POINT OF TAXATION IN CASE OF REVERSE CHARGE

Bare Reading:

Notwithstanding anything, contained in rules 3,4, or 8 the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months:

Provided further that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

Provided also that where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under sub-section (2) of section 68 of the Act, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice.

Provided *also that in case of services provided by the Government or local authority to any business entity, the point of taxation shall be the earlier of the dates on which, –*

(a) any payment, part or full, in respect of such service becomes due, as specified in the invoice, bill, challan or any other document issued by the Government or local authority demanding such payment; or

(b) payment for such services is made.

Critical Analysis:

Rule no. (7) of POT rules 2011 starts with the word Notwithstanding anything contained in rule 3,4 or 8, which mean this rule will override and prevail in cases where service receiver has to pay tax which is been dealt under sub-section (2) of section 68 of the Act.

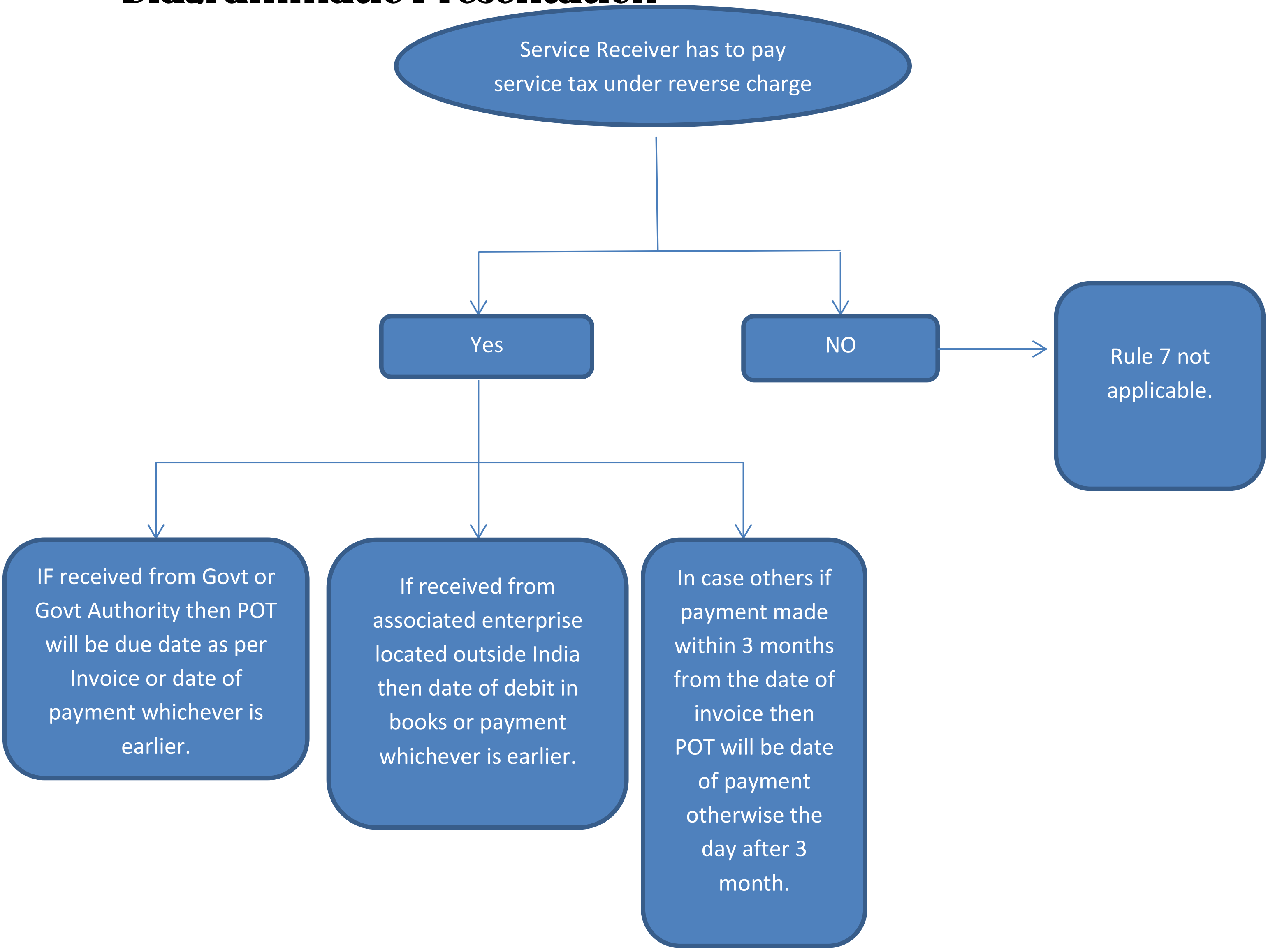
As per this rule if invoice have been raised by the service provider and service receiver is making payment within 3 months from the date of such invoice, then POT will be date of such payment, but 1^{st} proviso to rule 7 which states that if payment is not made within 3 months of such invoice then POT will be the first day after 3 month.

In case of proviso two deals with associate enterprise, where service provider is located outside India and receiver is in India then POT will be date of debit in the books of accounts or date of payment whichever is earlier. The thing to be noted under this proviso is that if the transaction between associate enterprise is within India then normal POT rule will apply.

In case of third proviso it is clear that if there is any change in rate of tax or new levy then we have to see that whether services have been provided and invoice have risen before such change then POT will be date of Invoice.

In case of fourth proviso which is dealt with services provided by government and governmental authority which in its invoice specifies the due date of payment then POT in such case would be date of payment or due date as per invoice whichever is earlier.

Diagrammatic Presentation



NOTE: In case of new levy or change in rate of tax then POT will be date of Invoice.

(Presented By: K.PRASANTH CA-FINAL) | e-Mail ID: kprasanth223@gmail.com