

Classification – Precautions and Disputes!

CA PRITAM MAHURE
AND ASSOCIATES

PRITAM.MAHURE@LAWGICAL.IN

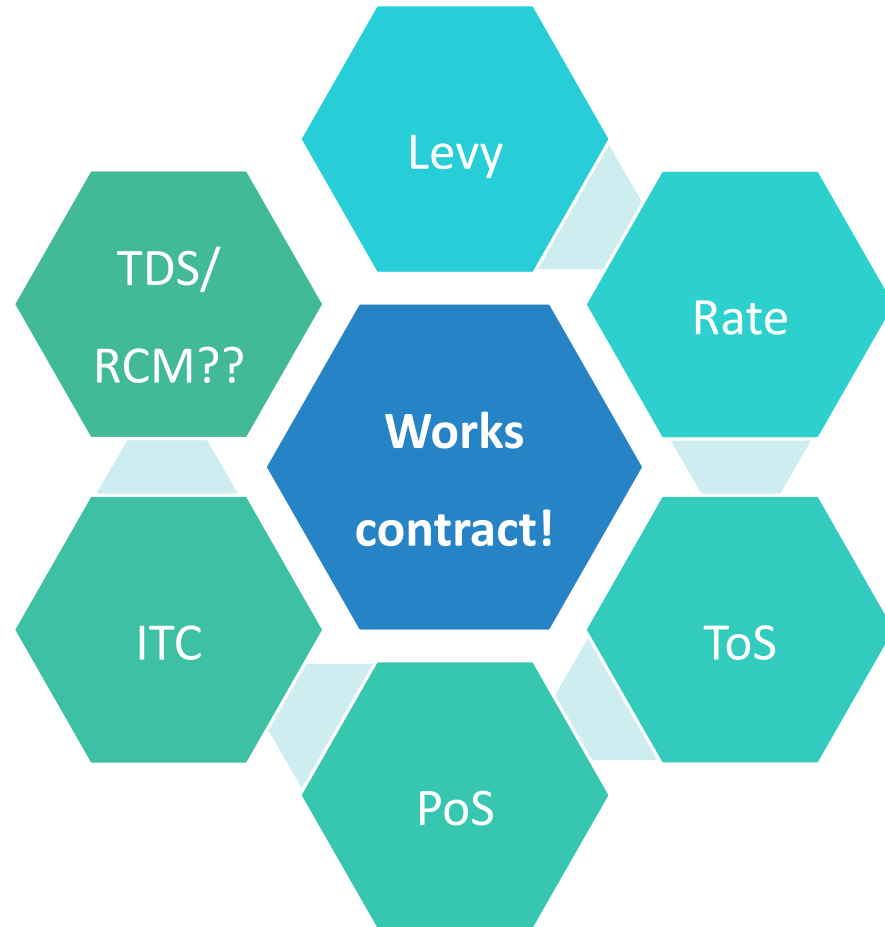
/ +91 9920644648)



CLASSIFICATION!



KNOW-WHY?



BUT THEN!

One Nation, One
Tax

ART. 265

Article 265

- *Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by **authority of law**.*

246A. SPECIAL PROVISION WITH RESPECT TO GOODS AND SERVICES TAX.—

- (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to **goods and services tax** imposed by the Union or by such State.
- (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.

GST - ARTICLE 366 (12A)

Goods
and
Services
tax

- means any tax on **supply of goods, or services or both** except taxes on the supply of the alcoholic liquor for human consumption

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, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*

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*

ARTICLE 366 - (12) AND (26A)

'Goods' **includes** all materials, commodities, and articles

'Services' **means** anything other than goods

SKILL LOTTO SOLUTIONS PVT. LTD. 2020 (43) G.S.T.L. 289 (S.C.)

*Definition of goods as occurring in Article 366(12) is **inclusive** definition **and does not specifically excludes actionable claim** from its definition. Whenever inclusive definition is given of an expression it always **intended to enlarge** the meaning of words or phrases, used in the definition.*

GOODS AND SERVICES!

Sec 2(52)

- **'Goods'** **means** 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 served before supply or under a contract of supply

Sec 2(102)

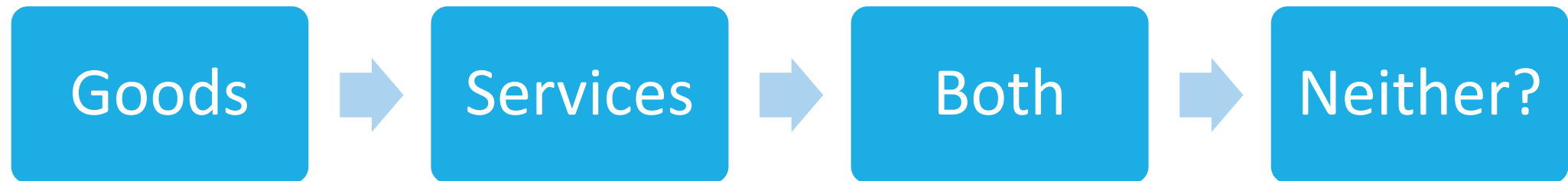
- **'Services'** **means** anything other than **goods**, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged

BOTH?



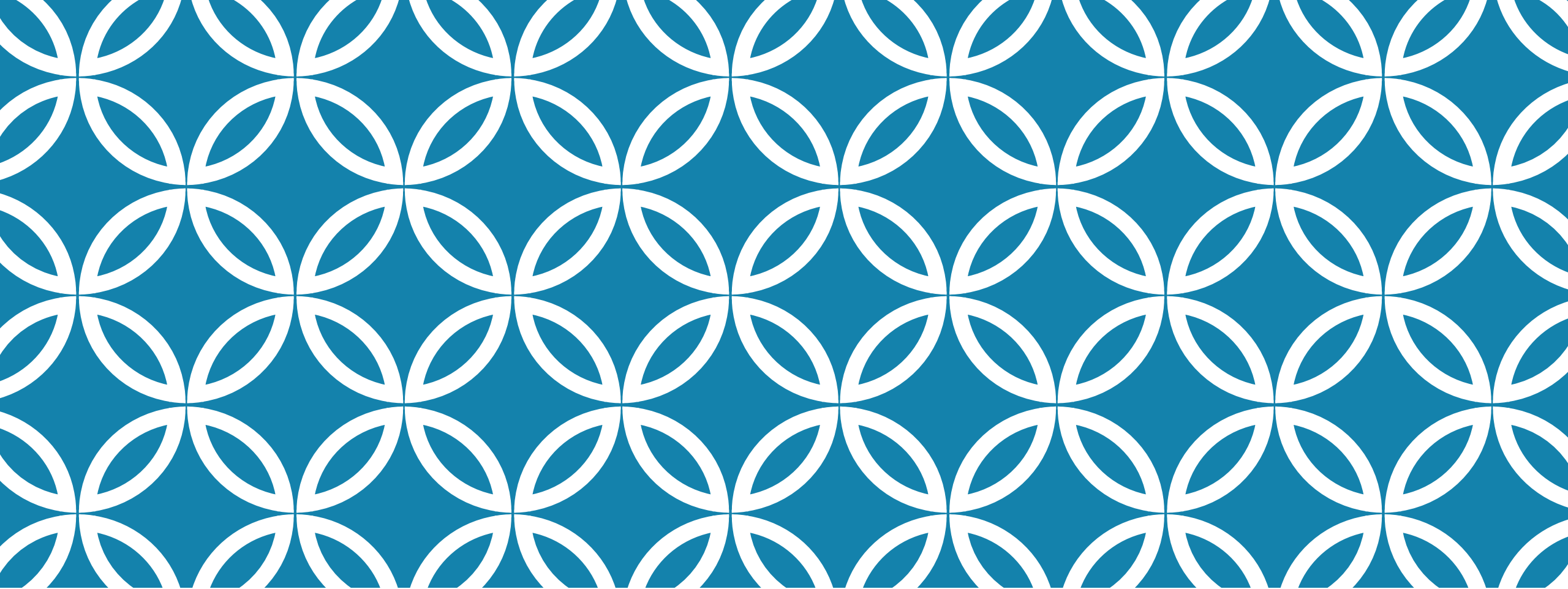
?

SEQUENCE?



UNDER-CONSTRUCTION UNITS?





CONCEPTUAL DIFFERENCE!



GOODS VS SERVICES!



ICE-CREAM?



ICE-CREME

Particulars	Goods	Services
Description	Ice cream and other edible ice, whether or not containing cocoa	(ii) Supply of 'restaurant service' other than at 'specified premises' ...
Not. No.	1/2017-CT	11/2017-CT
Rate	18% (Sr. No. 22 of Sch. III)	5% (Sr. No. 7 of Sch. III)
Heading / SAC	2105 00 00	Heading 9963 (Accommodation, food and Beverage services)

SCHEDULE II - ACTIVITIES [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

6. Composite supply

*The following **composite supplies** shall be treated as a supply of **services**, namely :—*

(a) Works contract as defined in clause (119) of section 2;

*(b) Supply, by way of or as part of any **service** or in any other manner whatsoever, of goods, being **food** or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.*

CIRCULAR NO. 164 /20 /2021-GST

4.2 Ice cream parlors sell **already manufactured** ice-cream and they **do not have a character** of a restaurant. Ice-cream parlors **do not engage in any form of cooking** at any stage, whereas, restaurant service involves the aspect of **cooking/preparing** during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.

AND THIS?



CLOUD KITCHENS!

[CIRCULAR 164 DATED 6.10.2021]

*Service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under “restaurant service” ... and attract **5% without ITC***



INFORMATION

Dear Guests.

As per the prevalent GST rules, we are having to charge GST at the rate of 18%. Note momos fall under the **HSN code 2106** (Sale of Momos).

Our Momo production is done centrally in our factory to ensure taste, hygiene & consistency which means there is no cooking carried out at the outlets. Momos are garnished and served piping hot at the outlet. Therefore our sale has to be categorised under the said HSN code.

However, for other delicacies such as Sizzlers, Au gratin, Momo Burgers we shall be charging only 5% GST as it does not fall under the category of Supply of Momos. For Beverages, tax rates are included in MRP for the respective soft drinks.

Understanding our guests' value and being a **#CustomerFirst** brand, we have **reduced our menu pricing by 10%** to ensure our guests don't be burdened. **This is not only a first time for us; it's possibly the first time a national brand has reduced its prices;** only to support its consumers.

We hope to get your continuous support, as an organisation we believe that adhering to tax and GST laws is of utmost priority. We strongly feel the path to progress for us as a nation is not by evasion; instead by adherence.

We are ready to address any further query or concern regarding this; do mail us at knowmore@wowmomo.com

Jai Hind

Regards
Team Wow! Momo

CASE II



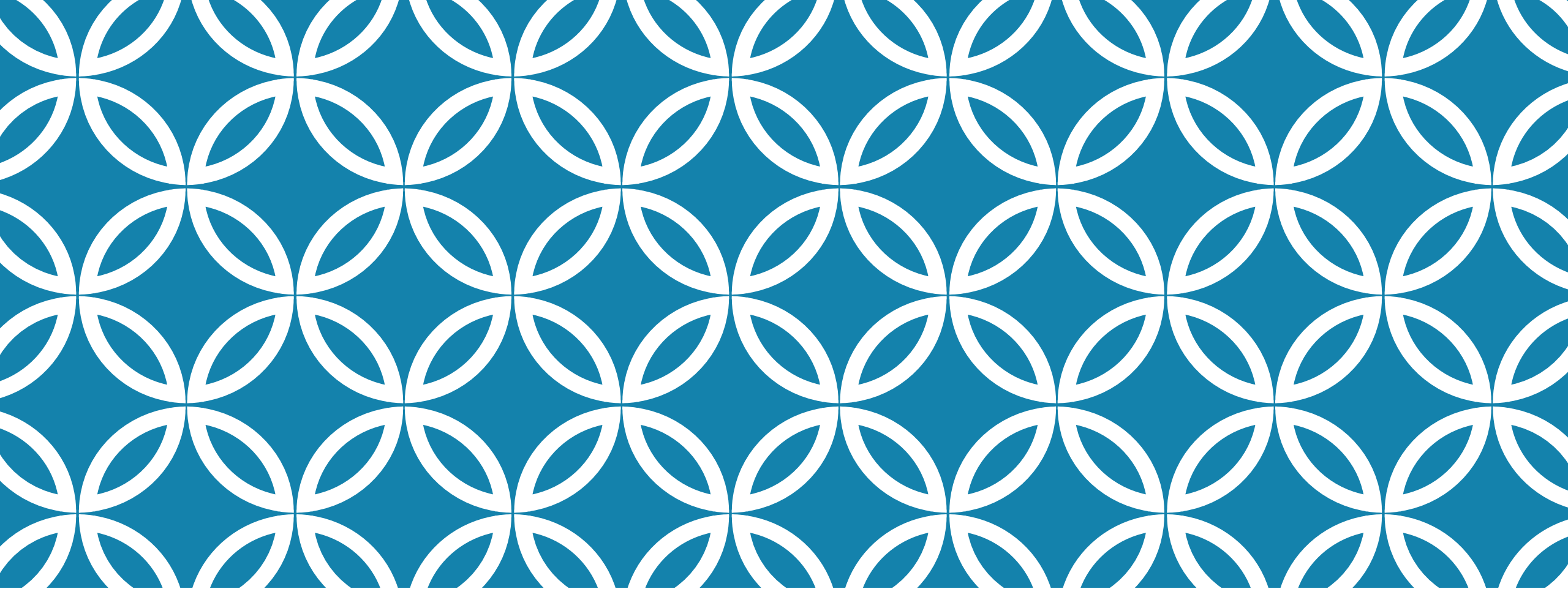
Taxpayer Supply of kits



To be used in machines for testing purposes



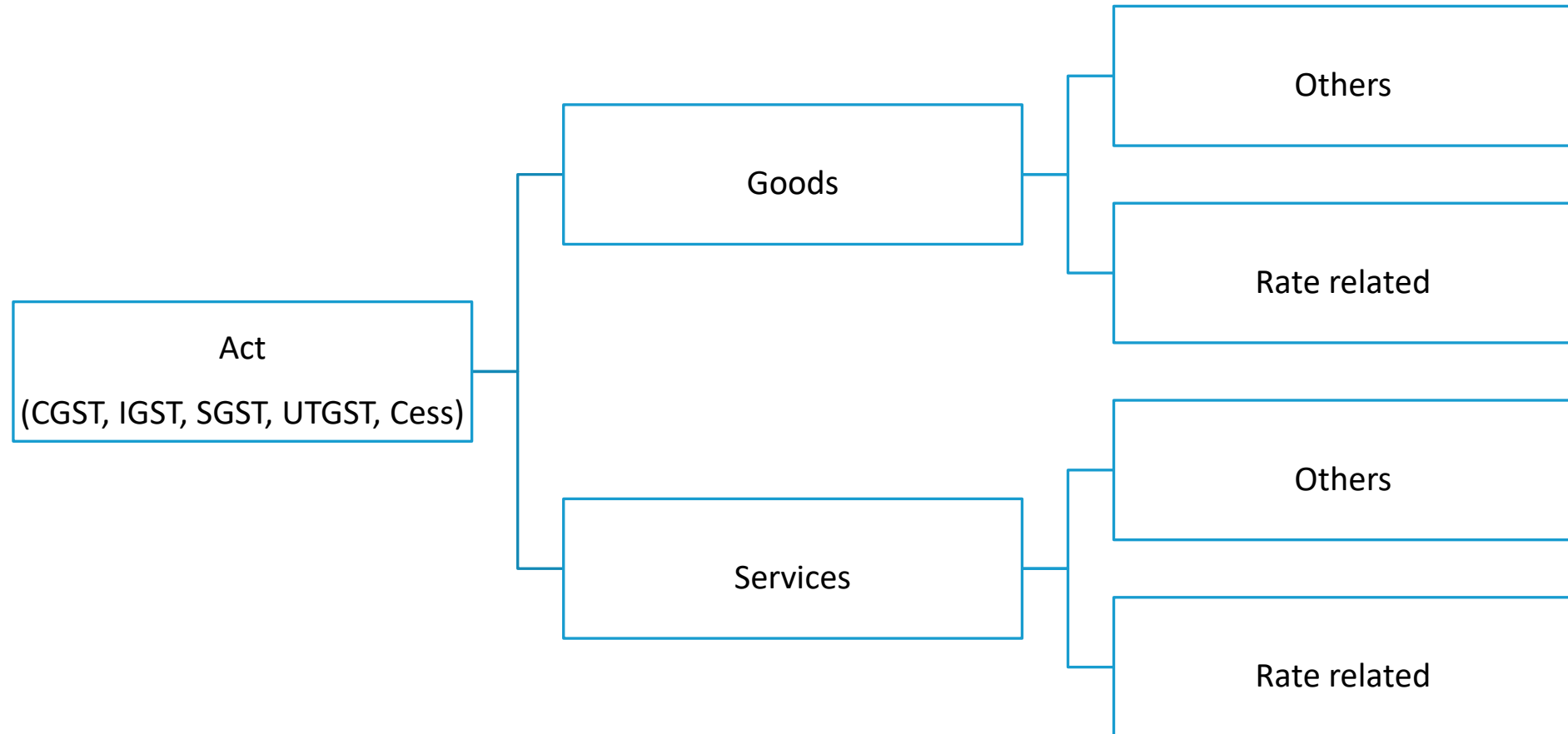
Hospitals to be charged on the basis of number of kits



NOTIFICATIONS



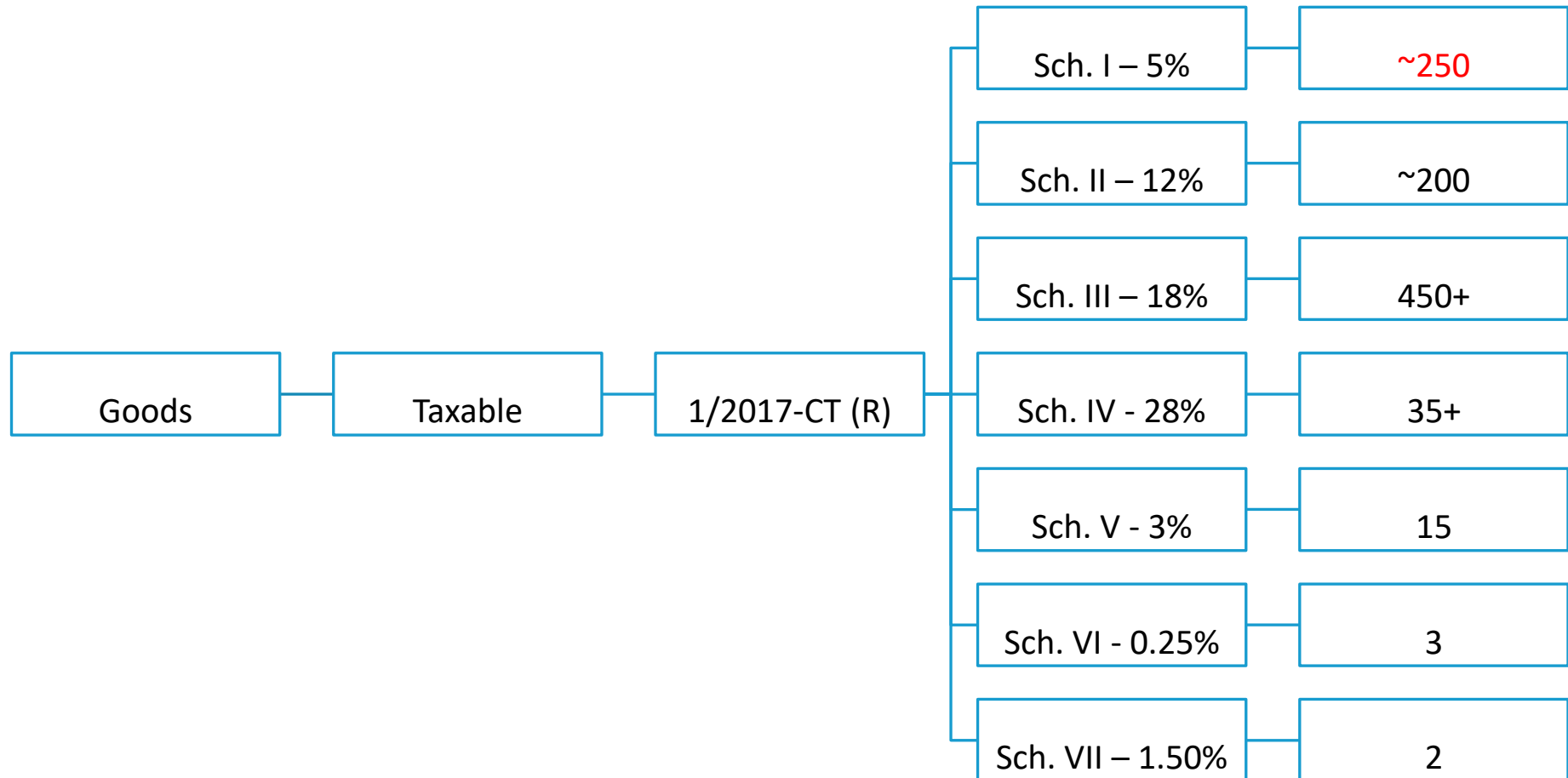
KEY NOTIFICATIONS - GOODS



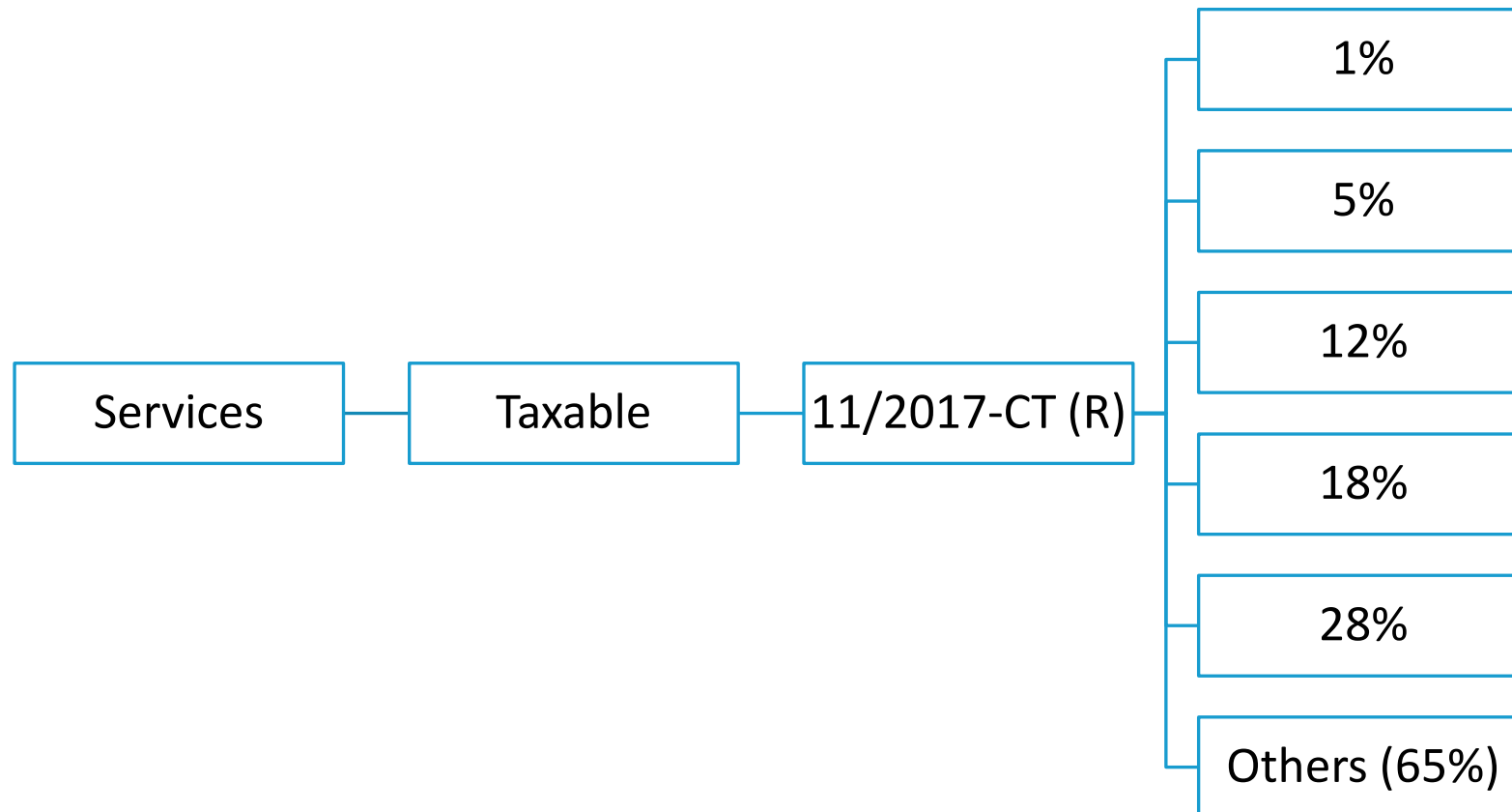
KEY NOTIFICATIONS!

Particulars	CT (R)			IT (R)		
	Taxable	Exempt	RCM	Taxable	Exempt	RCM
Goods	1/2017	2/2017	4/2017	1/2017	2/2017	4/2017
Services	11/2017	12/2017	13/2017	8/2017	9/2017	10/2017

KEY NOTIFICATIONS - GOODS



KEY NOTIFICATIONS - SERVICES



NOTIFICATIONS

2/2017-CT

- Approx. 150 entries

3/2017-CT etc

NOTIFICATION!

Sr. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
97	1905	Bread (branded or otherwise), except when served for consumption and pizza bread

BREAD?



Fasteners!



Classification – Burden of proof on Authorities!

Kesharwani Entp.
[2019 (28) GSTL
397 (Chattis.)]

Para 26/27

- ... unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort can be had to the **residuary item**.
- ... the **burden of proof** is on the State **Government** and the onus also lies on them to first establish **conclusively** that by no conceivable process of reasoning can the said product be brought under any of the tariff items and hence the product was being brought under the residuary item.

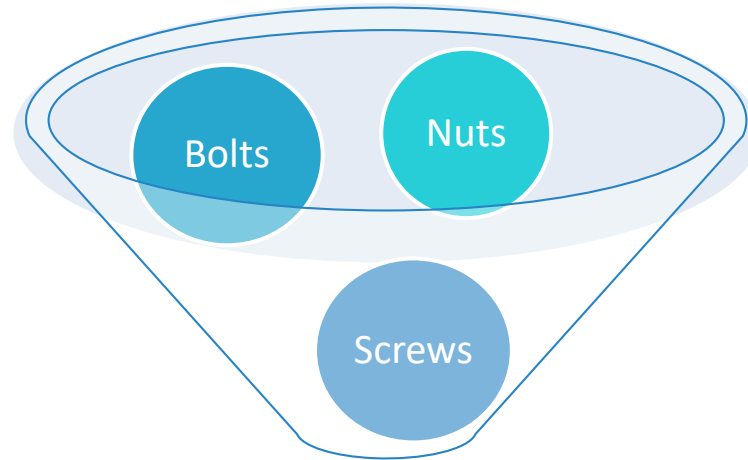
Classification – Residuary entry covers goods which are outside main entry!

Parle Agro Pvt Ltd
[2019 (20) GSTL
238 (Chattis.)]

Para 18

- **Supreme Court** in *A.R. Thermosets Private Limited's case (supra)* ... held ... that **residuary entry** is made to **cover only** those category of **goods which clearly fall outside** the ambit of the **main entry...**

Issue – classification of fasteners?

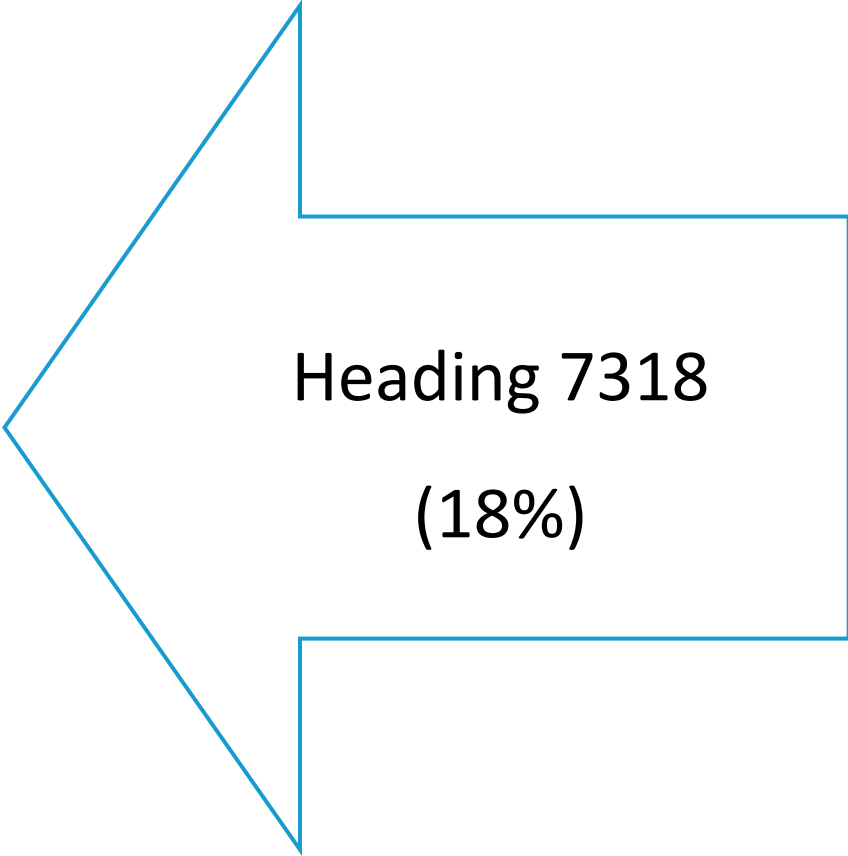


Classification based on **nature of goods** (Heading 7318)

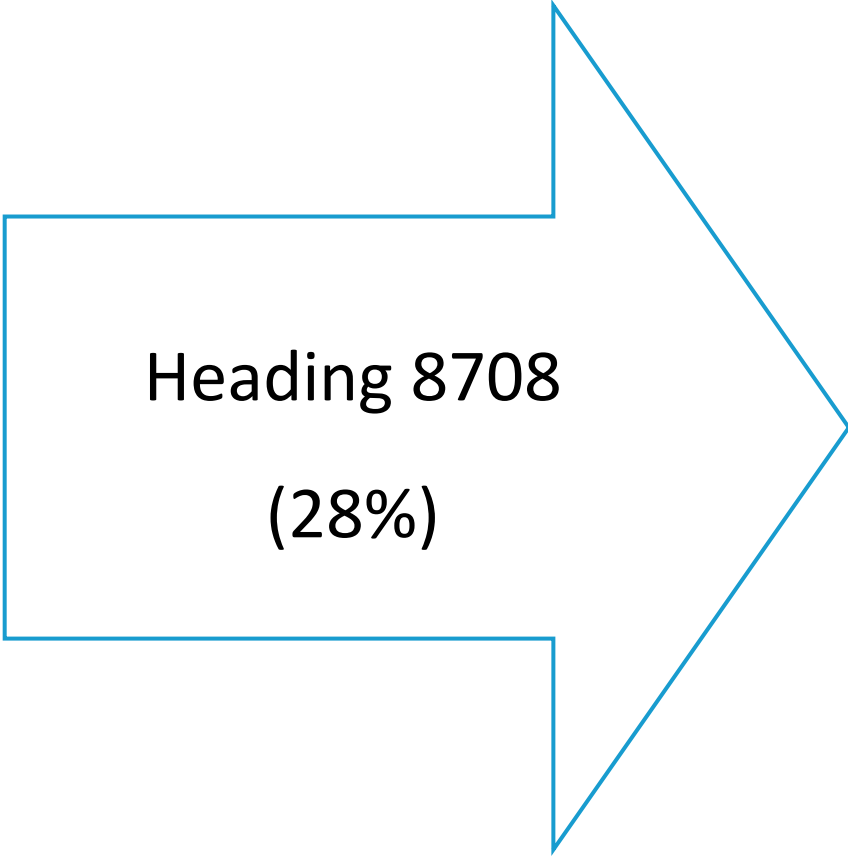
or based on **use** (say parts of Motor vehicle under

Heading 8708)?

Relevant Tariff Heading?



Heading 7318
(18%)



Heading 8708
(28%)

Relevant tariff provisions!

Particulars	Heading 7318	Heading 8708
Chapter	73	87
Section	XV	XVII
Section Notes	2 (a)	2 (b) and 3
Rate of GST	18%	28%

Relevant citations!

G.S. Auto International Ltd.

[2003 (152) E.L.T. 3 (S.C)]

Westinghouse Saxby Farmers
Limited

[2021-TIOL-121-SC-CX-LB]

A RAYMOND Fasteners India
Pvt. Ltd.

[2021(46) GSTL 306 (AAAR)]

WHAT GST NOTIFICATION SAYS!

Sr. No. 232 to Not. No. 1/2017-CT (R) [Sch. III]

Sr.	Chapter / Heading / Sub- heading / Tariff item	Description of Goods	Rate
232.	7318	<i>Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel</i>	9%

Sr. No. 170 to Not. No. 1/2017-CT (R) [Sch. IV]

Sr.	Chapter / Heading / Sub- heading / Tariff item	Description of Goods	Rate
170.	8708	<i>Parts and accessories of the motor vehicles of headings 8701 to 8705 [other than specified parts of tractors]</i>	14%

WHAT CUSTOMS TARIFF SAYS?

Not. No. 1/2017-CT (R) provides as under:

Why to refer to
Customs Tariff?

***“Explanation.** – For the purposes of this Schedule,*

...

*(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall **mean** respectively a tariff item, sub-heading, **heading** and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).*

*(iv) The **rules for the interpretation** of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the **Section and Chapter Notes** and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.*

Thus,

For classification purposes, reference to be made to:

- Customs Tariff including, *inter-alia*,
General Rules of Interpretation (GRI) and
relevant Sections Notes!

WHAT GRI PROVIDES?

General Rules for Interpretation ('GRI') of customs tariff!

*Classification of goods in this Schedule **shall be** governed by the following principles:*

- 1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the **terms of the headings** and **any relative section or chapter notes** and, provided such headings or notes do not otherwise require, according to the following provisions.*

Classification based on Heading and SN/ CN!

Based on GRI, classification has to be determined according to the terms of the **Headings** and any relative **Section** or Chapter **Notes!**

WHAT HEADING 7318 COVERS?

Heading 7318 of Customs tariff

Tariff Item	Description of Goods
7318	SCREWS, BOLTS, NUTS , COACH-SCREWS, SCREW HOOKS, RIVETS, COTTERS, COTTER-PINS, WASHERS (INCLUDING SPRING WASHERS) AND SIMILAR ARTICLES, OF IRON OR STEEL

Whether 7318 is appropriate heading for fasteners?

Heading 7318 specifically covers '*screws, bolts, ...*'!

```
graph TD; A[Heading 7318 specifically covers 'screws, bolts, ...'!] --> B[Only qualification to be covered under Heading 7318 is that the product should be 'screws, bolts, ...']; B --> C[In the Heading 7318 there is nothing to suggest classification based on 'usage', thus, irrespective of use, fasteners deserve to be covered under 7318!];
```

Only qualification to be covered under Heading 7318 is that the product should be '*screws, bolts, ...*'

In the Heading 7318 there is nothing to suggest classification based on 'usage', thus, irrespective of use, fasteners deserve to be covered under 7318!

WHAT SECTION NOTE
STATES?

Note 2 (a) to section XV!

*“2. Throughout this Schedule, the expression **“parts of general use”** means:*

*(a) **articles of headings** 7307, 7312, 7315, 7317 or **7318** and similar articles of other base metal;*

- ...

- *In Chapters 73 to 76 and 78 to 82 (but not in heading 7315) references to parts of goods do not include references to parts of general use as defined above.”*

Note 2 (B) to section XVII!

*“2. The expressions **“parts”** and “parts and accessories” **do not apply to** the following articles, whether or not they are identifiable as for the goods of this Section:*

(a) ...

*(b) **parts of general use, as defined in Note 2** to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39)*

3. References in Chapters 86 to 88 to “parts” or “accessories” **do not apply to** parts or accessories which are **not suitable for use solely or principally** with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.”

section XV - World custom Org. HSN Guide!

- **“(C) PARTS OF ARTICLES**

- *In general, identifiable parts of articles are classified as such parts in their appropriate headings in the Nomenclature.*
- *However, **parts of general use** (as defined in **Note 2** to this Section) presented separately are not considered as parts of articles, but are classified in the headings of this Section appropriate to them. This would apply, for example, in the case of bolts specialised for central heating radiators or springs specialised for motor cars. The bolts would be classified in heading 73.18 (as bolts) and not in heading 73.22 (as parts of central heating radiators). **The springs would be classified in heading 73.20 (as springs) and not in heading 87.08 (as parts of motor vehicles).**”*

Section Notes supports Heading 7318?

1.

- Note 2 to Section XV specifically defines “*parts of general use*”!

2.

- “*Parts of general use*” defined to, *inter-alia*, **mean** articles of Heading 7318!

3.

- Irrespective of use, fasteners covered under Heading 7318 as “*Parts of general use*”!

4.

- Even Note 2 (b) to Section XVII excludes “*Parts of general use*”!

Section notes have overriding force!

“...Section Notes and Chapter Notes have an overriding force on the respective headings.”

- Saurashtra Chemicals [1986(23) ELT 283 (Tri.)
[Approved in 1997 (95) ELT 455 (SC)]

Specific heading to be preferred!

“The specific heading of classification has to be preferred over general heading.”

- Moorco (India) Ltd [1994 (74) ELT 5 (SC)]

WHAT WCO HSN GUIDE PROVIDES?

Section XVII – World custom Org. HSN Guide!

- **“(III) PARTS AND ACCESSORIES**
- *... The other chapters of this Section each provide for the classification of parts and accessories of the vehicles, aircraft or equipment concerned.*
- *It should, however, be noted that these headings apply only to those parts and accessories which comply with **all three** of the following conditions:*
 - *(a) They must **not be excluded by** the terms of **Note 2** to this Section ... **and***
 - *(b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 ... **And***
 - *(c) They must not be more specifically included elsewhere in the Nomenclature.”*

To summaries!

Sr.	Condition	Whether fulfilled?
a.	They must not be excluded by the terms of Note 2 to this Section	No [as Heading 7318 is excluded due to Note 2 (b) to Section XVII]
b.	They must be suitable for use solely or principally with the articles of Chapters 86 to 88	No [as goods covered under Heading 7318 are mandatorily to be treated as “parts of general use” vide Note 2 (a) to Section XV]
c.	They must not be more specifically included elsewhere in the Nomenclature	No (as screws are covered under Heading 7318)

What Apex Court has held!

*“Since these fall under the category of **excluded goods** under Chapter Notes, **even though they are used specifically** solely or principally with the armoured vehicles of Chapter Heading 8710, they are classifiable under Chapter Heading 8536.90 only“*

- Intel Design Systems (India) Pvt. Ltd. [2008 (223) ELT 135 (SC)]

WATER!



WATER!

Sr. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
99.	2201	Water [other than aerated, mineral, purified , distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]

AQUAA CARE SURAT RO TECHNOLOGIES 2020-TIOL-68-AAR-GST

Issue

- Purified water

AAR

- Classification and HSN code of water is 2201
- **Purified water is excluded** from Sr. No. 99
- It will not be eligible for NIL rate
- Selling water in containers is composite supply as the principal activity is selling of purified water only

LATEST DEVELOPERS ADVISORY LTD 2020-TIOL-66-AAR-GST

Issue

- Two agreements, one for maintenance and another for water supply

AAR

- Both contracts, Contract-I and Contract-II, appear to be directly linked to each other as there is no case of direct supply of water by applicant to individual residents of the society and, therefore, applicant is required to pay GST as applicable
- Applicant appears to be trying to split the contract into Contract-I and Contract-II to avoid the GST and to facilitate the society (RWA) in order to keep the maintenance charges paid by residents below Rs. 7,500/-

ELECTRIC ENERGY!



ELECTRIC ENERGY!

Sr. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
104.	2716 00 00	Electrical energy

NON-TARIFF CHARGES

Taxable	Exempt
<p data-bbox="453 572 1021 615">T P Ajmer 2018-TIOL-77-AAR</p> <p data-bbox="384 743 1192 872">Not eligible for exemption under Not. No. 12/2017 – Circular 34/8/2018</p>	<p data-bbox="1475 572 2104 615">Torrent Power 2019-TIOL-15-HC</p> <p data-bbox="1398 743 2283 1039">If principle supply exempt then incidental too Paragraph 4 (1) of the impugned Circular No. 34/8/2018-GST dated 1.3.2018 is hereby struck down</p> <p data-bbox="1284 1172 2295 1296">[Pending before SC - UOI Vs Torrent Power Ltd 2019-TIOL-349-SC-GST]</p>

ELECTRICITY SUPPLY TO TENANTS – IT'S A SERVICE!

Srijan Realty Pvt.
Ltd. [2019 (24)
GSTL 169 (Cal.)]*

Para 18

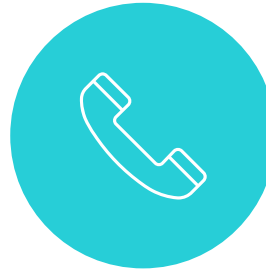
- It also cannot be said that, the petitioner is engaged in the supply or trading of **electricity** ... The petitioner **does not have a licence** to undertake trading in electricity...therefore, the petitioner cannot be said to be distributing or selling or trading in electricity ... to the occupants of the commercial complex... the only other thing that remains to describe the activity undertaken by the petitioner, **is service.***

THANK YOU!



CA Pritam Mahure and Associates

Happy to Discuss!



+91 9920644648 / 020-27293425



info@lawgical.in



<https://pmaconsulting.in>

[E-books on GST](#)

[E-books on How to be Future Proof](#)