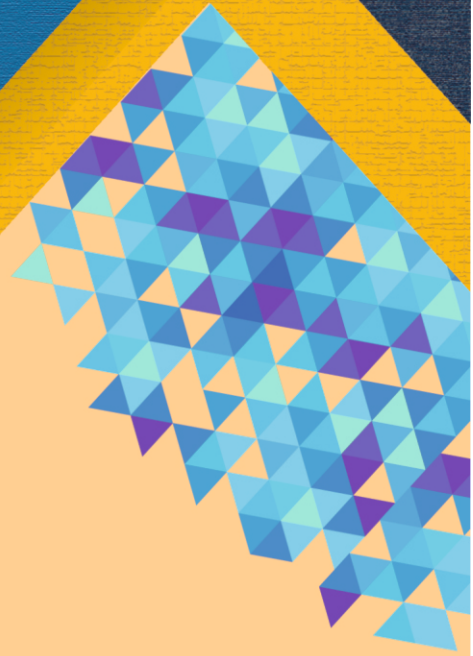


Handbook on

**WORKS
CONTRACT
UNDER GST**



GST



Vision Statement

"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

Mission Statement

"The Cost and Management Accountant professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting"

Objectives of Taxation Committee:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners, stakeholders and also Crash Courses on GST for Colleges and Universities.

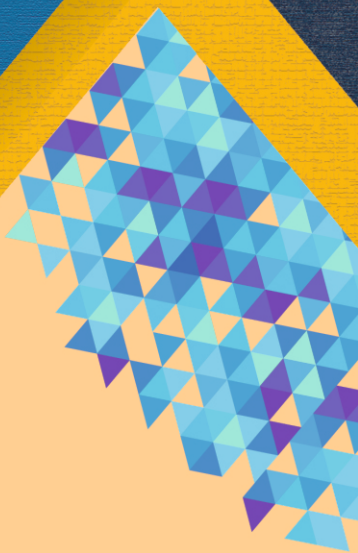
TAX RESEARCH DEPARTMENT

ACTIVITIES

- Webinars
- Representations to the Government
- Top Stories
- Workshops & Seminars on Taxation
- Corporate Trainings
- Taxation Help Desk
- Fortnightly Tax Bulletin
- **Indirect Tax** - Certificate Course on GST & Advance GST Course
- **Direct Tax** – Certificate Course on TDS & Filing of Return
- Crash Course on GST for Colleges & Universities
- Various Publications in Direct Tax & Indirect Tax

Handbook on
**WORKS
CONTRACT
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GST



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The President

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President's Message



Team Tax Research Department has been successful in timely publication of the revised edition of "Handbook on Works Contract under GST". We are always indebted to the support and encouragement given by our very own Resource contributors. I congratulate the TRD for timely publication and look forward for more such value additions in the future.

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. Under GST laws, the definition of "Works Contract" has been restricted to any work undertaken for an "Immovable Property" unlike the previous regime of VAT and Service Tax wherein works contracts for movable properties were also considered.

As regards 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. All these provisions have been deliberated in the handbook.

I acknowledge that the Tax Research Department is inspired and committed, on behalf of the Institute to put in efforts to contribute positively in this field. I look forward to the department for continuing this important work towards fulfilling the vision of members and stakeholders.

CMA Balwinder Singh

President

Date: 21.12.2019

Chairman's Message



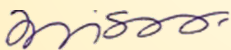
Congratulations to Tax Research Department for understanding and publishing the revised edition of '**Handbook on Works Contract under GST**'

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.

The term works contract has been restricted to contract for building construction, fabrication, etc., of any immovable property only. Any composite supply undertaken on movable property such as fabrication or painting job done in automotive body shop or annual maintenance contracts will not be covered under works contract as defined in the [GST Act](#). Such contracts would be treated as composite supplies and not as Works Contracts for the purposes of GST. The essentials of Works Contract have been dealt with in this handbook, which I am sure would be great help to stake holders.

I whole heartedly congratulate Team – TRD and the resource contributors on their success in publishing this handbook.

Wishing you Merry Christmas and Happy & Prosperous New Year....!!!

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

CMA Niranjan Mishra

Chairman – Indirect Taxation Committee

Date: 21.12.2019

Chairman's Message



Works contract is always intriguing. I was happy and eager to get hold of the draft of the book and was glad to know that the Taxation Committee has come up with such an excellent edition of "**Handbook on Works Contract under GST**". This is a refined and revised version of it. It is indeed a great work, and I look forward to reading more such notes.

We all know, a works contract is a mixture of service and transfer of goods. Examples of works contract are the construction of a new building, erection, installation of plant and machinery. Previously, in Pre-GST era Works contracts consisted of three kinds of taxable activities. It involved supply of goods as well as supply of services. If a new product was created during the works contract, then such manufacture became a taxable event. Previously, the supply of goods was taxable in the form of VAT and the service was taxable under service tax. If a new product appeared in the process of completing a works contract, Central Excise duty was levied. So, different aspects of one a single activity were taxed by different laws. This caused a lot of confusion regarding treatment and taxability which is why there were so many legal disputes in related to works contracts.

GST aims to put an end to the uncertainty for the legislature. GST with its "**One Nation One Tax**" has removed the confusion regarding the tax treatment; it has defined such contracts in GST schedule II. This means works contract will be treated as service and tax would be charged accordingly (not as goods or part goods/part services). This treatment of works contract as service and not as supply of goods will bring in much needed clarification to the works contracts. Professionals need to have this much needed clarity for deliberation of their everyday work. The book would be of much help in this regard.

I congratulate Team – Tax Research for bringing out the revised edition of "**Handbook on Works Contract under GST**" – The revised edition. We are indebted to the resource people for their selfless contribution and dedication towards this Handbook. Commendable job by the entire Tax Research Team. My best wishes to Taxation Committee for its all future endeavours.

Jai hind.

A handwritten signature in black ink, appearing to read 'Rakesh Bhalla'. Below the signature, the name '(Rakesh Bhalla)' is printed in a small, black, sans-serif font.

CMA Rakesh Bhalla

Chairman – Direct Taxation Committee

Date: 21.12.2019

Preface

A works contract is an agreement which is a mixture of service or labour and transfer of goods. Under a works contract the contractor agrees to do certain job in execution whereof, certain goods are transferred to the contractee. Thus, an agreement of building construction, manufacture, processing, fabrication, erection, installation, repair or commissioning of any movable or immovable property is a works contract.

In a general sense, a contract of works, may relate to both movable and immovable property. The most significant change with regard to Work Contract in GST is the meaning of "Work 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. ITC in works contract also have a very important aspect. ITC for works contract can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service.

There are various details in the impact of the new GST rule on Works contract and it is being updated on a regular basis. We are happy to bring out with this revised edition of this handbook for the benefit of our stakeholders. We, at Tax Research Department are grateful to **CMA Balwinder Singh, President** of the Institute for his support to the Department as always. We also acknowledge and are thankful to **CMA Niranjan Mishra, Chairman – Indirect Taxation Committee** and **CMA Rakesh Bhalla, Chairman – Direct Taxation Committee**, who has provided us with this opportunity to work on this handbook. We are also grateful **CMA Navneet Jain** and **CMA Monica Aggarwal** without whose contributions this publication would not have been so well published.

Thank You.

Tax Research Department

Date: 21.12.2019

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CHAPTER

01

UNDERSTANDING THE 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.

Position Maintenance of records

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.

The records as stated above need to be prepared in such manner that audit trails could be established because of its multi-dimensional effects on taxability and tax collections.

The records may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.

Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided below and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such



accounts and documents are maintained digitally.

Every registered person required to keep and maintain books of account or other records in accordance with the provisions shall retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records:

In case of any proceedings under the GST provisions, normally, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX pertaining to offences and penalties, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.



CHAPTER

02

RATES OF GST FOR WORKS CONTRACT

Determination of rates for various services within Works Contract is a bit complex exercise considering the varied nature of services. However the government seems to be very positive and have modified the main notification concerning rates of services as and when required depending upon the feedback from the various stake holders. Notification no. 11/2017 - Central Tax (Rate) concerning rates on services was issued on 28th June 2017 and the latest was issued on 30th Sep 2019. The same has been incorporated to the extent it related to Works Contract Services for the benefit of readers in our opinion. The readers are however requested to refer to the main notifications, in case of any doubt.

Notification No. 11/2017-Central Tax (Rate) (Extract only: for Works Contract)

New Delhi, the 28th June, 2017

Amended with Notification No. 20/2017-Central Tax (Rate) dt. 22nd August 2017, Notification No. 24/2017-Central Tax (Rate) dt. 21st September 2017, Notification No. 31/2017-Central Tax (Rate) dt. 13th October 2017, Notification No. 46/2017-Central Tax (Rate) dt. 13th November 2017, Notification No. 1/2018-Central Tax (Rate) dt. 25th January 2018, Notification No. 13/2018-Central Tax (Rate) dt. 26th July 2018, Notification No. 17/2018-Central Tax (Rate) dt. 26th July 2018, Notification No. 27/2018-Central Tax (Rate) dt. 31st December 2018, Notification No. 30/2018-Central Tax (Rate) dt. 31st December 2018, Notification No. 3/2019-Central Tax (Rate) dt. 29th March 2019, Notification No. 10/2019-Central Tax (Rate) dt. 10th May 2019, Notification No. 20/2019-Central Tax (Rate) dt. 30th September 2019

For more details, please follow –

http://cbic.gov.in/resources//htdocs-cbec/gst/Consolidated_notification_CGST_11.pdf

This Notification has been amended time to time for various times. For further amended notifications please visit-

www.cbic.gov.in

**Annexure: Scheme of Classification of Services (Extract only)**

S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
1	Chapter 99		All Services
2	Section 5		Construction Services
3	Heading 9954		Construction services
4	Group 99541		Construction services of buildings
5		995411	Construction services of single dwelling or multi dwelling or multi-storied residential buildings
6		995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels and the like
7		995413	Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings
8		995414	Construction services of commercial buildings such as office buildings, exhibition and marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings
9		995415	Construction services of other non-residential buildings such as educational institutions, hospitals, clinics including veterinary clinics, religious establishments, courts, prisons, museums and other similar Buildings



10		995416	Construction services of other buildings nowhere else classified
11		995419	Services involving repair, alterations, additions, replacements, renovation, maintenance or re-modeling of the buildings covered Above
12	Group 99542		General construction services of civil engineering works
13		995421	General construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels
14		995422	General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks
15		995423	General construction services of long-distance underground/ overland/ submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works
16		995424	General construction services of local water and sewage pipelines, electricity and communication cables and related works
17		995425	General construction services of mines and industrial plants
18		995426	General Construction services of Power Plants and its related Infrastructure
19		995427	General construction services of outdoor sport and recreation Facilities
20		995428	General construction services of other civil engineering works nowhere else classified
21		995429	Services involving repair, alterations, additions, replacements, renovation, maintenance or re-modeling of the constructions covered above



22	Group 99543		Site preparation services
23		995431	Demolition services
24		995432	Site formation and clearance services including preparation services to make sites ready for subsequent construction work, test-drilling and boring and core extraction, digging of trenches
25		995433	Excavating and earthmoving services
26		995434	Water well drilling services and septic system installation services
27		995435	Other site preparation services nowhere else classified
28		995439	Services involving repair, alterations, additions, replacements, maintenance of the constructions covered above
29	Group 99544		Assembly and erection of pre-fabricated constructions
30		995441	Installation, assembly and erection services of prefabricated buildings
31		995442	Installation, assembly and erection services of other prefabricated structures and constructions
32		995443	Installation services of all types of street furniture (such as bus shelters, benches, telephone booths, public toilets, and the like)
33		995444	Other assembly and erection services nowhere else classified
34		995449	Services involving repair, alterations, additions, replacements, maintenance of the constructions covered above
35	Group 99545		Special trade construction services
36		995451	Pile driving and foundation services



37		995452	Building framing and roof framing services
38		995453	Roofing and waterproofing services
39		995454	Concrete services
40		995455	Structural steel erection services
41		995456	Masonry services
42		995457	Scaffolding services
43		995458	Other special trade construction services nowhere else classified
44		995459	Services involving repair, alterations, additions, replacements, maintenance of the constructions covered above
45	Group 99546		Installation services
46		995461	Electrical installation services including Electrical wiring and fitting services, fire alarm installation services, burglar alarm system installation services
47		995462	Water plumbing and drain laying services
48		995463	Heating, ventilation and air conditioning equipment installation Services
49		995464	Gas fitting installation services
50		995465	Insulation services
51		995466	Lift and escalator installation services
52		995468	Other installation services nowhere else classified
53		995469	Services involving repair, alterations, additions, replacements, maintenance of the installations covered above
54	Group 99547		Building completion and finishing services
55		995471	Glazing services
56		995472	Plastering services
57		995473	Painting services



58		995474	Floor and wall tiling services
59		995475	Other floor laying, wall covering and wall papering services
60		995476	Joinery and carpentry services
61		995477	Fencing and railing services
62		995478	Other building completion and finishing services nowhere else Classified
63		995479	Services involving repair, alterations, additions, replacements, maintenance of the completion/finishing works covered above
305	Group 99832		Architectural services, urban and land planning and landscape architectural services
306		998321	Architectural advisory services
307		998322	Architectural services for residential building projects
308		998323	Architectural services for non-residential building projects
309		998324	Historical restoration architectural services
310		998325	Urban planning services
311		998326	Rural land planning services
312		998327	Project site master planning services
313		998328	Landscape architectural services and advisory services
314	Group 99833		Engineering services
315		998331	Engineering advisory services
316		998332	Engineering services for building projects
317		998333	Engineering services for industrial and manufacturing projects
318		998334	Engineering services for transportation projects
319		998335	Engineering services for power projects



320		998336	Engineering services for telecommunications and broadcasting Projects
321		998337	Engineering services for waste management projects (hazardous and non-hazardous), for water, sewerage and drainage projects
322		998338	Engineering services for other projects nowhere else classified
323		998339	Project management services for construction projects
324	Group 99834		Scientific and other technical services
325		998341	Geological and geophysical consulting services
326		998342	Subsurface surveying services
327		998343	Mineral exploration and evaluation
328		998344	Surface surveying and map-making services
329		998345	Weather forecasting and meteorological services
330		998346	Technical testing and analysis services
331		998347	Certification of ships, aircraft, dams, and the like
332		998348	Certification and authentication of works of art
333		998349	Other technical and scientific services nowhere else classified

Annexure

IReal estate project (REP) other than Residential Real estate project (RREP)

Input tax credit attributable to construction of residential portion in a real estate project (REP) other than residential real estate project (RREP), which has time of supply on or after 1st April, 2019, shall be calculated project wise for all projects which commence on or after 1st April, 2019 or ongoing projects in respect of which the promoter has not exercised



option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, in the prescribed manner, before the due date for furnishing of the return for the month of September following the end of financial year 2018-19, in the following manner:

1. Where % completion as on 31st March, 2019 is not zero or where there is inventory in stock

(a) Input tax credit on inputs and input services attributable to construction of residential portion in a REP, which has time of supply on or after 1st April, 2019, may be denoted as Tx. Tx shall be calculated as under:

$$Tx = T - T_e$$

Where,

(i) T is the total ITC availed (utilized or not) on inputs and input services used in construction of the REP from 1st July, 2017 to 31st March, 2019 including transitional credit taken on 1st July, 2017;

(ii) T_e is the eligible ITC attributable to (a) construction of commercial portion and

(b) construction of residential portion, in the REP which has time of supply on or before 31st March, 2019;

(b) T_e shall be calculated as under: $T_e = T_c + T_r$

Where, -

T_c is the ITC attributable to construction of commercial portion in the REP, calculated as under:

$T_c = T * (\text{carpet area of commercial apartments in the REP} / \text{total carpet area of commercial and residential apartments in the REP})$ and

T_r is the ITC attributable to construction of residential portion in the REP which has time of supply on or before 31st March, 2019 and which shall be calculated as under,

$$T_r = T * F_1 * F_2 * F_3 * F_4 \text{ Where, -}$$



$$F1 = \frac{\text{Carpet area of residential apartments in REP}}{\text{Total carpet area of commercial and residential apartments in the REP}}$$

$$F2 = \frac{\text{Total carpet area of residential apartment booked on or before 31st March, 2019}}{\text{Total carpet area of the residential apartment in REP}}$$

$$F3 = \frac{\text{Such Value of supply of construction of residential apartments booked on or before 31st March, 2019 which has time of supply on or before 31st March, 2019}}{\text{Total value of supply of construction of residential apartments booked on or before 31st March, 2019}}$$

(F3 is to account for percentage invoicing of booked residential apartments)

$$F4 = \frac{1}{\% \text{ Completion of construction as on 31st March, 2019}}$$

Illustration: where one-fifth (twenty percent) of the construction has been completed, $F4$ shall be $100 \div 20 = 5$.

Explanation: "% Completion of construction as on 31st March, 2019" shall be the same as declared to the Real Estate Regulatory Authority in terms of section 4 and section 11 of Real Estate (Regulation and Development) Act, 2016 (16 of 2016) and where the same is not required to be declared to the Real Estate Regulatory Authority, it shall be got determined and certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers(India).



(c) A registered person shall have the option to calculate 'Te' in the manner prescribed below instead of the manner prescribed in (b) above,-

Te shall be calculated as under:

$$Te = Tc + T1 + Tr$$

Where, -

Tc is the ITC attributable to construction of commercial portion in the REP, calculated as under:

$Tc = T3 * (\text{carpet area of commercial apartments in the REP} / \text{total carpet area of commercial and residential apartments in the REP})$;

Wherein

$$T3 = T - (T1 + T2)$$

T1 = ITC attributable exclusively to construction of commercial portion in the REP
T2 = ITC attributable exclusively to construction of residential portion in the REP and

Tr is the ITC attributable to construction of residential portion in the REP which has time of supply on or before 31.03.2019 and which shall be calculated as under,

$$Tr = (T3 + T2) * F1 * F2 * F3 * F4$$

or

$$Tr = (T - T1) * F1 * F2 * F3 * F4$$

(d) The amounts 'Tx' and 'Te' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(e) Where, Tx is positive, i.e. $Te < T$, the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equal to the difference between T and Te. Such amount shall form part of the output tax liability of the registered person and the amount shall be furnished in FORM GST ITC-03.

Explanation: The registered person may file an application in FORM GST DRC- 20, seeking extension of time for the payment of taxes or any amount due or for allowing payment of such taxes or amount in installments in accordance with the provisions of section 80. The commissioner may issue



an order in FORM GST DRC- 21 allowing the taxable person further time to make payment and/or to pay the amount in such monthly installments, not exceeding twenty-four, as he may deem fit.

(f) Where T_x is negative, i.e. $T_e > T$, the registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of residential portion in the REP, for which he shall not otherwise be eligible, to the extent of difference between T_e and T .

(g) The registered person may calculate T_c and utilize credit to the extent of T_c for payment of tax on commercial apartments, till the complete accounting of T_x is carried out and submitted.

(h) Where percentage completion is zero but ITC has been availed on goods and services received for the project on or prior to 31st March, 2019, input tax credit attributable to construction of residential portion which has time of supply on or after 1st April, 2019, shall be calculated and the amount equal to T_x shall be paid or taken credit of, as the case may be, as prescribed above, with the modification that percentage completion for calculation of F_4 shall be taken as the percentage completion which, as certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India), can be achieved with the input services received and inputs in stock as on 31st March, 2019.

2. Where % completion as on 31st March, 2019 is zero but invoicing has been done having time of supply before 31st March, 2019, and no input services or inputs have been received as on 31st March, 2019, "Te" shall be calculated as follows:-

(a) Input tax credit on inputs and input services attributable to construction of residential portion in a REP, which has time of supply on or before 31st March, 2019 may be denoted as T_e which shall be calculated as under,

$$T_e = T_c + T_r \text{ Where, -}$$

T_c is the ITC attributable to construction of commercial portion in the REP, calculated as under:

$T_c = T_n * (\text{carpet area of commercial apartments in the REP} / \text{total carpet area of commercial and residential apartments in the REP})$ and



Tr is the ITC attributable to construction of residential portion in the REP which has time of supply on or before 31st March, 2019 and which shall be calculated as under,

$Tr = Tn * F1 * F2 * F3$ Where, -

Tn= Tax paid on such inputs and input services on which ITC is available under the CGST Act, received in 2019-20 for construction of REP

F1, F2 and F3 shall be the same as in para 1 above

(b) The registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of residential portion in the REP, for which he shall not otherwise be eligible, to the extent of the amount of Te.

(c) The amount 'Te' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

3. Notwithstanding anything contained in paragraph 1 or paragraph 2 above, Te shall be determined in the following situations as under:

(i) where percentage invoicing is more than the percentage completion and the difference between percentage invoicing (per cent. points) and the percentage completion (percent. points) of construction is more than 25 percent. points; the value of percentage invoicing shall be deemed to be percentage completion plus 25 percent. points;

(ii) where the value of invoice issued on or prior to 31st March, 2019 exceeds the consideration actually received on or prior to 31st March, 2019 by more than 25 per cent. of consideration actually received; the value of such invoices for the purpose of determination of percentage invoicing shall be deemed to be actual consideration received plus 25 percent. of the actual consideration received; and

(iii) where the value of procurement of inputs and input services prior to 1st April, 2019 exceeds the value of actual consumption of the inputs and input services used in the percentage of construction completed as on 31st March, 2019 by more than 25 percent. of value of actual consumption of inputs and input services, the jurisdictional commissioner or any other officer authorized in this regard may fix the Te based on actual per unit consumption of inputs and input



services based on the documents duly certified by a chartered accountant or cost accountant submitted by the promoter in this regard, applying the accepted principles of accounting.

Illustration 1:

Sl. No	Details of a REP (Res + Com)			
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		75	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	$C2 * C3$	5250	sqm
5	value of each residential apartment		0.60	crore
6	Total value of the residential apartments	$C2 * C5$	45.00	crore
7	No. of commercial apartments in the project		25	units
8	Carpet area of the commercial apartment		30	sqm
9	Total carpet area of the commercial apartments	$C7 * C8$	750	sqm
10	Total carpet area of the project (Resi + Com)	$C4 + C9$	6000	sqm
11	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chartered engineer]		20%	
12	No of residential apartments booked before transition		40	units
13	Total carpet area of the residential apartments booked before transition	$C12 * C3$	2800	sqm
14	Value of booked residential apartments	$C5 * C12$	24	crore



15	Percentage invoicing of booked residential apartments on or before 31.03.2019		20%	
16	Total value of supply of residential apartments having t.o.s. prior to transition	$C14 * C15$	4.8	
17	ITC to be reversed on transition, $T_x = T - T_e$			
18	Eligible ITC (T_e) = $T_c + T_r$			
19	T (*see notes below)		1	crore
20	$T_c = T_x$ (carpet area of commercial apartments in the REP/total carpet area of commercial and residential apartments in the REP)	$C19 * (C9 / C10)$	0.125	crore
21	$T_r = T * F1 * F2 * F3 * F4$			
22	F1	$C4 / C10$	0.875	
23	F2	$C13 / C4$	0.533	
24	F3	$C16 / C14$	0.200	
25	F4	$1 / C11$	5	
26	$T_r = T * F1 * F2 * F3 * F4$	$C19 * C22 * C23 * C24 * C25$	0.467	crore
27	Eligible ITC (T_e) = $T_c + T_r$	$C26 + C20$	0.592	crore
28	ITC to be reversed on transition, $T_x = T - T_e$	$C19 - C27$	0.408	crore

* Note:-

1. The value of That C19 has been estimated for illustration based on weighted average tax on inputs.
2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencement of project which is later and transitional credit taken under section 140 of CGST Act 'as value of T.



Illustration 2:

Sl. No	Details of a REP (Res + Com)			
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		75	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	$C2 * C3$	5250	sqm
5	value of each residential apartment		0.60	crore
6	Total value of the residential apartments	$C2 * C5$	45.00	crore
7	No. of commercial apartments in the project		25	units
8	Carpet area of the commercial apartment		30	sqm
9	Total carpet area of the commercial apartments	$C7 * C8$	750	sqm
10	Total carpet area of the project (Resi + Com)	$C4 + C9$	6000	sqm
11	Percentage completion (Pc) as on 31.03.2019 [as declared to RERA or determined by chartered engineer]		20%	
12	No of residential apartments booked before transition		40	units
13	Total carpet area of the residential apartments booked before transition	$C12 * C3$	2800	sqm
14	Value of booked residential apartments	$C5 * C12$	24	crore
15	Percentage invoicing of booked residential apartments on or before 31.03.2019		60%	
16	Total value of supply of residential apartments having t.o.s. prior to transition	$C14 * C15$	14.4	crore
17	ITC to be reversed on transition, $T_x = T - T_e$			
18	Eligible ITC (T_e) = $T_c + T_r$			



19	T (*see notes below)		1	crore
20	$T_c = T \times (\text{carpet area of commercial apartments in the REP} / \text{total carpet area of commercial and residential apartments in the REP})$	$C19 * (C9 / C10)$	0.125	crore
21	$Tr = T \times F1 \times F2 \times F3 \times F4$			
22	F1	$C4 / C10$	0.875	
23	F2	$C13 / C4$	0.533	
24	F3	$C16 / C14$	0.600	
25	F4	$1 / C11$	5	
26	$Tr = T \times F1 \times F2 \times F3 \times F4$	$C19 * C22 * C23 * C24 * C25$	1.400	crore
27	Eligible ITC (T_e)= $T_c + Tr$	$C26 + C20$	1.525	crore
28	ITC to be reversed/ taken on transition, $T_x = T - T_e$	$C19 - C27$	-0.525	crore
29	T_x after application of cap on % invoicing vis-a-vis P_c			
30	% completion		20%	
31	% invoicing		60%	
32	% invoicing after application of cap ($P_c + 25\%$)	$C11 + 25\%$	45%	
33	Total value of supply of residential apartments having t.o.s. prior to transition	$C14 * C32$	10.80	crore
34	F3 after application of cap	$C33 / C14$	0.45	
35	$Tr = T \times F1 \times F2 \times F3 \times F4$ (after application of cap)	$C19 * C22 * C23 * C34 * C25$	1.05	crore
36	Eligible ITC (T_e)= $T_c + Tr$ (after application of cap)	$C20 + C35$	1.18	crore
37	ITC to be reversed / taken on transition, $T_x = T - T_e$ (after application of cap)	$C19 - C36$	-0.18	crore
38	T_x after application of cap on % invoicing vis-a-vis P_c and payment realisation			
39	% invoicing after application of cap ($P_c + 25\%$)		45%	



40	Total value of supply of residential apartments having t.o.s. prior to transition	C33	10.80	crore
41	Consideration received		8.00	crore
42	Total value of supply of residential apartments having t.o.s. prior to transition after application of cap vis-a-vis consideration received	8 cr + 25% of 8 Cr	10.00	crore
43	F3 after application of both the caps	C42 / C14	0.42	
44	Tr= T x F1 x F2 x F3 x F4 (after application of both the caps)	C19 * C22 * C23 * C43 * C25	0.97	
45	Eligible ITC (Te)=Tc + Tr (after application of both the caps)	C20 + C44	1.10	
46	ITC to be reversed/ taken on-transition, Tx=T-Te (after application of both the caps)	C19 - C45	-0.10	crore

* Note:-

1. The value of That C19 has been estimated for illustration based on weighted average tax on inputs.
2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencement of project which is later and transitional credit taken under section 140 of CGST Act 'as value of T.

Annexure II

Residential Real estate project (RREP)

Input tax credit attributable to construction of residential and commercial portion in a Residential Real estate project (RREP), which has time of supply on or after 1st April, 2019, shall be calculated project wise for all projects which commence on or after 1st April, 2019 or ongoing projects in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, in the prescribed manner, before the due date for furnishing of the return for the month of September following the end of financial year 2018-19, in the followingmanner:



1. Where % completion as on 31st March, 2019 is not zero or where there is inventory in stock

(a) Input tax credit on inputs and input services attributable to construction of residential and commercial portion in an RREP, which has time of supply on or after 1st April, 2019, may be denoted as Tx. Tx shall be calculated as under:

$$Tx = T - Te$$

Where,

(i) T is the total ITC availed (utilized or not) on inputs and input services used in construction of the RREP from 1st July, 2017 to 31st March, 2019 including transitional credit taken on 1st July, 2017;

(ii) Te is the eligible ITC attributable to construction of commercial portion and construction of residential portion, in the RREP which has time of supply on or before 31st March, 2019;

(b) Te shall be calculated as under:

$$Te = T * F1 * F2 * F3 * F4$$

Where, -

$$F1 = \frac{\text{Carpet area of residential and commercial apartments in the RREP}}{\text{Total carpet area of apartments in the RREP}}$$

(In case of a Residential Real Estate Project, value of "F1" shall be 1.)

$$F2 = \frac{\text{Total carpet area of residential and commercial apartment booked on or before 31st March, 2019}}{\text{Total carpet area of the residential and commercial apartment in the RREP}}$$

$$F3 = \frac{\text{Such value of supply of construction of residential and commercial apartments booked on or before 31st March, 2019 which has time of supply on or before 31st March, 2019}}{\text{Total value of supply of construction of residential and commercial apartments booked on or before 31st March, 2019}}$$



(F3 is to account for percentage invoicing of booked residential apartments)

$$F4 = \frac{1}{\% \text{ Completion of construction as on 31st March, 2019}}$$

Illustration: where one- fifth (twenty percent) of the construction has been completed, F4 shall be $100 \div 20 = 5$.

Explanation: “% Completion of construction as on 31st March, 2019” shall be the same as declared to the Real Estate Regulatory Authority in terms of section 4 and section 11 of Real Estate (Regulation and Development) Act, 2016 and where the same is not required to be declared to the Real Estate Regulatory Authority, it shall be got determined and certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India).

(c) The amounts ‘Tx’ and ‘Te’ shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(d) Where, Tx is positive, i.e. $T_e < T$, the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equal to the difference between T and T_e . Such amount shall form part of the output tax liability of the registered person and the amount shall be furnished in FORM GST ITC-03.

Explanation: The registered person may file an application in FORM GST DRC- 20, seeking extension of time for the payment of taxes or any amount due or for allowing payment of such taxes or amount in installments in accordance with the provisions of section 80. The commissioner may issue an order in FORM GST DRC- 21 allowing the taxable person further time to make payment and/or to pay the amount in such monthly installments, not exceeding twenty-four, as he may deem fit.



(e) Where, T_x is negative, i.e. $T_e > T$, the registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of the RREP, for which he shall not otherwise be eligible, to the extent of difference between T_e and T .

(f) Where percentage completion is zero but ITC has been availed on goods and services received for the project on or prior to 31st March, 2019, input tax credit attributable to construction of residential and commercial portion which has time of supply on or after 1st April, 2019, shall be calculated and the amount equal to Tax shall be paid or taken credit of, as the case may be, as prescribed above, with the modification that percentage completion for calculation of F_4 shall be taken as the percentage completion which, as certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India), can be achieved with the input services received and inputs in stock as on 31st March, 2019.

2. Where % completion as on 31st March, 2019 is zero but invoicing has been done having time of supply before 31st March, 2019, and no input services or inputs have been received as on 31st March, 2019, " T_e " shall be calculated as follows:-

(a) Input tax credit on inputs and input services attributable to construction of residential and commercial portion in an RREP, which has time of supply on or before 31st March, 2019 may be denoted as T_e which shall be calculated as under,

$T_e = T_n * F_1 * F_2 * F_3$ Where, -

T_n = Tax paid on such inputs and input services on which ITC is available under the CGST Act, received in 2019-20 for construction of residential and commercial apartments in the RREP.

F_1 , F_2 and F_3 shall be the same as in para 1 above

(b) The registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of residential or commercial portion in the RREP, for which he shall not otherwise be eligible, to the extent of the amount of T_e .

(c) The amount ' T_e ' shall be computed separately for input



tax credit of central tax, State tax, Union territory tax and integrated tax.

3. Notwithstanding anything contained in paragraph 1 or paragraph 2 above, Te shall be determined in the following situations as under:

(i) where percentage invoicing is more than the percentage completion and the difference between percentage invoicing (per cent. points) and the percentage completion (per cent. points) of construction is more than 25 per cent. points; the value of percentage invoicing shall be deemed to be percentage completion plus 25 percent. points;

(ii) where the value of invoices issued on or prior to 31st March, 2019 exceeds the consideration actually received on or prior to 31st March, 2019 by more than 25 per cent. of consideration actually received; the value of such invoices for the purpose of determination of percentage invoicing shall be deemed to be actual consideration received plus 25 per cent. of the actual consideration received; and

(iii) where, the value of procurement of inputs and input services prior to 1st April, 2019 exceeds the value of actual consumption of the inputs and input services used in the percentage of construction completed as on 31st March, 2019 by more than 25 per cent. of value of actual consumption of inputs and input services, the jurisdictional commissioner or any other officer authorized in this regard may fix the Te based on actual per unit consumption of inputs and input services based on the documents duly certified by a chartered accountant or cost accountant submitted by the promoter in this regard, applying the accepted principles of accounting.

Illustration 1:

Sl No	Details of a residential real estate project (RREP)			
	A	B	C	D
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		100	units
3	Carpet area of the residential apartment		70	sqm



4	Total carpet area of the residential apartments	C2 * C3	7000	sqm
5	value of each residential apartment		0.60	crore
6	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chartered engineer]		20%	
7	No of apartments booked before transition		80	units
8	Total carpet area of the residential apartment booked before transition	C3 * C7	5600	sqm
9	Value of booked residential apartments	C5 * C7	48	crore
10	Percentage invoicing of booked residential apartments on or before 31.03.2019		20%	
11	Total value of supply of residential apartments having t.o.s. prior to transition	C9 * C10	9.6	crore
12	ITC to be reversed on transition, $T_x = T - T_e$			
13	Eligible ITC (T_e) = $T \times F1 \times F2 \times F3 \times F4$			
14	T (*see notes below)		1	crore
15	F1		1	
16	F2	C8 / C4	0.8	
17	F3	C11 / C9	0.2	
18	F4	1/ C6	5	
19	Eligible ITC (T_e) = $T \times F1 \times F2 \times F3 \times F4$	C14 * C15 * C16 * C17 * C18	0.8	crore
20	ITC to be reversed on transition, $T_x = T - T_e$	C14 - C19	0.2	crore

*Note:-

1. The value of T at C14 has been estimated for illustration based on weighted average tax on inputs.
2. In actual practice, the registered person shall take



'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencement of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.

Illustration 2:

Sl No	Details of a residential real estate project (RREP)			
	A	B	C	D
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		100	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	C2 * C3	7000	sqm
5	value of each residential apartment		0.60	crore
6	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chartered engineer]		20%	
7	No of apartments booked before transition		80	units
8	Total carpet area of the residential apartment booked before transition	C3 * C7	5600	sqm
9	Value of booked residential apartments	C5 * C7	48	crore
10	Percentage invoicing of booked residential apartments on or before 31.03.2019		60%	
11	Total value of supply of residential apartments having t.o.s. prior to transition	C9 * C10	28.8	crore
12	ITC to be reversed on transition, $T_x = T - T_e$			
13	Eligible ITC (T_e) = $T \times F1 \times F2 \times F3 \times F4$			
14	T (*see notes below)		1	crore
15	F1		1	
16	F2	C8 / C4	0.8	
17	F3	C11 / C9	0.6	



18	F4	1/ C6	5	
19	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)	C14 * C15 * C16 * C17 * C18	2.4	crore
20	ITC to be reversed on transition, Tx= T- Te	C14 - C19	-1.4	crore
21	Tx after application of cap on % invoicing vis-a-vis Pc			
22	% completion		20%	
23	% invoicing		60%	
24	% invoicing after application of cap(Pc + 25%)	C6 + 25 %	45%	
25	Total value of supply of residential apartments having t.o.s. prior to transition	C9 * C24	21.60	crore
26	F3 after application of cap	C25/ C9	0.45	
27	Te= T x F1 x F2 x F3 x F4 (after application of cap)	C14 * C15 * C16 * C26 * C18	1.80	crore
28	ITC to be reversed / taken on transition, Tx= T- Te (after application of cap)	C14 - C27	-0.80	crore
29	Tx after application of cap on % invoicing vis-a-vis Pc and payment realization			
30	% invoicing after application of cap (Pc + 25%)		45%	
31	Total value of supply of residential apartments having t.o.s. prior to transition	C25	21.60	crore
32	consideration received		16.00	crore



33	Total value of supply of residential apartments having t.o.s. prior to transition after application of cap vis-a-vis consideration received	16 cr + 25% of 16 Cr	20.00	crore
34	F3 after application of both the caps	C33/ C9	0.42	
35	Te= T x F1 x F2 x F3 x F4 (after application of both the caps)	C14 * C15 * C34 * C26 * C18	1.67	
36	ITC to be reversed / taken on transition, Tx= T- Te (after application of both the caps)	C14 - C35	-0.67	crore

*Note:-

1. The value of T at C14 has been estimated for illustration based on weighted average tax on inputs.
2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencement of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.

Annexure III

Illustration 1:

A promoter has procured following goods and services [other than capital goods and services by way of grant of development rights, long term lease of land or FSI] for construction of a residential real estate project during a financial year.

Sl. No.	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/ N)
1	Sand	10	Y
2	Cement	15	N
3	Steel	20	Y
4	Bricks	15	Y
5	Flooring tiles	10	Y
6	Paints	5	Y



7	Architect/ de- signing/ CAD drawing etc.	10	Y
8	Aluminum windows, Ply, commercial wood	15	Y

In this example, the promoter has procured 80 per cent. of goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], from a GST registered person. However, he has procured cement from an unregistered supplier. Hence at the end of financial year, the promoter has to pay GST on cement at the applicable rates on reverse charge basis.

Illustration 2:

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

Sl. No.	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/ N)
1	Sand	10	Y
2	Cement	15	Y
3	Steel	20	Y
4	Bricks	15	Y
5	Flooring tiles	10	Y
6	Paints	5	N
7	Architect/ de- signing/ CAD drawing etc.	10	Y
8	Aluminum windows, Ply, commercial wood	15	N



In this example, the promoter has procured 80 per cent. of goods and services including cement from a GST registered person. However, he has procured paints, aluminum windows, ply and commercial wood etc. from an unregistered supplier. Hence at the end of financial year, the promoter is not required to pay GST on inputs on reverse charge basis.

Illustration 3:

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

Sl. No.	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs procured from registered supplier? (Y/N)
1	Sand	10	N
2	Cement	15	N
3	Steel	15	Y
4	Bricks	10	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc.	10	Y
8	Aluminum windows	15	N
9	Ply, commercial wood	10	N

In this example, the promoter has procured 50 per cent. of goods and services from a GST registered person. However, he has procured sand, cement and aluminum windows, ply and commercial wood etc. from an unregistered supplier. Thus, value of goods and services procured from registered suppliers during a financial year falls short of threshold limit of 80 per cent. To fulfill his tax liability on the shortfall of 30



percent from mandatory purchase, the promoter has to pay GST on cement at the applicable rate on reverse charge basis. After payment of GST on cement, on the remaining shortfall of 15 per cent., the promoter shall pay tax @ 18 percent under RCM.

Annexure IV

FORM

(Form for exercising one time option to pay tax on construction of apartments in a project by the promoters at the rate as specified for item (ie) or (if), against serial number 3 in the Table in this notification, as the case may be, by the 20th of May, 2019)

Reference No. _____ Date _____

To _____

(To be addressed to the jurisdictional Commissioner)

1. GSTIN:
2. RERA registration Number of the Project:
3. Name of the project, if any:
4. The location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the longitude and latitude of the end points of the project:
5. The number, type and the carpet area of apartments for booking or sale in the project:
6. Date of receipt of commencement certificate:



Declaration

1. I hereby exercise the option to pay tax on construction of apartments in the above mentioned project as under:

I shall pay tax on construction of the apartments: (put (√) in appropriate box)	At the rate as specified for item (ie) or (if), against serial number 3 in the Table in this notification, as the case may be	At the rate as specified for item (i) or (ia) or (ib) or (ic) or (id), against serial number 3 in the Table in this notification, as the case may be

2. I understand that this is a onetime option, which once exercised, shall not be allowed to be changed.

3. I also understand that invoices for supply of the service can be issued during the period from 1st April 2019 to 20th May 2019 before exercising the option, but such invoices shall be in accordance with the option being exercised herein.

Signature

Name

Designation

Place:

Date:



CHAPTER

03

INPUT TAX CREDIT FOR WORKS CONTRACT SERVICE

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, additional 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).

CHAPTER

04

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 an 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: 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	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 perse 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 an current 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.

CHAPTER

05

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), in item (i) (ia), (ib), (ic), (id), (ie) and (if) against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer 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 and paragraph 2A below, “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 maybe including by way of lease or sublease..

2A. Where a person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be deemed to be equal to the Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right or FSI (including additional FSI), nearest to the date on which such development right or FSI (including additional FSI) is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 above.”

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).

CHAPTER

06

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 compulsorily take registration. (Prior to 01st April 2019)

As per Notification 10/2019 – Central tax dt. 07 March 2019 applicable w.e.f. 01st April 2019 (extract), the following category of persons, as the category of persons have been exempted from obtaining registration under the CGST Act, namely,-

Persons involved in inter – State taxable supply of services not goods, if the aggregate turnover of a service provider, in a financial year of a unit does not exceed prescribed amount of threshold exemption limit i.e. Rs. 20 lakhs (Rs. 10 lakhs in case of the special category states of Nagaland, Manipur, Mizoram and Tripura), there is no need to get GST number.

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 was not available to works contractors as it is treated as service under GST.



Composition scheme was only available to suppliers of goods and the restaurant industry (not serving alcohol). He would have to register as a normal supplier on crossing the 20 Lakh threshold. (Prior to 1st April 2019) W.e.f. 1st April 2019 services have also been included in composition scheme (notification extract as below).

As per Notification No. 2/2019 – Central tax dt. 07th March 2019 a supplier of services only (or services and goods together) with annual turnover up to Rs. 50 Lakh may opt for composition scheme and the rate of GST applicable for such supplier would be 6%.

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.



F. No. 354/27/2019-TRU

Government of India Ministry of Finance Department of Revenue Tax Research Unit dt. 30th April 2019

GST exemption on the upfront amount payable in installments for long term lease of plots, under Notification No. 12/2017 – Central Tax (R) S. No.41 dated 28.06.2017 -reg. (Extract)

Sl. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
41	Heading 9972	“Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.”	NIL	NIL



2. It is hereby clarified that GST exemption on the upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business under Entry No. 41 of Exemption Notification 12/2017 – Central Tax (R) dated 28.06.2017 is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront.

**Notification No. 49/2019-Central Tax,dt. 09-10-2019
(Relevant Extract)**

In the said Rule, In Rule 117:-

(a) In sub-rule (1A) for the figures, letters and word “31st March, 2019”, the figures, letters and word “31st December, 2019” shall be substituted.

Provision before amendment

Earlier the date for submitting the declaration electronically in FORM GST TRAN-1 were 31st March, 2019 in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal.

Rule 117 (1A)

Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond [31st December, 2019], in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.

Impact

The registered persons who could not submit the said declaration by the 31st March 2019 on account of technical difficulties on the common portal may submit FORM GST TRAN-1 before 31st December 2019.



However, Revision of Tran-1 for non-technical errors due to inadvertence of assessee allowed by Karnataka High court

As per order in Writ petition No. 12812/2019 (T-RES) dt. 28th March 2019 in the High court of Karnataka at Bengaluru, even on the technical glitches out of the petitioner/assessee's inadvertence requires to be addressed by the Nodal officers appointed in terms of Circular instructions dated 03.04.2018 supra. The object and purpose of the transitional arrangements made under section 140 of the Act requires to be achieved to its logical end. (Extract).

It needs mention that apparently order has been issued for specific assessee and should not be considered as general order.

(b) In sub-rule (4), in clause (b), in sub-clause (iii), in the proviso for the figures, letters and word "30th April, 2019", the figures, letters and word "31st January, 2020", shall be substituted.

Provision before amendment

In sub rule (4) in sub-clause (iii), The registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions, submits a statement in FORM GST TRAN 2.

Provided that the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), may submit the statement in FORM GST TRAN-2 by 30th April, 2019

Rule 117 (4) (iii)

The registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN 2 by 31st March 2018, or within such period as extended by the Commissioner, on the recommendations of the Council, for each of Page 115 of 155 the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period:]



[Provided that the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), may submit the statement in FORM GST TRAN-2 by [31st January, 2020

Impact

In said rule, if the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), may submit the statement in FORM GST TRAN-2 by 31st January , 2020. However, earlier the date of were 30th April 2019.

CHAPTER

07

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 remodeling 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

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.

CHAPTER

08

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 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 Rs. 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 therecipient.

This value shall exclude the taxes leviable under GST (i.e. 'Central tax', 'State tax', 'UT tax', 'Integrated tax' & 'Cess').



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 out sources 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.

CHAPTER

09

TRANSACTION 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 there in 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.

Question: 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 then 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 there on 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-	Rs. 5,00,00,000.00
Demand raised and received till 30/06/2017-	Rs. 2,00,00,000.00
Amount payable after 30/06/2017-	Rs. 3,00,00,000.00
VAT Paid	Rs. 5 Lakhs (1% on Rs. 5 Crores)
ST paid on	Rs. 9 Lakhs (4.5% on Rs. 2Crores)

What would be the liability in respect of Rs. 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

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

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

What would be the liability in respect of Rs.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.

CHAPTER

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 contractor 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 underprogress,
- (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 made '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. Rs. 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.



CHAPTER

11

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 (Rs.)

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 Rs. 80 Lakhs is 50% i.e. Rs. 40 lakh and of which, developer has so far spent Rs. 30 lakh. Under GST regime, the builder will have to pay the remaining Rs. 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 Rs. 1.8 lakh ($100000 \times 18\%$) to the vendor.

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

As for a different customer, who has an outstanding amount of Rs. 60 Lakh (possible under subvention schemes) as on July 1, the amount due from him will be Rs. 60 lakh plus 12% GST which is Rs. 7.2 Lakh. Out of this, a developer may be able to pass on an input tax credit limited to Rs.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 Rs. 20 lakh or over Rs. 20 lakh.

Anti-profiteering Provisions in GST Law:

CBES Directive	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	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



	<p>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,</p> <p>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.</p>
Anti-profiteering Authority Set-up	<p>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.</p> <p>The authority, to be headed by a retired secretary-level officer, can take suo motu action, besides acting on complaints of profiteering</p>
Time Frame	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.



CHAPTER

12

ADVANCE RULINGS

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 tax payer 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

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 a nearlier 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 there by 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 per cent 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.

The Maharashtra AAR has favored 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 that 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.

Summary with final result

The Applicant M/s Giriraj Renewables Private Ltd., had sought Advance Ruling on the following questions from Authority for Advance Ruling Karnataka

1. Whether supply of turnkey Engineering, Procurement & Construction (EPC) Contract for construction of solar powerplant wherein both goods and services are supplied can be construed to be a Composite Supply in terms of Section 2(30) of CGST Act, 2017.
2. If Yes, Whether the Principal Supply in such case can be said to be 'Solar Power Generating System' which is taxable at 5% GST.
3. Whether benefit of concessional rate of 5% of solar power generation system and parts thereof would also be available to sub-contractors.

Ruling as provided by the AAR Karnataka is given below:

1. Question No. 1-The major component (PV Module) said to have been constituting 70% of the whole project cannot be construed to be supplied by the applicant consequent upon High Sea Sale of the said product and hence it cannot be construed to be a principal supply of the project and thereby cannot be a composite supply.
2. Question No. 2- The question does not remain relevant on account of answer to question number 1.



3. Question No. 3- The supply made by sub-contractor need to be viewed as an individual supply and thereby the appropriate rate of GST has to be applied depending on the specific nature of supply.

The above rulings of Maharashtra and Karnataka were challenged before Appellate Authority for Advance ruling. The summary of orders of AAAR are given below

State /UT	Name of Appellant	Brief of Order-in-Appeal (OIA)	Appeal Order No. & Date
Kar-nata-ka	Giriraj Renewables Private Ltd.,	<p>The AAAR modified the ruling rendered by the AAR as under:-</p> <p>1. The supply of the PV module which is the major component of the solar power plant is not naturally bundled with supply of the remaining components & parts of the solar power plant and the supply of Services of Erection, Installation and Commissioning of the solar Power Plant.</p> <p>2. The supply of the remaining portion of the contract in question which involves the supply of balance components and parts of the solar power plant and supply of services of erection, installation and commissioning of solar power plant is viewed as a composite supply as the supply of goods and services are naturally bundled. The tax liability on this portion of the contract in question (other than PV Module) which is termed as "composite supply" will be determined in terms of section 8 of the CGST Act 2017, where in the rate applicable to the dominant nature of the supply will prevail.</p>	KAR/AAAR/Appeal-02/2018 dated 05-09-2018



Ma-har-ash-tra	M/s. Giriraj Renewables Private Limited	The Appellate Authority for Advance Ruling upheld the ruling given by the Authority for Advance Ruling holding the activities (Supply of Solar Power Generation Plant and the installation thereof) of the Appellant as works contract.	MAH/AAAR/SS-RJ/08/2018-19 dated 05.09.2018
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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 splitup into two separate sets of contracts—one for supply of materials at ex-factory 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 an 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 inter dependence 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 thereunder.

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 contractee's 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 contract or for original contract work pertaining to railways.
2. 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.

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 honor.
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 meters per house in a housing project approved by competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;	12
	(d) low cost houses up to a carpet area of 60 square meters 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 maybe.	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 maybe.	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 “workscontract” 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 suchcontract;
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 sub contractor, 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 sub contractor.
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 sub contractor. And we are doing the job forrailways.
12. We would also like to high light 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 inter pretative 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, alongwith 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:-



Sl 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 up -till 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 SCSII 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 case.

4. Whether exemption under serial no. 18 of Notification No. 12/2017 - CT (Rate) dated 28/06/2017 is applicable on charges for transporting materials for erection of towers in a contract for Tower Package



WEST BENGAL AUTHORITY FOR ADVANCE RULING GOODS AND SERVICE TAX – Skipper Ltd

1. The Applicant, stated to be engaged in the manufacturing, installation and other ancillary services of integrated transmission towers has entered into a Joint Venture (hereinafter referred to as "JV") with M/s C & C Constructions Ltd, Gurgaon, and, as JV has executed a contract with M/s Power Grid Corporation of India (hereinafter referred to as "PGCIL") for construction and commissioning of 400 kV D/C (Quad) Jigmeling-Alipurduar line (Indian portion – NER) under transmission system for transfer of power from Mangdechhu Hydroelectric Project in Bhutan (hereinafter the Tower Package), has sought a Ruling, in Amendment to Application, dated 03.09.2018, on the applicability of Serial No. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 (hereinafter referred to as "the Exemption Notification") to them.

The Applicant's prayer for Amendment of Application is granted and Advance Ruling is admissible on this question under Section 97(2)(b) of the CGST/WBGST Acts, 2017 (hereinafter referred to, collectively, as "the GST Act").

The Applicant declares that the issue raised in the application is not pending nor decided in any proceedings under any provisions of the GST Act.

The officer concerned has raised no objection to the admissibility of the Application. The Application is, therefore, admitted.

2. The Applicant refers to the Advance Ruling pronounced by this Authority in the case of EMC Ltd (Case No. 07 of 2018 and Order No. 04/2018-19 dated 11/05/2018) in which this Authority has held that EMC Ltd has not contracted separately for ex-factory supply of materials, but for the composite supply, namely works contract service for construction, erection and commissioning of the Tower Package, 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.

The Applicant states that while the modus operandi of entering



into a contract with PGCIL is similar to that adopted by EMC Ltd, insofar as the contract with PGCIL has been split up into two separate parts – one for ex-factory supply of materials (hereinafter referred to as “the First Contract”), and the other for supply of allied services like erection of towers, testing and commissioning of transmission lines etc. (hereinafter referred to as “the Second Contract”), which also includes inland/local transportation, insurance, delivery of materials and storage of them at the contractee PGCIL’s site, the execution of the Towers cannot come under “works contract service”, since it does not involve the supply of any immovable property. Hence, the Advance Ruling for EMC Ltd cannot be relied upon for determining the case of the Applicant.

The Applicant argues that an immovable property, after construction/erection/repair/ commissioning, is attached to the land, structure or building for the permanent beneficial enjoyment of the structure and it cannot be removed without substantial damage to the structure. Transmission towers are attached to the earth to provide structural support to the transmission wires. The purpose of erecting the tower is the beneficial enjoyment of the tower and not of the structure attached to the land (the base on which the tower is erected). The tower can be dismantled and shifted to another location without major damage, and such shifting of towers is not an uncommon event. Transmission towers are, therefore, not immovable property.

Judgments passed by the High Courts and the Supreme Court in the cases of Essar Telecom Infrastructure Pvt Ltd [(2012) 25 STR 16 (Kar)]; Sri Velayuthaswamy Spinning Mills (P) Ltd (WP Nos. 4434, 4435, 13652, 13653 of 2009); Solid & Correct Engineering Works [(2010) 252 ELT 481 (SC)] are referred to by the Applicant in support of his Argument.

3. On a careful reading of the contracts between the JV and PGCIL it is seen that, in the present context, the contractual obligation between the JV and PGCIL is for construction, erection and commissioning of the Tower Package and not for the erection of a standalone tower. It includes fabrication and supply of all types of transmission line towers and accessories, supply of earth wire, hardware fittings and conductors, earth wire accessories and OPGW and associated fittings



and accessories and Tower Earthing required for complete execution of the Package, inland transportation, insurance, delivery, handling of stores, detailed survey of route alignment, profiling, tower spotting, optimization of tower location, soil testing, geotechnical investigations, piling, casting of foundation for tower footings, installation of Tower Earthing, erection of towers, tack welding of bolts and nuts, painting, fixing of insulator strings, stringing of conductors and earth wires/OPGW along with necessary line accessories, stringing of power lines, supply and erection of span markers, obstruction lights for aviation requirement, testing and commissioning of the erected transmission lines and other activities as may be required for completion of the project.

The contractual agreement is found to be in sharp contrast to the narrow focus on the manufacture and installation of standalone towers that the Applicant would like the question to be confined to.

It is clearly a supply of a bundle of goods and services that result in construction, erection and commissioning of the Tower Package.

It, therefore, needs to be ascertained whether the Tower Package, which includes the erection of a series of transmission towers and commissioning of the transmission line, is an immovable property.

4. "Immovable property" is not defined under the GST Act. The term 'goods' is defined under Section 2(52) of the GST Act as all kinds of moveable properties other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Property other than goods, money and securities should, therefore, be considered as 'immovable property' under the GST Act.

However, in the absence of a definitive explanation under the GST Act, recourse is being taken to other allied Acts dealing with "property" to determine the definition of "Immovable property".

It is seen that Section 3(26) of the General Clauses Act, 1897



defines “Immovable Property” as to include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth;

Section 3 of the Transfer of Property Act, 1882 simply provides that unless there is something repugnant in the subject or context ‘immovable property’ does not include standing timber, growing crops or grass. The Section, however, defines the term “attached to the earth” to mean (a) rooted in the earth, as in the case of trees and shrubs, (b) embedded in the earth, as in the case of walls or buildings, and (c) attached to what is so embedded for permanent beneficial enjoyment of that to which it is attached.

The essential character of ‘immovable property’, as emerges from the above discussion and relevant to the present context is that it is attached to the earth, or permanently fastened to anything attached to the earth, or forming part of the land and not agreed to be severed before supply or under a contract of supply.

5. In *Triveni Engineering & Industries Ltd [(2000) 120 ELT 273 (SC)]* the Apex Court observes that while determining whether an article is permanently fastened to anything attached to the earth both the intention as well as the factum of fastening has to be ascertained from the facts and circumstances of each case.

In *S/S Triveni N L Ltd [RN – 910, 911 & 912 of 2001 (All)]* Allahabad High Court observes that ‘permanently fastened to anything attached to the earth’ has to be read in the context for the reason that nothing can be fastened to the earth permanently so that it can never be removed. If the article cannot be used without fastening or attaching it to the earth and is not removed under ordinary circumstances, it may be considered permanently fastened to anything attached to the earth.

Furthermore, in the context of the GST Act, if the article attached to the earth is not agreed to be severed before supply or under a contract for supply, it ceases to be goods and, for that matter, a moveable property.

6. A Tower Package includes the erection of a series of transmission towers linked together by the power line for



transmitting electricity. The towers are erected on foundations built on the land, and benefits of the towers cannot be enjoyed unless they are so attached. Once commissioned, the transmission line and the transmission towers are not to be shifted under ordinary circumstances. In fact, the transmission line is being constructed after a detailed survey of route alignment, profiling, tower spotting, optimization of tower location, soil testing, geotechnical investigations etc. and after acquiring the land for the erection of the towers. All these points to the fact that the Tower Package is being constructed for its enjoyment in perpetuity with no plan for removal or shifting in the foreseeable future.

The Tower Package being constructed is, therefore, an immovable property.

7. The Applicant has referred to several case laws and judgments in support of the argument that the Towers, so constructed under contract, are not "immovable property".

a) In *Sri Velayuthaswamy Spinning Mills P Ltd (supra)* the Madras High Court based its judgment on Section 3 of the Transfer of Property Act, 1882, and held that a windmill is a moveable property, being of the view that if a thing is embedded in the earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, it becomes an immovable property. On the other hand, if the attachment is made for the beneficial enjoyment of the chattel itself, which in this case is the windmill, then it remains a chattel even though fixed for the time being so that it may be joyed.

This view of the Madras High Court does not take into consideration the intention of the parties while attaching the chattel to the foundation embedded in the earth and stands in direct opposition to the judgment of the Allahabad High Court in *S/S Triveni N L Ltd (supra)*. In this era of rapid technological advancement, when trees can be relocated, buildings and bridges can be built with pre-fabricated structures, the intention behind attaching a thing to the earth as a factor in determining its mobility cannot be ignored. This factor is taken into consideration while defining goods under the GST Act, where only those things attached to the earth or forming part of the land are included that are agreed to be severed



before supply or under a contract of supply. The rest are left out as “immovable property”.

b) In the case of *Solid & Correct Engineering Works*, (supra), the Apex Court when examining whether a machine, fixed with nuts and bolts to a foundation, with no intent to permanently attach it to the earth, is an immovable property or not, has held that such an attachment without necessary intent to making it permanent cannot be an immovable property. The emphasis is on the intention of the party. The Apex Court observes that the machine in question can be moved and has indeed been moved after the road construction and repair project, for which it was installed, is completed. However, if a machine is intended to be fixed permanently to a structure embedded in the earth, the moveable character of the machine, according to the Supreme Court, becomes extinct.

In the present context, it has already been pointed out that the series of transmission towers are being erected under the Tower Package with no intention of removing or shifting them in foreseeable future. They are, therefore, clearly intended to be fixed permanently to the foundation embedded in the earth. The moveable character of the towers, therefore, becomes extinct.

c) In the case of *Essar Telecom Infrastructure Pvt Ltd* (supra), the Karnataka High Court, differing with Bombay High Court’s judgment in *Hutchison Max Telecom P Ltd [(2008) 224 ELT 191 (Bom)]*, observes that mobile towers do not acquire the character of immovable goods, as they can be dismantled and replanted elsewhere. The Karnataka High Court has not elaborated further on this point.

In view of the differing observations of two High Courts on similar matters, no conclusion needs to be drawn based on them.

At this point, it is sufficient to distinguish between the erection of a standalone roof-top mobile tower and that of a series of transmission towers over a stretch of more than hundred kilometres, fastened and linked with power cables. The mobile towers are standalone entities erected usually on roof-tops after an agreement with the owner of the building for using the



space for a limited period of time, subject to periodic renewals. On the other hand, the Tower Package involves the erection of a series of towers on acquired land for use in perpetuity. In contrast to the time-bound nature of the agreements for using building spaces for erecting mobile towers, the Tower Package is not being constructed with the contemplation of such relocation. The judgment of Karnataka High Court in the matter of Essar Telecom Infrastructure P Ltd (*supra*) is, therefore, not applicable in the present context.

8. The Applicant further argues that separate contracts, executed with the explicitly defined separate scope of work and price, should be construed as separate distinct agreements with each of the supplies being separate supplies and refers to several judgments in support of his argument.

The cases referred to are: Hindustan Aeronautics Ltd [(1984) SCR (2) 248]; Gannon Dunkerley & Co [(1959) SCR 379]; Associated Hotels of India [(1972) SCR (2) 937]; Power Grid Corporation of India Ltd [(2007) 112 TTJ Hyd 654].

Reference is also made to Circular No. 47/21/2018-GST dated 08/06/2018 of CBIC to argue that if a supply involves the supply of both goods and services and the value of such goods and services are shown separately, the goods and services are liable to tax at the rates as applicable to them separately. Reference is also made to an e-flyer of CBIC to argue that the trade may well decide whether contractual supplies of goods and services should be treated as a composite supply or various individual supplies.

Although integral parts of the contract for the Tower Package, the First Contract and the Second Contract, according to the Applicant, are separate agreements and the two are not naturally bundled. The First Contract stands executed when the goods are delivered to PGCIL at the factory gate. The Second Contract involves all subsequent activities, including transportation etc. and services performed on the goods supplied by the contractee.

In this connection the Applicant refers to a Ruling of Karnataka Authority for Advance Ruling (hereinafter referred to as "KAAR") in the case of M/s Giriraj Renewables Pvt Ltd. wherein the contract is for setting up a solar power plant,



where the contractee imports the solar photovoltaic module (PV Module) and supplies them free of cost to the contractor at the work site. The Ld KAAR observes that the contractor cannot, therefore, claim that he is supplying the PV Module and the other supplies are ancillary to this principal supply. As the goods belong to the contractee at the time of provisioning the services, it cannot be said that the supplies of materials and services are naturally bundled and a composite supply.

Drawing an analogy the Applicant argues that ex-works supply of materials results in the transfer of title of the goods to PGCIL at the factory gate, and all subsequent activities, including transportation etc., are services performed on the goods supplied by the contractee. As the goods belong to the contractee at the time of provisioning the services, it cannot be said that the supplies of materials and services are naturally bundled and are a Composite Supply.

9. The scope of work for the contract for the Tower Package needs to be examined in some detail. The First Contract includes the 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 Applicant argues that the property in the goods passes to PGCIL at the factory gate. Appendix-1 to the First Contract contains Terms and Procedures of Payment. It provides for progressive payment, 10% of which will be made after signing of the Contract Agreement, and 60% will be made upon submission of documents inter alia evidencing dispatch of the goods, insurance, material inspection and clearance etc. 20% of the ex- works price component of the fabricated tower parts/tower shall be paid on completion of their erection. Final payment of the balance 10% shall be made after the erection of all the towers of the transmission line subject to submission of an unconditional and irrevocable bank guarantee covering the above 10% amount, valid till scheduled date for testing and commissioning of the transmission line. If there is an increase in Contract price due to price adjustment, 90% of it shall be paid on receipt of the respective shipment at the site.

Appendix-3 to the First Contract describes the Insurance



Requirements. It mandates the JV to provide insurance cover for the transit risk from the manufacturing works of the JV to the project warehouse at final destination and also the risk from the date of receipt at the site and till the date of operational acceptance, indicating that PGCIL does not own up risk in the goods till they are applied to construction, erection and commissioning of the Tower Package.

It is, therefore, abundantly clear that neither the risk in the goods passes to PGCIL at the factory gate nor that the JV will get any payment, other than the advances paid, until and unless the goods are dispatched. Evidently, property in the goods does not pass to PGCIL at the factory gate. The JV needs to move the goods and deliver them at the work site before claiming 60% of the payment for execution of the First Contract. The balance amount is to be paid in phases till completion of erection of all towers of the transmission line.

10. It is immediately apparent from the above discussion that the First Contract cannot be executed independently of the Second Contract. There cannot be any 'supply of goods' without a place of supply. As it is evident from the above discussion that title to the goods has not been transferred to PGCIL at the factory gate, supply under the First Contract involves movement and/or installation at the site, and the place of supply shall be the location of the goods at the time when movement of the goods terminates for delivery to PGCIL 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 executable contract unless tied up with the Second Contract.

The contractee is aware of such interdependence of the two contracts. Although awarded under two separate agreements, clauses under both of them make it abundantly clear that notwithstanding 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 the '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.

It is evident that although supplies of goods and services to PGCIL are being made under two separate agreements, they are not executable separately. The First Contract for supply of goods cannot be executed unless tied up with the Second Contract. Unless and until supplies under both the contracts are made and the Tower Package is commissioned, PGCIL is not treating either of the contracts as successfully completed and reserves the right to initiate actions for breach of contract. They are not two neatly separable contracts, where provisioning of services under the Second Contract begins subsequent to transfer of property in the goods to PGCIL under the First Contract, but are indivisible contracts for the bundled supply of goods and services. The ruling of KAAR in the matter of M/s Giriraj Renewables Pvt Ltd is, therefore, not relevant in the present context.

It is thus a single source contract for bundled supplies of goods and services for construction, erection and commissioning of the Tower Package – an immovable property.

11. The Applicant's reference to several judgments of the apex court is also of little relevance since they are all delivered in the context of situations prior to the 46th Amendment to the Constitution, and are focused on devising the parameters to distinguish between a contract for the sale of goods and works contract. A careful reading of these judgments reveals that the prevailing view of the Apex Court at that time was that no straitjacket formula can be devised that might be applicable under all conditions for distinguishing a contract for the sale of goods from works contract, and it should depend on the facts and circumstances of each case. Dominant intention as reflected in the terms and conditions of the contract and many other aspects are required to be taken into account.



The 46th Amendment to the Constitution has enlarged the scope of tax on the sale of goods by including therein inter alia tax on the transfer of property in goods (whether as goods or in some other form) involved in executing works contract [sub-clause (b) of clause (29A) to Art 366]. A legal fiction is thereby created, which has enabled the State to segregate an indivisible composite works contract into contracts for the sale of goods and for service, and impose a tax on the transfer of property in goods.

The legal history of works contract has since travelled a long way. In *Larsen & Toubro Ltd [(2013) 12 SCALE 77]* a three-member Constitution Bench of the Apex Court sums it up, describing works contract as a composite contract involving contracts for both service and sale of goods irrespective of dominant intention. Rejecting the traditional view espoused by several earlier judgments of the same court, wherein the focus lied on examining the substance of the contract, Apex Court now holds that the distinction between a contract for the sale of goods and contract for service has almost diminished in the matter of such composite contracts. All that is required is the existence of a contract for construction, erection, commissioning etc. of an immovable property, and execution of the contract must involve the transfer of property in goods (as goods or in some other form), whether or not the goods have been transferred by way of accretion. In its judgment dated 06/05/2014 in *Kone Elevator India Pvt Ltd [Writ Petition (Civil) No. 232/2005 and other cases]*, a five-member Constitution Bench of the Supreme Court concurs with the above decision.

12. After 101st Amendment of the Constitution, even the legal fiction for segregation of works contract into contracts for the sale of goods and for service is no longer necessary for the purpose of taxation. Clause 12A to Art 366 defines tax on supply of goods and services. Tax on the supply of goods includes a tax on the sale of goods as defined in Clause (29A) of Art 366. However, GST being a tax on the supply of both goods and services, it is no longer necessary to segregate the supply of goods in an indivisible composite contract for the purpose of taxation. GST can be levied on the entire value chain, which is the bundled supply of goods and services for execution of an indivisible composite contract for construction, erection, commissioning etc. of an immovable property.



Works contract is, therefore, defined under section 2(119) of the GST Act as a contract for 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.

Discussion in the preceding paragraphs establishes that the Applicant is executing an indivisible composite contract for construction, erection and commissioning of an immovable property, namely the Tower Package, execution of which involves bundled supply of both goods and services.

It is, therefore, works contract, as defined under Section 2(119) of the GST Act.

13. The contract for the Tower Package as above, being works contract is service in terms of paragraph 6(a) to Schedule II to the GST Act. Activities covered under Schedule II are to be treated as a supply of the nature described under section 7(1) (d) of the GST Act. Reference to Circular No. 47/21/2018-GST dated 08/06/2018 of CBIC or the e-flyer is, therefore, not relevant in the present context.

The price components of both the First and the Second Contracts, including that for transportation, in-transit insurance etc. are, therefore, to be clubbed together to arrive at the value of the supply of works contract service as discussed above.

Transportation of goods and in-transit insurance, being merely parts of the bundled services, should to be treated as components of the value of the works contract and not as separate and independent supplies.

The exemption under serial no. 18 of the Exemption Notification is, therefore, not applicable in the present context.

In view of the foregoing, we rule as under

RULING

The Applicant supplies works contract service, the value of which includes inter alia consideration paid for transportation and in-transit insurance. GST is to be paid on the entire value of the works contract, including the supply of materials,



transportation, in- transit insurance, erection, commissioning etc.

The exemption under serial no. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 is, therefore, not applicable in the present context.

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

5. Whether the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 (as amended from time to time)is applicable to the contractors/sub-contractors involved in the construction of Indo-Nepal Border Road or otherwise.

HELD have different view on the issue, we are making a reference to the Appellate Authority for hearing and decision on said issue

Advance Ruling No. 17/2018-19 Dated 30th January, 2019

RULINGS FOR THE STATE OF UTTARAKHAND for advance ruling - M/s NHPC Limited,

Note:-Under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

1. This is an application under Sub-Section (1) of Section 97 of the CGST/SGST Act, 2017 (hereinafter referred to as Act) and the rules made thereunder filed by M/s NHPC, Admin Building, Tanakpur Power Station, Banbasa, Uttarakhand seeking an advance ruling on the issue:

(a) Whether the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) is applicable to the contractors/sub-contractors involved in the construction of Indo-Nepal Border Road or other wise.

2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section(2)of section



97 or subsection (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

3. As per the said sub section(2) of Section 97 of the Act, advance ruling can be sought by an applicant in respect of:

- (a) Classification of any goods or services or both
- (b) Applicability of a notification issued under the provisions of this Act,
- (c) Determination of time and value of supply of goods or services or both,
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid
- (e) Determination of the liability to pay tax on any goods or services or both
- (f) Whether the applicant is required to be registered
- (g) 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

4. In the present case applicant has sought advance ruling on applicability of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 on their activity of construction of road and whether the said notification is also applicable to the other contractors involved in the said activity of construction of road. Therefore, in terms of said Section 97(2)(b) of Act, the present application is hereby admitted.

5. Accordingly opportunity of personal hearing was granted to the applicant on 11.01.2019. Shri N K Gupta (DGM- Finance) and Shri J C Pant (Senior Manager - Law) of the applicant appeared for personal hearing on said date and submitted documents during the proceedings. Nobody appeared from the side of Revenue for the hearing.

6. From the documents submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing no. 05AAACN0149C4Z2. On going through the 'Office Memorandum' dated 02.05.2018, We find that 1.2Km long link canal is to be constructed by India from Tanakpur Barrage to the Indo-Nepal border under Mahakali Treaty signed



between India & Nepal in 1996. Besides construction of canal, 1.3 Km road is also to be constructed which is the issue in hand to be discussed later on. DPR of the project has been prepared by NHPC. The construction of 1.2 Km long link canal from Tanakpur Barrage to the Indo-Nepal border including the construction of 1.3 Km link road will be financed out of the budgetary outlays of MEA under the budget head "Aid to Nepal". Initially NHPC can spend the money, if required, subsequently the same can be recouped from the budget of MEA to NHPC directly. Budget releases will be made by MEA to NHPC which is executing the project as a turnkey agency of MEA based on the recommendation of the Ministry of Power.

7. The applicant further submitted the MOU dated 03.10.2018 signed between General Manager, NHPC Ltd, Tanakpur Power Station, Champawat, Uttarakhand (herein after referred as client/department) and Superintendent Engineer, PWD, Champawat, Uttarakhand (hereinafter referred as construction agency). The relevant portions of the same are summarized as under:

- i. On the proposal of client, construction agency has agreed to do construction and related works of construction of 1.3 km motor road from Tanakpur Barrage to Brahmdev in District Champawat
- ii. Total cost of the project is Rs. 6.72 cr including GST & contingencies as indicated in the administrative formed by General Manager, NHPC, Tanakpur Power Station vide letter dated 02.07.2018.
- iii. The construction agency shall commence & complete the work as per the schedule. In case the construction agency fails to complete the work within schedule, liquidated damages @0.035% per day of delay subject to the maximum of 10% of total cost of the project shall be deducted from the bill of the construction agency.
- iv. Security deposit/Retention money shall be deducted by the construction agency from the interim bills of the contractor of the construction agency engaged for the execution of work @ 5% of the total value of each bill of the work done. The security deposit less any amount due shall, on demand, be released to the contractor by the construction agency after obtaining 'no defect certificate from the client / department'



after 30 days of expiry of defects liability period.

v. At the time of making payment to construction agency by the client/department, GST as applicable shall be deposited by the client / department under RCM in terms of section 9(3) of the Act read with Notification no.13/2017. The contractor shall be paid on work invoice /running/ final bill by adding GST as applicable at the time of payment by the construction agency. Further the outcome of advance ruling to have clarification for avoidance double GST shall be treated as integral part of MOU.

vi. The construction agency shall refund all the balance money to the client/ department after completion of project excluding contingency charges.

vii. The construction agency shall be responsible for ensuring the quality standard so fall the material & works of the project

viii. The project shall be handed over to the authorized representative of client /department.

8. In the present case we are restricting our conclusion to the facts and circumstances which was filed for our consideration in the application. Now we proceed to decide the issue inhand:

8.1 Whether the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) is applicable to the contractors/sub-contractors involved in the construction of Indo-Nepal Border Road or otherwise.

8.2 In the instant case we find that the work is allotted to the applicant by MEA is related to "construction of road". The applicant sub-contracted the said work to PWD, Govt. of Uttarakhand who further sub-contracted to a contractor.

8.3 From the record we find that NHPC Ltd has been entrusted the work of construction of road by Ministry of External Affairs, Govt. of India(in short "MEA")where in the funds will be provided by MEA from its head "Aidto Nepal" to M/s NHPC Ltd. It means that the funds provided by MEA to M/s NHPC Ltd are in the form of grants. The function of M/s NHPC Ltd in the said work has been defined as "turnkey agency". The issue of GST liability on the applicant on this matter has already been decided by us vide Ruling No.10/2018-19 dated 22-10-2018 where in the activity of the applicant was held exempted from GST in terms of Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 (as amended from time totime).



8.4 The applicant in their present application has sought advance ruling on the applicability of GST on sub-letting of work entrusted to PWD, Uttarakhand and contract or hire by PWD, Uttarakhand for completion of said work. On this issue we have different views and are discuss asunder:

(a) [Ruling per: Vipin Chandra, Member]— In the background of the issue in hand, the applicant has earlier sought the advance ruling on the applicability of GST on the activity being carried out vide Advance RulingNo. 10/2018-19 dated 22-10-2018, it was held by the authority that their activity is exempted from GST in terms of NotificationNo.12/2017-CT(Rate) dated 28.06.2017. Now the applicant has sought the advance ruling whether the same work allotted to sub-contractor is also exempted orotherwise In this context, I find that there is no entry in the exemption Notification No 12/2017-CT (Rate) dated 28.06.2017 which exempts the supply in question being earned out by the sub-contractors rather entry (iv) of serial no 3 of Notification No.. 11/2017-CT (Rate) dated 28.06.2017 prescribed GST Rate @ 12% [CGST 6%+SGST 6%]for supply in question i.e' construction of road'

Thus it is observed that there is no conflict between the two entries made in the aforesaid notifications in as much as the activity of the applicant i.e' construction of road 'is exempted vide serial no. 9C of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 whereas the entry no. (iv) of serial no. 3 of Notification No. 11/2017-CT (Rate) dated 28.06.2017 prescribed GST rate of 12% on the same work i.e 'construction of road'. The entries in Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 prescribing GST rates on service have to be read together with entries in exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.A supply which is specifically covered by any entry of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 is exempt from GST notwithstanding the fact that GST rate has been prescribed for the same under Notification No.11/2017-Central Tax (Rate) dated 28.06.2017.

In view of the above it is observed that since the supply in question i.e' construction of road 'by sub-contractor is not exempted vide Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017,therefore the sub-contractors are liable to pay GST @ 12% [CGST 6% + SGST 6%].



(b) [Ruling per: Amit Gupta, Member]- Respectfully I have gone through the views expressed by Hon'ble member Shri Vipin Chandra. I am having certain reservations on the opinion expressed. In the present case I find that Ministry of External Affairs (herein after referred to as MEA) has allotted the work i.e 'construction of road' to the NHPC (applicant). The applicant sub-let the said work to PWD, Uttarakhand who further sub-let the work to a contractor. The applicability of GST on the applicant for "construction of road' has already been decided by the authority vide Advance Ruling No 10/2018-19 dated 22-10-2018 wherein it was held that the services provided by the applicant to MEA is exempted in terms of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 [amended vide Notification No. 32/2017-Central Tax (Rate)) and the relevant portion of the same is re-produced as under:

S. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
1	2	3	4	5
9C	Chapter 99	Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.	Nil	Nil

I find that the Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 supra (amended vide Notification No.20/2017- Central Tax (Rate) dated 22.08.2017, Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017 & Notification No. 31/2017- Central Tax (Rate) dated 13.10.2017) notifies



that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column(4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table.

Initially, the GST rate on works contract service was notified at 18% .Subsequently, various notifications were issued notifying the various GST rates for different situations in which works contract service is being provided. To remove the ambiguity on the applicability of GST rate on the sub-contractors, the GST council in its 25th meeting held on 18 January 2018, made following recommendation in this regard:

“to reduce GST rate (from 18% to 12%) on works contract services (WCS) provided by sub-contractor to the main contractor providing Works Contract Services to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity from which attracts the GST rate of 12%. Likewise, WCS attracting 5% GST, their sub-contractor would also liable @ 5%.”

I find that in the case of S P Gupta Vs UOI [reported in AIR 1982 SC 149], the Hon’ble Apex Court held that words used in the constitutional or statutory provision are shrouded in mystery, clouded with ambiguity and are unclear and unintelligible so that the dominant object of the legislature cannot be spelt out from the language, external and like parliamentary debates, the report of the select committees or its chairman, the statement made by the sponsor of the statute can be pressed in to services as to know the real purpose or intent of the legislature.

In this context I find that the legal facts given under “Fiscal Interpretation of Statutes has to be read in conjunction with the recommendation of 25th GST Council (supra) and I observe that where literal interpretation may not serve the purpose or may lead to absurdity, the “doctrine of purposive interpretation” can be adopted which is based on the understanding that the authority issued to attach that meaning to the provisions which serve the purpose behind such a provision and the same was upheld by the Hon’ble Supreme Court in its judgment (supra).

Therefore observe that the purpose or object of the GST Council is to extend benefit to the last chain of said supply and reason for the same is to provide equal opportunities and equal level



playing fields to business entities and avoid discrimination. Thus I am of the view that the recommendations made by the GST Council in this regard makes it clear that if GST rate on the work contract is 12% or 5% then sub-contractor is also liable to discharge his GST liability @ 12% or 5% as the case may be. Similarly if GST rate on the said work contract is exempted or 0%, then supply of service in the form of work contract by the sub-contractors will also come in the purview of exempted or 0%.

Thus observe that if the principal contractor is providing an exempt works contract service to Government in terms of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) and in such case if works contract is partially or wholly sub-contracted then the sub-contractors would also be exempted from payment of GST.

In support of my view, I rely on following case laws :

(i) The Hon'ble Supreme Court in the case of Director of Enforcement Vs Deepak Mahajan [reported in(1994)3SCC 430]has observed that "mechanical interpretation of the words and application of legislative intent of concept of purpose and object will render the legislation insane.

(ii) In the case of Siraj –ul –Haq Khan Vs Sunni Central Board of Waqf [reported in AIR 1959SC198],the Hon'ble Apex Court held that "an attempt must always be made to reconcile the relevant provisions so as to advance the remedy intended by statute. Where the liberal meaning of the words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt the rule of liberal construction in such a way so as to give meaning to all parts of the Act and to make the whole of it effective andoperative."

I further observe that if the GST is made applicable to the sub-contractors in the instant case, the whole purpose of exemption extended to the applicant i.e NHPC vide Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017will be lost as NHPC & PWD do not do the work on their own and they get their work completed through the sub-contractors. In such circumstances and facts of the case in hand the objective and purpose of the GST Council to give benefit to the work being undertaken will be defeated.

On harmonious reading of both notifications viz 11/2017-Central Tax (Rate) dated 28th June, 2017 and 12/2017- Central Tax (Rate) dated 28th June2017 to get light of object behind the



GST Council to pass the benefit of tax to the downstream of the chain, I observe that sub-contractors of supply in question are exempted from payment of GST in as much as the main contractor namely NHPC is exempted from GST in terms of Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017(as amended from time to time vide Advance ruling no.10/2018-19 dated 22-10-2018

RULING

In view of the above, we have different views on the applicability of GST on the sub-contractors as discussed supra. Since we have different views on that particular issue, we are making a reference to the Appellate Authority for hearing and decision on said issue in terms of Section 98(5) of the Act which provide that where the members of the Authority, differ on any question which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

FAQs released by CBIC

F. No. 354/32/2019-TRU

**Government of India Ministry of
Finance Department of Revenue
(Tax Research Unit)**

Dated the 7th May, 2019, New Delhi

Subject: FAQs on real estate- reg.

A number of issues have been raised regarding the new GST rate structure notified for real estate sector effective from 01-04-2019. A compilation of Frequently Asked Questions (FAQs) is presented below. The answers to the FAQs have been given in simple language for guidance and easy understanding of all stakeholders in the real estate sector. They do not have force of law. In case of conflict, the gazette notifications, which have legal force, shall have precedence.



S. No.	Question	Answer						
1.	What are the rates of GST applicable on construction of residential apartments?	<p>With effect from 01-04-2019, effective rate of GST applicable on construction of residential apartments by promoters in a real estate project areas under:</p> <table border="1" data-bbox="567 456 1005 930"> <thead> <tr> <th data-bbox="567 456 798 596">Description</th> <th data-bbox="798 456 1005 596">Effective rate of GST (after deduction of value of land)</th> </tr> </thead> <tbody> <tr> <td data-bbox="567 596 798 729">Construction of affordable residential apartments</td> <td data-bbox="798 596 1005 729">1% without ITC on total consideration</td> </tr> <tr> <td data-bbox="567 729 798 930">Construction of residential apartments other than affordable residential apartments</td> <td data-bbox="798 729 1005 930">1% without ITC on total consideration</td> </tr> </tbody> </table>	Description	Effective rate of GST (after deduction of value of land)	Construction of affordable residential apartments	1% without ITC on total consideration	Construction of residential apartments other than affordable residential apartments	1% without ITC on total consideration
Description	Effective rate of GST (after deduction of value of land)							
Construction of affordable residential apartments	1% without ITC on total consideration							
Construction of residential apartments other than affordable residential apartments	1% without ITC on total consideration							
		<p>The above rates are effective from 01-04-2019 and are applicable to construction of residential apartments in a project which commences on or after 01-04-2019 as well as in on-going projects. However, in case of on-going project, the promoter has an option to pay GST at the old rates, i.e. at the effective rate of 8% on affordable residential apartments and effective rate of 12% on other than affordable residential apartments and, consequently, to avail permissible credit of inputs taxes; in such cases the promoter is also expected to pass the benefit of the credit availed by him to the buyers</p>						



2.	What is an affordable residential apartment?	<p>Affordable residential apartment is a residential apartment in a project which commences on or after 01-04-2019, or in an ongoing project in respect of which the promoter has opted for new rate of 1% (effective from 01-04-2019) having carpet area upto 60 square meter in metropolitan cities and 90 square meter in cities or towns other than metropolitan cities and the gross amount charged for which, by the builder is not more than forty five lakhs rupees. [Cities or towns in the notification shall include all areas other than metropolitan city as defined, such asvillages.]</p> <p>In an ongoing project in respect of which the promoter has opted for new rates, the term also includes apartments being constructed under the specified housing schemes of Central or State Governments.</p>
		[Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their geographical limits prescribed by Government.]



3.	What is an on-going project?	<p>A project which meets the following conditions shall be considered as an ongoing project.</p> <p>(a) Commencement certificate for the project, where required, has been issued by the competent authority on or before 31st March, 2019, and it is certified by a registered architect, chartered engineer or a licensed surveyor that construction of the project has started (i.e. earthwork for site preparation for the project has been completed and excavation for foundation has started) on or before 31st March, 2019.</p> <p>(b) Where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is to be certified by any of the authorities specified in (a) above that construction of the project has started on or before the 31st March, 2019.</p> <p>(c) Completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019.</p> <p>(d) Apartments of the project have been, partly or wholly, booked on or before 31st March, 2019.</p>
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4.	Does a promoter or a builder has option to pay tax at old rates of 8% & 12% with ITC?	<p>Yes, but such an option is available in the case of an ongoing project. In case of such a project, The promoter or builder has option to pay GST at old effective rate of 8% and 12% with ITC. To continue with the old rates, the promoter/builder has to exercise one time option in the prescribed form and submit the same manually to the jurisdictional Commissioner by the 10th of May, 2019.</p> <p>However, in case where a promoter or builder does not exercise option in the prescribed form, it shall be deemed that he has opted for new rates in respect of ongoing projects and accordingly new rate of GST i.e. 5% / 1% shall be applicable and all The provisions of new scheme including transitional provisions shall be applied.</p> <p>There is no such option available in case of projects which commence on or after 01.04.2019. Construction of residential apartments in projects commencing on or after 01.04.2019 shall compulsorily attract new rate of GST @ 1% or 5% without ITC.</p>
5.	What is the rate of GST applicable on construction of commercial apartments [shops, godowns, offices etc.] in a real estate project?	With effect from 01-04-2019, effective rate of GST, after deduction of value of land or undivided share of land, on construction of commercial apartments [shops, godowns, offices etc.] by promoter in real estate project are as under:



		Description	Effective rate of GST (after deduction of value of land)
		Construction of commercial apartments in a Residential Real Estate Project (RREP), as explained in question no. 6 below, which commences on or after 01-04-2019 or in an ongoing project in respect of which the promoter has opted for new rates effective from 01-04-2019	5% without ITC on total consideration.
		Construction of commercial apartments in a Real Estate Project (REP) other than Residential Real Estate Project (RREP) or in an ongoing project in respect of which the promoter has opted for old rates	12% with ITC on total consideration.



6.	What is a Residential Real Estate Project?	A "Residential Real Estate Project" means a „Real Estate Project" in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the project.
7.	What is the criteria to be used by an architect, a chartered engineer or a licensed surveyor for certifying that construction of the project has started by 31st March, 2019	Construction of a project shall be considered to have been started on or before 31st March, 2019, if the earthwork for site preparation for the project has been completed, and excavation for foundation has started on or before the 31st March, 2019.
8.	Does a promoter/ builder have to purchase all goods and services from registered suppliers only?	A promoter shall purchase at least eighty percent. of the value of input and input services, from registered suppliers. For calculating this threshold, the value of services by way of grant of development rights, long term lease of land, floor space index, or the value of electricity, high speed diesel, motor spirit and natural gas used in construction of residential apartments in a project shall be excluded.
9.	If value of purchases as prescribed above from registered supplier is less than 80%, what would be the applicable GST rate on such purchases?	Promoter has to pay GST @ 18% on reverse charge basis on all such inward supplies (to the extent short of 80% of inward supplies from registered supplier) except cement on which tax has to be paid (by the promoter on reverse charge basis) at the applicable rate, which at present is 28% (CGST 14% + SGST 14%)



10.	In case of new rate of 5%/1%, whether the conditions of payment of tax through Cash Ledger, payment of tax under RCM subject to 80% limit, non-availing of Input Tax Credit, reversal of credit, maintenance of project wise account, reporting of ITC not availed in corresponding GSTR-3B etc. are required to be complied mandatorily by the Developer ?	Yes. All the specified conditions against clause (i) to (id) of Sl. No 3 of Notification No. 11/2017- CTR are mandatory.
11.	What is the rate of GST applicable on transfer of development rights, FSI and long term lease of land?	<p>Supply of TDR or FSI or long term lease of land used for the construction of residential apartments in a project that are booked before issue of completion certificate or first occupation is exempt. Supply of TDR or FSI or long term lease of land, on such value which is proportionate to construction of residential apartments that remain un-booked on the date of issue of completion certificate or first occupation, would attract GST at the rate of 18%, but the amount of tax shall be limited to 1% or 5% of value of apartment depending upon whether the residential apartments for which such TDR or FSI is used, in the affordable residential apartment category or in other than affordable residential apartment.</p> <p>TDR or FSI or long term lease of land used for construction of commercial apartments shall attract GST of 18%.</p> <p>The above shall be applicable to supply of TDR or FSI or long term lease of land used in the new projects where new rate of 1% or 5% is applicable.</p>



12.	Who is liable to pay GST on TDR and floor space index?	The promoter is liable to pay GST on TDR or floor space index supplied on or after 01-04-2019 on reverse charge basis.
13.	At what point of time, the promoter should discharge its tax liability on TDR.	The liability to pay GST on development rights shall arise on the date of completion or first occupation of the project, whichever is earlier. Therefore, promoter shall be liable to pay tax on reverse charge basis, on supply of TDR on or after 01-04-2019, which is attributable to the residential apartments that remain un-booked on the date of issuance of completion certificate, or first occupation of the project.
14.	At what point of time, the promoter should discharge its tax liability on FSI (including additional FSI).	On FSI received on or after 1.4.2019, the promoter should discharge his tax liability on FSI as under: (i) In case of supply of FSI wherein consideration is in form of construction of commercial or residential apartments, liability to pay tax shall arise on date of issuance of Completion Certificate. (ii) In case of supply of FSI wherein monetary consideration is paid by promoter, liability to pay tax shall arise on date of issuance of Completion Certificate only if such FSI is related to construction of residential apartments. However, liability to pay tax shall arise immediately if such FSI is related to construction of commercial apartments.



15.	At what point of time, the promoter should discharge its tax liability on supply of long term lease.	On long term lease received on or after 1.4.2019, the promoter should discharge his tax liability on long term lease as under: In case of supply of long term lease of land for construction of commercial apartments, tax shall be paid by the promoter immediately. However, for construction of residential apartment, liability to pay tax on the upfront amount payable for long term lease shall arise on the date of issuance of Completion Certificate.
16.	Land development corporation of Orissa has provided land on long term lease for 99 years, for construction of a real estate project. As per the lease agreement, promoter has to pay an upfront amount of Rs. 10 Crore and annual/ monthly license fee of 5 lakhs. Does the promoter has to pay GST on these amounts?	The liability to pay tax on Long term lease of land (30 years or more) received against consideration in the form of upfront amount and periodic license fee is on the promoter. The promoter has to discharge tax liability on the same on RCM basis. However, the upfront amount payable for the long term lease (known as premium, salami, cost, price, development charges etc.) is exempt to the extent it is used for construction of residential apartments that are booked before issuance of completion certificate or first occupation. Annual/ monthly rent or license fee payable for long term lease is taxable under GST.



17.	Someone booked a flat from XYZ Developers in June, 2018. As of 31-03-2019, he had paid 40% of the value of the flat. What shall be the GST rate applicable on the remaining portion of value of the flat?	GST on the remaining portion of the value of flat payable to the promoter on or after 01-04-2019 as per the contract between the promoter and buyer shall be payable at effective rate of 1% or 5%, subject to the condition that the builder has not exercised the option to pay tax on construction of apartments at the old rates of 12% or 18%.
		If the XYZ developer exercises option to continue to pay tax at old effective rate of 8% or 12% by 10th May, 2019, then GST has to be paid @ 8% or 12% on remaining portion of the value of the flat; in such cases, the promoter would be entitled to permissible credit of input taxes and, as such, the price that he charges from the buyer should appropriately reflect this credit.
18.	I am a beneficiary of PMAY- CLSS and carpet area of my house being constructed in an ongoing project is 150 sqm. Am I eligible for new rate of 1% on same?	You are eligible for new GST rate of 1%, subject to the condition that the developer-promoter with whom you have booked the house has not exercised option to pay tax on construction of apartments at the old rate of 8%.



19.	I am planning to purchase an apartment in a newly launched project. The project has been launched after 31.03.2019 by XYZ Developers at Noida. Price of the apartment having carpet area of 80 sqm is 48 lakhs. What is the rate of GST applicable on construction of this apartment?	The tax rate applicable on construction of the apartments in a project that commences on or after 01.04.2019 would be 5%.
20.	I have already paid tax of 12% (effective) on installments paid before 01.04.2019. I wish to get	The buyer can not exercise option to pay tax at the new or old rates. It is the builder, who has to exercise the option to pay tax on construction of
	the benefit of new rate of 1% or 5%. Whether it is the builder or the buyer who has the option to pay tax at the new or old rates?	apartments at the old rate of 12% latest by 10th May, 2019. If the builder doesn't exercise his option to continue to pay tax at the old rate by the said date, then the effective GST rate applicable on all your installments payable to the builder on or after 01.04.2019 as per the contract shall be either 1% or 5%, depending on whether the apartment is an affordable or other than affordable residential apartment.



21.	<p>In respect of supply made in an ongoing Project covered by clauses (ie) and (if) of Entry 3 of Notification No. 3/2019, CT (R), an option is required to be exercised by the Promoter in Annexure IV by 10th May 2019. At the same time, it is permissible for him to issue invoices between 1st April 2019 to 9th May 2019 which shall, however, be in conformity with the option to be exercised. Whether it is permissible for the Promoter to revise the invoice as provided in Section 34 of CGST Act, 2017, including by way of issuance of Credit/Debit Notes so as to bring the transaction in conformity with the option exercised by the Promoter ultimately by 10th May 2019?</p>	<p>Where the GST rate at which tax has been charged in the invoices issued by the promoter prior to 10th May, 2019 are not in accordance with the option required to be exercised by him on or before 10th May, 2019 to pay GST on construction of apartments in an ongoing project at either the new or old rates, the promoter may issue debit or credit notes in accordance with Section 34 of CGST Act, 2017.</p>
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22.	<p>How to compute adjustment of tax in a Credit Note to be issued u/s 34 by Real Estate Developer in case unit was booked prior to 1st April, 2019 on which GST was paid on part consideration received at the time of booking, but cancelled after 1st April, 2019.</p>	<p>Developer shall be able to issue a Credit Note to the buyer as per provisions of section 34 in case of change in price or cancellation of booking provided that the amount received in excess if any, consequent to issuance of Credit Note, is refunded to the Buyer by the Developer before September following the end of the financial year. Developer shall be able to take adjustment of tax paid in respect of the amount of such Credit Note. For example, a Developer who paid GST of Rs. 1,20,000 at the rate of 12% (effectively) in respect of a gross amount of booking of Rs.10,00,000 before 1st April, 2019 shall be entitled to take adjustment of tax of Rs. 1,20,000 upon cancellation of the said booking on or after 1st April, 2019 against other liability of GST including liability arising at the rate of 5%/1% provided that the entire amount received from the buyer is refunded by the Developer.</p> <p>Further, in case apartments booked prior to 1.04.2019 on which GST has been paid till 31.03.2019 at the old rates of 8%/ 12% with ITC, are cancelled and rebooked at the new rates of 1% / 5% without ITC or sold after issuance of completion certificate, the credit taken in respect of such apartments for supply of service till 31.03.2019 on which tax was paid @ 8%/12% with ITC shall be required to be reversed.</p>
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23.	Whether the option to pay tax at the applicable effective rate of 12% or 8% (with ITC) is available to the Promoter in respect of the New Project, which has been commenced on or after 1st April 2019?	No, there is no option to pay tax at the effective rate of 12% or 8% with ITC on construction of residential apartments in projects which commences on or after 01-04-2019.
24.	From the plain reading of the provisions and the definitions of the various terms as defined in the Notification No. 3/2019-CT(R), it appears that the one- time option is required to be exercised for the entire REP or RREP. Does this mean that a Promoter can opt for old rates or new rates, as the case may be, for different projects being undertaken by him under the same entity?	Yes.The option to pay tax on construction of apartments in the ongoing projects at the effective old rates of 8% and 12% with ITC has to be exercised for each ongoing project separately. As per RERA, 2016, project wise registration is allowed. So, the promoter may exercise different options for different ongoing projects being undertaken by him.
25.	In respect of the construction and supply of premises under specific schemes like PMAY, Housing for All (Urban), RAY etc. as mentioned in sub items (b), (c), (d), (da), (db) of item (iv) and sub items (c), (d), (da) of item(v) of Entry 3 of Notification 11/2017 – CT (R), whether the pre-existing effective rate of 8%,	No.The rate of 8% and 12% with ITC is not available for construction of apartments in a project that commences on or after 01-04-2019. It makes no difference whether or not the apartments are being constructed under PMAY or any other housing schemes of the Central or State Government.



	with ITC benefit continues to be available in case of any New Project that has commenced under any such scheme after 1/4/2019?	
26.	In respect of any ongoing project undertaken under the specific schemes like PMAY, Housing for All (Urban), RAY etc. as mentioned in items(iv) and (v) of Entry 3 of Notification 11/2017- CT (R), prior to 31/3/2019, whether an option is available to the Promoter to pay the tax at the new rates of 1% or 5% (without ITC) or at the existing rates of 8% (with ITC)?	Yes. The promoter has the option to pay tax either at the old rate of 8% (with ITC) or at 1% (without ITC) on construction of residential apartments in ongoing projects being constructed under PMAY and other specified housing schemes of the Central or State Governments in items (iv) and (v) of Entry 3 of Notification 11/2017- Central Tax (Rate) dated 28-06-2017. The option to pay tax on construction of apartments in the ongoing projects at the old rates of 8% with ITC has to be exercised by the promoter for ongoing project.
27.	In case where the Development rights are supplied by the Landowner to the Promoter, under an area sharing arrangement between 1st July 2017 and 31/3/19, but the allotment of constructed area in an ongoing project is made by the Promoter to the Landowner on or after 1/4/2019, whether the tax liability, if any, is required to be discharged in terms of the Notification No. 4/2018 - CT(R)?	Yes. Tax liability on service by way of transfer of development rights prior to 01-04-2019 is required to be discharged in terms of Notification No. 4/2018-CentralTax (Rate) dated 25.01.2018.



28.	Whether the GST is leviable on the output supply of Transferable Development rights by a developer (usually evidenced by TDR Certificate issued by the authorities). If yes, under which entry and at what rate?	Yes, GST is payable on transfer of development rights by a developer to another developer or promoter or to any other person under reverse charge mechanism @ 18% with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017 - Central Tax (Rate) dated 28-06-2017 (heading 9972).
29.	What is the meaning of the term "first occupation" referred to in clauses (i) to (id) of Entry 3 of Notification No. 3/2019? Whether, in case of an ongoing project, where part occupation certificate has been received in respect of some of the premises comprised in the ongoing project, the Promoter is entitled to exercise the option of 1% / 5% (without ITC) or @ 8%/12% (with ITC) available in terms of Notification No. 3/2019 CT (R), in respect of the balance ongoing project?	The term "first occupation" appearing in Schedule II para 5 (b) and in notification No. 11/2017 - Central Tax (Rate) dated 29-03-2019 means the first occupation of the project in accordance with the laws, rules and regulations laid down by the Central Government, State Government or any other authority in this regard. Where occupation certificate has been issued for part (s) of the project but not for the entire project by 31-03-2019, the first occupation of the project shall not be considered to have taken place on or before 31-03-2019 and the project shall be considered ongoing project provided it satisfies the other requirements of the definition of the term ongoing project. Promoter shall be entitled to exercise option to pay tax @ 1%/5% (without ITC) or @ 8%/12% (with ITC) on construction of apartments in such project.
30.	(a) In case of a single building registered as 2 (two) separate projects under the provisions of RERA viz. 1st to 10th floor	(a) Both the projects registered as separate projects under RERA, 2016 shall be treated as distinct projects for the purpose of Notification No. 11/2017-Central Tax (Rate)



	<p>as one Project and 11th to 20th floor as another project, whether the Developer can consider the entire building as single ongoing project, since all the three conditions to be complied with for classifying a project as an ongoing project can be satisfied only if the entire building is considered as a single project?</p> <p>(b) Furthermore, if different towers in a single layout are registered as separate projects under the provisions of RERA but where the approvals are common for all the towers, whether the Developer can consider entire layout as a single Ongoing project?</p>	<p>dated 28-06-2017 as amended by Notification No. 3/2019-Central Tax (Rate) dated 29-03-2019. Both the projects will have to independently satisfy the requirements of the definition of ongoing projects.</p> <p>(b) No. All the towers registered as different projects under RERA shall be treated as distinct projects. Only such towers registered as distinct projects for which commencement certificate has been issued on or before 31-03-2019, construction has started on or before 31-03-2019 and for which apartments have been booked on or before 31-03-2019 but completion certificate has not been issued or first occupation has not taken place by the said date shall be treated as ongoing projects.</p>
31.	<p>Whether TDR purchased on or after 1.4.2019 to be consumed by a developer-promoter in an ongoing project, in respect of which the promoter has opted for the new rate of tax, shall be liable to be taxed at the applicable rate, but limited to 1% or 5%, as the case may be, of the unsold area at the time of issuance of completion certificate?</p>	<p>Yes. Portion of such TDR transferred on or after 01-04-2019 which is used in an ongoing project in respect of which the promoter has opted for new rate of tax on construction of apartment @ 1% or 5% without ITC which remained un-booked on the date of issuance of completion certificate or first occupation of the project shall be liable to tax at the applicable rate not exceeding 1% of the value in case of affordable residential apartments and 5% of the value in case of other than affordable residential apartments.</p>



32.	<p>What shall be the classification of and rate of tax applicable to works contract service provided by a contractor to a developer or promoter under the new dispensation effective from 01-04-2019 for</p> <p>(a) New project after 1.4.2019 and ongoing projects where option has been exercised for new rate and</p> <p>(b) Ongoing projects where option has not been exercised for new rate?</p>	<p>The rate of tax applicable on the work contract service provided by a contractor to a promoter for construction of a real estate project shall be 12% or 18% depending upon whether such work contract service is provided for construction of affordable residential apartments or residential apartments other than affordable residential apartments. Rate of tax applicable on such work contract service provided by a contractor to a promoter on construction of commercial apartments shall be 18% (irrespective of option exercised by developer- promoter). The relevant entries of the notification are at items (iv), (v), (va) and (vi) against sl. no. 3 of the table in Notification No. 11/2017-Central Tax (rate) dated 28-06-2017 prescribing rate of 12% for works contract services of construction of affordable apartments/ apartments being constructed under schemes specified therein. In case of works contract services for construction of other apartments, rate of 18% as prescribed in item (xii) against sl. no. 3 of the table in Notification No. 11/2017-Central Tax (rate) dated 28-06-2017 shall be applicable.</p>
33.	<p>A registered project has three blocks and Completion Certificate has been received for one block prior to 1st April, 2019 and for two blocks will be received after that date. Will such a project for which multiple completion certificates are received partly before 1st April, 2019 and partly after that date, constitute an ongoing project?</p>	<p>Where more than one completion certificate is issued for one project, for the purpose of definition of ongoing project as defined in the clause (xx) in the paragraph 4 of the notification No. 11/ 2017- CTR, dated 28.06.2017, completion certificate issued for part of the project shall not be considered to have been issued for the project on or before 31-03-2019 unless completion certificate(s) have been issued for the entire project. Therefore, if completion certificate has not been issued for part of the project on or before 31-03-2019, the project shall still be considered as ongoing project provided other conditions of the definition of „ongoing project „are met.</p>



34.	<p>It is a prevalent practice that more than one commencement certificate is issued by competent authority for single project. For example, in case of a single tower comprising of 50 floors and registered as single project, separate commencement certificates may be issued by the competent authority for (i) basement and parking which is common to entire building (ii) first twenty floors (iii) next thirty floors. If one or two commencement certificates are received by the Developer prior to 1st April, 2019 and remaining on or after that date, will such a project be considered as an ongoing project?</p>	<p>Where commencement certificate has been issued even for part of the project on or before 31-03- 2019, it shall be treated as an ongoing project provided other requirements of the definition of ongoing project are met.</p>
35.	<p>There are many projects of redevelopment/slumrehabilitation in pipeline as on 1st April, 2019. It is possible that in such projects the development rights have been conferred upon the developer and pursuant to which the development process has been initiated such as receipt of commencement certificate, excavation for foundation etc., but booking against units for sale has not been received prior to 1st April, 2019.</p>	<p>In case of redevelopment or slum rehabilitation projects, the original inhabitants or the slum dwellers are not required to pay any monetary consideration to the promoter for the residential apartments allotted to them. Therefore, the residential apartments allotted to the original inhabitants in case of redevelopment project or slum dwellers in case of slum rehabilitation or redevelopment project, the requirement that at least one installment has been credited to the bank account of the promoter shall not be required to be met for such apartments to be considered as having been booked on or before 31-03-2019</p>



	<p>However, allotment of units to the existing dwellers (in respect of free supply units) which will yield no monetary consideration has been done. Clause (xiii) of Para 4 of Notification No. 11/ 2017-CTR as amended by Notification No. 3/2019-CTR requires credit of at least one installment in the bank account prior to 1st April, 2019 for a project to be considered as ongoing project. It may please be clarified whether in such cases, apartments being constructed in the project shall be deemed to have been booked prior to 1st April, 2019 in case development agreement is executed prior to that date and whether accordingly such projects shall be considered as an ongoing project?</p>	<p>provided other requirements for considering an apartment booked on or before 31.03.2019 have been met. The consideration for such apartments is receipt in the form of transfer of development rights from the original inhabitants in case of redevelopment projects or the government in case of slum rehabilitation projects. Hence, the condition relating to credit of at least one installment in the bank account of the promoter for the apartments being constructed in a slum redevelopment project to have been partly or wholly booked shall be deemed to have been satisfied in order to consider the project as an ongoing project, provided all other conditions for considering an apartment as booked are met in case of apartments allotted to slum dwellers; as there is no cash payment to be made by the slumdwellers.</p>
36.	<p>Can a developer take deduction of actual value of Land involved in sale of unit instead of taking deduction of deemed value of Land as per Paragraph 2 to Notification No. 11/2017-CTR?</p>	<p>No. Valuation mechanism prescribed in paragraph 2 of the notification No. 11/2017- CTR dated 28.06.2017 clearly prescribes one- third abatement towards value of land.</p>
37.	<p>Para 3 of Annexure I and II to Notification No. 3/2019-CTR dated 29.03.2019, stipulate three different conditions. Clause (i) and (ii) of the said Para 3 are relating to percentage of invoicing. It is requested to clarify as to how and where the percentage of invoicing is to be taken into consideration while determining quantum of ITC reversal.</p>	<p>The illustrations given in the said annexure clearly explain how the provisions given in the clause (i) and (ii) of para 3 of the said annexure relating to percentage of invoicing shall operate. The same may be referred to.</p>



38.	<p>It may be clarified whether exemption granted on transfer of development right or FSI for residential construction and reverse charge mechanism prescribed for payment of tax on TDR, FSI or long term lease (premium) in the new dispensation is applicable where development rights were transferred by way of an agreement executed prior to 1st April, 2019 but consideration, whether in cash or other form, flowed to the land owner, in full or part, on or after 1st April, 2019.</p>	<p>The new dispensation has been prescribed for real estate sector vide notifications issued on 29.03.2019. The same are effective prospectively from 01.04.2019. They shall apply only to development rights or FSI transferred on or after 01.04.2019. They shall not apply to development rights transferred by way of an agreement prior to 01.04.2019 even if the consideration for the same, in cash or kind, is paid in part or full on or after 01.04.2019.</p>
39.	<p>Land Owner being an individual is not engaged in the business of land relating activities and thus whether the transfer of development rights by an individual to a promoter is liable for GST and whether the same will fall within the scope of „Supply“ as defined in Section 7 of CGST/SGST Act, 2017? Position of such a transaction may be clarified in light of amendments recently made.</p>	<p>The term business has been assigned a very wide meaning in the CGST Act and it includes any trade, commerce, manufacture, profession, vacation, adventure, or any other similar activity whether or not it is for a pecuniary benefit irrespective of the volume, frequency, continuity or regularity of such activity or transaction. Therefore, the activity of transfer of development rights by a land owner, whether an individual or not, to a promoter is a supply of service subject to GST.</p>



40.	In certain projects, developers have started construction on or before 31-03-2019. However, bookings in the project have not started. One of the conditions prescribed for a project to qualify as an ongoing project is that apartments being constructed should have been partly or wholly booked. Whether such project where bookings have not started but construction has started, would be eligible for the new rates of 1% or 5% without ITC?	As per explanation in clause (xxviii) of para 4 of the notification No. 11/2017-CTR dated 28.06.2017, "project which commences on or after 01.04.2019" shall mean a project other than an ongoing project. A project, in which bookings for the apartments have not started, would not be covered under definition of "ongoing project". The same would accordingly be treated as a project which commences on or after 01.04.2019 subject to the new rates of 1% or 5% without ITC, as the case maybe.
41.	Whether the Form as per Annexure IV of the Notification No. 3/2019-CTR is to be filed with both the jurisdictional commissioner i.e. Central Tax, State Tax. Whether modification / amendments in such Form are allowed subsequent to filing of the form, after 10th May, 2019?	No. The Form shall be filed manually with the office of the Commissioner in whose jurisdiction the registration of the promoter is assigned. No modification / amendment of the option is allowed in the Form once submitted.

F. No. 354/32/2019-TRU



No. 354/32/2019-TRU
Government of India Ministry of Finance
Department of Revenue
(Tax Research Unit)

Dated the 14th May, 2019, New Delhi

Subject : FAQs (Part II) on real estate- reg.

A number of issues have been raised regarding the new GST rate structure notified for real estate sector effective from 01-04-2019. A compilation of Frequently Asked Questions (FAQs) containing 41 questions was issued on 7th May, 2019. Part II of the FAQ is presented below. The answers to the FAQs have been given in simple language for guidance and easy understanding of all stakeholders in the real estate sector. They do not have force of law. In case of conflict, the gazette notifications, which have legal force, shall have precedence.

Sl. No.	Question	Answer
1.	In case of an area sharing arrangement between a Landowner-Promoter and a Developer-Promoter, where the Project qualifies to be considered An "Ongoing Project", whether an option of 1% or 5% (without ITC) vis-à-vis 8% or 12% (with ITC) as prescribed in Notification No. 3/2019 can be exercised by the Developer-Promoter and Landowner-Promoter independently?	The legal and operational harmony necessitates that both the Landowner-Promoter and the Developer-Promoter exercise identical option for a project.
2.	In case of an area sharing arrangement between a Landowner-Promoter and a Developer - Promoter in a New Project undertaken on or after 1/4/2019, whether the new rate of 1% or 5% is applicable in case of the Landowner-Promoter who Sells the under-construction premises before completion of the project?	The new effective rates of 1% and 5% without ITC are applicable to the apartments booked by the land owner promoter in an ongoing project as well as a new project which commences on or after 01-04 -2019.



	<p>Will the Landowner-Promoter be entitled to ITC in respect of tax Charged to him by the Developer-Promoter on such supply? Whether the Landowner-Promoter shall be entitled to avail ITC on any other services or goods used by him in furtherance of his business (such as brokerage on sales etc.)?</p>	<p>The land owner promoter shall be entitled to ITC in respect of tax charged to him by the developer promoter on construction of such apartments. However, the land owner promoter shall not be entitled to avail ITC on any other services or goods used by him.</p>
3.	<p>Residential Real Estate (RREP) shall mean a REP in which the carpet area of the commercial apartments more than 15% of the total carpet area of all the apartments in the REP (Clause xix). "Carpet area" shall have the same meaning as assigned to it in clause (k) of Section 2 of the RERA, 2016. Whether non-saleable areas such as society office, club house, etc., are to be taken into consideration for determining 15% for deciding whether the project is RREP or not?</p>	<p>The term "Residential Real Estate Project (RREP) has been defined in the notification to mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP. Apartments shall be taken as commercial or residential apartments as declared to RERA authority.</p>
4.	<p>For the purpose of determining the threshold of Rs.45 lakhs in case of "affordable apartment", whether following charges recovered by the developer from the buyer shall be included?</p> <ul style="list-style-type: none">• Amenity Charges• Society formation charges• Advance maintenance• Legal Charges	<p>For the purpose of determining the threshold of the gross amount of Rs.45.00 lakh for affordable residential apartments, all the charges or amounts charged by the promoter from the buyer of the apartments shall form part of the gross amount charged.</p>



		<p>Clause xvi, sub-clause (a) (ii)(C) of paragraph 4 of notification No.11 /2017-CT(R) dated 28.06.2017, reproduced below, refers.</p> <p>"C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, parking charges, common facility charges etc."</p> <p>However the value shall not include stamp duty maintenance charges / deposits for maintenance of apartment or maintenance of common infrastructure.</p>
5.	In case of a Real Estate Project, comprising of Residential as well as Commercial portion (more than 15%), how is the minimum procurement limit of 80% to be tested, evaluated and complied with where the Project has single RERA Registration and a single GST Registration and it is not practically feasible to get separate registrations due peculiar nature of building(s)?	The promoter shall apportion and account for the procurements for residential and commercial portion on the basis of the ratio of the carpet area of the residential and commercial apartments in the project.
6.	In an area sharing promoter has constructed flats/the land owner who supplied TDR for the project. Value of TDR at the time when the landowner transferred it to the promoter is not known. How would the promoter GST on TDR?	Value of TDR, shall be equal to the amount charged by the promoter for similar apartments from the independent buyers booked on the date that is nearest to the date on which such development rights or FSI is transferred by the land owner to the promoter.



7.	<p>In the formula prescribed under first proviso to Entry 41A of the Notification 12/2017- CT (R), as amended by Notification 4/2019 CT (R), what rate shall be taken to determine the value to be ascribed to the "GST Payable on TDR or FSI or both for construction of the residential apartments in the project but for exemption contained therein" as no specific rate has been prescribed in Notification 11/2017 CT-Rate or any other notification?</p> <p>What is the rate applicable to output supply of TDR or FSI?</p> <p>Whether the quantum of TDR or FSI (including additional FSI) or both shall be taken only in respect of un-booked apartments as on the date of issuance of Completion Certificate occupation of the project for the purpose of formula?</p>	<p>The GST on transfer of development rights or FSI (including additional FSI) is payable at the rate of 18% (9% + 9%) with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017 (heading 9972).</p> <p>There is no exemption on TDR or FSI (Addl. FSI) for construction of commercial apartments.</p> <p>Therefore, GST shall be payable on TDR or FSI (including additional FSI) or both used in respect Of</p> <p>(i) carpet area of commercial apartment and</p> <p>(ii) un-booked residential apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula.</p>
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8.	<p>In case of Redevelopment, Slum Rehabilitation arrangements, the Developer will be constructing two types of units i.e. one which is allotted to existing occupiers monetary consideration second which is sold in the market to outside buyer. Price at which the unit is being sold to the outsider is determined in a manner to factor cost of construction of both type of units so that the unit to existing occupiers may be allotted free of monetary consideration. It be clarified whether the Input Tax Credit in relation to construction of units to be allotted to existing occupiers, in case of residential project opted for old rates or commercial projects, shall be allowed to the Developer.</p>	<p>The apartments given to the original inhabitants or the slum dwellers in redevelopment project or slum rehabilitation project are given by the promoter against consideration received by them in the form of TDR/ FSI/ monetary consideration from the original inhabitants in case of redevelopment projects and from the Government in case of slum rehabilitation projects. The supply of service by way of construction of such apartments against construction wholly or partly in the form of TDR/FSI is a taxable supply subject to GST. Wherever tax is paid on construction of such apartments at the effective rates of GST of 8%/12% with ITC, the promoters shall be eligible for ITC, including ITC in relation to construction of</p>
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		units to be allotted to the existing occupiers even though there may not be a monetary consideration but the consideration is in the form of grant of TDR/FSI.
9.	<p>In case of redevelopment or slum rehabilitation project, (new or an existing project) whether the constructed units supplied to existing occupiers by the developer free of monetary consideration are taxable?</p> <p>In case of ongoing project in respect of which the promoter has opted for new rates of 1%/5%, it may be clarified whether the units being supplied free of monetary consideration to existing dwellers will fall within the definition of affordable housing when certain units being sold in the open market are eligible for concessional rates under the category of Credit Linked Subsidy Scheme i.e. sub-item (da) of item (iv) of Sl. No. 3 of notification No. 11/2017-CTR?</p>	<p>Yes, units supplied free of cost also attract GST as their consideration is not money but TDR/ FSI or rights relatable to land on which construction takes place.</p> <p>In such an ongoing project, the units sold in open market would (without ITC), if such units are covered under Credit Linked Subsidy Scheme, as provided in the definition of "affordable residential apartments" given in notification no 11/2017 - CTR dated 28.06.2017 as amended by notification No. 3/2019- CTR dated 29.03.2019. The apartments being constructed in such ongoing</p>



		<p>project, for existing slum dwellers/occupiers shall be eligible for 1% rate if they meet the definition of affordable residential apartment, as under-</p> <p>(a) They have carpet area of less than 60 sqm in specified metropolitan cities or 90 sqm in places other than the specified metropolitan cities and the gross amount charged for similar apartments from independent buyers is not more than rupees 45 lakhs. (Please refer to para 2A of notification No. 11/2017- CTR dated 28.06.2019 as amended vide notification No. 3/2019- CTR dated 29.03.2019), Or</p> <p>(b) They are being constructed under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv);</p>
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		sub-item (b), sub-item (c), sub-item (d) and sub item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the said notification.
10.	What shall be the rate of GST applicable on projects in respect of which OC has been issued prior to 01.04.2019, but the balance demands are pending? Such projects are neither projects which commence on or after 01.04.2019 nor ongoing projects.	Time of supply of the service by way of construction of apartments in such projects falls prior to 01.04.2019 and accordingly the rates as existed prior to 01.04.2019 would apply to such balance demands.
11.	The affordable apartment should not have a carpet area exceeding 60 sqm in metropolitan cities and 90 sqm in other places. Will the internal walls of the apartment, balcony or verandah be included 60/90 sqm meter?	"Carpet area" is defined in clause (k) of section 2 of the RERA, 2016 and the same has been adopted in the notification.
12.	If an un-registered person transfers development right to a developer-promoter, then it is apparently not covered by the fourth proviso applicable to clause (i) to clause (id) of serial 3 of Notification No. 11/2017 (as amended). Will the promoter be liable to pay GST on TDR received from land owner?	Promoter shall be liable to pay GST on TDR transferred by any person whether registered or not on RCM basis.
13.	Whether the ITC availed as per the second proviso applicable to clause (i) to clause (id) of serial 3 of Notification No. 11/2017 (as amended) against the output liability of 5%/1%?	No. GST on services of construction of an apartment by a promoter at the rate of 1%/ 5% is to be discharged in cash only. ITC, if any, may be used for discharging any other supply of service.



14.	If a developer-promoter opts to pay tax for the ongoing project of affordable residential apartment at the new rate, can he use the ITC available to him under the second proviso applicable to clause (i) to clause (id) of serial 3 of Notification No. 11/2017 (as amended) for payment of tax at 1%/5%?	Reply as in Q. No. 13 above.
15.	The condition in Notification No. 3/2019 specifies that 80% of inputs and input services should be procured from registered person. What about expenditure such as salaries, wages, etc. These are not supplies under GST [Sl. 1 of Schedule III]. Now, my question is, whether such services will be included under input services considering 80% criteria?	Services by an employee to the employer in the course of or in relation to his employment are neither a goods nor a service as per clause 1 of the Schedule III of CGST Act, 2017. Therefore, salaries and wages paid by promoter to his employees will not be relevant for the minimum purchase requirement of 80%.
16.	A buyer has booked an apartment prior to 1st April, 2019 and paid part consideration to the developer. The developer decides to opt for the new scheme for this ongoing project. Will the buyer be required to pay any additional tax for such payment he has made prior to 31st march, 2019?	No. For the past payments made before the transition date (01.04.2019), no additional GST is required to be paid.



17.	Whether the condition of receiving 80% of inputs and input services from the registered person shall be applicable if the developer opts to continue to pay tax at the old rates of 12%/8% in respect of an ongoing project?	No, if the developer opts to continue to pay tax at the old rates of 12%/8% in respect of an ongoing project, the condition of receiving 80% of inputs and input services from the registered person doesn't apply.
18.	Whether the inward supplies of exempted goods / services shall be included in the value of supplies from persons while calculating threshold?	Yes. Inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold.
19.	Whether the purchase of from an unregistered person shall be required to be included in the value of Input and Input Services for the purpose of calculation of 80% threshold? 9	No. As per Schedule III, Entry No 5, of CGST Act, sale of land is not a supply. In addition, as per 5th proviso to entries at Sl. No. (i), (ia), (ib), (ic) and (id) against Serial No 3 in the Notification No.11 / 2017-CTR dated 28.06.2017 as amended by Notification No. 3/2019-CTR dated 30/03/2019, transactions by way of grant of



		development rights, long term lease, FSI etc. are not required to be included in the value of Input and Input Services for evaluation of criteria of 80% from registered persons.
20.	When a developer prefers option of paying tax at 1%/ 5%, without ITC, for an ongoing project, whether which were not considered as affordable in the earlier scheme (though certain such project were considered as affordable in the earlier scheme) will be considered as affordable after 1st April, 2019, if such apartments fit the definition of affordable residential apartments as provided in notification No. 3/2019- CT(R) 29.03.2019?	Yes, in case of an ongoing project in respect of which the promoter has not opted to pay GST at the old rate, he shall pay tax at the effective rate of 1% without ITC on apartments which meet the new definition of affordable residential apartment.
21.	Whether the amended rule shall apply to all RREPs including ongoing projects?	In case of an ongoing RREP, in respect of which promoter opts for the new rates of 1%/5% and which underwent transition of ITC consequent to change of rates of tax on 01.04.2019, ITC determined under sub- rule (1) of rule 42 shall not be required to be calculated finally on the completion or first occupation of the RREP.



22.	Whether separate Form (Annexure IV) shall be filed by the Developer in respect of each of the Ongoing Projects?	Yes. The promoter has to exercise the option for payment of tax at the old rates of 8%/ 12% with ITC for each of the ongoing projects separately.
23.	On what basis a Contractor/Sub-contractor executing a composite supply of works contract in terms of clause (va) i.e. 12% for affordable residential apartments, shall satisfy himself as regards condition of 50% of the total carpet area?	The contractor may charge tax on the works contract service provided by him to a promoter at the concessional rate of 12% under notification No. 11/2017- CTR dated 28.06.2019, S. No.3, entry (va) on the basis of a declaration by the promoter to the contractor that the project meets the conditions prescribed for concessional rate of GST on works contract service prescribed under the said entry.
24.	Whether the condition to make payment within 180 days by Land Owner – Promoter to Developer provided in second proviso to section 16(2), shall be applicable for reversal of input tax credit?	The apartments given to the Land Owner–Promoter are given by the Developer–Promoter against consideration received by him in the form of TDR from the Land Owner–Promoter.



		<p>Therefore, the payment by Land Owner–Promoter for service of construction of apartments received from the Developer – Promoter is made even before the service is provided.</p> <p>Therefore, Land Owner – Promoter shall not be required to reverse input tax credit of tax charged from him by the Developer–Promoter on the ground that he has not made payment for the service received from the Developer–Promoter.</p>
25.	<p>Whether the exemption given by way of Entry 41A/41B of Notification No. 12/2017-CTR shall be available in respect of development rights etc. transferred to a person other than promoter? Please clarify whether sub-clause (v) in clause (zk) in section 2 in RERA Act, 2016 covers a person who purchases TDR as developer?</p>	<p>The exemption is available only on TDR/FSI transferred on or after 1st April, 2019 for construction of residential apartments by a promoter in a real estate project.</p>
26.	<p>How to determine construction by the promoter to land owner in lieu of transfer of development rights, when land owner is not registered?</p>	<p>Value of construction services provided by the promoter to land owner in such cases shall be</p>



		determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the land owner, nearest to the date on which such development right etc. is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 of Notification No. 11/2017-CT(R) dated 28.06.2017.
27.	<p>In case of a project, completion certificate received prior to 31-03-2019 but some part of the consideration in relation to the apartment is due after 31-03-2019, it appears that such project will not qualify as ongoing project.</p> <p>What will be the applicable tax rate on such amount received on or after 01.04.2019 – old rate or new rate?</p>	<p>Time of supply of service of construction of such apartments is prior to 01.04.2019 and the same shall be subject to tax at the old rates of 12%/8%.</p>

F. No. 354/32/2019-TRU



Ministry of Finance

Recommendations of the 33rd GST Council meeting (Extract only)

Real estate sector is one of the largest contributors to the national GDP and provides employment opportunity to large numbers of people. "Housing for All by 2022" envisions that every citizen would have a house and the urban areas would be free of slums. There are reports of slowdown in the sector and low off-take of under-construction houses which needs to be addressed. To boost the residential segment of the real estate sector, following recommendations were made by the GST Council in its 33rd meeting held today:

2. GST rate:

- i. GST shall be levied at effective GST rate of 5% without ITC on residential properties outside affordable segment;
- ii. GST shall be levied at effective GST of 1% without ITC on affordable housing properties.

3. Effective date: The new rate shall become applicable from 1st of April, 2019.

4. Definition of affordable housing shall be:-

A residential house/flat of carpet area of up to 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities having value up to Rs .45 lacs (both for metropolitan and non-metropolitan cities).

Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).

5. GST exemption on TDR/JDA, long term lease (premium), FSI:

Intermediate tax on development right, such as TDR, JDA, lease (premium), FSI shall be exempted only for such residential property on which GST is payable.

6. Details of the scheme shall be worked out by an officers committee and shall be approved by the GST Council in a



meeting to be called specifically for this purpose.

7. Advantages of the recommendations made:

The new tax rate in principle was approved by the Council taking into consideration the following advantages:-

i. The buyer of house gets a fair price and affordable housing gets very attractive with GST @1%.

ii. Interest of the buyer/consumer gets protected; ITC benefits not being passed to them shall become anon-issue.

iii. Cash flow problem for the sector is addressed by exemption of GST on development rights, long term lease (premium), FSI etc.

iv. Unutilized ITC, which used to become cost at the end of the project gets removed and should lead to better pricing.

v. Tax structure and tax compliance becomes simpler for builders.

8. GST Council decided that the issue of tax rate on lottery needs further discussion in the GoM constituted in this regard.

The decisions of the GST Council have been presented in this note in simple language for easy understanding. The same would be given effect to through Gazette notifications/circulars which alone shall have force of law.

DSM/RM/KMN

Decisions taken by the GST Council in the 34th meeting held on 19th March, 2019 regarding GST rate on real estate sector (Extract only)

(Notification No 3/2019 to 9/2019 Central Tax Rate)

GST Council in the 34th meeting held on 19th March, 2019 at New Delhi discussed the operational details for implementation of the recommendations made by the council in its 33rd meeting for lower effective GST rate of 1% in case of affordable houses and 5% on construction of houses other



than affordable house. The council decided the modalities of the transition as follows.

Option in respect of ongoing projects:

2. The promoters shall be given a one-time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019.

3. The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply.

New tax rates:

4. The new tax rates which shall be applicable to new projects or ongoing projects which have exercised the above option to pay tax in the new regime are as follows.

(i) New rate of 1% without input tax credit (ITC) on construction of affordable houses shall be available for,

(a) all houses which meet the definition of affordable houses as decided by GSTC (area 60 sq min non-metros/90 sq min metros and value upto RS.45 lakhs), and

(b) affordable houses being constructed in ongoing projects under the existing central and state housing schemes presently eligible for concessional rate of 8% GST (after 1/3rd land abatement).

(ii) New rate of 5% without input tax credit shall be applicable on construction of,-

(a) all houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on installments payable on or after 01.04.2019.

(b) all houses other than affordable houses in new projects.

(c) commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions for the new tax rates:



5. The new tax rates of 1% (on construction of affordable) and 5% (on other than affordable houses) shall be available subject to following conditions,-

(a) Input tax credit shall not be available,

(b) 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

Transition for ongoing projects opting for the new tax rate:

Ongoing projects (buildings where construction and booking both had started before 01.04.2019) and have not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.

The transition formula approved by the GST Council, for residential projects (refer to para 4(ii)) extrapolates ITC taken for percentage completion of construction as on 01.04.2019 to arrive at ITC for the entire project. Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined. Thus, transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safe guards.

For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

Treatment of TDR/ FSI and Long term lease for projects commencing after 01.04.2019

7. The following treatment shall apply to TDR/ FSI and Long term lease for projects commencing after 01.04.2019.

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption



of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.

The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM).

The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate.

The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion. Decisions from para 7.1 to 7.4 are expected to address the problem of cash flow in the sector.

Amendment to ITC rules:

8. ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects. The change would clearly provide procedure for availing input tax credit in relation to commercial units as such units would continue to be eligible for input tax credit in a mixed project.

9. The decisions of the GST Council have been presented in this note in simple language for easy understanding. The same would be given effect through Gazette notifications/circulars which alone shall have force of law.

Ministry of Finance

Recommendations of the 35th GST Council meeting (Extract only)

PRESS RELEASE

(Law and Procedure related changes)

The GST Council, in its 35th meeting held today at New Delhi, recommended the following:



1. In order to give ample opportunity to taxpayers as well as the system to adapt, the new return system to be introduced in a phased manner, as described below: Refer to 37th Meeting of the GST Council, Goa 20 September, 2019

2.

i. Between July, 2019 to September, 2019, the new return system (FORM GST ANX-1&FORM GST ANX-2 only) to be available for trial for taxpayers. Taxpayers to continue to file FORM GSTR-1&FORM GSTR-3B as at present;

ii. From October, 2019 onwards, FORM GST ANX-1 to be made compulsory. Large taxpayers (having aggregate turnover of more than Rs. 5 crores in previous year) to file FORM GST ANX-1 on monthly basis whereas small taxpayers to file first FORM GST ANX-1 for the quarter October, 2019 to December, 2019 in January, 2020;

iii. For October and November, 2019, large taxpayers to continue to file FORM GSTR-3B on monthly basis and will file first FORM GST RET-01 for December, 2019 in January, 2020. It may be noted that invoices etc. can be uploaded in FORM GST ANX-1 on a continuous basis both by large and small taxpayers from October, 2019 onwards. FORM GST ANX-2 may be viewed simultaneously during this period but no action shall be allowed on such FORM GST ANX-2;

iv. From October, 2019, small taxpayers to stop filing FORM GSTR-3B and to start filing FORM GST PMT-08. They will file their first FORM GST- RET-01 for the quarter October, 2019 to December, 2019 in January, 2020;

v. From January, 2020 onwards, FORM GSTR-3B to be completely phased out

3. On account of difficulties being faced by taxpayers in furnishing the annual returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C, the due date for furnishing these returns/reconciliation statements to be extended till 31.08.2019 (. (56/2019-Central Tax ,dt. 14-11-2019)

4. To provide sufficient time to the trade and industry to furnish the declaration in FORM GST ITC-04, relating to job work, the due date for furnishing the said form for the period July, 2017 to June, 2019 to be extended till 31.08.2019



(32/2019-Central Tax ,dt. 28-06-2019) and 38/2019-Central Tax ,dt. 31-08-2019

5. Certain amendments to be carried out in the GST laws to implement the decisions of the GST Council taken in earlier meetings

6. Rule 138E of the CGST rules, pertaining to blocking of e-way bills on non-filing of returns for two consecutive tax periods, to be brought into effect from 21.08.2019, instead of the earlier notified date of 21.06.2019

6. Last date for filing of intimation, in FORM GST CMP-02, for availing the option of payment of tax under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, to be extended from 30.04.2019 to 31.07.2019

(Note: The recommendations of the GST Council have been presented in this release in simple language for information of all stakeholders. The same would be given effect through relevant Circulars/Notifications which alone shall have the

36th GST Council Meeting, New Delhi 27th July, 2019

PRESS RELEASE

The Council had recommended :-

A. Reduction in the GST rate on supply of goods and services:(Notification No- 12/2019 on 31-07-2019)

(1)The GST rate on all electric vehicles be reduced from 12% to 5%.

(2)The GST rate on charger or charging stations for Electric vehicles be reduced from 18% to 5%.

(3)Hiring of electric buses (of carrying capacity of more than 12 passengers) bylocal authorities be exempted from GST.

(4)These changes shall become effective from 1st August, 2019.

B. Changes in GST law:



- (1) Last date for filing of intimation, in FORM GST CMP-02, for availing the option of payment of tax under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 (by exclusive supplier of services), to be extended from 31.07.2019 to 30.09.2019.
- (2) The last date for furnishing statement containing the details of the self-assessed tax in FORM GST CMP-08 for the quarter April, 2019 to June, 2019 (by taxpayers under composition scheme), to be extended from 31.07.2019 to 31.08.2019. (35/2019-Central Tax ,dt. 29-07-2019)

(Note: The recommendations of the GST Council have been presented in this release in simple language for information of all stakeholders. The same would be given effect through relevant Circulars/Notifications which alone shall have the force of law.)

Changes in GST as per recommendations in 37th GST Council

Ref:<http://gstcouncil.gov.in/sites/default/files/news-latter/Newsletter-October%20-2019.pdf>

Changes in filing of Return

Form GSTR-3B return for each month from October, 2019 to March, 2020 shall be required to be filed on or before the 20th day of the succeeding month.

Notification No. 44/2019 – Central Tax, dated 09/10/2019

- Time limit for filing quarterly returns in Form GSTR-1 by registered persons having aggregate turnover upto 1.5 crore rupees for the quarter October-December 2019 and January-March 2020 shall be 31st January, 2020 and 30th April, 2020, respectively.

Notification No. 45/2019 – Central Tax, dated 09/10/2019

- Time limit for filing monthly returns in Form GSTR-1 by registered persons having aggregate turnover of more than



1.5 crore rupees for each month from October, 2019 to March, 2020 shall be the eleventh day of the succeeding month.

Notification No. 46/2019 – Central Tax, dated 09/10/2019

- Option has been provided for furnishing annual return of FY 2017-18 and 2018-19 for the taxpayers having aggregate income less than 2 crore rupees.

Notification No. 47/2019 – Central Tax, dated 09/10/2019

- Form GST CMP-08 for the quarter July, 2019 to September, 2019 or part thereof, shall be required to be furnished by 22nd October, 2019.

Notification No. 50/2019 – Central Tax, dated 24/10/2019

Changes in GST Rules

- Various rules regarding due dates of filing returns have been changed for registered taxpayers in Jammu and Kashmir.

Notification No. 48/2019 – Central Tax, dated 09/10/2019

- Changes in Rules, including inter alia the restriction of 20% of the eligible credit out of the invoice or debit notes not uploaded by the supplier.

Notification No. 49/2019 – Central Tax, dated 09/10/2019. The notification is very important as it limits the availment and utilization if ITC

Important Changes brought in by the 37th GST Council meeting

New GST return filing system to be introduced from April 2020

The GST council has again accepted the demand of the industry and postponed the new system of filing of GST return I the mid of the year. Hope fully this will be implemented from April 2020.

Optional filing of GSTR 9 and waiver from filing of GSTR 9A

Considering the problems being faced by MSME sector , GST



council decided to relax the provisions with regard to filing of specific annual Returns and Composition tax payers are not required to file GSTR 9A and for other organisations including MSMEs having aggregate turnover upto Rs two crores , filing of GSTR 9 has been made optional.

Filing of Appeals

Extension of Date was recommended by the council for filing of appeals against orders of appellate authorities before GST Appellate tribunal

Restriction on availment of ITC in case returns have not been filed by suppliers

Restriction on availment of Input Tax Credit has been imposed where the GSTR 2A does not contain the data with regard to availment of ITC.

The new provision ie rule 36(4) of CGST Rules reads as follows "Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes, the details of which have been uploaded by the suppliers under sub-section (1) of section 37." However, the same has been challenged in the court of law and notices have been issued to State and Central Government on 15th Nov 2019. The case is pending with Gujarat High Court.

Refund to be disbursed by single authority

The taxpayer were facing lots of issues in getting the refunds because of multiplicity of authorities, now the GST council decided to launch an Integrated refund system with disbursement by single authority which has been introduced from 24th September, 2019.

Linking of Aadhaar with GSTIN nos

To prevent the misuse of GST mechanism, GSTINs may be linked with Aadhaar numbers.

37th Meeting of the GST Council, Goa

20 September, 2019



PRESS RELEASE

(Law and Procedure related changes)

The GST Council, in its 37th meeting held today at Goa, recommended the following:

1. Relaxation in filing of annual returns for MSMEs for FY 2017-18 and FY 2018-19 as under:
 - a. waiver of the requirement of filing FORM GSTR-9A for Composition Taxpayers for the said tax periods; and
 - b. filing of FORM GSTR-9 for those taxpayers who (are required to file the said return but) have aggregate turnover up to Rs. 2 crores made optional for the said tax periods.
2. A Committee of Officers to be constituted to examine the simplification of Forms for Annual Return and reconciliation statement.
3. Extension of last date for filing of appeals against orders of Appellate Authority before the GST Appellate Tribunal as the Appellate Tribunals are yet not functional.
4. In order to nudge taxpayers to timely file their statement of outward supplies, imposition of restrictions on availment of input tax credit by the recipients in cases where details of outward supplies are not furnished by the suppliers in the statement under section 37 of the CGST Act, 2017.
5. New return system now to be introduced from April, 2020 (earlier proposed from October, 2019), in order to give ample opportunity to taxpayers as well as the system to adapt and accordingly specifying the due date for furnishing of return in FORM GSTR-3B and details of outward supplies in FORM GSTR-1 for the period October, 2019 - March, 2020.
6. Issuance of circulars for uniformity in application of law across all jurisdictions:
 - a. procedure to claim refund in FORM GST RFD-01A subsequent to favourable order in appeal or any other forum;
 - b. eligibility to file a refund application in FORM GST RFD-01A for a period and category under which a NIL refund application has already been filed; and



- c. clarification regarding supply of Information Technology enabled Services (ITeS services) (in supersession of Circular No. 107/26/2019-GST dated 18.07.2019) being made on own account or as intermediary.
7. Rescinding of Circular No.105/24/2019-GST dated 28.06.2019, ab-initio, which was issued in respect of post-sales discount.
8. Suitable amendments in CGST Act, UTGST Act, and the corresponding SGST Acts in view of creation of UTs of Jammu & Kashmir and Ladakh.
9. Integrated refund system with disbursal by single authority to be introduced from 24th September, 2019.
10. In principle decision to link Aadhar with registration of taxpayers under GST and examine the possibility of making Aadhar mandatory for claiming refunds.
11. In order to tackle the menace of fake invoices and fraudulent refunds, in principle decision to prescribe reasonable restrictions on passing of credit by risky taxpayers including risky new taxpayers.

Note: The recommendations of the GST Council have been presented in this release in simple language only for immediate information of all stakeholders. The same would be given effect through relevant Circulars/Notifications which alone shall have the force of law.

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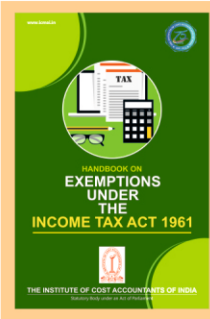
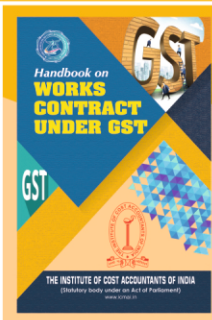
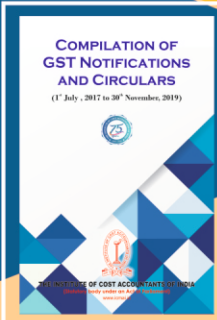
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