

# SERVICE TAX IN REAL ESTATE

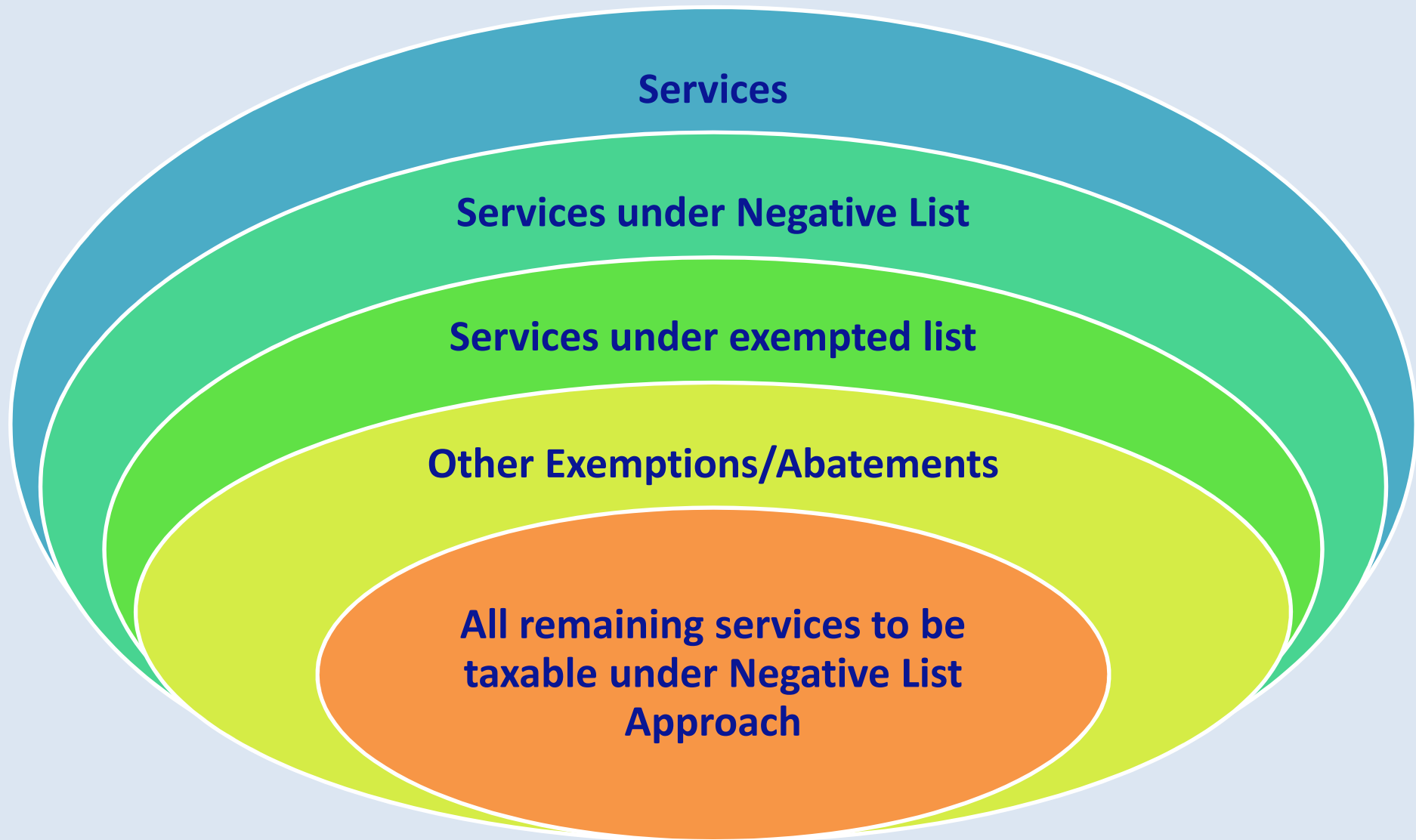


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# TAXATION OF SERVICES –NEGATIVE LIST REGIME



## DEFINITION OF SERVICE:

- Any activity
- Carried out by one person
- For another person
- For consideration
- Includes a declared service



## **ENTRIES OF DECLARED LIST GOVERNING REAL ESTATE** **(Section 66E)**

- **Renting of Immovable Property;**
- **Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority;**
- **Service portion in execution of Works Contract**

## RENTING OF IMMOVABLE PROPERTY:

- It was already taxable. Validity of the levy was upheld by many courts.
- Covers following (an illustrative list):
  - Renting for temporary purpose like marriages or other social functions;
  - Permitting use of property for vending/dispensing machine
  - Renting for entertainment or sports
- Location of immovable property determines the taxability.

# Exemptions for Renting .....

## Negative List

- ✓ Services by way of renting of residential dwelling for use as residence.
- ✓ Services relating to agriculture or agricultural produce by way of renting of vacant land

## Mega Exemption

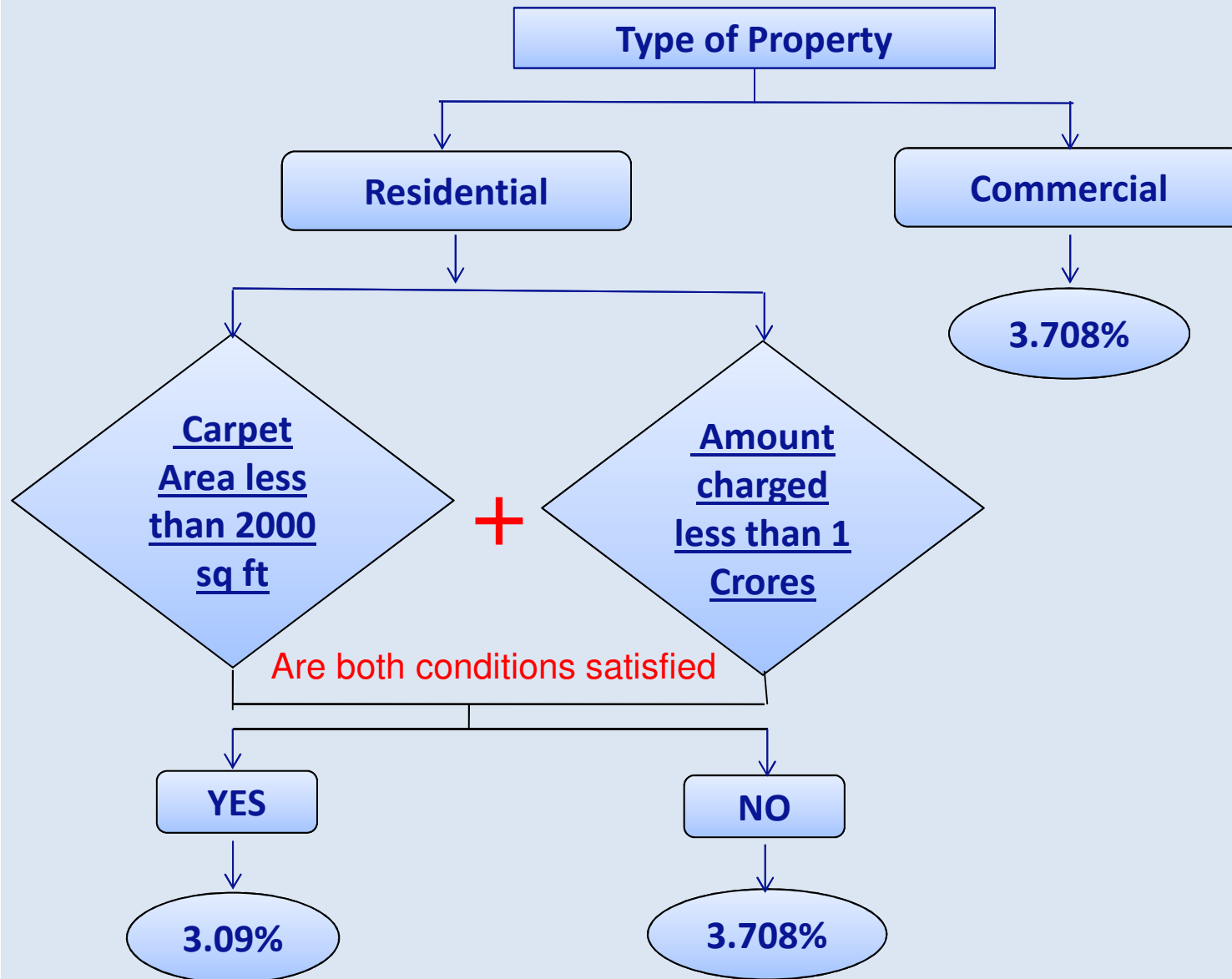
5. Services by a person by way of renting of precincts of a religious place meant for general public.
9. Renting of immovable property to an educational institution in respect of education exempted from service tax.
18. Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation **below Rs.1000/- per day or equivalent.**
24. Vehicle parking to general public (Taxable w.e.f. 01-Apr-13)



## **CONSTRUCTION SERVICE:**

- *Booking of flats under construction(i.e. before issuance of completion certificate) is taxable;*
- *Sale of plots are not taxable;*
- *Builders are also allowed abatement of 75%/70%(based on type of property), provided the land value is also included in total consideration;*
- *No Abatement allowed on Preferential Location Charges, associated incomes(e.g. transfer charges, cancellation charges)*
- *CENVAT Credit is allowed on*
  - ✓ *input services*
  - ✓ *Capital goods;*
- *CENVAT Credit on inputs(e.g. steel, cement) barred*

# Effective Rates Applicable w.e.f. 01-March-2013





## **No service tax on sale of completed properties**

**Completion Certificate from Competent Authority required for sale of flat to be exempt from service tax.**

**Competent Authority means The Government or any authority authorized to issue completion certificate under any law for the time being in force and In case there is non-requirement of such certificate from such authority, then from any of the following namely:-**

- ✓ Architect Registered with Council of Architecture constituted under the Architects Act, 1972; or**
- ✓ Chartered Engineer Registered with Institution of Engineers (India); or**
- ✓ Licensed Surveyor of the respective local body of the city or town or village or development or planning authority.**

## WORKS CONTRACT SERVICE:

➤ *Works contract means a contract which involves-*

✓ *Transfer of property in goods*

*And*

✓ *such contract is for the purpose of :*

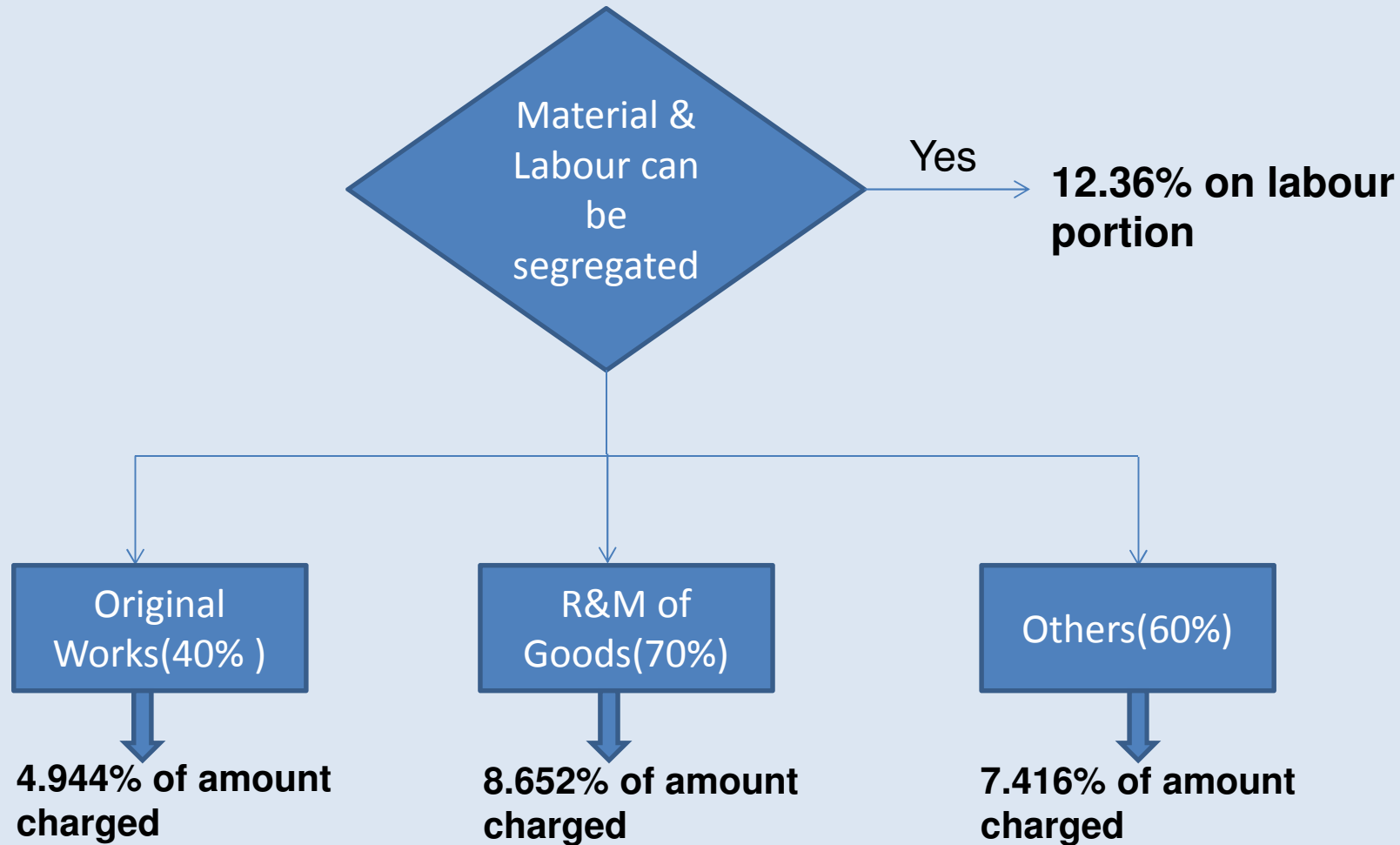
- *Construction*
- *Erection*
- *Commissioning*
- *Installation*
- *Completion*
- *Fitting out*
- *Repair*
- *Maintenance*
- *Revocation*
- *Alteration*

*of movable or immovable property*



## WORKS CONTRACT SERVICE:

- *Valuation under Works Contract Service(Rule 2A of Service tax (Determination of Value) Rules, 2006)*



# Exemptions from Service Tax in Real Estate Sector



# Exemptions from Service Tax in Real Estate Sector

## Mega Exemption: Entry No.12

Service of Construction, Erection, Commissioning, Installation, Completion, Fitting Out, Repair, Maintenance, Renovation, or Alteration.



The Government, a Local Authority or a Governmental Authority


### In Relation to :

- 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
- c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- d) canal, dam or other irrigation works;
- e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) 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;

# Exemptions from Service Tax in Real Estate Sector

## Mega Exemption: Entry No.13

Service 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.
- c) A building owned by an entity registered under section 12AA of the Income tax Act, 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.
- e) A structure meant for funeral, burial or cremation of deceased.

# Exemptions from Service Tax in Real Estate Sector

## Mega Exemption: Entry No.14

Service by way of  
Construction, Erection, Commissioning, or  
Installation of Original Works pertaining to

Repair, maintenance  
are not included in  
this entry

- 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 meters 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.
- d) Post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes.
- e) Mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

# CENVAT OF INPUT SERVICES

Credit on Input Service	Whether Credit can be taken against Output Service		
	Works Contract (including R&M)	Construction of Complex	Renting of Immovable Property
Works Contract	Yes	Yes	<b>No</b>
Man Power Supply	Yes	Yes	Yes
Commission/ Brokerage	Yes	Yes	Yes
Professional/Legal Consultancy	Yes	Yes	Yes
Telephone Bills	Yes	Yes	Yes
Other Services	Yes	Yes	Yes



# Service Tax Issues in Real Estate Transactions

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## Case Study-1



ABC Ltd has entered into a contract for construction of road meant for general public. ABC Ltd sub contracts the aforesaid work to three contractors namely:

- ✓ XYZ Ltd , laying the surface of road
- ✓ GHI Ltd , other physical activities in respect of such roads.

What will be the Service tax implication on the aforesaid transactions?

- Services provided by way of construction of road meant for use by general public is Exempted from payment of Service Tax. Thus, any service which is used in the construction of said road shall be exempted from Service Tax as per **Entry 13(a) of N/N 25/2012 dated 20.06.2012**. Accordingly, all the aforesaid services in respect of roads are not exigible to Service Tax.
- Further, as far as laying of surface is concerned same is also covered under definition of Works Contract as engrafted under Section 65B (54) of Finance Act, 1994. Since, main Contractor enjoys exemption, the sub contractor also continue to enjoy the exemption in respect of Works Contract Services - **Entry 29(h) of N/N 25/2012 dated 20.06.2012**

## Case Study-2



M/s ABC Pvt Ltd is engaged in construction of hospitals and educational institutes. Whether M/s ABC Pvt Ltd. is required to pay Service Tax on the same?

If M/s ABC Pvt Ltd is constructing such structures for the government, a local authority or a governmental authority, in that case M/s ABC is not required to pay Service Tax on the same as per **Entry 12 (a) of Notification No 25/2012.**

However, if such structure are built for persons other than government, a local authority, governmental authority, M/s ABC Pvt Ltd is required to pay Service Tax on the same.

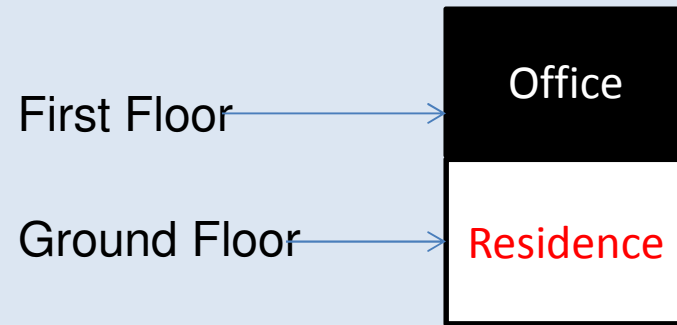
## Case Study-3



Mr. A has let out a house to Mr. B for Residential purposes. Further, along with such house Mr. A has also provided various amenities such as furniture, refrigerator, air conditioners etc. What shall be Service tax implications of the same?

This will be a case of Bundled Services where a number of services have been provided in lieu of a Single Consideration. Accordingly, taxability of the same shall be determined as per **Section 66F of Finance Act, 1994**. As per said Section, if services are considered Naturally Bundled in the ordinary Course of business, it shall be considered as the provision of said service which provide essential character to it. In this case, Renting of Immovable Property is the essence of aforesaid activity. Further, Renting of property for residential purposes is not exigible to Service Tax. Thus, said activity of Renting by Mr. A shall not be exigible to Service Tax.

## Case Study-4



Mr. A has rented a house to Mr. B, consisting of two floors. one floor of which is to be used as residence and the other for the purpose of running of a office? What shall be the Service Tax implications on the same?

Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of Service Tax. In this case renting for use as residence is a Negative List Service while renting for non-residence use is chargeable to tax. Since, the latter category attracts highest liability of Service Tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property.

Thank You.

