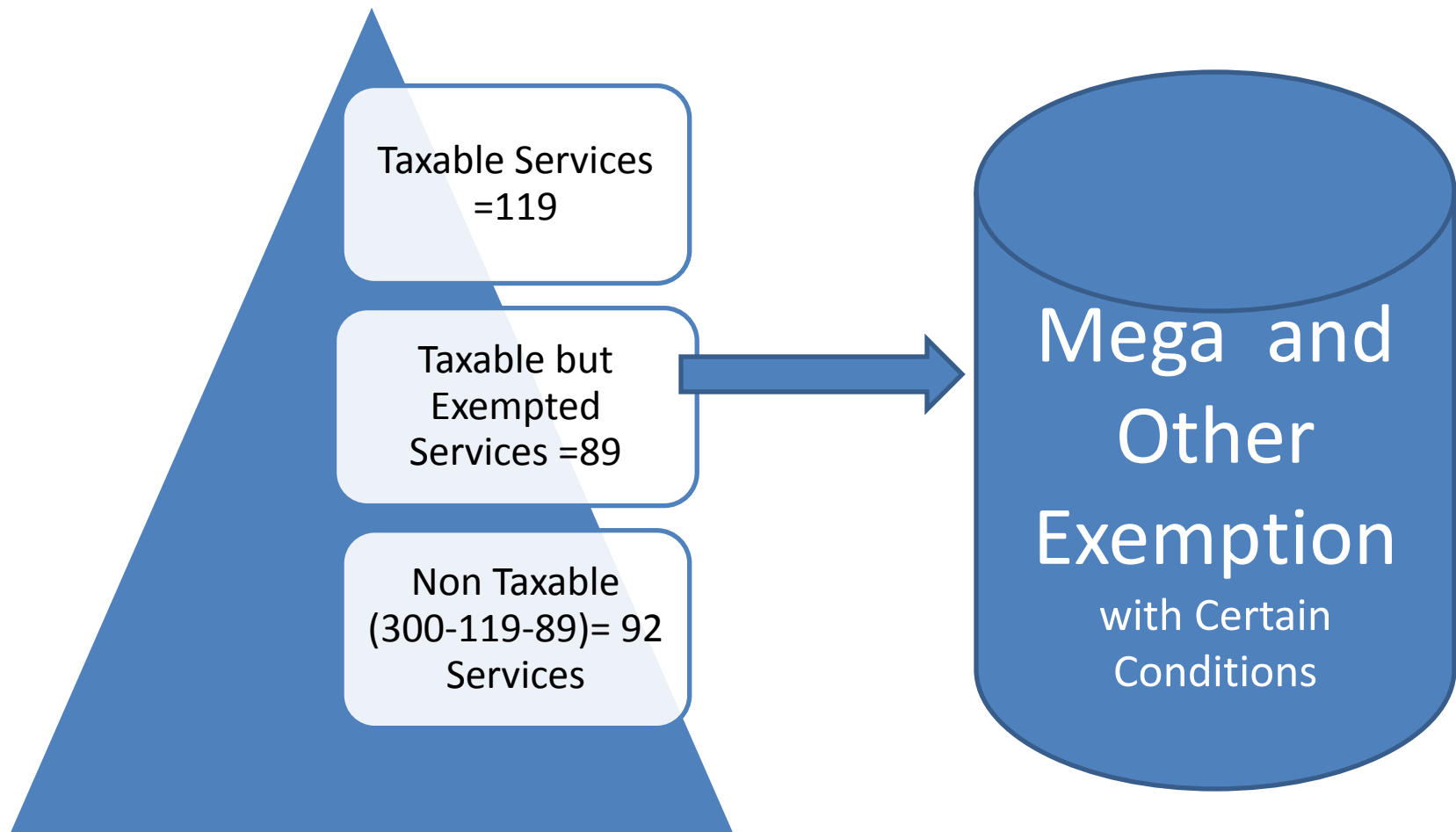


17 Converted as Non Taxable



Whether 283 become Taxable?

# Scenario after to 1.7.2012



# Three Tier Test to Check Taxability

IMAGE Concept (5)



Negative List (17)



Mega and Other Exemption (47)



Taxable Service + Declared Services

# Declared Services

GDP

Agriculture

Manufacturing

Services

Trade

Service +  
Material



# Negative List

Applicable from  
July 01, 2012

# Negative List-Section 66D

1. Services by Government or a Local Authority excluding the following services to the extent they are not covered elsewhere:
  - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
  - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  - (iii) transport of goods or passengers; or
  - (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;

# Negative List contd...

2. Services by the Reserve Bank of India;
3. Services by a foreign diplomatic mission located in India;
4. Services relating to agriculture by way of
  - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or **seed testing**;
  - (ii) supply of farm labor;
  - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

# Concept 1 to Understand the Clauses

- Develop the Key factors/Standard Requirement.
- Analyse the Actual Activity performed
- Check variance Analysis and Taxability.

## Clause 4 (iv)

Standard Requirement	Actual Activity	Variance
Where are You Doing	At Farm house	NO
What are you Doing	Pruning	NO
On which Product	(Agriculture Produce)	NO
Result of Activity	Essential Character Should remain the same	NO
Aim of Activity	Primary	YES

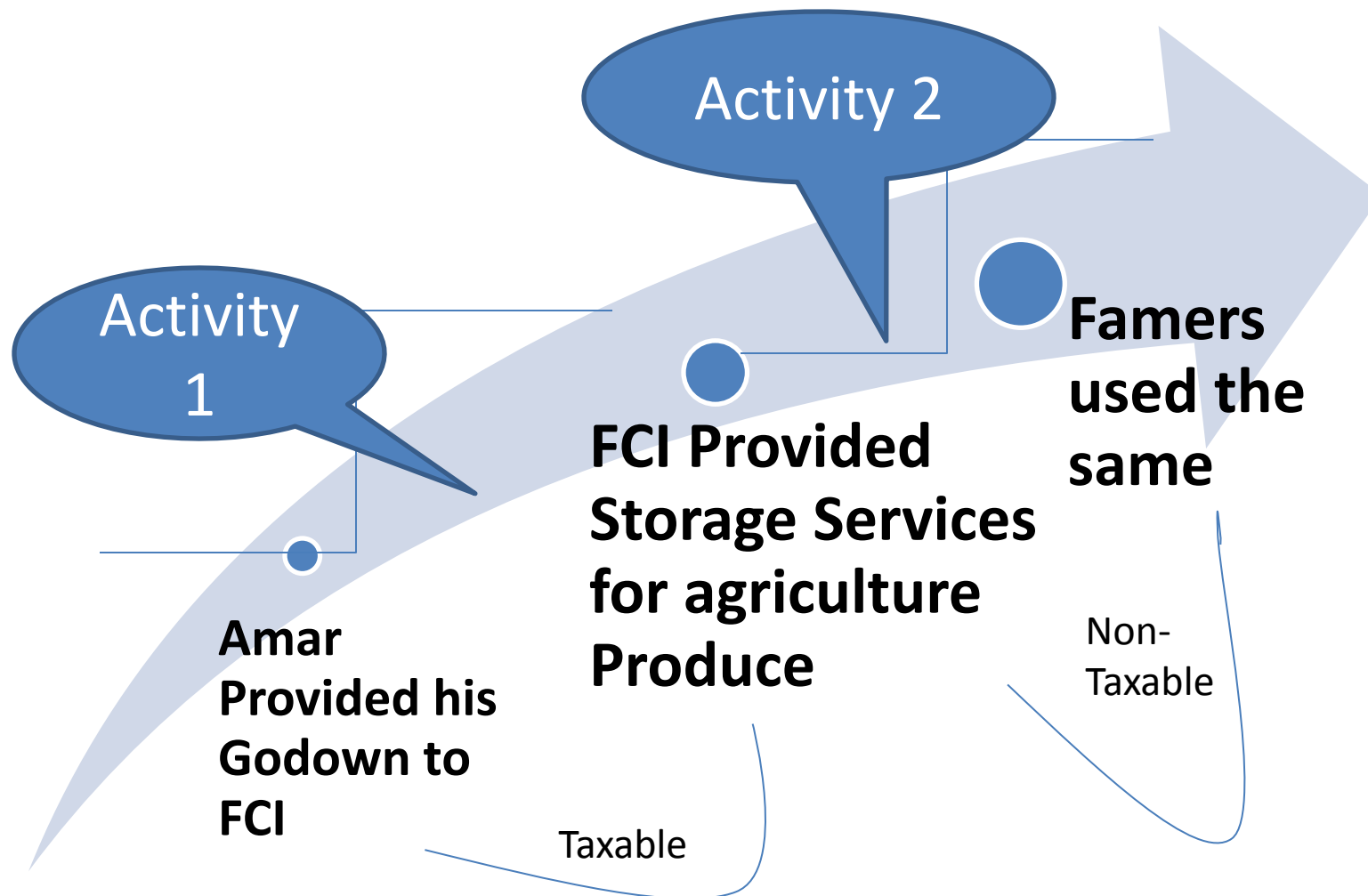
# Negative List contd...

- (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- (v) loading, unloading, packing, storage or warehousing of agricultural produce;
- (vi) agricultural extension services;
- (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

# Concept 2 to Understand the Clauses

- When there are series of Activity, then follow Steps:
  - Bifurcate the activity
  - Develop Classification of the same
  - Undergo three tier test to check taxability

loading, unloading, packing, storage or warehousing  
of agricultural produce;

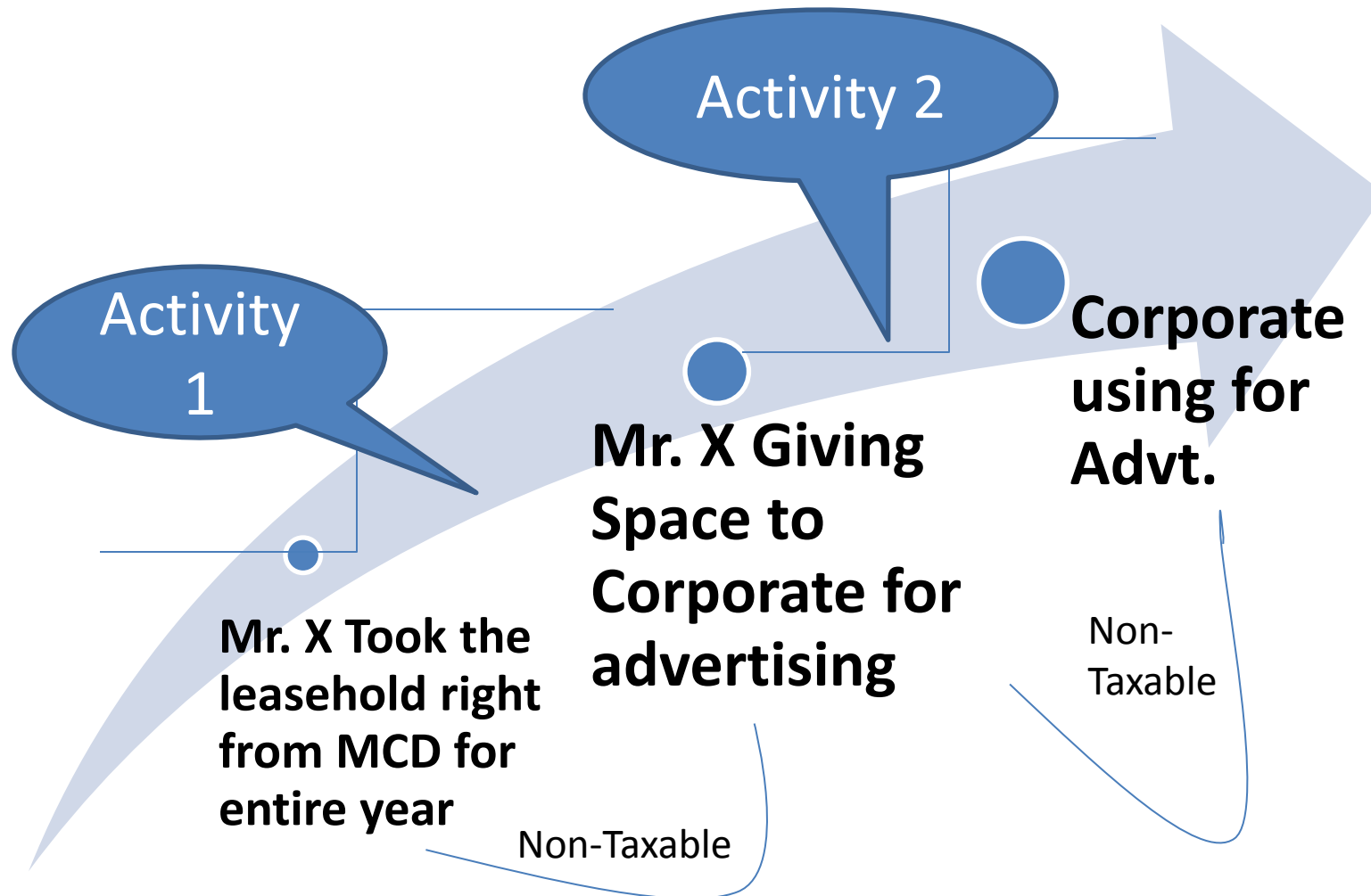




# Negative List contd...

- 5. Trading of goods;
- 6. Any process amounting to manufacture or production of goods;
- 7. Selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
- 8. Service by way of access to a road or a bridge on payment of toll charges;
- 9. Betting, gambling or lottery;

# Selling of space or time slots for advertisements other than advertisements broadcast by radio or television



# Negative List contd...

10. Admission to entertainment events or access to amusement facilities;
11. Transmission or distribution of electricity by an electricity transmission or distribution utility;
12. Services by way of:
  - (i) pre-school education and education up to higher secondary school or equivalent;
  - (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
  - (iii) education as a part of **an approved vocational education course**;

# Negative List contd...

13. Services by way of renting of residential dwelling for use as residence;

14. Services by way of:

- (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
- (ii) *inter se* sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;



# Negative List contd...

15. Service of transportation of passengers, with or without accompanied belongings, by
- (i) a stage carriage;
  - (ii) railways in a class other than first class; or  
an air-conditioned coach;
  - (iii) metro, monorail or tramway;
  - (iv) inland waterways;
  - (v) public transport, other than predominantly for tourism purpose, in a vessel of less than fifteen tonne net; and
  - (vi) metered cabs, radio taxis or auto rickshaws;

# Negative List contd...

## 16. Services by way of transportation of goods:

- (i) by road except the services of  
a goods transportation agency; or  
a courier agency;
- (ii) by an aircraft or a vessel from a place outside India  
to the first customs station of landing in India; or
- (iii) by inland waterways;

## 17. Funeral, burial, crematorium or mortuary services including transportation of the deceased.

# Mega Exemptions

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under [section 12AA](#) of the [Income tax Act, 1961 \(43 of 1961\)](#) by way of charitable activities;
5. Services by a person by way of:—
  - (a) renting of precincts of a religious place meant for general public; or
  - (b) conduct of any religious ceremony;

# Mega Exemptions- contd.....

## 6. Services provided by—

### (a) an arbitral tribunal to—

(i) any person other than a business entity; or

(ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;

### (b) an individual as an advocate or a partnership firm of advocates by way of legal services to,—

(i) an advocate or partnership firm of advocates providing legal services;

(ii) any person other than a business entity; or

(iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or



# Mega Exemptions- contd.....

(c) a person represented on an arbitral tribunal to an arbitral tribunal;

# Mega Exemptions- contd.....

7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;
8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;
9. Services provided to an educational institution in respect of education exempted from service tax, by way of,
  - (a) auxiliary educational services; or
  - (b) renting of immovable property;

# Mega Exemptions- contd.....

10. Services provided to a recognised sports body by—
- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
  - (b) another recognised sports body;

# Mega Exemptions- contd.....

11. Services by way of sponsorship of sporting events organised,—

- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
- (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- (c) by Central Civil Services Cultural and Sports Board;
- (d) as part of national games, by Indian Olympic Association; or
- (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;

# Mega Exemptions- contd.....

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

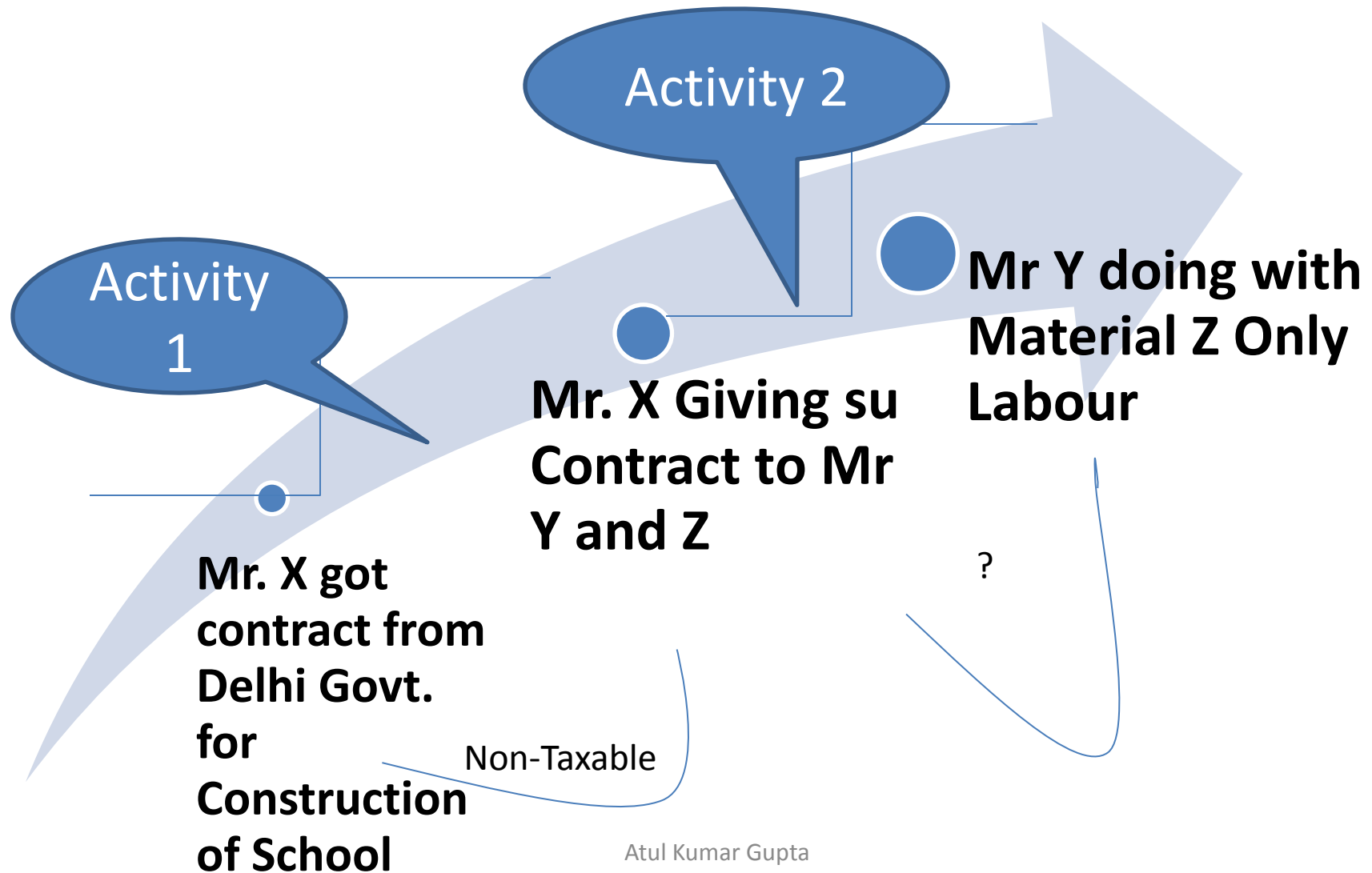
(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as an educational, a clinical, or an art or cultural establishment;

# Mega Exemptions- contd.....

- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for water supply, water treatment, or sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation* 1 to clause 44 of section 65 B of the said Act;

# Construction of School by Sub Contractor



# Mega Exemptions- contd.....

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—
- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
  - (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;



# Mega Exemptions- contd.....

- (c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or
- (e) a structure meant for funeral, burial or cremation of deceased;

# Mega Exemptions- contd.....

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,—

- (a) an airport, port or railways, including monorail or metro;
- (b) a single residential unit otherwise than as a part of a residential complex;
- (c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

# Mega Exemptions- contd.....

- (d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
- (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;

# Mega Exemptions- contd.....

16. Services by a performing artist in folk or classical art forms of

(i) music, or

(ii) dance, or

(iii) theatre, excluding services provided by such artist as a brand ambassador;

17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

# Mega Exemptions- contd.....

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;
19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having:
  - (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and
  - (ii) a licence to serve alcoholic beverages;

# Mega Exemptions- contd.....

20. Services by way of **transportation by rail** or a vessel from one place in India to another of the following goods—

- (a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the CENTRAL EXCISE TARIFF ACT, 1985(5 of 1986);
- (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (c) defence or military equipments;

# Mega Exemptions- contd.....

- (d) postal mail or mail bags;
- (e) household effects;
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) railway equipments or materials;
- (h) agricultural produce;
- (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
- (j) chemical fertilizer and oilcakes;

# Mega Exemptions- contd.....

21. Services provided by a **goods transport agency** by way of transportation of—

- (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- (b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
- (c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;



# Mega Exemptions- contd.....

22. Services by way of giving on hire:—

- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- (b) to a goods transport agency, a means of transportation of goods;

# Mega Exemptions- contd.....

23. Transport of passengers, with or without accompanied belongings, by:—

- (a) air, embarking or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; or
- (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire;
- (c) ropeway, cable car or aerial tramway;

# Mega Exemptions- contd.....

24. Services by **way of motor vehicle parking** ~~to general public~~ excluding leasing of space to an entity for providing such parking facility;
25. Services provided to Government, a local authority or a governmental authority by way of—
  - (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
  - (b) repair or maintenance of a vessel or an aircraft;

# Mega Exemptions- contd.....

26. Services of general insurance business provided under following schemes:—

- (a) Hut Insurance Scheme;
- (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
- (c) Scheme for Insurance of Tribals;
- (d) Janata Personal Accident Policy and Gramin Accident Policy;
- (e) Group Personal Accident Policy for Self-Employed Women;
- (f) Agricultural Pumpset and Failed Well Insurance;
- (g) premia collected on export credit insurance;

# Mega Exemptions- contd.....

26. Services of general insurance business provided under following schemes:—

- (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
- (i) Jan Arogya Bima Policy;
- (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana; or
- (o) Coconut Palm Insurance Scheme;

# Mega Exemptions- contd.....

27. Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and
- (b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;

# Mega Exemptions- contd.....

28. Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution—

- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of service tax; or
- (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

# Mega Exemptions- contd.....

29. Services by the following persons in respective capacities—
- (a) sub-broker or an authorised person to a stock broker;
  - (b) authorised person to a member of a commodity exchange;
  - (c) mutual fund agent to a mutual fund or asset management company;
  - (d) distributor to a mutual fund or asset management company;



# Mega Exemptions- contd.....

- (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
- (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
- (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
- (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

# Mega Exemptions- contd.....

30. Carrying out an intermediate production process as job work in relation to—

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act 1985, (5 of 1986)

# Mega Exemptions- contd.....

- (c) any goods on which appropriate duty is payable by the principal manufacturer; or
- (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year.

# Mega Exemptions- contd.....

31. Services by an organiser to any person in respect of a business exhibition held outside India;
32. Services by way of making telephone calls from:—
  - (a) departmentally run public telephones;
  - (b) guaranteed public telephones operating only for local calls; or
  - (c) free telephone at airport and hospitals where no bills are being issued;

# Mega Exemptions- contd.....

- 33. Services by way of slaughtering of bovine animals;
- 34. Services received from a provider of service located in a non- taxable territory by—
  - (a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
  - (b) an entity registered under [section 12AA](#) of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
  - (c) a person located in a non-taxable territory;

# Mega Exemptions- contd.....

- 35. Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material;
- 36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);
- 37. Services by way of transfer of a going concern, as a whole or an independent part thereof;
- 38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
- 39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

*Thank  
You*

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