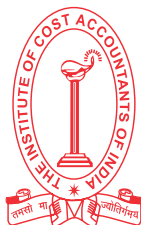


Handbook on **WORKS CONTRACT UNDER GST**



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(Statutory body under an Act of Parliament)



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President's Message

Congratulations to Tax Research Department on their successful accomplishment of the Task of publishing the "Compilation of Notifications of GST". I along with my colleagues at The Council of The Institute of Cost Accountants of India wish them all the luck for their endeavour. I acknowledge that this output in form of 'Compilation of Notifications of GST' was the natural result of their outstanding efforts and toil.

The Goods and Services Tax (GST) Act was passed in the Parliament on 29th March 2017. The Act came into effect on 1st July 2017; Goods & Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. In simple words, Goods and Services Tax (GST) is an indirect tax levied on the supply of goods and services. This law has replaced many indirect tax laws that previously existed in India. GST is one indirect tax for the entire country.

Notifications and Circulars on GST are issued by the Ministry from time to time to keep the concerned people updated regarding changes made by them with regard to various compliance procedures, tax rates, and similar matters. Our Tax Research Department has come up with an updated summary of all such notifications issued in a summarised form. It would surely help the stakeholders in undertaking their duties.

I congratulate CMA Niranjana Mishra, Chairman – Taxation Committee for bringing out this 'Compilation of Notifications of GST' and for taking a very good initiative which shall go a long way. I also congratulate other members of this Committee and Tax Research Department of the Institute for their efforts and best wishes for their future initiatives for development of the CMA profession.

With Warm Regards,

CMA Amit A. Apte

21st December, 2018

CMA Balwinder Singh
VICE PRESIDENT



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Vice President's Message

It gives me immense pleasure to congratulate the Tax Research Department on their successful accomplishment of the Task of publishing the 'Handbook on Works Contract'. It is indeed a result of their continuous efforts and dedication leading to an excellent output in form of 'Handbook on Works Contract'.

The technical knowledge on Works Contract in the regime of GST is of utmost importance and requires expert advisory. A works contract is essentially a contract of service which may also involve supply of goods in the execution of the contract. It is basically a composite supply of both services and goods, with the service element being dominant in the contract between parties. In a general sense, a contract of works, may relate to both immovable and immovable property. e.g. if a sub-contractor, undertakes a sub-contract for the building work, it would be a works contract in relation to immovable property. Under GST laws, the definition of "Works Contract" has been restricted to any work undertaken for an "Immovable Property" unlike the existing VAT and Service Tax provisions where works contracts for movable properties were also considered.

Further, the maintenance of records under GST, as per Rule 56 (14) of the CGST Rules, 2017 states, every registered person executing works contract shall keep separate accounts for works contract showing - (a) the names and addresses of the persons on whose behalf the works contract is executed; (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract; (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract; (d) the details of payment received in respect of each works contract; and (e) the names and addresses of suppliers from whom he received goods or services.

I have been informed that all the technical issues relating to Works Contract have been addressed in the handbook.

I congratulate CMA Niranjana Mishra and his team, for all their commitment, dedication and achievement. I am sure that the Tax Research Department will continue to contribute with excellence in the important areas requiring professional knowledge and technical inputs. My best wishes are with them for their future endeavours.

Warm regards,

CMA Balwinder Singh
7th November, 2018

CHAIRMAN'S MESSAGE



Namaskar and Best Wishes!!!

With the introduction of GST, many provisions under earlier indirect tax regime were pooled into GST. However, a lot of confusions and complications also came along. Here we have tried to simplify one of the topics i.e. 'Works Contract under GST'.

In earlier Indirect tax, Works contract was a composition of three taxes VAT, Service Tax and Excise Duty and provisions in relation to works contract were variable in every state.

With this handbook we have tried our best to simplify on the understanding of the provisions Works Contract under GST and shed a light on the practical implications along with Advance Ruling Orders passed in relation to Works Contract.

I would like to thank my team "Tax Research Department" for rendering untired efforts exclusively working for creating awareness on Taxation by means of launching courses on Taxation, Organizing Seminars, Webinars, coming up with handbooks on various topic of taxation etc.

Also, I would like to express gratitude to CMA Anil Sharma for being a guiding force and inspiration to Team Tax Research Department in preparing this Handbook.

A handwritten signature in black ink, appearing to read 'Niranjan Mishra'.

CMA Niranjan Mishra
21st December 2018



P R E F A C E

Tax Research Department of The Institute of Cost Accountants of India has floated a new publication i.e. Handbook on Works Contract.

This booklet contains Understanding of Works Contract under GST, Rates of GST under Works Contract, Input Tax Credit for Works Contract Services, Time of supply, place of supply and Valuation of Works Contract and Works Contract under GST in Practical Scenario.

The purpose of this Handbook is to clarify the complexities and collaborate all the aspects of Works Contract under GST along with taking up the practical issues of Works Contract

We are confident that this handbook will support to achieve the true objective of laws and provisions framed under the Act and will be beneficial for the stakeholders.

Further, we would like to acknowledge the sincere efforts put by our Resource person, CMA Anil Sharma.

The suggestions and comments of the stakeholders are welcomed to improvise the contents and formats.

Tax Research Department
The Institute of Cost Accountants of India

On this 7th Day of November, 2018





ACKNOWLEDGEMENTS

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1

UNDERSTANDING WORKS CONTRACT

Meaning of Works Contract

A works contract is a **mixture/combination** of services and transfer of goods. Examples of works contract are the construction of a new building, erection, installation of plant and machinery etc.

Definition of Works Contract under GST

As per section 2(119) of CGST Act "works contract" is defined as a contract for:

- building, construction,
- fabrication,
- completion, erection, installation,
- fitting out,
- improvement, modification,
- repair, maintenance, renovation,
- alteration or commissioning

of **any Immovable property** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

In simple words, any contract in relation to an Immovable property where services are provided along with transfer of goods is known as a "Works Contract".

Example of works contract – Building an Apartment comes under Works Contract. The process of building comes under works contract.

Works Contract is a Supply of Services

Under Schedule II, entry no. 5(b) of CGST Act, it has been clearly stated that Works Contract amounts to supply of services, hence the confusion whether it will be categorised as supply of service or goods does not sustain anymore. General Rate of Tax @18% has been fixed for supply of services under Works Contract. Some of the activities under Works Contract attract 5% and 12% tax rate also.



2

RATES OF GST FOR WORKS CONTRACT

[As per Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017, Notification no.24/2017-Central Tax (Rate) dated 21.09.2017 & Notification No. 01/2018-Central Tax (Rate)]

SL No.	Heading	Tax Rate
1	Construction of 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 has been received after issuance of completion certificate	18%
2	Composite supply of works contract	18%
3	Composite supply of Works contract to the Government, local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of: <ul style="list-style-type: none">○ Historical monument, archaeological site or remains of national importance○ Canal, dam or other irrigation works○ Pipeline conduit or plant for<ul style="list-style-type: none">□ Water treatment□ Water supply□ Sewerage treatment/disposal○ a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession	12%

	<ul style="list-style-type: none"> ○ a structure meant predominantly for use as <ul style="list-style-type: none"> ❑ an educational ❑ a clinical ❑ an art or cultural establishment ❑ a residential complex predominantly meant for self-use or the use of their employees 	
4	<p>Composite supply of works contract supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:</p> <ul style="list-style-type: none"> ○ a road, bridge, tunnel, or terminal for road transportation for use by general public. ○ a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana ○ a civil structure or any other original works pertaining to the "In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban); ○ a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana <ul style="list-style-type: none"> ❑ a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban) ❑ a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban) 	12%



	<ul style="list-style-type: none"> ○ a pollution control or effluent treatment plant, except located as a part of a factory ○ a structure meant for funeral, burial or cremation of deceased ○ a building owned by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities." ○ railways, excluding monorail and metro ○ a single residential unit otherwise than as a part of a residential complex ○ 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 ○ post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes ○ mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages 	
5	<p>Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p>	12%
	<p>(b) a structure meant predominantly for use as</p> <ul style="list-style-type: none"> (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or <p>(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017</p>	



6	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) (constructions made under the government scheme of pradhan mantra awas yojna) to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.</p> <p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.</p>	12%
7	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified i.e. construction services other than above, to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.</p> <p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.</p>	5%

3

INPUT TAX CREDIT FOR WORKS CONTRACT SERVICES

The works contractor shall be entitled to take input tax credit under section 16 on all input and input services used in supply of services – works contract – construction contract subject to the provisions of section 17(5). The block credits under sections 17(5)(c) and (d) are specific conditions for works contracts which are read as follows:

“(c) the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

(d) Goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course of furtherance of business.”

The explanation under these clauses states that for the purpose of clauses (c) and (d) the expression 'construction' includes reconstruction, renovation, addition or alteration or repairs to the extent of capitalisation to the said immovable property. The definition of plant and machinery is already given above. Therefore, if the owner of the land wishes to construct a factory building on that piece of land, then he has to award works contract services for construction of immovable property i.e. building. In this case he would not be eligible for input tax credit qua the tax charged by the contractor on such supplies.

Whether the factory building is plant and machinery or not is another debatable issue. The State authorities have always treated the construction of factory building other than plant and machinery although in a given case it may be possible to argue that it is a part of plant and machinery because it is a place which houses the plant and machinery. Under GST, the factory building would be immovable property.

Another issue regarding factory shed, whether it is immovable property or not? The issue becomes more complex when such shed is not made of bricks and sand but under newer technology where it can be erected within a day's time by using materials or fabrications which are brought in CKD condition. Well such cases would be the grey area always under GST on account of change in technology. The settled law is that law must move with times.

Similarly if a taxable person purchases steel, cement, sand etc. and is charged the GST on invoices and if such goods are used for construction of the factory guest house, then he will not be allowed the input tax credit in terms of section 17(5)(d).

4

PLACE OF SUPPLY AND TIME OF SUPPLY IN RESPECT OF WORKS CONTRACT

Place of Supply in respect of Works Contract

In terms of section 12(3) of IGST Act, 2017 the place of supply of services, directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out co-ordination of construction services and any services ancillary to the services referred to hereinabove shall **be the location at which immovable property is located or intended to be located.**

The phrase 'intended to be located' is important for pre-construction services.

In terms of section 7(3) of IGST Act, 2017, 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 supply of services in the course of inter-State trade or commerce.

For example, if a contractor in Maharashtra is given a contract to construct a commercial building in Andhra Pradesh (AP), then all the supplies by the supplier who is in Maharashtra (unless he is registered in AP) would be subject to IGST.

The question therefore can be whether it is advisable for a contractor to register its site as a registered place in a State where he is not otherwise registered.

It is possible to argue that such person can register as casual taxable person. But this provision of casual taxable person is meant for specific situation. A construction contract which normally takes more than 3 months or almost a year to complete the services, cannot be registered as a casual taxable person. Ideally, therefore, if the contract in the



other State is likely to continue for longer, it would be wiser to take registration under the main section 22 rather than a casual taxable person.

Term casual taxable person is defined in section 2(20) which read as follows:

“Casual taxable person means a person who occasionally undertakes transactions involving supply of goods or services or both in the course of furtherance of business whether as principal, agent or in any other capacity in a State or a Union Territory where he has no fixed place of business.

Section 27 refers to specific provision related to casual taxable person or a non-resident taxable person.

A non-resident taxable person is defined in section 2(77) to mean any person who occasionally undertake transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.”

There are specific provisions for a casual taxable person; he has to deposit the estimated liability in advance. The registration shall be valid for 90 days and such person can make taxable supplies only after issuance of certificate of registration. In case of an extension of time beyond 90 days he shall be called upon to deposit additional amount of tax equivalent to estimated tax liability during the extension period.

Therefore in our opinion taking registration as casual taxable person would not be advisable. While taking the decision for separate registration for the construction site, one must consider the cost-benefit ratio, specifically the administrative cost benefits of Input Tax Credit.

At times maintaining a separate office especially with the present GST regime requiring lot of procedural formalities and also have financial impact. One must think twice before while establishing a additional office in a separate State. As you are aware, in terms of section 25(4) of CGST Act, 2017, a person who has obtained or is required to obtain more than one registration whether in one State or Union Territory or more than one State or Union Territory shall, in respect of each such registration, be treated as distinct person for the purpose of this Act. Therefore, if a small works contract is to be undertaken in another State, like fixing of grills windows etc., which would not take more than a month's time to complete the works contract, it would be ideal to collect IGST and pay.

Time of supply in respect of works contract – Taxable Event

Let us go to the provisions relating to time of supply of service. Section 13(2) of the CGST Act lays down the various possibilities as follows:



Time of Supply of Services – Section 13	
Description of Event	Time of Supply
Normal Case – Thumb rule	Earlier of the following: <ol style="list-style-type: none"> 1. Date of Issue of Invoice (if Invoice issued within 30 days of supply of services) 2. Date of Receipt of Payment or Date of Provision of Service (if Invoice not issued within 30 days) 3. The date on which recipient shows receipt of service in his book
Liability under Reverse Charge basis	<ol style="list-style-type: none"> 1. Date of payment entered into books of account of Recipients or payment debited in bank account 2. Date Immediately following 60 days from date of Issue of Invoice or any other documents
In any other case	Date of receipt of service in the books of account of the Recipient

The works contract in relation to immovable property would also include construction of properties or anything attached to ground which need not to be a building, for example plant and machinery, platforms etc. One can refer to the case laws in relation to immovable property under the sales tax or excise laws to determine whether the contract is for movable or immovable property. The test is the contract must result into immovable property or should be for immovable property.

The works contracts of immovable property are normally completed over the months or may be years. There is a specific provision for continuous supply of goods and continuous supply of services.

Section 2(33) reads as follows

“Continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.

The construction contract would be per se continuous supply because the contract normally continues over a period of time, at least for more than 3 months and there is normally condition to make periodic payment.

The time of supply provision u/s section 13(2) refers to the period for raising of invoices. Section 31(2) makes it mandatory for the registered person supplying taxable service to issue a tax invoice before or after



the service but within a prescribed period. The time prescribed for raising of invoice in terms of Rule 47 is 30 days from the date of supply of service. Therefore, all the contracts of immovable property should ideally fix the time for raising the invoice. For example, in the contract for sale of under-construction flats, one would normally find the stages at which the payment has to be made by the buyer of the flat like completion of first slab, second slab, etc. therefore, no sooner as the work of the first slab is completed and is certified as completed by the architect the developer must send a notice to the persons from whom he has to recover the instalments.

Rule 31(5) reads as follows

"Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,— (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment; (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment; (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event".

The above provision makes it clear that it would be wise to define the due date of payment in the contract to avoid any litigation.

In case of the composite supply of goods and services, the time of supply is determined in terms of section 13. Normally, the contracts which are not in relation to immovable property are completed within 3 months and therefore such contract would fit in section 13(2). However, there may be contracts of repair of heavy machinery where the goods are sent for repairs and the repairs takes more than 3 months. In that case, such contract would also be continuous supply of service. However, an area of doubt can be whether such contract can be stated to be provided continuously or on a recurrent basis under a contract. Normally, in case of repair contracts the time period is not fixed. There is no provision for periodic payment obligations. Section 2(33) also refers to the notifications by the Central Government.

5

VALUATION OF WORKS CONTRACT

The consideration under section 2(31) refers to the monetary value/ transaction value. The purpose of valuation of construction contract one must refer to Note 2 given under Notification 11/17 – Central Tax (Rate) dated 28th June, 2017 providing deduction of land cost recovery as follows:

"2. In case of supply of service specified in column (3) of the entry at item (i) against Serial No. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one-third of the total amount charged for such supply. Explanation – For the purposes of paragraph 2, "total amount" means the sum total of, – (a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be."

Thus clear 33.33% deduction is allowed towards cost of land. This is deeming price. No scope for proving actual land cost. This probably explains the enhancement of rate from the promised rate of 12% to 18%. This note needs corresponding amendment after amendment to this entry on 22-8-2017.

As the construction contract would be composite contract of services, the rate as prescribed and amended hereinabove would apply. We would come little later on about the transitional position. As regards the works contract in relation to these notified services in Notification 11/17, rate as prescribed would apply subject to conditions, if any, specified therein. As the contracts in relation to movable properties would be a composite supply in terms of section 8(A), a composite supply comprising two or more supplies, one of which is principal supply, shall be treated as supply of such principal supply. For example, in case of repair of a car, the same should fall under maintenance repair and installation service (except construction services at Sr. No. 25 under Heading 9987).



6

MISCELLANEOUS TOPICS UNDER WORKS CONTRACT

Works Contract for Immovable property only

Under the GST regime the scope of works contract has been restricted to any activity undertaken in relation to Immovable property only, unlike the previous regime where works contract for movable properties was also considered.

For example: Any composite supply of goods and services will not fall within the definition of works contract per se under GST. Such contracts would continue to remain composite supplies and will not be treated as a Works Contract for the purposes of GST.

Decentralised Service Registration

As per the rules laid down under CGST Act, every person whose aggregate turnover crosses the threshold limit of Rs.20 lakh and Rs.10 lakh in Special Category States) must compulsory take registration. This applies to provider of Works Contract as well. Thus, every state where a works contractor has a project office, he will need to obtain a registration if the threshold limit crosses.

Composition Scheme

Composition scheme is not available to works contractors as it is treated as service under GST. Composition scheme is only available to suppliers of goods and the restaurant industry (not serving alcohol). He will have to register as a normal supplier on crossing the 20 Lakh threshold.

Abatement

No abatement has been prescribed for works contract under the GST law.

Maintenance of records for works contract

As per Rule 56 (14) of the CGST Rules, 2017, every registered person executing works contract shall keep separate accounts for works contract showing –

- (a) The names and addresses of the persons on whose behalf the works contract is executed;



- (b) Description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
- (c) Description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
- (d) The details of payment received in respect of each works contract; and
- (e) The names and addresses of suppliers from whom he received goods or services.



7

PART OF SCHEDULES OF CGST ACTS, 2017

Serial No. 5 of Schedule II CGST Act, 2017 – **Supply of Services**

The following shall be treated as supply of services, namely:—

- (a) renting of immovable property;
- (b) 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 has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation. —For the purposes of this clause—

- (1) the expression “competent authority” means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—
 - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (2) the expression “construction” includes additions, alterations, replacements or remodelling of any existing civil structure.
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate



an act or situation, or to do an act; and

- (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

Serial No. 6 of Schedule II CGST Act, 2017 - 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; and
- (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.



TDS IN RELATION TO WORKS CONTRACT UNDER GST

A. Who could be liable to deduct TDS under GST law?

- A department or an establishment of the Central Government or State Government; or
- Local authority; or
- Governmental agencies; or
- Such persons or category of persons as may be notified by the Government.

As per the latest Notification dated 13th September 2018, the following entities also need to deduct TDS-

- An authority or a board or any other body which has been set up by Parliament or a State Legislature or by a government, with 51% equity (control) owned by the government.
- A society established by the Central or any State Government or a Local Authority and the society is registered under the Societies Registration Act, 1860.
- Public sector undertakings.

B. When will the liability to deduct TDS be attracted? What is the rate of TDS?

TDS is to be deducted at the rate of 2 percent on payments made to the supplier of taxable goods and/or services, where the total value of such supply, under an individual contract, exceeds ₹ 2,50,000. No deduction of Tax is required when the location of supplier and place of supply is different from the State of the registration of the recipient.

C. What are the registration requirements for TDS deductor?

A person who is liable to deduct TDS has to compulsorily register and there is no threshold limit for this. The registration under GST can be obtained without PAN and by using the existing Tax Deduction and Collection Account Number (TAN) issued under the Income Tax Act. Thus it can be said having TAN is mandatory.



D. Time limit for payment of TDS?

The deductor would be liable to make the payment of TDS by the 10th day of the next month.

E. Impact of TDS on Government civil contractors

The Indian government, on an average, gives out more than 10,000 civil contracts every year throughout the country. The contract for constructing/repairing of the national highways average more than Rs 100 crores. These contracts are acquired by big construction companies and then sub-contracted to smaller firms and then again further sub-contracted to another small firm. This loop will face problems due to GST and in particular due to the TDS liability.

The government would need to deduct TDS from the contractor which would ensure tax compliance by the contractors and all the other sub-contractors. Currently, many small civil/labour contractors do not fulfill tax compliance. Under GST it will be imperative for them to get registered and fulfill tax compliance.

For example: ABC got a contract for repair work on an 800-meter road by the government for Rs 10 lakhs. ABC outsources work to XYZ and then XYZ further outsources it to a small civil/labour contractor DEF.

Earlier, DEF would not have registered under service tax/VAT but now he would need to register under GST for claiming the ITC credit.

The purpose of inserting the TDS clause under GST is to ensure tax compliance from the unorganized construction sector.

9

TRANSITION PROVISION FOR WORKS CONTRACT

Both service tax and VAT applied to works contract because a works contract incorporates both goods (iron bars, cement) and services (labourers, engineers).

ITC was available on the proportion of supply on which VAT or service tax has been paid before GST implementation date but the supply is made after the appointed day.

The taxpayer must submit a declaration electronically in FORM GST TRAN-1 furnishing the details within a period of ninety days of the appointed day.

Government Works Contracts executed before GST and continued Post GST

This is one of the biggest challenges and a grey area under the transitional provisions. You would appreciate that the Government contracts although continue over a period of time, the taxation aspect would not be allowed to alter by the employer i.e. the Government, be it Central Government or State Government. The major issue was sorted out by the State of Maharashtra for at least the Government contracts. On 19th August, 2017 the State of Maharashtra has issued an internal circular as regards how to deal with the Government contract and applicability of the GST thereon. The directions given therein clarify all issues of ongoing works contracts.

- (i) The contracts awarded after 1st July, 2017 would be taxed as per GST provisions. (Kindly refer to the latest amendment of 22nd August given in the beginning of this article)
- (ii) The tender of works contract accepted prior to 22nd August, 2017 but work order not given – presuming that such tenders would not have considered the GST applicability, all the tenders would be cancelled and a short tender notice would be given for fresh tenders. The contracts requiring immediate order like repairing of road etc., would be given priority and the GST provisions would be taken care of.
- (iii) The tender accepted prior to 1st July, 2017 but work order given after 1st July, 2017. The work order would not be cancelled but the necessary amendment in the price of the works contract, as



an impact of GST, should be considered.

- (iv) Tender issued between 1st July, 2017 and 21st August 2017 – if work order is not given the procedure as per (ii) should be followed.
- (v) Work order issued prior to 1st July, 2017 and the work commenced prior to 1st July, 2017 and to be continued after 1st July, 2017 (on-going contract) –
 - (a) For the work completed prior to 1st July, 2017 and bill received prior to 1st July, 2017, the tax applicable as per VAT should be paid.
 - (b) The work completed prior to 1st July 2017, and the bill issued after 1st July, 2017, tax to be paid as per VAT provisions.
 - (c) Part of the work done after 1st July, 2017, tax to be paid as per GST. The Law and Judiciary Dept. should look into the amendment required in future bills.

Construction contracts executed before GST and continued Post GST

The State of Maharashtra has made an amendment to the composition scheme adopted by the builders/developers. In terms of the original composition scheme under the MVAT Act announced in 2010 the builders/developers selling under-construction flats along with the interest in the land were allowed to pay 1% composition towards VAT on the total consideration for sale of flats. The time for collection of this 1% composition was fixed as at the time of registration of agreements to sell flat. Normally such registrations were made on receiving about 20% of the consideration and for majority of the under-construction buildings the MVAT was paid at 1%. By an amendment made on 30th May, 2017 the provision is made to the effect that, irrespective of the Notification of 2010 and irrespective of the payment made by the developers at 1% on the total consideration, any amount received for such registered document after 1st June, 2017 composition at 1% would again be payable. For any payment towards consideration received by the developer after 1st July, 2017, the applicable GST should be paid. The only solution given was, that the developers would be allowed to carry forward the credit of tax paid at 1% at the time of registration. The developers in Maharashtra therefore will have to claim the credit for such 1% paid prior to 1st July, 2017 and for the said contracts part of the consideration would be received after 1st July, 2017. Such credits will have to be taken in the last return to be filed under the MVAT Act i.e. for the month of June, 2017.

Q. What happens to the service tax paid in pre GST regime and refunded on cancellation Post GST?

Under the service tax regime, the input tax credit was required to be



reversed when an assessee does not make payment within 90 Days from the date of invoice and the assessee was entitled to reclaim the credit when the payment was made.

Instance where reversal of the credit was not on or before 30th June, 2017 and the payment to the vendors are made on or after 1st July, 2017. So, where such payment is made within three months from the appointed day i.e. by 30th Sept, 2017, the assessee would get credit under section 140(9)

If the builder has not paid to the contractors for more than 90 days as on 30th June, 2017 and if he has reversed the ITC credit thereof and payment due to the vendor is not paid till 30th September, 2017 than entire ITC will be lost.

Another instance is that the customer might have booked the flat in Pre GST regime, he must have paid service tax thereon and the builder has paid service tax to the Govt. and if the flat gets cancelled in post GST and the advance paid by the customer along the service tax is repaid to the customer. Whether Builder will be eligible to adjust this against GST Liability?

Ans. No. there is no provision for such adjustment in GST Sec 142(5).

Real Estate Related – Section 142(11)(C)

Scenario 1: Agreement registered before 01/06/2017

Value of Flat -	₹ 5,00,00,000.00
Demand raised and received till 30/06/2017 -	₹ 2,00,00,000.00
Amount payable after 30/06/2017-	₹ 3,00,00,000.00
VAT Paid	₹ 5 Lakhs (1% on ₹ 5 Crores)
ST paid on	₹ 9 Lakhs (4.5% on ₹ 2 Crores)

What would be the liability in respect of ₹ 3 Crores received by the builder.

View 1	CGST	SGST	TOTAL
Tax payable on 5 Crore	30,00,000	30,00,000	60,00,000
Less: Credit on Tax paid	9,00,000	5,00,000	14,00,000
Net Tax Payable	21,00,000	25,00,000	46,00,000

View 2	CGST	SGST	TOTAL
Tax payable on 3 Crore	18,00,000	-	18,00,000
Less: Credit on Tax paid	-	-	-
Net Tax Payable	18,00,000	-	18,00,000



View 3	CGST	SGST	TOTAL
Tax payable on 3/5 Crore	18,00,000	30,00,000	48,00,000
Less: Credit on Tax paid		5,00,000	5,00,000
Net Tax Payable	18,00,000	25,00,000	43,00,000

View 4	CGST	SGST	TOTAL
Tax payable on 3 Crore	18,00,000	18,00,000	36,00,000
Less: Credit on Tax paid		3,00,000	3,00,000
Net Tax Payable	18,00,000	15,00,000	33,00,000

₹ 2,00,00,000 received and taxes paid on the amount in Pre GST regime, and

₹ 3,00,00,000 will be taken in post GST and GST @ 12% is to be paid on Rs. 3,00,00,000.

Option: 4 Seems to be better.

Scenario 2: Agreement NOT registered before 01/06/2017

Value of Flat - ₹ 5,00,00,000.00

Demand raised and received till 30/06/2017 - ₹ 2,00,00,000.00

Amount payable after 30/06/2017- ₹ 3,00,00,000.00

VAT Paid ₹ 2 Lakhs (1% on ₹ 2 Crores)

ST paid on ₹ 9 Lakhs (4.5% on ₹ 2 Crores)

What would be the liability in respect of ₹ 3 Crores received by the builder.

View 1	CGST	SGST	TOTAL
Tax payable on 5 Crore	30,00,000	30,00,000	60,00,000
Less: Credit on Tax paid	9,00,000	2,00,000	11,00,000
Net Tax Payable	21,00,000	28,00,000	49,00,000

View 2	CGST	SGST	TOTAL
Tax payable on 3/5 Crore	18,00,000	30,00,000	48,00,000
Less: Credit on Tax paid	-	2,00,000	2,00,000
Net Tax Payable	18,00,000	28,00,000	46,00,000

View 3	CGST	SGST	TOTAL
Tax payable on 3 Crore	18,00,000	18,00,000	36,00,000
Less: Credit on Tax paid	-	-	-
Net Tax Payable	18,00,000	18,00,000	36,00,000

View 3 seems better.

10

WORKS CONTRACT UNDER GST IN PRACTICAL SCENARIO

1. I am a civil work contractor. I work for contractee. If I purchase concrete, bricks, cement or other items to complete the construction against tax invoice. Can I claim ITC for those purchases and what restriction of section 17 (5).

Ans. Input Tax Credit is NOT available Issue for contractor to determine whether supply made by him is a "Works Contract" or a "Composite Contract (other than works contract)"?

2. Whether the following will be works contract or composite supply (other than works contract)

1	Plumbing Contract	If the plumbing becomes part of an immovable property which cannot be removed without damaging to that particular goods or without damaging to the particular property, may be regarded as works contract.
2	Electrical Installation	If the installation of Electrical items becomes part of an immovable property which cannot be removed without damaging to that particular goods or without damaging to the particular property, may be regarded as works contract.
3	Supply and installation of doors at site	GST Rate for the door is 28%. If fixing the doors is treated as a works contract the GST Rate becomes 18%. So is it a supply of door and fixing is incidental or is it a fixing of the door to the immovable property. The decision is a controversial matter.
4	Lift/elevator installation	It is a contract in relation to immovable property. Hence it would come under the works contract.
5	Installation of Air handling units	Installation of Centralized air conditioning units in an immovable property comes under Works Contract
6	Installation of fire fighting equipment	Installation of fire fighting equipment will be treated as a works contract if it is installed in an immovable property.



7	Painting contract	Painting contract in an immovable property is treated as a works contract.
8	Repairs of Car	Not a works contract
9	AMC Contracts	Not a works contract

3. A building contractor may engage in services of a sub-contractor for a portion of the whole work, then the sub-contractor will charge GST in the tax invoice raised to the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his sub-contractor as his output is works contract service. However if the main contractor provides works contract service (other than for plant and tools) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the IT Company.

Plant and Machinery, in certain cases, when affixed permanently to the earth would constitute immovable property. When a works contract is for the construction of plant and machinery, the ITC of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list and ITC would be available when used in the course or furtherance of business

4. Impact of GST on Real Estate, Works contract and Civil Construction

Case 1: If any civil construction is sold by the builder before its completion i.e. before getting the Completion Certificate by the competent authority, then such construction will come under the purview of Works Contract and GST shall be applicable on transfer of property.

Case 2: Civil Construction sold after getting the Completion Certificate will not attract GST.

- No ITC on construction on his own account
- Contractor/ Builder will not enjoy any ITC on input services if he constructs building.
- But he will enjoy ITC on input services for further supply of works contract services.
- ITC available to builder while constructing plant and machine
- No composition scheme in case of supply of services

5. How will Long Term Construction / Works Contracts be affected?

The goods/services **supplied after the appointed day** in pursuance of a works contract **entered into before to the appointed day** shall be liable to GST.



Case 1

Mr. B has entered into a contract with Pegasus Constructions Ltd. to build an office building on 1st May 2017. Pegasus Constructions has supplied materials and services on 20th June 2017 for which the payment was received on 25th June 2017.

No GST will apply on materials supplied on 20th June 2017 as it was before GST implementation.

Case 2

Pegasus Constructions Ltd. supplies goods on 15th July 2017. Will GST apply?

GST will apply on this as supply was after GST rollout, even though the contract was signed before GST.

Case 3

Pegasus Constructions has supplied materials and services on 14th June 2017 and issued an invoice for it on 14th June. Payment is made on 27th July 2017. Will GST apply in this case?

GST will not apply as the supply was made before GST implementation. Also, the time of supply is 20th June (date of issue of invoice) which is before GST implementation.

Case Laws:

GST on work contracts for which agreements executed before July 1, 2017

Since CGST Act, 2017 came in force with effect from 1-7-2017, contract work for which agreements were executed prior to 1-7-2017, GST would not be imposed on same and 2 per cent VAT alone was applicable

Coimbatore Corporation Contractors Welfare Association v. State of Tamil Nadu (Madras High Court)

Since CGST Act, 2017 came in force with effect from 1-7-2017, contract work for which agreements were executed prior to 1-7-2017, GST would not be imposed on same and 2 per cent VAT alone was applicable.

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to consider and pass orders on the representation of the petitioner dated 05.07.2017, 10.07.2017, 11.07.2017 and 11.09.2017 by paying the payment of 12% GST in addition to the value of work done for all works contracts Viz

- (i) for the contract work for which agreements were executed prior to 01.07.2017 and the work is in under progress,
- (ii) for the tenders called and agreements executed after 01.07.2017 without any GST Provisions in the estimate and tender,
- (iii) the levy of 12% GST provisions has to be included in the estimates itself for further tenders and has to be paid in addition to the value of work done for all works contracts as in the case of



Southern Railways.

DETAILED ORDER

1. The petitioner is an association registered under the provisions of the Tamil Nadu Societies Act bearing Registration No.81/2012. The Association was formed for the Welfare of the members of the Road Contractors, who have been carrying on works for the National Highways and Highways department and other Governmental organisation.
2. The contractors used to remit 2% tax on value for the works executed by them towards the Works Contract Tax under the Tamil Nadu Value Added Tax, 2006 [HEREINAFTER CALLED AS THE TNVAT] in terms of Section 6 of the TNVAT Act.
3. After the enactment of the **Central Goods and Services Tax Act, 2017** with effect from 01.07.2017, certain problems have arisen, which has compelled the petitioner to submit representations to the respondent.
4. The petitioner would state that on 22.08.2017, the Central Government issued notification notifying that 6% of the tax is leviable by the Central Government towards Works Contract.
5. The State Government is empowered to levy towards works contract tax in addition to the works contract tax imposed by the Central Government. Therefore, the contractor would be liable to pay 12% of tax towards works contract.
6. Therefore, the petitioner/association made representations on 05.07.2017, 10.07.2017, 11.07.2017 and 11.09.2017 to the respondents stating that the contract works for which the agreements were executed prior to 01.07.2017 GST cannot be imposed and 2% VAT alone is applicable.
7. Alternatively the association stated that if the petitioners are compelled to pay anything over and above 2%, the respondent in addition to the value of the work done, has to remit the GST as per the notification, since the representations submitted by the petitioner/ association have not been considered and no orders were passed.
8. When the case came up for hearing on 18.09.2017, the petitioner was directed to implead the Secretary to Government, Commercial Taxes Department and the Commissioner of Commercial Taxes. Accordingly, an application was filed to implead and the same was ordered by order dated 20.09.2017.
9. Mr. K.Venkatesh, learned Government Advocate [TAXES] accepted notices for the newly impleaded respondents and it appears that he had personally spoken to the Commissioner of Commercial Taxes, from which, it is seen that the Government also is in the process of discussing as to how the modality has



to be worked out and what is the relief petitioner/ association entitled to.

10. In any event, since the petitioner's representations are pending, it is appropriate for the respondent to respond to the same by giving them a reply. The appropriate person who would be in a position to give reply is that the Commissioner of Commercial Taxes shall give a reply. Because all other authorities are the department of Highways and National Highways etc., who would not be in a position to specifically address the issue pointed out by the petitioner.
11. The learned Government Advocate has drawn the attention of this Court to G.O. Ms.No.264, Finance [SALARIES] Department, dated 15.09.2017. The operative portion of the Government Order reads as follows :—
 - "5. Under the new tax regime, GST (comprising CGST, SGST and IGST) on works contracts for Government work was initially notified at 18 percent. This had resulted in representations from contractors of ongoing works for compensation by procuring entity for increased tax liability over and above the contracted value of work. The difficulties arising out of increased GST on works contracts for Government work was deliberated in the GST Council Meetings held on 20th August 2017 and 9th September 2017. Consequently, the GST on works contracts for Government work is being reduced to 12 percent. This move more or less balances the taxes on works contracts in the pre GST and post GST regime.
 6. Pending notification of guidelines in the matter, the Government now direct that all departments and procuring entities shall make 'on account' payment of bills presented by contractors, restricting the payments to the value due as per existing contract agreements. Any difference on account of final payment due based on the guidelines to be issued and the 'on account' payment made as above may be adjusted from out of the 5 percent amount retained with procuring entity. The payment of final bill in cases where on account payments have been made shall be made only after the notification of the guidelines."
12. In the light of the stand taken by the respective parties there will be a direction to the Commissioner of Commercial Taxes to consider the representation given by the petitioner/ association and pass orders on merits and in accordance with law, within a



period of four weeks from the date of receipt of a copy of this order.

13. The authorised representative of the petitioner/ association may be afforded an opportunity of personal hearing by the Commissioner. The petitioner/ association is directed to communicate the copies of the representation along with a copy of this order to the Commissioner of Commercial Taxes for due and effective compliance of the above directions.

Issues under GST for builders and real estate developers:

1. Cases where builders are liable to pay GST and where they are exempted from paying GST.

Cases where builders are exempted from GST:-

Sale of land does not attract GST

Sale of building after getting completion certificate or 1st Occupancy whichever is earlier

Apart from above cases GST is applicable for builders and real estate developers.

2. GST in case of builders acquired land on lease by the Government?

Govt has clarified by notifying that land given on lease to the builders will also be excluded from GST.

3. Basic sale price declared by the builders for selling flat, for e.g. ₹10,000/ sq. ft and preferential location charges are taken by the builders in addition to basic sale price.

Preferential location charges are not included for determining the valuation of building/ flat and for calculating the deduction of 33.33% (land value). Hence there is no abatement for Preferential Location Charges.

4. Interest on delayed payment by the buyer of building?

GST is applicable on interest of delayed payment only at the time when interest is paid by the buyer to the builder.

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PASSING OF BENEFITS OF INPUT TAX BY THE CONSTRUCTION COMPANY TO ITS BUYERS

GST will be charged by the developers from the customers on the basis of on total outstanding amount as on July 1, 2017.

This can be different for different customers in the same project. It is, therefore, possible that different customers in the same project with different amounts payable to the builder and different customers in different projects with the same amount payable to the builder may end up getting a different input set off benefit.

Analysis: Passing the ITC Benefits to Customers (₹)

Price of the Housing Unit	80,00,000	80,00,000
Cost of Construction @ 50%	40,00,000	40,00,000
Developer already spent before 01.07.2017	30,00,000	30,00,000
GST applicable to Developer @18% (Input Tax)	1,80,000	1,80,000
	Scenario -I	Scenario -II
Amount paid by buyer before GST	70,00,000	20,00,000
Outstanding with Buyer	10,00,000	60,00,000
GST Payable on outstanding amount @ 12% (Output Tax)	1,20,000	7,20,000
Spent by developer after 01.07.2017	10,00,000	10,00,000
Passable Benefits	1,20,000	1,80,000
ITC Benefit to Buyer	Full	Partial

Let's assume that cost of construction for a housing unit worth ₹ 80 Lakhs is 50% i.e. ₹ 40 lakh and of which, developer has so far spent ₹ 30 lakh. Under GST regime, the builder will have to pay the remaining ₹ 10 lakh after July, 2017 to get input tax credit from the vendors. Let's

assume that GST applicable to the builder is 18%, then the builder will pay a GST tax of ₹1.8 lakh ($100000 \times 18\%$) to the vendor.

Now, for a customer who may have already paid ₹ 70 Lakh (possible under down payment plan) and has only ₹ 10 lakh as outstanding post July 1, will have to pay ₹ 1.2 lakh (@12%) as GST meaning that the builder can technically pass on the full input tax credit benefit of ₹ 1.2 lakh to this buyer

As for a different customer, who has an outstanding amount of ₹ 60 Lakh (possible under subvention schemes) as on July 1, the amount due from him will be ₹ 60 lakh plus 12% GST which is ₹ 7.2 Lakh. Out of this, a developer may be able to pass on an input tax credit limited to ₹1.8 Lakh only. Further the troubling part for developers is that, they themselves are left in the quandary to ascertain regarding the ITC benefits they would be getting from their vendors. That again is also dependent on whether the turnover of the vendor is less than ₹ 20 lakh or over ₹ 20 lakh.

Anti-profiteering Provisions in GST Law :

CBES Directive	<ul style="list-style-type: none"> ○ Section 171 of the Central GST Act provides that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit will be passed on to the recipient by way of commensurate reduction in prices
Typical Procedure	<ul style="list-style-type: none"> ○ As per the structure, the complaints of profiteering would first come to the Standing Committee comprising tax officials from states and the Centre ○ It would forward the complaint to the Directorate of Safeguards (DGS) for investigation, which is likely to take about 2-3 months to complete the inquiry
	<ul style="list-style-type: none"> ○ On completion of investigation, the report would be submitted to the anti-profiteering authority which would decide on the penalty. Where the consumer cannot be identified, the recovered amount shall be deposited in the Consumer Welfare Fund as provided under Section 57 of the Central GST (CGST) and State GST (SGST) Acts, ○ A period of 8-11 months has been provided for the whole process involving screening of the complaint and subsequent investigation and action, if any, by the anti-profiteering authority.



Anti profiteering Authority Set-up	<ul style="list-style-type: none">○ A 5 member anti-profiteering authority will be set up to decide on levying penalty if businesses do not pass on the benefit of price reduction to consumers under GST.○ The authority, to be headed by a retired secretary-level officer, can take suo motu action, besides acting on complaints of profiteering
TimeFrame	<ul style="list-style-type: none">○ The Anti-profiteering provision will have a sunset date of 2 Years

Besides the aforesaid guidelines, there is no concrete mechanism to compel developers to pass the benefits.

12

ADVANCE RULING

What is Advance Ruling?

Any advance tax ruling is a written interpretation of tax laws. It is issued by tax authorities to corporations and individuals who request for clarification of certain tax matters. An advance ruling is often requested when the taxpayer is confused and uncertain about certain provisions. Advance tax ruling is applied for, before starting the proposed activity.

Section 95(A) of CGST Act, 2017 - 'Advance Ruling' means a decision provided by the Authority for Advance Ruling (hereinafter referred to as 'Authority') or the Appellate Authority for Advance Ruling (hereinafter referred to as 'Appellate Authority') to an applicant in written form on matters or on questions specified in relation to the supply of goods and/or services proposed to be undertaken or being undertaken by the applicant.

The Authority/Appellate Authority is State/Union Territory specific.

Objective of having a mechanism of Advance Ruling

- Provide certainty for tax liability in advance in relation to a future activity to be undertaken by the applicant.
- Attract Foreign Direct Investment (FDI)
- Reduce litigation and costly legal disputes
- Give decisions in a timely, transparent and inexpensive manner

Matter or Question for which Advance Ruling under GST can be sought:

As per Section 97 (2) of the Goods and Service Tax Act, 2017 Advance Ruling can be sought on following questions:

- Classification of any goods or services or both;
- Applicability of a notification issued under the provisions of this Act;
- Determination of time and value of supply of goods or services or both;
- Admissibility of input tax credit of tax paid or deemed to have been paid;



- Determination of the liability to pay tax on any goods or services or both;
- Whether applicant is required to be registered;
- Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Procedure on receipt of application

On receipt of an application, a copy will be forwarded to the prescribed officer and he will furnish the necessary relevant records.

Process of Advance Ruling under GST

An advance ruling is first sent to Authority for Advance Ruling (Authority). Any person unhappy with the advance ruling can appeal to the Appellate Authority for Advance Ruling (Appellate Authority).

Advance Ruling Authority → Appellate Authority for Advance Ruling

Process of Advance Ruling under GST

Forms

Application for Advance ruling has to be made in FORM GST ARA-01 along with Rs. 5,000 for CGST & SGST each.

Decision of the Authority

The Authority can by order, either admit or reject the application.

Will all applications be allowed?

The Authority will NOT admit the application when-

- (b) The same matter has already been decided in an earlier case for the applicant
- (c) The same matter is already pending in any proceedings for the applicant

Basically, Advance Ruling will not be possible in any pending case or any decision already given.

Applications will be rejected only after giving an opportunity of being heard. Reasons for rejection shall be given in writing.

When will the authority give their decision?

Advance ruling decision will be given within 90 days from application.

If the members of the Authority differ in opinion on any point, they will refer the point to the Appellate Authority.

Advance Ruling will have prospective effect only.

On whom will the advance ruling apply?

The advance ruling will be binding only -



- (a) On the applicant
- (b) On the jurisdictional tax authorities in respect of the applicant.

If the law, facts of the original advance ruling change then the advance ruling will not apply.

Appeal to the Appellate Authority

If the applicant aggrieved by the advance ruling he can appeal to the *Appellate Authority*.

1. Cases under Advance Ruling in relation to Works Contract

The AAR ruling came in response to an application by **M/s Giriraj Renewables Private Ltd.** who is an EPC contractor and has entered into agreement with various developers who desire to set up and operate solar photovoltaic plants for supply of generated power. The contracts are for supply of goods as well as services. The applicant has contended that:

- The agreement is construed as a composite supply; the principal supply would be the supply of PV Modules which again are liable to tax @ 5%.
- He is engaged in the business of supply of 'solar power generating system' and the same should be liable to tax at 5%.
- The proposed agreement with its customers should be taxable @5% GST, and the same should be applicable to subcontractors as well.

Karnataka Authority of Advanced Ruling (AAR)

- The major component (PV Module) said to have constituted 70% of the whole project procured by the owner himself. Therefore, the same cannot be construed as a principal supply by the applicant and hence, it cannot be construed to be a principal supply of the project and thereby cannot be a composite supply.
- EPC contract for the construction of solar power project in which both goods and services are supplied cannot be interpreted as a composite (a mix of components, which make up a solar project) supply contract. Therefore, the supply of each component in a 'Solar Power Generating System' cannot have a flat tax rate of 5 percent GST.
- Further, the authority clarified that the rate of GST will depend on the supply type as the sub-contractor is an individual supplier and cannot avail any GST at concessional rate.

Maharashtra State Authority of Advanced Ruling (AAR)

Has, in response to an application by Giriraj Renewables Pvt. Ltd., clarified that irrespective of the fact that there are separate contracts for supply of goods and services for a solar power plant, the entire project of setting up and operation of a solar photovoltaic plant shall



qualify as a works contract and shall be taxable at 18%.

Conclusion

Two separate Authorities for Advance Rulings (AAR) on the GST rate applicable on installation of solar plants have thrown the solar industry into confusion. The industry has knocked at the doors of the government seeking clarity on the matter.

Two rulings, from the Maharashtra AAR, have favoured a GST rate of 18%, treating installation as a whole works contract. The Karnataka AAR, however, has ruled to treat installation at the concessional rate of 5% applicable on equipment. The challenge for the applicant is as he has to maintain it differently in both the states as one has given it at 5% and another at 18%.

To avoid such confusion, it may be proposed to have a central body for advance ruling so that the trade and industry can really benefit from the same. The current mechanism does not have any representation from the Judiciary and for this a petition is already filed in the High Court of Gujarat and it posted for hearing on 2nd July 2018. Keeping in view of all the above, the advance ruling mechanism should be revisited in GST else it will defeat the objective of having such a mechanism.

2. West Bengal Authority for Advance Ruling Goods and Service Tax

Applicant: EMC Ltd

Order No. & date: 04/WBAAR/2018-19 dated 11/05/2018

The Applicant is stated to be a supplier of materials and allied services for erection of towers, testing and commissioning of transmission lines and setting up sub-stations collectively called the Tower Package.

His question is related to contracts obtained mainly from M/s Power Grid Corporation of India (hereinafter the contractee). The contractee awards the Applicant contracts for supply of Tower Packages split up into two separate sets of contracts – one for supply of materials at exfactory price (hereinafter the First Contract), and the other for supply of allied services like survey and erection of towers, testing and commissioning of transmission lines etc (Second Contract), which also includes inland/local transportation, in-transit insurance, loading/unloading for delivery of materials and storage of them at the contractee's site. The contractee agrees to reimburse the actual GST payable, except on the price component for inland/local transportation, in-transit insurance and loading/unloading. The applicant raises separate freight bills on the contractee as per the rate schedule annexed to the Second Contract.

The Applicant wants a Ruling on whether he is liable to pay tax on such freight bills.

An Advance Ruling is admissible on this question under Section 97 (2) (a) & (e) of the CGST / WBGST Act, 2017 (hereinafter "the GST Act").The



Applicant also declares that the issue raised in the application is not pending or decided in any proceedings under any provisions of the GST Act. The concerned officer has raised no objection to admissibility of the application. The application is admitted.

The Applicant is not a goods transport agency (hereinafter the GTA) or engaged in insurance business. He will, according to the application, arrange such services and pay the GST as applicable on the consideration paid to the suppliers of such services. His service to the contractee for inland/local transportation, the applicant argues, is exempt under the GST Act. He refers to Notification No. 9/2017 – IT (Rate) dated 28/06/2017, which, according to him, grants exemption on transportation service provided by an entity other than GTA. As the applicant is not a GTA, his supply of transportation service, he claims, is exempt vide the above notification.

Before dealing with the above argument, it needs to be clarified that reference to a notification under the IGST Act should be contract specific, where an inter-state supply is taking place. In this application general nature of a supply is being dealt with rather than the place of any particular supply. Moreover, West Bengal Authority for Advance Ruling has no mandate to deal with questions involving inter-state supply. Reference is, therefore, being made to analogous Notifications under the GST Acts, viz Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 (1136-FT dated 28/06/2017 under State tax) (hereinafter “the Exemption Notification”).

Serial no. 18 of the Exemption Notification exempts services by way of transportation of goods by road, except the services of a GTA. In his written submission the Applicant admits that he is not Page 2 of 3 transporting the goods, but hiring the service of a transport agency. Similarly, the Applicant is not providing the insurance service, but buying such services from an insurance service provider. The Applicant is, therefore, the recipient of such services and not a supplier thereof. The question of the Applicant providing transportation service, therefore, does not arise.

Before deciding the issue of taxability of the consideration payable under the Second Contract for inland/local transportation and ancillary services like in-transit insurance, which are included in the freight bills the contracts referred to above need to be examined.

The First Contract includes ex-works supply of all equipment and materials. The scope of the work includes testing and supply of transmission line towers, spares and accessories thereof, and all other materials required for successful commissioning of the transmission line.

The Second Contract includes all other activities required to be performed for complete execution of the tower package. The scope of the work includes transportation, in-transit insurance, loading/unloading and delivery of the goods to the contractee’s site; detailed survey



including route alignment, profiling etc; classification of foundations for the towers and casing of foundations based on the drawing supplied by the contractee; erection of the towers; dismantling of the existing 400kv transmission line; stringing of power line crossing section under live line condition; painting of the towers; testing and commissioning of the transmission lines etc.

It is immediately apparent that the First Contract cannot be executed independent of the Second Contract. There cannot be any „supply of goods’ without a place of supply. As the goods to be supplied under the First Contract involve movement and/or installation at the site, the place of supply shall be the location of the goods at the time when movement of the goods terminates for delivery to the recipient, or moved to the site for assembly or installation [refer to Section 10(1) (a) & (d) of the IGST Act, 2017]. The First Contract, however, does not include the provision and cost of such transportation and delivery. It, therefore, does not amount to a contract for „supply of goods’ unless tied up with the Second Contract. In other words, the First Contract has “no leg’ unless supported by the Second Contract. It is no contract at all unless tied up with the Second Contract.

The contractee is aware of such interdependence of the two contracts. Although awarded under two separate contract agreements, clauses under both of them make it abundantly clear that notwithstanding the break-up of the contract price, the contract shall, at all times, be construed as a single source responsibility contract and the Applicant shall remain responsible to ensure execution of both the contracts to achieve successful completion and taking over of the facilities. Any breach in any part of the First Contract shall be treated as a breach of the Second Contract, and vice versa. It is expressly understood that any default or breach under the „Second Contract shall automatically be deemed as a default or breach of this „First Contract also and vice-versa, and any such default or breach or occurrence giving the contractee a right to terminate the „Second Contract, either in full or in part, and/or recover damages there under.

The two contracts are, therefore, linked by a cross fall breach clause that specifies that breach of one contract will be deemed to be a breach of the other contract, and thereby turn them into a single source responsibility contract. Black’s Law Dictionary defines that “a severable contract, also termed as divisible contract, is a contract that includes two or more promises each of which can be enforced separately, so that failure to perform one of the promises does not necessarily put the promises in breach of the entire contract”. In terms of this definition, the „cross fall breach clause, in the present context, settles unambiguously that supply of goods, their transportation to the contractee’s site, delivery and installation, erection of towers and testing and commissioning transmission lines and related services are not separate contracts, but form only parts of an indivisible composite



works contract supply, as defined under Section 2(119) of the GST Act, with,, single source responsibility

Composite nature of the contract is clear from the clause that defines satisfactory performance of the First Contract (supply of goods) as the time when the goods so supplied are installed and finally commissioned in terms of the Second Contract. In other words, the First Contract cannot be performed satisfactorily unless the goods have been transported and delivered to the contractees site, applied for erection of towers, the transmission lines laid, tested and commissioned in terms of the Second Contract. The two promises – supply of the goods and the allied services – are not separately enforceable in the present context. The recipient has not contracted for ex-factory supply of materials, but for the composite supply, namely works contract service for construction of the Tower Package.

The price components of both the First and the Second Contracts, including that for transportation, in-transit insurance etc are to be clubbed together to arrive at the value of the composite supply of works contract service as discussed above, and taxed at 18% in terms of Serial no. 3 (ii) of Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017 (1135 – FT dated 28/06/2017 under the State Tax).

In view of the foregoing the rule is as under

RULING

The applicant supplies works contract service, of which freight and transportation is merely a component and not a separate and independent identity, and GST is to be paid at 18% on the entire value of the composite supply, including supply of materials, freight and transportation, erection, commissioning etc.

This ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act

3. GST Rate on Work Contract Services pertaining to railways by sub-contractor

GST Aar Maharashtra – Shree Constructions

Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act”] by SHREE CONSTRUCTION, the applicant, seeking an advance ruling in respect of the following questions :

1. What Tax rate to be charged by the sub-contractor to main contractor on Works Contract Services (WCS) pertaining to railways original works contract?
2. Whether to charge tax rate of 12% GST or 18% GST?



At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

Facts and Contention – as per the Applicant

The submissions, **as reproduced verbatim**, could be seen thus-

Statement of relevant facts having a bearing on the question(s) raised

1. We are providing works contract service as sub-contractor to main contractor for original contract work pertaining to railways.
2. As per **Notification No-20/2017- Central Tax (Rate) dated 22-08-2017** the rate of 'GS' is 12% for composite supply of works contract supplied by way of construction, erection, commission or installation of original works pertaining to railways.
3. As per SR.No-12 in press release of 25th meeting of GST council held at New Delhi on 18-01-2018, the rate of GST applicable to main contractor should be levied by sub-contractor.
4. As per **Notification No-01/2018- Central Tax(Rate) dated 25-01-2018** the service provided by sub- contractor to main contractor for railway original works contract services is not specified in the notification.

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the afore said question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought)

1. As per our view point even though we are sub-contractor providing service to main contractor for original contract work pertaining to railways, we should charge 12% GST only and not 18% as applicable in other cases.
2. The contract for original works pertaining to railways remains the same works contract.
3. As there is difference of opinion after reading of press release of 25th meeting of GST council dated 18-01-2018 and **notification No 1/ 2018 dated 25-01-2018**, we are not in position to levy correct rate of GST on original sub-contracting work pertaining to railways carried on by us for our main contractor.
4. This advance ruling is sought clarification for rate of tax to be levied by the sub-contractor to main contractor for original contract work pertaining to railways.


Further submissions, as reproduced verbatim, could be seen thus-

Our Submission is in Part 1 and Part 2 hereunder –

1. Part 1 – The Issue put before your honour.
2. Part 2 – The submission and explanation in support of our issue.

Part 1: Issue

- a. We are a Works Contractor.
- b. We execute and undertake composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017.
- c. We have been awarded a subcontract by another works contractor to execute the original work of civil construction for Railways.
- d. As per the schedule of GST rate for a service under GST, the composite value of works contract is classified along with rates of tax as hereunder.

AC Code	Description of Services	Rate in %
9954	(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, excluding (including substituted from 25/01/2018) monorail and 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;	12
	(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under- (1) the Affordable Housing in Partnership component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government; (e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages,	

- e. The sub-contractor providing services to main contractor is further classified only under two categories as under



SAC Code	Description of Services	Rate in %
9954	(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority; a Governmental Authority or a Government Entity. Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.	12
	(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item	12
	(vi) d above to the Central Government; State Government, Union territory, a local authority, a Governmental Authority or a Government Entity. Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government; State Government, Union territory or local authority, as the case may be.	12

- f. Even though, we being subcontractor providing civil construction services to main contractor effecting original works contract for Railways which is not covered in 9954 (ix) and 9954 (x), we believe that the rate applicable to us, is 12% only which is the rate applicable for Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-
(a) railways excluding(including substituted from 25/01/2018) monorail and metro;

Thus, to have certainty in the tax liability in relation to an activity provided by us, our application for Advance Ruling is sought for



1. At what rate of tax the liability should be determined on services provided by us to main contractor effecting civil construction work for railways?
2. Under which head we should classify our Services to execute civil construction contract for railways?

Part 2:. Our Submission and Explanation

In support of our charging tax @ 12%, we submit our submission as under –

1. As per the section 2 (119) of the CGST Act, 2017 “works contract” means a contract for building, construction, fabrication, completion, erection, installation fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property, wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;
2. As per Section 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;
3. Contractor and sub-contractor are not defined under the CGST Act, 2017 but as per the general definition
 - a. Contractor means a person or firm that undertakes a contract from the employer to provide materials or labour to perform a service or do a job at a specified price.
 - b. A subcontractor means a person who is hired by a general contractor (or prime contractor, or main contractor) to perform a specific task as part of the overall project or the total project at a specified price for services provided to the project by the originating employer.
4. When the contractor awards either wholly or partially, the contractual obligation to a sub-contractor the contracts remains the same and the identity of the contract doesn't change.
5. When the contractor awards either wholly or partially, the work to the subcontractor, the work to be performed by the contractor as well as subcontractor remains same and identical to what is specify in the contract between the main contractor and the employer.
6. It can also be seen from the definition quoted above that subcontractor is not doing anything other but only what is specified in the contract between the main contractor and the employer.
7. As per the definition of agent above a agent is a person who



carries on the same business of supply and / or receipt of goods or services or both on behalf of another. Thus we can call a subcontractor as an agent also who is undertaking the same supply of service for main contractor.

8. It can also be said that, the sub-contractor is only an agent of the contractor and the works job undertaken by him passes directly from the sub-contractor to the employer.
9. As the work get transferred directly to the employer by the subcontractor the works contract remains the same and therefore leads to the conclusion that there is only one contract which is undertaken by the contractor as well as subcontractor.
10. In our case, it is the transaction of a works contract, where the property in goods passes directly to the employer as and when we as a subcontractor have transferred and put our material and services for of execution of civil work carried for railways. The main contractor cannot take out our executed job and cannot treat it separately. Thus it cannot be said at any point of time, that the property in the works job passes to the contractor where the work is executed by us a subcontractor.
11. As we have already noticed, we are only an agent of the contractor and the property in goods passes directly from us being subcontractor to the employer which leads us to the conclusion that there is only one contract that is between railways and contractor as well as subcontractor. And we are doing the job for railways.
12. We would also like to highlight the intent of the Government is to bring the rates of main contractor and subcontractor at par while they are providing their services to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.
13. Railways being a Governmental Authority / Entity is already covered under clause (x) of heading 9954 of section 5 of classification of services even though not specified separately.
14. Thus the rate applicable for civil works contract carried out for railways in para (v) of heading 9954 of section 5 of classification of services should be applicable to subcontractor also.

03. Contention – as per the Concerned Officer

2. As directed the application has been examined with reference to provisions of Chapter XVII of CGST Act, 2017 and it is submitted that –

- i) Prima facie it appears that the question on which the advance ruling is sought under CGST Act doesn't fall under any of the category mentioned in sub section (2) of Section 97 of the Act as the question, put forth by the Applicant is only relating to



charging of rate of tax on the Works Contract Services (WCS) by the sub contractor to main contractor in respect of railways original works contract.

- ii) On examination of the Notification No.20/ 2017-Central Tax (Rate) dated 22.08.2017 it appears that in terms of serial number (v) of Table, Composite supply of works contract as defined in clause (119) of Section 2 of CGST Act, 2017, supplied by way of construction, erection, commissioning or installation of original works pertaining to – (a) railways, excluding monorail and metro; rate of tax is prescribed as 12%. Other than these services, rate of tax is prescribed at the rate of 18% as shown in serial number (vi). There is no Specific inclusion of WCS services provided by sub contractor to main contractor. Therefore, it appears from the said Notification No.20/ 2017-Central Tax (Rate) dated 22.08.17 that the category of WCS services provided by sub-contractor to main contractor are not covered by the said notification.
- (iv) As per amending **Notification No.01 /2018-Central Tax (Rate) dated 25.01.2018**, in para (C) it is substituted that in serial number (ix) and (x) that for Composite supply of WCS provided by subcontractor to main contractor specified in item (iii) or item (iv) to the Government Entity, rate of tax prescribed is 12%. However, for construction services other than (v), rate of tax is prescribed as 18%. Therefore, **Notification No.01/2018-Central Tax (Rate) dated 25.01.2018**, the services provided by sub contractor to main contractor for railway original works contract services are excluded from the main entry (ix) and (x) of the said notification. All other construction services other than specified services are therefore attract rate of 18% tax which includes services provided by sub contractor to main contractor for railway original works contract.
- (v) The contention of the Applicant, that their services are covered by the original works contract specified in para (ix) and (x) of amended **Notfn.No.01/2018-CT(Rate) dated 25.01.2018**, is not correct in as much as the said Notification has classified all other Works Contracts relating to Construction services in head (xii) prescribing rate of 18%. The minutes of meeting dated 18.01.2018 para-12 quoted by the Applicant has mention of Government Entity but doesn't specifically include WCS provided by sub contractor to main contractor in relation to Railways.

In view of above, the question before the Advance Ruling Authority may be disposed off as per above provisions of law for the time being in force without accepting the interpretative



views of the Applicant based on the minutes of meeting dated 18.01.2018 quoted by them.

4. Hearing

The preliminary Hearing was held on 12.06.2018. Shri Deepak Chandok, Chartered Accountant, duly authorized along with Ms Veena Chandok, CA., appeared and requested for admission of application as per details in ARA. No jurisdictional officer from the side of the department was present.

The application was admitted and Final Hearing in the matter was held on 03.07.2018. Shri Deepak Chandok, Chartered Accountant, along with Shri Vasant Hidakar, Partner appeared and made oral and further written submissions which were taken on record. The jurisdictional officer, Sh. Devender Bakliwal, Supdt., Division-I, Pune-I Commissionerate appeared and made written submissions which were taken on record .

5. Observations

We have gone through the facts of the case, submissions made by the applicant and the department and documents on record.

The applicant has submitted that they are supplying Works Contract Services (WCS), as a subcontractor, to the main contractor who in turn are supplying WCS for original work pertaining to the Railways. They have made further submissions that when a contractor awards either wholly or partially, the work to a sub-contractor, then the work to be performed by both of them remains the same and identical to what is specified in the contract between the main contractor and the employer, in this case, the Railways and as per **Notification No-20/2017- Central Tax (Rate) dated 22-08-2017** the rate of GST is 12% for composite supply of works contract supplied by way of construction, erection, commission or installation of original works pertaining to railways. They are claiming that since the tax rate is 12% for the main contractor, the same rate should be applicable to them too. They have also submitted that **Notification No-01/2018- Central Tax(Rate) dated 25-01-2018** has made certain amendments to the earlier **Notification No. 20/2017**, but has not provided clarification with respect to services provided by sub- contractor to main contractor for railway original works contract services. They have also cited SR.No-12 in press release of 25th meeting of GST council held at New Delhi on 18-01-2018, and stated that the rate of GST applicable to main contractor should be levied by sub-contractor.

We find that **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017**, has specified the rate of central tax to be levied on Intra State supply of services of description specified in Column 3 of the Table in the said Notfn, falling under scheme of classification of services



mentioned therein. The relevant clauses (v) as mentioned by the applicant in their favour, of the said Notfn, as amended by **Notfn No. 20/2017-Central Tax (Rate) dated 22.10.2017** is reproduced below:-

S1 No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
3	Heading 9954 (Construction services)	(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, excluding monorail and metro; (b) ; (c) ; (d) ; (e) ; or (f)	6	-]

A plain reading of Sr. No. 3, clause (v) reveals that 'composite supply of WCS supplied by way of construction, erection, commissioning, or installation of original works **pertaining to,-**

(a) Railways

Attracts a tax rate of 6% each of CGST and SGST.

Here we may mention that the applicant has submitted that they have been sub-contracted by the main contractor to supply WCS and in turn the main contractor is supplying WCS to the Railways. From the submissions made by the applicant it appears that the WCS provided by them is the same or a part of the main contract entered into between the main contractor and the Railways. It also appears that works contract service is civil works performed by the sub-contractor for the Railways and the property in goods (materials used in the supply of Works Contract Service) also gets transferred to the Railways directly. In such a case as per the abovementioned clause (v) of **Notfn No. 20/2017-Central Tax (Rate) dated 22.10.2017**, the works contract **service provided by the sub-contractor to the main contractor would be supply of Works Contract pertaining to Railways** and therefore chargeable to tax @ 12% (6% of CGST and SGST each). However, the benefit of 12% tax rate would be available to the applicant only if the Works



Contract Services provided by them are Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to railways.

Thus in respect of Sr. No. 3 of Notification No. 11/2017 dated 28.06.2017 as amended uptill today, even the sub-contractor providing services of composite supply of works contract in respect of original works pertaining to railways would be covered for concessional rate of GST @ 12% as given under Sr. No. 3 of Notification No. 11/2017 as amended referred above.

06. In view of the deliberations as held hereinabove, we pass an order as follows:

ORDER

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 09/2018-19/B-65 Mumbai, dt. 11/07/2018

For reasons as discussed in the body of the order, the question is answered thus –

Q. No. 1 : What Tax rate to be charged by the sub contractor to main contractor on Works Contract Services (WCS) pertaining to railways original works contract?

Answer : The tax rate to be charged by the sub-contractor to the main contractor would be @ 6% of CGST and SCSI each, in the present case.

Q. No. 2: Whether to charge tax rate of 12% GST or 18% GST?

Answer : The tax rate to be charged would be 12% in the present cas.

NOTE

NOTE