



# **INTERMEDIARY**

---

**THE CHAMBER OF TAX CONSULTANTS**

**STUDY CIRCLE MEETING**

**DATE: 27.07.2021**

**GROUP LEADER: KEVAL SHAH**

**CHAIRMAN: RAJIV LUTHIA**

# Flow of the Session



**01. History of  
Intermediary Service**

**03. Destination based  
Consumption tax and  
Constitutional validity of  
determining the Place of  
Supply**

**02. Dissection of  
Definition of  
Intermediary  
Services**

**04. Deliberations on  
Issues**

# History of Intermediary Service

---

- Introduced in the year 2012 – Negative List based taxation.
- Purpose was to determine the “Place of Provision of Service”.
- Intermediary facilitating the supplier of services were covered.
- Scope expanded from October 2014 to cover intermediary facilitating supplier of goods.
- Legacy carried forward to GST Law.



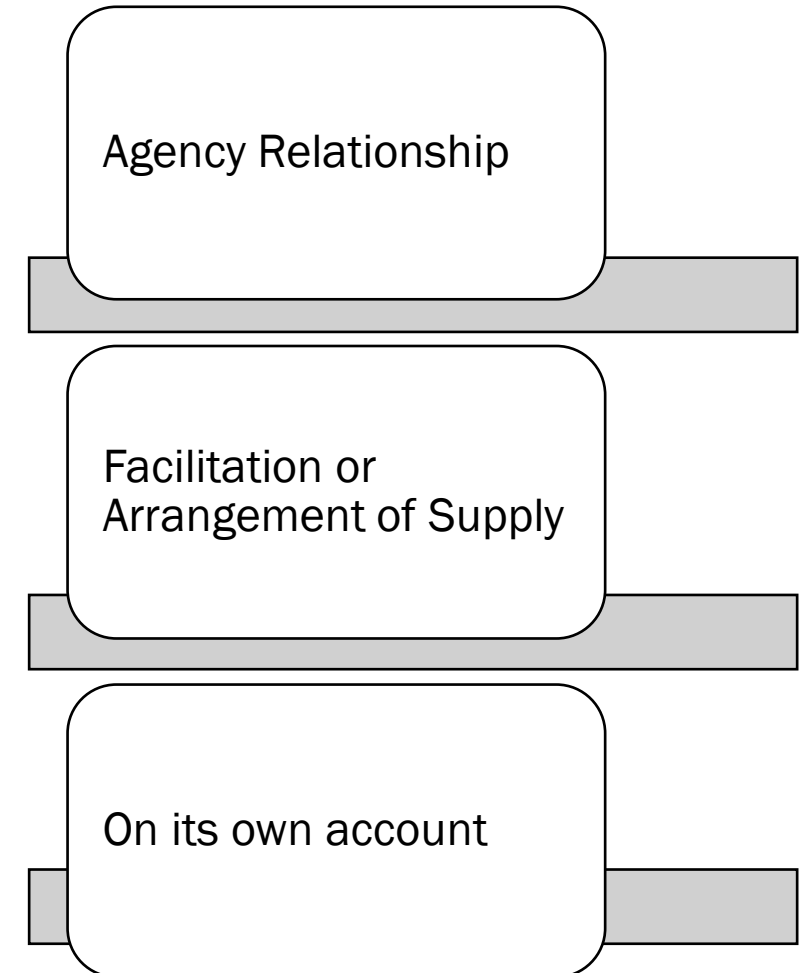
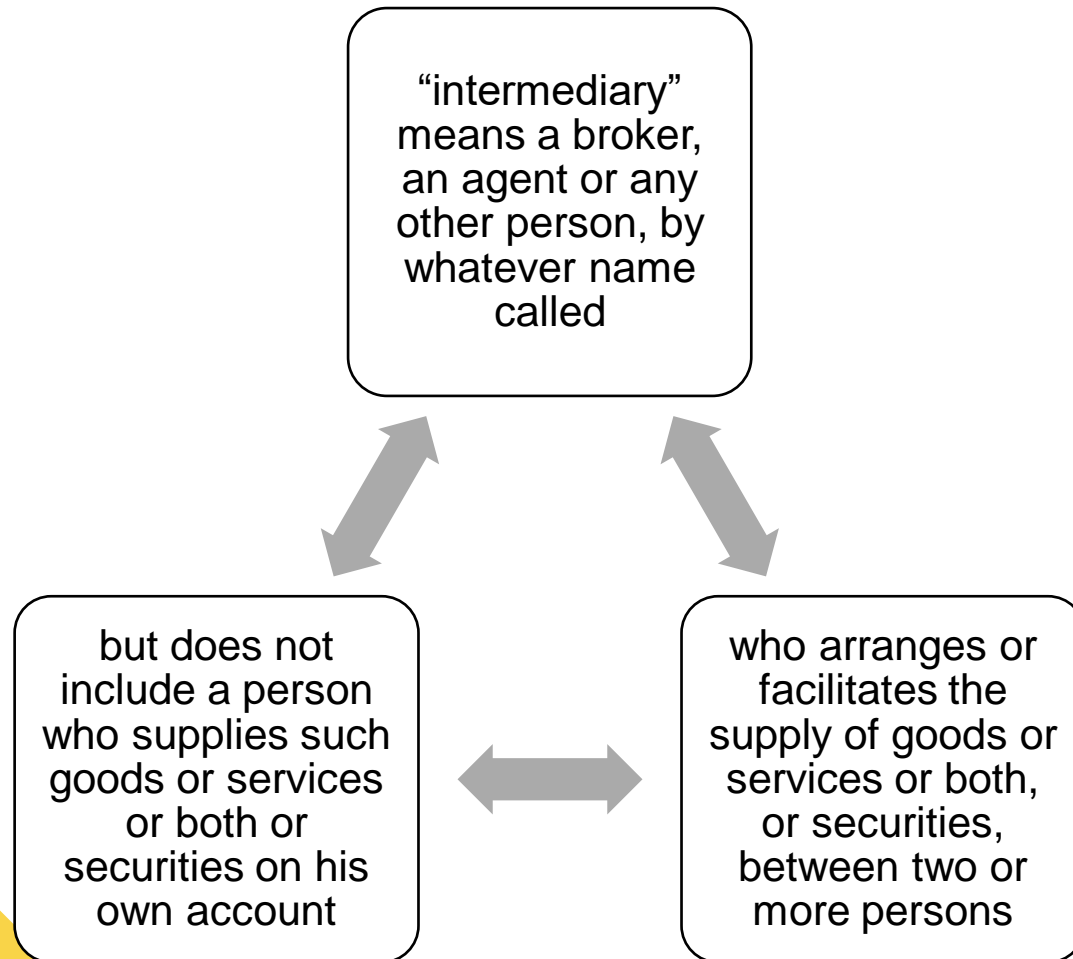


## “ Definition of “Intermediary” and its understanding

Section 2(13) of IGST Act, 2017:

“Intermediary” **means** a broker, an agent or any other person, by whatever name called, **who** arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, **but does not include** a person who supplies **such** goods or services or both or securities on his own account;

# Dissection of Definition



# Principal - Agent



## Agent defined u/s 2(5) of CGST Act, 2017

- “Agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

## Section 182 in The Indian Contract Act, 1872



- An ‘agent’ is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the ‘principal’.

Any Other Person?– Ejusdem Generis – Noscitur a sociis

# Arranges or Facilitates



## Arrange

- “to plan, prepare for or organize something” (Cambridge English Dictionary).
- “to make plans for something to happen for example by agreeing to time and place” (Macmillan Dictionary).
- “to set in a rank or row, to put in order, to settle or work out ... to come to an agreement.... to make plan...” (Chambers Dictionary)

## Facilitate



- “to make easy or easier” (Chambers Dictionary)
- “make something possible or easier” (Cambridge /English Dictionary)
- “to help people deal with a process or reach an agreement or solution without getting directly involved in the process, discussion etc. yourself” (Cambridge Business English /dictionary).

# On its Own Account

---

- Emphasis on existence of three or more parties in contract.
- Principal to Principal Contract Vs Principal to Agent Contract.
- Thus, an intermediary is involved with two supplies at any one time:
  - the supply between the principal and the third party; and
  - the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.
- An intermediary cannot alter the nature of services/goods supplied by the Principal.



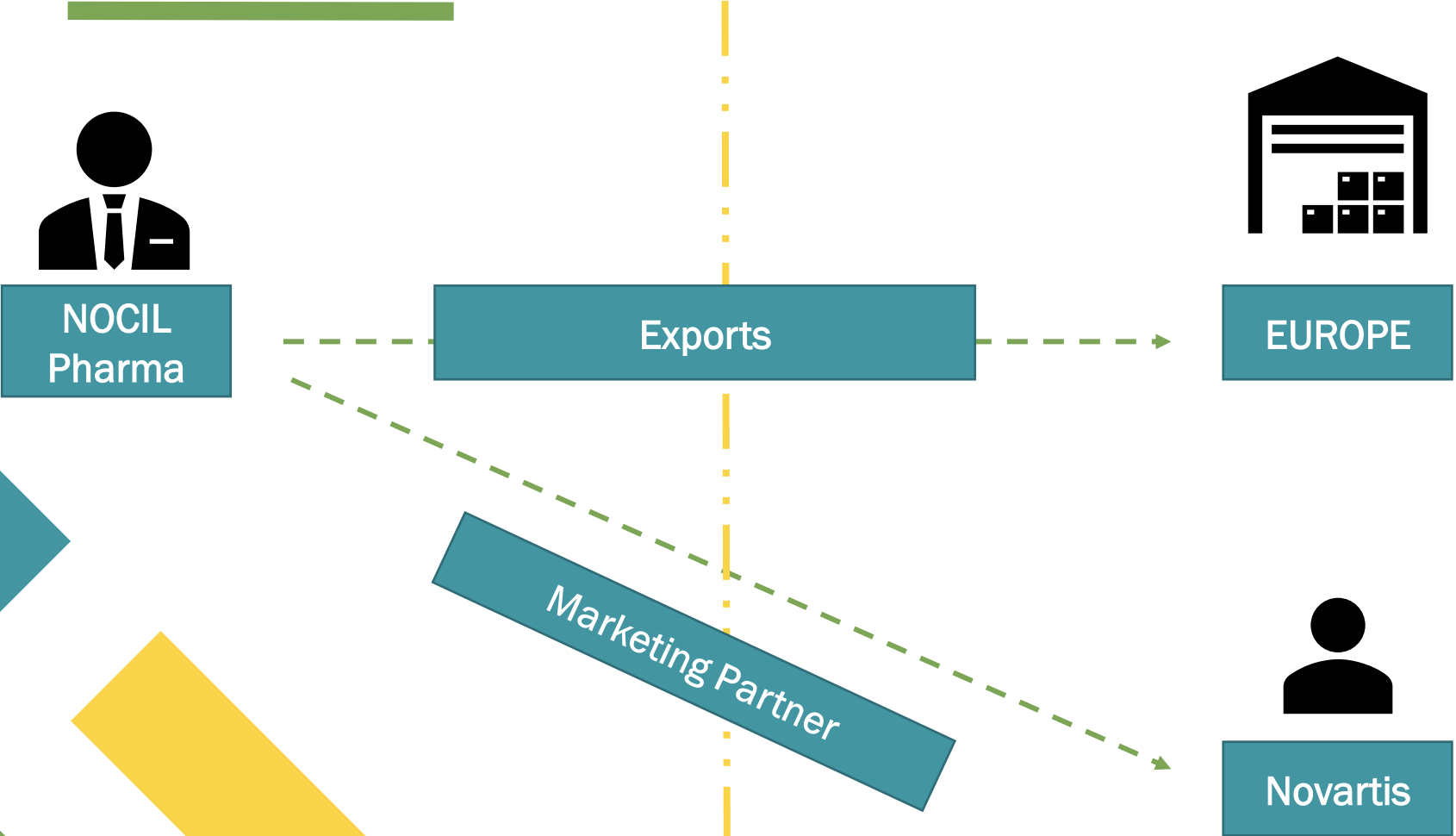
# Constitutional Validity

---

- Place of Supply in case of “Intermediary services” has been provided as “Location of Supplier”.
- Deviation from the concept of consumption-based tax.
- Sec 13(8) – determining place of supply for intermediary services being challenges as constitutionally invalid
  - High Court of Gujarat - Material Recycling Association of India v. Union of India and two Others’ - 2020 (40) G.S.T.L. 289 (Guj.)
  - High Court of Bombay – Dharmendra M Jani v. Union of India - [2021] 127 taxmann.com 730 (Bombay)



# Case Study 1 - Novartis



Novartis Scope of Services:

- 1. Right to appoint agents
- 2. Advertise
- 3. Market and Promote through mass mailing/messaging

Fees shall be paid based on order procured

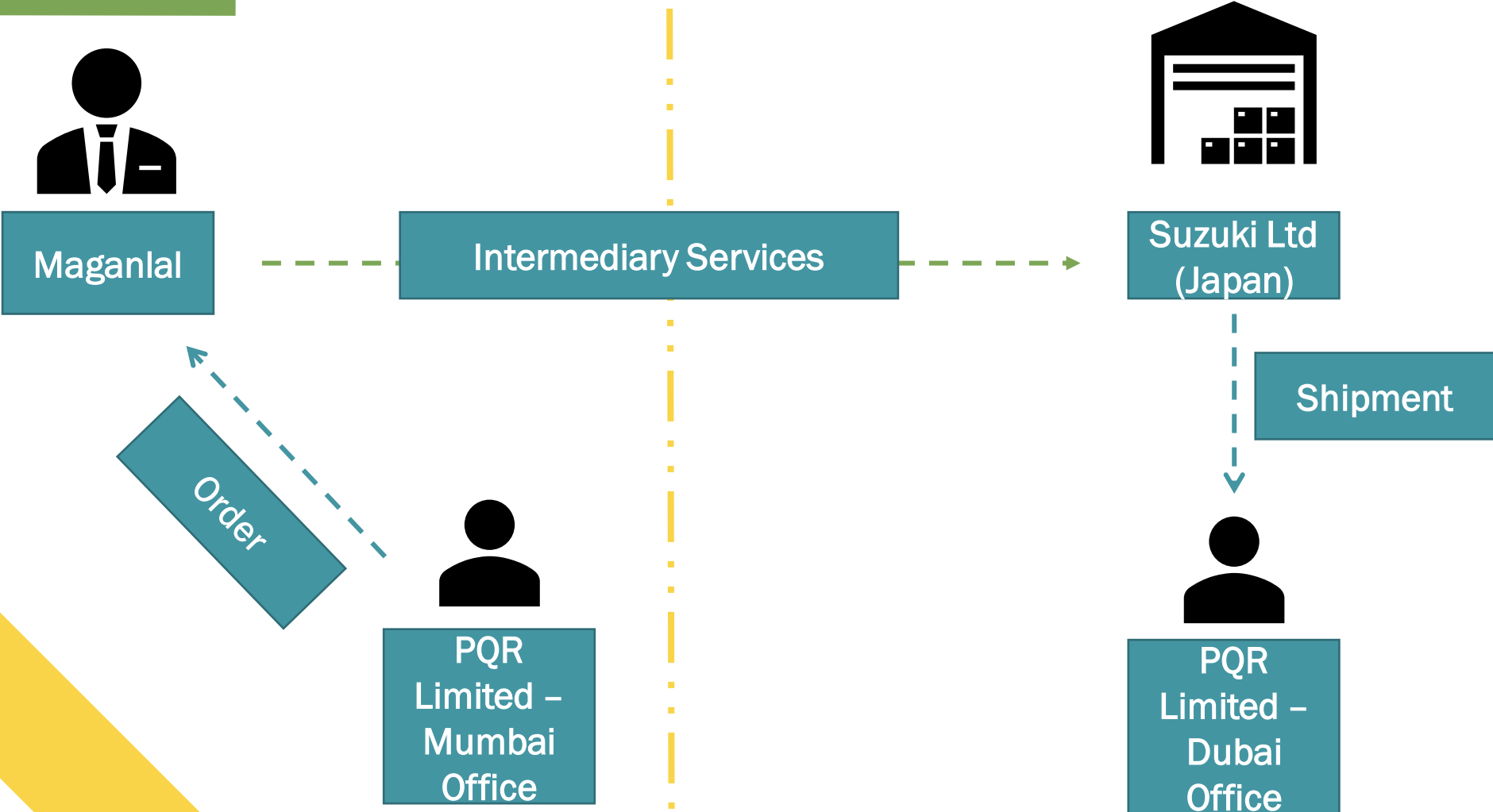
# Issues for Discussion

- Whether the services provided by Novartis would qualify as “Intermediary Services”?
- Is there a difference between Marketing Services and Intermediary Services?
  - Godaddy India Web Services Private Limited [2016 (46) S.T.R. 806 (A.A.R.)]
  - Paragraph 5.9.6 of the Education Guide, 2012 issued by C.B.E. & C. Relevant portion is extracted as under;

*Similarly, persons such as call centers, who provide services to their clients by dealing with the customers of the client on the client’s behalf, but actually provided these services on their own account’, will not be categorized as intermediaries*

Conditions	Whether satisfying
Whether Agency Relationship exists?	No
Whether facilitation or arrangement?	Yes**
Not providing services on own account?	No

# Case Study 2 – Maganlal & Co



# Issues for Discussion

---

- Whether the Intermediary Services would be treated as “Inter-state” or “Intra-state” Supply?
- Section 7 Vs Section 8 - Interplay
- Whether exemption provided in Entry 12AA of Notification no. 9/2017 – Integrated Tax (Rate) dated 28-06-2017 should be available?

# Recipient of Supply

---

(93) “recipient” of supply of goods or services or both, means —

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

# Inter-state Vs Intra-state

## SECTION 7. Inter-State

(3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in -

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce.

(5) Supply of goods or services or both, -

- (a) when the supplier is located in India and the place of supply is outside India;
  - (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
  - (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,
- shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce

# Inter-state Vs Intra-state


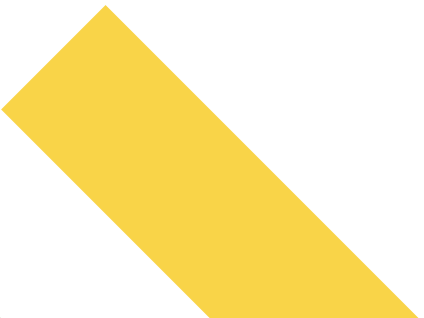



## SECTION 8. Intra-State supply

(2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply :

Notification No 09/2017 - IT(Rate) dated 28.06.2017.....effective from 01.10.2019

12AA - Heading 9961 - Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory





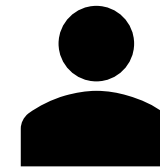
# Case Study 3 – XYZ Inc



Oxford  
University



XYZ INC  
(UK)



ABC (India)

Fees: 5000  
EURO p.m.

## Scope of Services:

- Market their courses & enroll student from India.
- Consult, advice, arrange & organize tours/visit for representative of Oxford
- University to various schools & colleges located in INDIA
- Develop the content & design for the course material for students.
- Co-ordinate with Students for completing the enrollment process.

## Scope of Services

- Consulting, Advising & arranging college/high school visit in India representative of XYZ INCs or their client's representative.
- Develop Content & design course material for clients of XYZ INC.
- Carrying out research & prepare study report about various school and education institutions across India.
- Carrying out research on various courses offered by foreign universities and give suggestions for their suitability to Indian students.

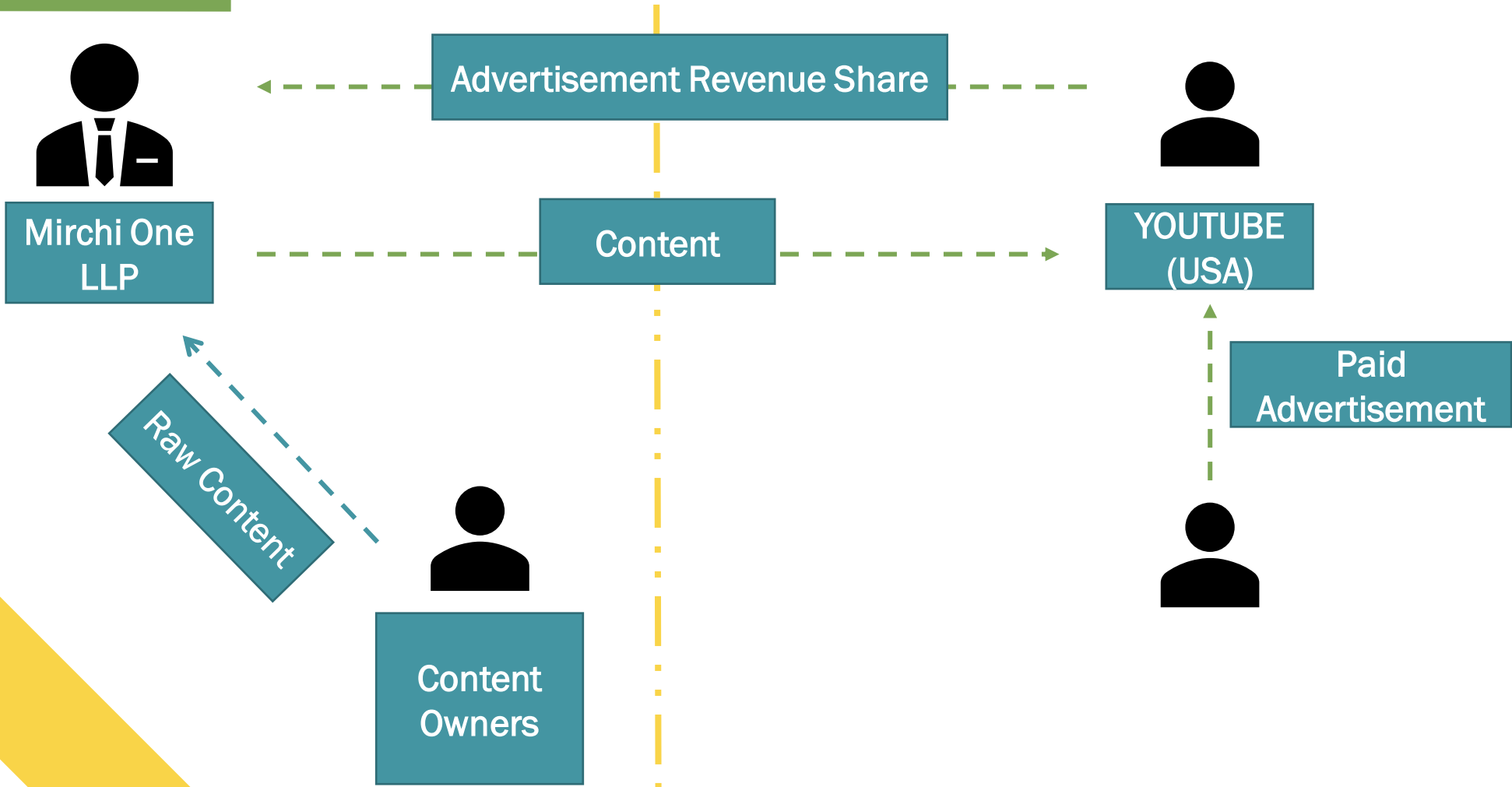
# Issues for Discussion

---

- Whether the services provided by ABC Education India Private Limited would be treated as Intermediary Services?

Conditions	Whether satisfying
Whether Agency Relationship exists?	No
Whether facilitation or arrangement?	Yes**
Not providing services on own account?	No

# Case Study 4 – Mirchi One



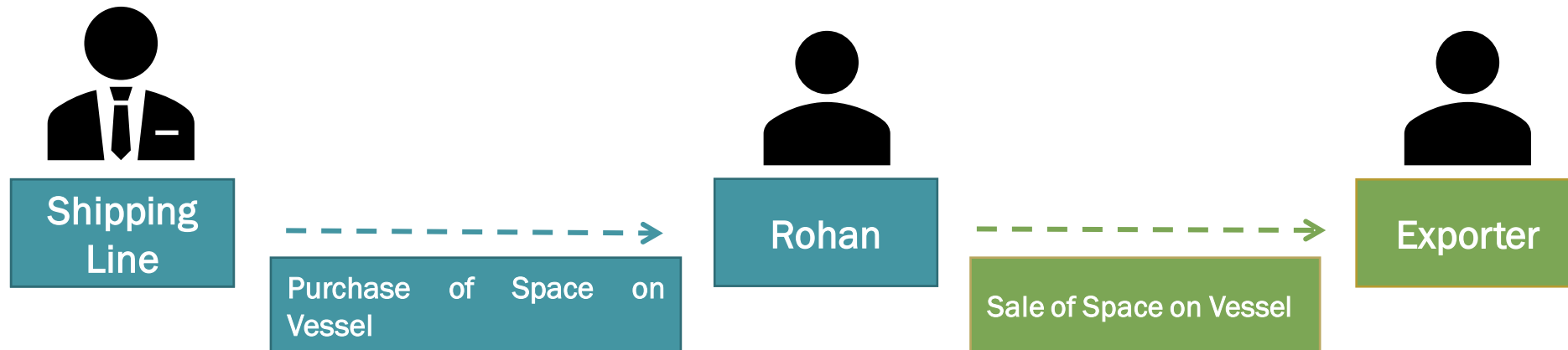
# Issues for Discussion

---

- Whether the income earned by Mirchi One LLP is on account of intermediary services provided by them?

Conditions	Whether satisfying
Whether Agency Relationship exists?	No
Whether facilitation or arrangement?	Yes**
Not providing services on own account?	No

# Case Study 5 – Rohan Container



## Issues for Discussion:

Whether the margin earned on sale of space is liable for GST considering the same as “Intermediary Services”

# Discussion

---

- Marine Trans India Private Limited Vs CST, Hyderabad ST [2020 (33) G.S.T.L. 241 (Tri. - Hyd.)]

*It is the case of the appellant that this is a deal on principal-to-principal basis between them and the shipping lines and again between the exporters and them. They are not acting as an agent. They could purchase the space for a lower price and sell it at a higher price and thereby earn profit. On the other hand, if they failed to sell the space to exporters, after purchasing from the shipping lines, they may incur a loss. They are not receiving any commission whatsoever from the shipping line or from the exporters*

- Pheonix International Freight Services Pvt Ltd Vs CST, Mumbai II - 2017 (47) S.T.R. 129 (Tri. - Mumbai)
- Greenwich Meridian Logistics (India) Pvt. Ltd. [2016 (43) S.T.R. 215 (Tribunal)]
- DHL Lemuir Logistics Pvt. Ltd. v. Commissioner – 2016-TIOL-1455-CESTAT-MUM

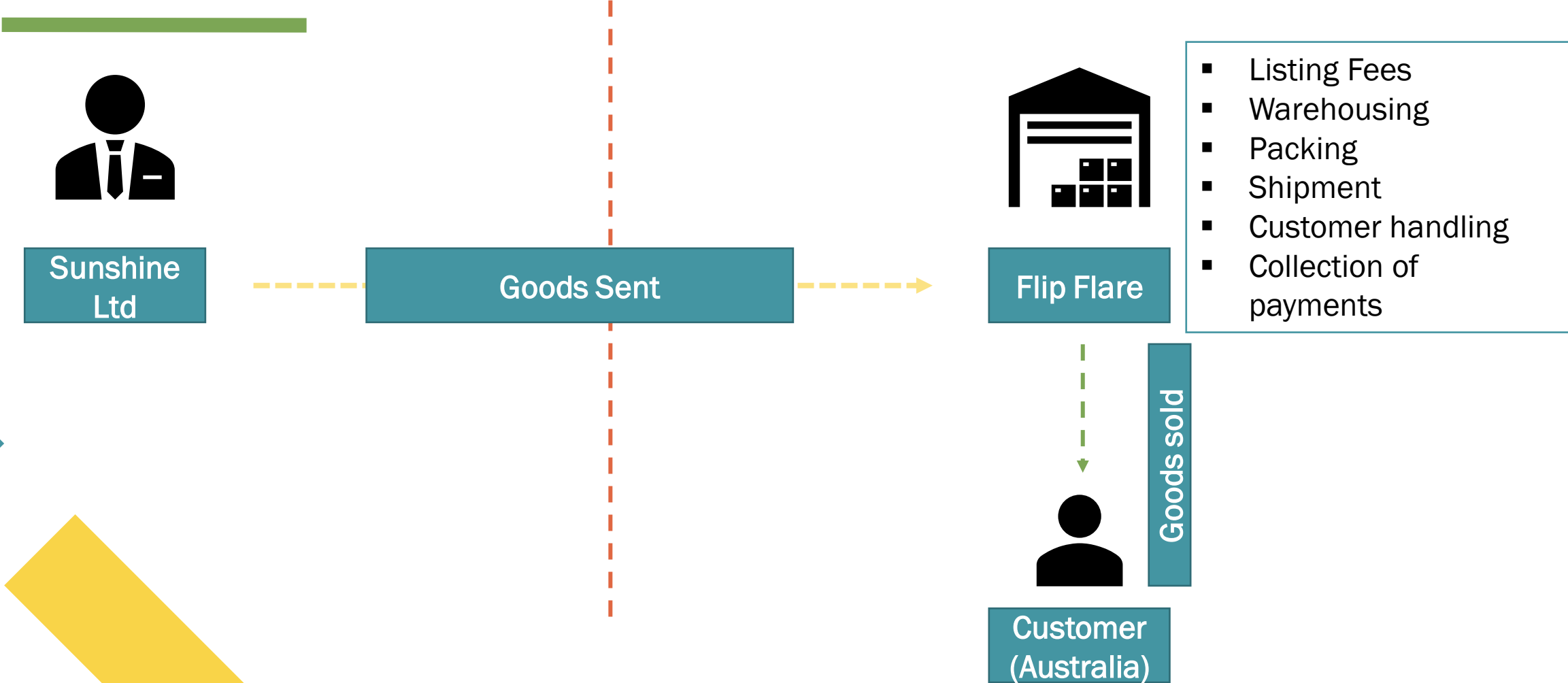
# Discussion

- Circular No. 197/7/2016-S.T., dated 12-8-2016

*The freight forwarders may also act as a principal who is providing the service of transportation of goods, where the destination is outside India. In such cases the freight forwarders are negotiating the terms of freight with the airline/carrier/ocean liner as well as the actual rate with the exporter. The invoice is raised by the freight forwarder on the exporter. In such cases where the freight forwarder is undertaking all the legal responsibility for the transportation of the goods and undertakes all the attendant risks, he is providing the service of transportation of goods, from a place in India to a place outside India. He is bearing all the risks and liability for transportation. In such cases they are not covered under the category of intermediary, which by definition excludes a person who provides a service on his account*

Conditions	Whether satisfying
Whether Agency Relationship exists?	No
Whether facilitation or arrangement?	Yes**
Not providing services on own account?	No


# Case Study 6 – Sunshine Ltd





# Issues for Discussion

---

- Whether the services provided by Flip Flare would be considered as an Intermediary service or an E-commerce service?
  - Whether there is any element of composite or mixed supply involved? If yes, please determine the taxability of the same
- 

# Certain Relevant Definitions

E Commerce	Agent	Intermediary
Electronic Commerce means the supply of goods or services or both, including digital products over digital or electronic network	Agent means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another	Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account
Electronic Commerce Operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce		

Schedule I:

Supply of goods — by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal



# Thank You.



Keval Shah



+91 98674 62965 | 88506 67258



keval@consultingedge.in



www.consultingedge.in