


WELCOME
to the Session on
Works Contract Services
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[I] A brief History of Works Contract

- State of Madras V. Gannon Dunkerley (Delivered in 1958) [GD-I]
- 46th Constitutional Amendment
- *Larsen and Toubro v. State of Karnataka* (2014) SC larger bench
- Can a works contract be vivisected?

[II] Works Contract in Pre-GST Regime

- In VAT side
- In Service Tax side

[III] Works Contract in GST Regime

- Provisions concerned
- Some Popular Works Contract Models
- Sectors where WCS are more apparent
- Valuation
- ITC Restrictions
- Time of Supply
- Place of Supply
- Transitional Provisions
- Classification Scheme
- GST rates & Exemptions
- Case Laws

[IV] Real Estate Transactions

[II] Works Contract in Pre-GST Regime

Works Contract in Service Tax Law

- Service Tax was introduced as a positive list based taxation scheme w.e.f. 1994.
- Services in the nature of construction contracts were made taxable from 2005. Thereafter installation contracts, maintenance contracts were also made taxable from 2006.
- Works Contract Services were introduced into the tax net w.e.f. 01.06.2007 – Supreme Court in the case of Larsen & Toubro has confirmed taxability only from 01.06.2007.

Comparison of Pre-GST Tax Scenario in real Estate on VAT side & Service Tax side

Service Tax side	MVAT side
'Contract for construction of Flat' is considered as service up to completion stage.	'Deemed sale of goods', irrespective of whether the contract was divisible or indivisible.
Service tax payable at abated value	Four schemes are available [see next slide]
Time of supply is earliest of invoice, supply & payment	'Time when property in goods passed' is the time when goods are incorporated. The deemed point of time for this event varies for different schemes. For composition scheme, it is when the contract is registered.
Service tax payable on advance	Payment time is not directly linked to payment.

Pre-GST Tax Scenario in real Estate on VAT side

[Trade Circular No. 18T of 2017 dt 31.5.17]

On VAT side **four optional schemes** were available:

1. Actual (labour, service charge etc) expense method [Rule 58(1)]
2. Standard Deduction Method [Proviso to Rule 58(1)]
3. Composition Scheme under S.42(3)
4. Composition scheme under S.42(3A) – **Mostly opted**. Was operative from 1.4.10 to 31.5.17. The Features were-
 - **Pay 1% composition amount** in lieu of the tax, on the agreement (i.e. registered) value or the value determined for the purpose of payment of Stamp duty, whichever is higher.
 - Becomes payable **on the date on which the agreement is registered**, irrespective of the fact whether the Developer has received any payment or not.
 - Facility available subject to the conditions in the scheme. One vital condition is that the said developer is **not entitled to claim set off** and is also **prohibited from issuing the tax invoice**.

Pre-GST Tax Scenario in real Estate

- **VAT side (composition without credit):-** Realty developers in Maharashtra (as well in many other states) were allowed the benefit under a composition scheme under the then prevailing MVAT Act, in terms of which, they were allowed to pay VAT @ 1% on the total value of the apartment including the value of the undivided portion of the land.
- **Service Tax side (tax on abated value without credit):-** Most of these developers had also opted to pay service tax under the then prevailing Notification No. 26/2012-ST dated 20-6-2012, in terms of which, service tax was paid on 30% of the total value inclusive of the land value. [30% of 15% = 4.5%]
- In effect, the total of VAT and service tax worked out to 5.5% on the total value including land, in the pre-GST era.

Deduction based Valuation under MVAT (Pre-GST)

No.	Type of Works Contract	*Amount to be deducted from the contract price (%)
1	Installation of plant and machinery	15%
2	Installation of air conditioners and air coolers	10%
3	Installation of elevators (lifts) and escalators	15%
4	Fixing of marble slabs, polished granite stones and tiles (other than mosaic tiles)	25%
5	Civil works, like construction of buildings, bridges, roads, etc.	30%
6	Construction of railway coaches or under-carriages supplied by Railways	30%
7	Ship and boat building including construction of barges, ferries, tugs, trawlers and dredgers	20%
8	Fixing of sanitary fittings for plumbing, drainage and the like	15%
9	Painting and polishing	20%
10	Construction of bodies of motor vehicles and construction of trucks	20%
11	Laying of pipes	20%
12	Tyre re-treading	40%
13	Dyeing and printing of textiles	40%
14	Any other works contract	20%

Abatement based Valuation under Service Tax [Pre-GST]

- Section 93 of the FA, 1994 empowered govt to grant exemptions from service tax.
- Under these powers, N/N 26/2012 ST dt 20.6.12 provided list of services and abatements available to these services (amended time to time). The abatements may be with or without conditions.

Eg.

- **Construction of complex, building, civil structure, parts thereof- 70% without ITC; land value included.**
- Financial leasing including hire purchase- 90%
- Container freight by rail- 60%
- Non-containerised freight by rail-70%
- Food supply together with renting of premises-30% without ITC
- Air passenger transport in economy class - 60% without ITC
- Air passenger transport in non-economy class - 40% without ITC
- Passenger transport in contract carriage- 60% without ITC
- Accommodation services in hotels etc- 40% without ITC
- GTA- 70% without ITC
- Goods transport in vessel- 70 % without ITC
- Renting of motor cab- 60% without ITC
- Tour operator services- 90% without ITC

[III] Works Contract in GST Regime

Provisions concerned

1. Article 265- No tax levy without authority
2. Article 366(29A)- deemed sale under MVAT, after 46th Constitutional Amendment
3. Article 366(26A)- Definition of GST
4. S.2(52)- Definition of Goods
5. S.2(102)- Definition of Services
6. S.2(30)- Definition of Composite supply
7. S.2(74)- Definition of Mixed Supply
8. S.2(119)- Definition of Works Contract
9. S.7(3)- Govt's power to classify into Goods or services
10. S.8- Tax liability on Mixed & Composite supply
11. Sch II, 2(a,b)- Leasing/renting of land, leasing/renting of building
12. Sch II, 5(a,b), 6(a)- Renting, construction services & Composite services
13. Sch III, para5- Land and Constructed building is out of GST.
14. S.17(5)(c, d)- ITC restrictions
15. Explanation to S.17- Definition of 'Plant & Machinery'
16. IGST S.10(1)(d), S.12(3)/13(4)- Place of supply
17. N/N 4/2018 CTR & 4/2018 ITR both dated 25.1.2018- deferred TOS
18. S.140(3, 6), 142(10) & 142(11)(b, c)- Transitional provisions
19. State of Madras V. Gannon Dunkerley (SC in 1958) [GD-I]
20. Gannon Dunkerley & Co. V. State of Rajasthan (SC in 1993) [GD-II]
21. Lassen and Toubro Ltd V. State of Karnataka (SC in 2014)

Comparative Definitions of Works Contract under the Enactments

Central Sales Tax Act, 1956	Finance Act, 1994	CGST Act, 2017
Section 2(ja)	Section 65B(55)	Section 2(119)
<p>“Works Contract” means</p> <p>a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property.</p>	<p>“Works Contract” means</p> <p>a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.</p>	<p>“Works Contract” means</p> <p>a contract for <u>building</u>, <u>construction</u>, <u>fabrication</u>, <u>completion</u>, <u>erection</u>, <u>installation</u>, <u>fitting out</u>, <u>improvement</u>, <u>modification</u>, <u>repair</u>, <u>maintenance</u>, <u>renovation</u>, <u>alteration</u> or <u>commissioning</u> 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</p>

➤ What constituted 'Works Contract' in pre-GST regime, Do they still qualify as 'Works Contract' in GST regime too?

❖ Following were 'Works Contract' earlier, but they cease to be so in GST regime:

- Fabrication of coaches on tailor made basis
- Photo processing
- Printing of lottery tickets
- De-mineralized water
- Pest Control

❖ Following were 'Works Contract' earlier, and continue to be so even in GST regime:

- Rolling shutter
- Aluminum doors
- Floating hotel (fastened to immovable platform)
- BOT project of toll road
- Lift installation
- Construction of residential complex

➤ Some Popular Works Contract Models :

1. O&M Operation and Maintenance
2. EPC Engineering, Procurement & Construction
3. BOT Build, Operate & Transfer
4. DBOT Design, Build, Operate and Transfer
5. E&P Exploration and Production
6. AMC Annual maintenance Contrancts
7. RMC Repair and maintenance Contracts

➤ Sectors where WCS are more apparent

1. Real Estate Sector
2. Oil and Gas sector
3. Roads / Highways
4. Ports
5. Thermal Power Generation
6. Solar Power Generation
7. Large manufacturing sector

A contract could be for supply of –

1. Goods only [goods simpliciter]
 2. Services only [services simpliciter i.e. pure services]
 3. Goods + Services bundle. Again this bundle could be-
 1. Mixed supply [when not naturally bundled]
 2. Composite supply [when naturally bundled] Further this composite supply could be -
 1. Works contract [when it relates to 14 activities qua immovable property]
 2. Other composite [when relates to movable property, or any 15th activity qua immovable property]
- Thus, **works contract is necessarily a composite supply**, as it satisfies all the conditions viz.
 - A works contract involves taxable supply of goods and services &
 - The goods and services (related to the fourteen types of activities of s.2(119)) are generally naturally bundled in ordinary course of business and supplied in conjunction with each other.

- So, in order to decide **whether it is a WCS or not**, the test is to identify
 - Firstly, whether it is a **bundle** of goods and services ? [if not, then each of the individual supplies will be taxed separately as goods or services at the respective rates]
 - Secondly, whether the bundling is **natural** ? [if not, then entire bundle will be taxed at rate of the highest rated element in the bundle]
 - thirdly, whether the goods and services in the bundle relate to some **immovable property** ?
 - Fourthly, whether the activity performed is among the **14 activities** mentioned in the definition of works contract u/s 2(119) ?
- The answer of the said test may be that-
 - It is a WCS. In that case the entire bundle will be a supply of services as per **6(a)/sch II**. [**5(b)/sch II** classifies a specie of it (i.e. under-construction complex, building, civil structure or their parts) as service supply].
 - It is not WCS. That means, it is any other composite supply. Then, as per **S.8**, it will be treated as supply of the 'Principal supply' (that gives essential character to the bundle).

➤ Power of the Govt to classify as Goods or Services:-

Section 7(3) of CGST Act, 2017:-

Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- a) a supply of goods and not as a supply of services; or
- b) a supply of services and not as a supply of goods

➤ Para 5 & 6 of Schedule-II of the CGST Act, 2017

5. Supply of services

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

- a) **renting** of immovable property; [this may cover plant & machinery]
- 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.

- Builder sells flat to Mr A. CC is dated 11.3.19. If part consideration is received on 10.3.19, then it is supply. But if entire consideration is received after 11.3.19 then it is not a supply (instead, is a sale of immovable property)
- Covers sale of residential flat before it is occupied. Once occupied, any sale by the buyer after that will not attract GST, even if completion certificate is not obtained. However, if builder himself is selling, he will be exempt from GST only if he sales after completion certificate is obtained.

Explanation.—For the purposes of this clause—

1. the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case 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;

6. Composite supply

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

a) **works contract** as defined in clause (119) of section 2; and

As per **Section 2(119)** of the Central Goods and Services Tax (CGST) Act, 2017, unless the context otherwise requires, the term “works contract” means a contract for

1. building,
2. construction,
3. fabrication,
4. completion,
5. erection,
6. installation,
7. fitting out,
8. improvement,
9. modification,
10. repair,
11. maintenance,
12. renovation,
13. alteration or
14. 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.

Qn. Why Works Contract is deemed as Service?

Ans:- Possible reasons could be that

- Since goods involved in works contract may fall under different tariff heads, these cannot be classified in a particular HSN Code.
- definition of 'services' is much wider than definition of goods and hence it is easier to fit works contract in definition of services.
- Works contracts yield into immovable property which in GST has localized Place of supply whereby revenue accrues to the State where the immovable property is located. To bring revenue on all the immovable property related activities also to the said State.

What is Immovable Property?

- Section 2 of the **General Clauses Act**, 1897

‘Immovable property shall include land, benefits to arise out of 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

Immovable property does not include standing timber, growing crop or grass.

- Section 2(6) of **Registration Act**:- Immovable property includes any land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit arising out of land, and things attached to earth or permanently fastened to anything which is attached to earth, but does not include standing timber, growing crops or grass.

“Attached to the earth” means

- (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 or
 - (c) Attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.
- Thus, things attached to the earth or permanently fastened to anything attached to the earth are not movable but immovable property.

➤ The **implicit tests** to determine immovability are-

- i. **Degree of Attachment** should be such as to partake the character of the attachment of trees or shrubs rooted to earth or walls or building embedded in that sense. [When a chattel is so attached that it can not be removed without great damage to the chattel then the same would partake the character of an immovable property. It is a question of fact.]
- ii. **Object and intent of the attachment** should be for the permanent beneficial enjoyment of the immovable property to which it is attached.

JURISPRUDENCE:- [or exception to the aforesaid]

- If the chattel can be removed from the base and sold then the same shall not be treated as immovable property.
- If the assembled goods have been attached to the earth only for effective functioning of the machinery itself, the same shall not qualify as immovable property.
- If the assembled goods are dismantled only for ease of transportation and without substantial damage then such goods shall not qualify as immovable property.
- In case of towers, except for the civil work of putting up a platform to fix the equipment/tower, the super structure does not acquire the character of immovable goods.

What is land ?

- Not defined in GST
- Section 3(a) of **Land Acquisition Act**, 1894:-
‘Land’ includes benefits that arise out of land and things attached to earth or permanently fastened to anything attached to the earth.
- Section 3(4) of **Bombay Land Revenue Code**, 1879:-
‘Land’ includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth and also shares in or charges on the revenue or rent of village or other defined portions of territory.

SCHEDULE III

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED **NEITHER** AS
A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

5. Sale of land and, subject to
clause (b) of paragraph 5 of
Schedule II, sale of building.

6. Actionable claims, other
than lottery, betting and
gambling.

ITC Restrictions

Section 17(5) : Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax **credit shall not be available** in respect of the following, namely:—

- (c) **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 or machinery) **on his own account** including when such goods or services or both are used in the course or furtherance of business.

Explanation to (d) above.—For the purposes of clauses (c) and (d), the expression “**construction**” **includes** re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

Explanation to S.17:- For the purposes of this Chapter and Chapter VI, the expression “**plant and machinery**” **means** apparatus, equipment, and machinery fixed to earth by foundation or **structural support** that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

Blocked Credit u/s. 17(5) (c) & 17(5)(d)

- c) Works contract service for construction of an immovable property (except plant & machinery) except where it is an input for further supply of works contract service. [Thus ITC on works contract service will be available to builders in case of ongoing construction project of residential complex (where output GST is payable).
- d) Goods and/or services received by a taxable person **for construction of an immovable property** on his own account whether to be used for personal or business use. [getting constructed a building for doing business of renting-out its rooms, while retaining the property with himself. Also, getting interiors of this building changes after 3 years and capitalizing the cost towards the cost of the building]

Expln:- for c & d above, “Construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.

Note:- As per the Explanation to S.17,

ITC available for 'plant and machinery' which includes foundation & structural support on which apparatus/ equipment / machinery rest. But 'plant and machinery' does not include land/building/civil structure, telcom towers; and pipelines laid outside the factory premises.

TRANSITIONAL PROVISIONS

140(3) Credit on transition stock
[7 persons, 7 taxes, 5 conditions]

For 6 classes-

- Those not liable earlier, now liable.
- Manufactured exempted G/S earlier
- Work contractor service providers
- 1st/2nd State dealers
- Registered importer
- Depot

➤ 5 Conditions-

1. Such inputs are used / to be used for making taxable supplies.
2. Credit admissible in both regimes.
3. Duty paying invoice / other document should be in possession.
4. Such invoice should not be more than 12 months old.
5. Supplier is not eligible for any abatement under GST

Note:- Reduced credit to non-manufacturer not having invoice [r/w R 1(3)(a)] - Invoice possession is a must for manufacturer & service provider. For others, if they do not have it, they will take reduced credit at some fixed rate.

	140(6)	Earlier composition payer, now normal	<p>Fixed rate payers (i.e. composition dealers) of Sales tax shall take in e-ledger the credit on transition stock.</p> <p>•5 Conditions:-</p> <ol style="list-style-type: none"> 1. Used in taxable supplies in GST regime. 2. Paying in normal tax scheme (not composition) 3. Credit admissible in both regimes 4. Possesses invoice / other documents [restricted credit in case of other document] 5. Invoice not older than 12 months.
	142(10)	Post-AD supply under pre-AD contract	Shall be liable to GST.
	142(11)	For SGST Act	Credit to the extent of VAT/ST already paid on the post AD portion of service will be available.

Section 140(10):- Save as otherwise provided in this Chapter, the goods or services or both **supplied** on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

S.142(11) [pre-AD POT (ie ISP for services & Sale for VAT), but Post-AD supply]

S.142(11)(a)- Notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

S.142(11)(b)- Notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;

Example: Advance of Rs. 1,00,000/- was received on 20th June, 2017 for service to be rendered in July, 2017. The invoice for the service was raised for Rs. 1,50,000/- on 31st July, 2017. Appointed day as 1st July, 2017, GST shall be levied only on Rs. 50,000/-.

Note- To avoid double levy, the word used in both the clauses (a) & (b) is 'leviable' and not 'paid'. Thus immaterial whether actually paid or not in Pre-GST. However in clause (c) the word used is 'paid'. Thus, here it is immaterial whether tax in pre-GST regime was leviable or not

S.142(11)(c)- where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

Example :-For Works contract service (including builders' construction of flats etc), Construction services or Food & Beverages services the contract entered in March, 2017 for Rs 1,00,00,000/-. Advance received till 30th June, 2017 amounts to Rs 10,00,000/-. VAT of Rs 40,000/- and Service Tax of Rs 60,000/- have been paid on the said advance. Appointed day is 1st July, 2017, GST shall be levied on Rs 1,00,00,000/- as per Section 13 of the CGST Act. The VAT and Service Tax paid (i.e., Rs 1,00,000/-) shall be allowed as credit under the existing law.

Table 11 / Tran 1:- The proportion of supply on which Value Added Tax or service tax has been paid before the appointed day but the "**supply is made after the appointed**" day, and the Input Tax Credit admissible thereon to be furnished.

Qn. In case of Construction Contracts, builders remit taxes on receipt of payment or completion of slabs as provided in the contract. What will the impact due to change in the tax rates?

Ans. For payments received before the change in rate of tax, if invoices are also raised before the change in rate of tax, old rate will be applicable. Else the new rate will be applicable.

For slab completion before the change in rate of tax, if invoices are also raised before the change in rate of tax, old rate will be applicable. Else the new rate will be applicable.

GST Rates

- The general rate of GST on works contract service is 18% (9% CGST and 9% SGST) or 18% IGST - Notification No. 11/2017-CT (Rate) and No. 8/2017-IT (Rate) both dated 28-6-2017, effective from 1-7-2017. However, one view is that, works contract is a composite supply and rate cannot be 18% in all cases.
- However, since the Sr No. 3(ii) of Notification No. 11/2017-CT (Rate) dated 28-6-2017, which prescribes the tax rate of 18% on 'composite supply of works contract as defined in section 2(119) of CGST Act' falls under heading 9954 i.e. construction service, many are of the view that-

One view:-

- **This rate should at the most apply only to 'construction services' and not all works contracts.**

Argument:-

- This rate cannot apply to other works contracts, as 'works contract' is not limited to construction services. It covers all activities relating to plant, machinery r equipment which are immovable.
- The words 'composite supply' in para 6(a) of Schedule II of CGST Act cannot be ignored and cannot be treated as superfluous or otiose. If all works contracts are to be taxed @ 18%, the words 'composite supply' becomes redundant.

- It is well established rule of construction that Court would not adopt a construction which would render some of the words in a statutory provision nugatory and/or superfluous - *Royal Hatcheries (P.) Ltd. v. State of AP* 1994 taxmann.com 748
- In *J K Cotton Weaving & Spinning Co. Ltd. v. State of UP* [1961] 3 SCR 185, it was observed - 'The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of statute should have effect. - quoted with approval in *Mohammad Ali Khan v. CWT* [1997] 92 Taxman 52 (SC) - quoted with approval in *Ram Phal Kundu v. Kamal Sharma* AIR 2004 SC 3240 (SC 3 member bench) - same view in *Nathi Devi v. Radha Devi Gupta* AIR 2005 SC 648 (SC 5 member bench) * *R & B Falcon (A) Pty Ltd. v. CIT* [2008] 169 Taxman 515 (SC).

Another view:-

- works contract has been defined as 'deemed supply of service' and tax rate should be 18% in all the cases
- Thus, even though the plant or machinery or equipment or other material used in execution of works contract which is principal supply, may have GST rate of less than 18% (Nil, 5%, 12%) or more than 18% (28%), the tax rate on the entire bundle of such works contract will be 18%.

➤ Distinction between construction service and works contract service

- There is no doubt that construction contract is also a 'works contract'. However, under GST, distinction has been made between 'works contract service' and 'construction of complex'.
- The distinction is that in case of **works contract**, a customer (recipient of supply of service) approaches the supplier of service (contractor) to undertake construction as per his requirements. In almost all the cases, the land is owned by or taken on lease by customer. The contractor enters into contract with customer and then undertakes construction with his own material. If the material is supplied by recipient himself (customer), then it is not works contract. It is simple contract for work.
- In **construction of complex**, the builder or developer normally does not have any identified customer. Even if he has some identified customers before commencement of construction, he is undertaking construction activity on his own and not on basis of contract with customer. The land never belongs to the customer.
- **Illustration:-** A society awards a contract to a contractor to construct residential complex in premises owned by society, it will be a 'works contract' and not 'construction of complex'

➤ Difference between Job work and Works Contract:-

S.2(68) “job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly;

S.2(119) “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;

- By analysing the difference we can figure out that works contract involves process on an immovable property. Whereas job-work is mainly on movable property.
- WCS is a composite contract involving both transfer of property and provision of labour.
- In WCS with the cost of goods we increase the value of WCS service; whereas, in Job work with the services (JW/labour) we increase the intrinsic value of goods. Eg. We send door mat for printing ‘welcome’ on it (job work). We add cost of cement, sand, steel to increase the value of WCS services.
- In GST WCS is applied for or on immovable property; while in job work we undertake some process / treatment on movable item (goods) belonging to some registered person.

➤ Difference between sale and works contract:-

The works contracts are not normal sales. In the normal sale there is a transfer of property in definite or ascertained goods. The goods remain same before and after the delivery of the goods. However, in works contracts it does not happen. The goods before the delivery and after the execution of works contracts are different, many times in different form also.

Some Case Laws

Works contract service of renewable energy plant and equipment

[Presumptive apportionment was provided for w.e.f. 1.1.19 to remedy the controversy after Maharashtra AAAR ruling in *Fermi Solar Farms (P.) Ltd., In re* [2018] that the total activity is 'works contract' taxable at 18% even if split into two separate contracts of material and service]

- Renewable energy devises and parts for their manufacture falling under chapter 84, 85 or 94 are subject to GST @ 5% [IGST 5% or CGST 2.5% + SGST/UTGST 2.5%] as per Sr. No. 234 of Schedule I of Notification Nos. 1/2017-CT (Rate) and 1/2017-IT (Rate) both dated 28-7-2017.
- However, if composite contract of supply of goods plus service of construction, installation, commissioning is executed, it becomes works contract and GST rate becomes 18% on whole contract. Thus, basic purpose of promoting renewable energy sources gets defeated.
- Hence, it is now provided w.e.f. 1-1-2019 that in case of such composite contract, value of goods will be taken as 70% (attracting 5% GST) and value of services 30% (attracting 18% GST).
- Specific provisions have been made w.e.f. 1-1-2019 for GST on service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following,

- (a) Bio-gas plant
- (b) Solar power based devices
- (c) Solar power generating system
- (d) Wind mills, Wind Operated Electricity Generator (WOEG)
- (e) Waste to energy plants/devices
- (f) Ocean waves/tidal waves energy devices/plants.

- In aforesaid cases, the IGST rate is 18% [or 9% CGST plus 9% SGST/UTGST] - Sr. No. 38 of Notification Nos. 11/2017-CT (Rates) and 8/2017-IT (Rates) dated 28-6-2017 inserted w.e.f. 1-1-2019.
- As per *explanation* to this entry, this entry shall be read in conjunction with serial number 234 of Schedule I of the notification No. 1/2017-CT (Rate) as amended w.e.f. 1-1-2019.
- As per *explanation* to Sr. No. 234 of Schedule I of the notification No. 1/2017-CT (Rate) as amended w.e.f. 1-1-2019, if the aforesaid goods are supplied with other goods and services, the value of goods will be taken as 70% and value of services will be 30% of gross consideration charged.
- Thus, in case of composite works contract of aforesaid goods and services (*i.e.* supply of goods plus construction, engineering or installation or other technical services), the value of service will be taken as 30% of gross consideration charged.

EPC contract given by Nagpur Metro:-

Activity of applicant company for electrical cable supply and laying work of new underground cable for metro rail project **was in nature of composite supply of works contract** and same would be covered under Sr. No. 3, item no. (ii) of Notification No. 11/2017 dated 28-6-2017 as amended by Notification No. 1/2018 dated 25-1-2018 and attract 18 per cent GST (9 per cent each of CGST and SGST)

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➤ **Nipro India Corpn. (P.) Ltd. (AAR - MAHARASHTRA) May 2018**

[ITC available on expenses incurred for 'Mechanical Works' and 'Electrical Works' under Extension Project, but not on 'Civil Works',]

Where assessee, a manufacturer of medical equipments, proposes to undertake an extension of its manufacturing facility and in this regard it has awarded a contract to a vendor for execution of Extension Project, it would be entitled to take credit of input tax paid in relation to costs proposed to be incurred for following activities: Internal finishing works, Internal Sewer and Venting System, Sanitary ware & CP, Air Condition Work, Air-Conditioning Piping Work & Accessories, etc.

- 'Mechanical Works' entails activities in the nature of Plumbing Works, Fire Protection Work, Air Conditioning Works, etc. and 'Electrical Works' entails activities in the nature of Sub-station work, D G Set Work, Lighting System Work, etc.

- the provision under section 17(5)(c) and 17(5)(d) also suggests that input tax credit would be available where such works contract services, goods and/or services are received for construction of an immovable property in the nature of plant and machinery.

ITC Amissible on the following activities:

- Internal finishing works.
- Internal Sewer & Venting System.
- Sanitary ware & CP.
- Air Condition Work.
- Air Conditioning Piping Work & Accessories.
- Ventilation Fans.
- Automatic Control System.
- Compressed Air Supply system.
- Steam Supply System.
- Process Chilled Water Supply System.
- Purified Water Supply System.
- N2 Supply System.
- Process Waste Water Supply System.
- Local Exhaust System.
- Sub-station Work.
- DG Set Power Supply System.
- Main Feeder Distribution.
- Lighting System Work.
- Emergency and Exit Light Fixtures.
- Socket Outlet Work.

ITC **partly admissible** for the following activity:

- External sewage system.

ITC **not available** on

- Structural work, external finishing work, internal finishing work, M and E related civil work.
- M & E related Civil Works.
- Internal and domestic water distribution supply system.
- Gardening Water Supply System.
- Dismantling Work.
- Internal Fire Hydrant System.
- Sprinkler Works.
- Extinguishers.
- Fire Documentation. [Para 6]

- **Bhayana Builders Pvt. Ltd (2018)- Supreme Court-** Freebies provided by recipient not includible:-

Held that value of goods and materials supplied free of cost by a recipient to supplier is neither monetary nor non-monetary consideration paid by or flowing from service recipient, accruing to benefit of provider. Hence, the value of such / material is not to be included in price charged for them by the supplier.

➤ AAR Rajsthan in Kailash Chandra, *In re on 31st Jan 2019*

Activity of supply, design, installation, commissioning and testing of solar energy based water pumping systems and O&M work by applicant proposed to be undertaken for a Government Department is a works contract of composite supply of services taxable at 12 per cent

➤ AAR Tamilnadu in Kara Property Ventures LLP., *In re on 21st Jan 2019*

Value of supply of services provided by applicant in housing project wherein applicant had entered into two separate agreements, viz., one for 'sale of undivided share of land' and other for 'construction' with customers, measure of levy of GST on supply of service of 'construction' would be 2/3rd of total value charged for construction service and amount charged for transfer of undivided share of land, as per entry No. 3(i) of Notification No. 11/2017-C.T.(Rate), dated 28-6-2017 as amended and No. II (2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 72, dated 29-6-2017 as amended

➤ AAR Maharashtra in Precision Automation & Robotics India Ltd., *In re on 13th June 2018*

Supply and installation of 'car parking system' qualifies as an immovable property, and thereby a 'works contract' under section 2(119)

➤ **AAR Maharashtra in Shree Construction, In re on 11th July 2018**

Sub-contractor providing works contract services by way of construction, erection, commissioning, or installation to main contractor in respect of original contract works pertaining to railways would be covered for concessional rate of GST at rate of 12 per cent

➤ **AAR Karnataka in Skilltech Engineers & Contractors (P.) Ltd., In re on 21st March 2018**

Where applicant got single composite contract by a statutory company KPTCL, but with three connected agreements for supply of materials, erection and civil work, respectively, in response to a single tender notification, contract entered by applicant is 'indivisible' and squarely falls under works contract, which is a service and applicant is not entitled for benefit of concessional rate of GST at rate of 12 per cent

THANK YOU

ACS TAXCON

Lawyers and Tax Consultants



WELCOME

Job Work, ITC-04

16th October 2020

Presentation by :

A. K. Sinha , [M.Sc., LL.M.(M.U.)]
Lawyer and Consultant
ACS Taxcon



JOB WORK SERVICES

Presentation Plan

- Meaning & Nature of Job work [S.2(68)]
[GST Vs C. Excise regime]
- Extended meaning of inputs
- Procedural aspects
- ITC on goods supplied to job worker [S.19]
- Time limits for the return of processed goods
- Waste clearing provision
- Transitional provision [S.141]
- Documents for job work movement [R-45, 55]
- Inter-state supply of job work services [Notfn 7/2017 IT dt. 14.9.17. Relaxes S.24(i); Later Notfn 10/2017 IT dt. 13.10.17 relaxes for all services]
- Job work at 5% concessional rate of tax
- Eway Bill Provisions for Job work
- Classification of job work and residuary services
- Posers

JOB WORK

- **S.2(68)- Defines Job work**
- **S.143- Job work procedure (post AD)**
- **S.19- ITC i/r/o inputs/capital goods sent for job work**
- **Explanation (ii) to S.22(4)- supply of goods by job worker is Principal's supply**
- **S.141- Transitional Provisions relating to job work**
- **Table 9 (a & b) of the form GST Tran-1**
- **Rule 45: Conditions and restrictions in respect of inputs and capital goods sent to the job worker**
- **Rule 55. Transportation of goods without issue of invoice**
- **S.169, clause d- service of documents through portal**
- **CBEC Circular No. 38/12/2018 dt 26.3.18**

[Note- S.19 permits retention of credit, S.143 permits tax free movement, S.141 gives a 6 month window for completion of pre-GST job works.]

Meaning of Job Work in GST

Section 2(68) of the CGST Act, 2017 defines Job work thus :

“job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly.

- Two persons [owner of the goods and the activity doer]
- Sender (called Principal) to be registered.
- Receiver (ie activity doer called Job worker) may be registered or unregistered.
- Activity to be any process / treatment on the goods

Job Work [how different in GST?]

Section 2(68) of the CGST Act, 2017 defines Job work thus :

“job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly.

[JOB WORK in GST]

Job work in Central Excise [S.2(n) of Cenvat Credit Rules,2004]:

Job work means **processing or working upon** of raw materials or semi-finished **goods supplied to job worker**, so as to complete a part of whole of the process **resulting in the manufacture** or finishing of an article **or any operation** which is essential for the aforesaid process.

[JOB WORK in C.EXCISE]

Job Work [how different in GST?]

- Registered Job worker will pay GST on labour charges. If he is unregistered, principal will pay on RCM u/s9(4) [prior to 13.10.17]
- Principal will pay GST on job worked goods
- VAT/CST will no more be there

[JOB WORK in GST]

- Process amounting to manufacture – C.Ex duty by J.W.
[Job-worker exempted, if Principal undertook to pay]
- Process not amounting to manufacture – Service Tax by J.W.
- Job worker used own goods – VAT / CST by J.W.

[JOB WORK in C.EXCISE]

Job Work [GST Vs Excise (1)]

- If sender / owner of material is unregistered, the process undertaken will not be 'job work service', but 'residuary service' and 18% rate will be applicable.
 - Goods cleared by job-worker are treated as clearance by the principal and includible in Principal's turnover.
 - Only conversion or service charges constitutes job worker's turn over.
 - Tax and accounting liability is of Principal
- [JOB WORK in GST]**

- If goods are manufactured during job work, excise liability arises (as manufacture was the taxing event); and who has supplied the material becomes immaterial.
 - Duty payable on the basis of price at which raw material supplier sells the final product in the market.
 - Exemption was given in many cases [Cenvat rule 4(5)(a), Notfn 214/86], in view of heavy liability on job-worker. However, such clearance was added to calculate the job worker's SSI threshold of 3 crore.
 - After 1.4.2008 job worker was to pay 8% amount on job charges u/CCR 6(3, 3A) if he is was availing cenvat credit on inputs or input services.
 - Use of minor incidental material is no bar in job work. [putting own buttons by job worker while stitching shirts]
 - job work permissible even if identity of goods gets lost. [naptha for generation of electricity and steam]
- [JOB WORK in C.EXCISE]**

Nature of Job Work [GST Vs C. Excise (2)]

- As per **Schedule II (para 3) of CGST Act, 2017**, any treatment or process which is applied to another person's goods is a **supply of services**.
- Therefore, its **value will be the job-work or conversion charges**, and not the entire value of job worked goods. [Expl. (ii) of S.22]. Threshold for registration will be constituted only by such values.
- Value of **job worked goods is the Principal's turn over**.
- **liability to discharge tax** under Section 143 would lie **on the principal**.
- Journey of goods from Principal to Job-worker is not a supply, but return journey is.

- Job work is '**business**', not mere service.
- **Liability is fastened on job worker, if the job work amounts to manufacture**. In that case, the value of job-worked goods are included in job-worker's turn over for computing his exemption threshold of 3 crore.
- **Raw material supplier or Brand name owner or Loan licensee is not the manufacturer**. [Automobile manufacturers Bajaj, Maruti, Mahindra often get auto-parts manufactured on job work basis; Not Cloth supplier, but tailor is manufacturer] [**unless** job-worker is dummy, agent, employed labour – then it is manufacture on principal's own account i.e in his control, direction and supervision]

Gist of Section 143

[allows tax free to & fro job work movement within time]

- **Intimation** required for to & fro, as well as JW1 to JW2 movement [ITC4 itself is intimation].
- **Not compulsory**. Principal can send after paying GST too.
- Not applicable to **exempted or non-taxable** goods or to unregistered Principal.
- For **out and out final supply** from Job worker's premises, the job worker should be registered, or if not, his premises should figure as additional POB of the principal in the Principal's registration.
- **Accounting liability** is of the principal. S.143(2)
- If time line for return / out and out clearance is defaulted, then it will be **deemed supply** by the principal ab initio. S.143(3 & 4).
- **Waste/scrap** can be cleared directly by job worker. Tax on it will be paid by the job worker if he is registered, or by the principal in otherwise case. [143(5)]
- **Input includes** partially processed goods by the principal. [143(5)]

S.143 permits tax free movement (to & fro) & out and out supply on tax payment

143. (1) A *registered person* (hereafter in this section referred to as the “*principal*”) may *under intimation* and subject to such *conditions* as may be prescribed, send any *inputs or capital goods*, without payment of tax, to a job worker *for job work* and from there subsequently send *to another job worker* and likewise, and shall, —
- (a) bring back inputs, after completion of job work or *otherwise*, or capital goods, *other than moulds and dies*, jigs and fixtures, or tools, *within one year and three years*, respectively, of their being sent out, *to any of his place* of business, without payment of tax;
- (b) *supply* such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, *within one year and three years*, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—

- (i) where the job worker is registered under section 25; or*
- (ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.*

Thus, For out and out final supply from Job worker's premises, the job worker should be registered, or if not, his premises should figure as additional POB of the principal in the Principal's registration. [how about inter state job worker?]

Ab-initio Deemed Supply if goods not returned / cleared in time [1 year for input, 3 yr for Capital goods & no time for moulds & dies etc.

S.143(2) The *responsibility* for keeping proper accounts for the inputs or capital goods shall lie *with the principal*.

S.143(3) Where the *inputs* sent for job work are *not received back* by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are *not supplied from the place of business of the job worker* in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it *shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out*.

Waste, Scrap can be cleared by regd Job worker, or by Principal

- S.143(4)- Where the *capital goods*, other than moulds and dies, jigs and fixtures, or tools, sent for job work are *not received back* by the principal in accordance with the provisions of clause (a) of sub-section (1) or are *not supplied from the place of business of the job worker* in accordance with the provisions of clause (b) of sub-section (1) within a period of *three years* of their being sent out, it shall be *deemed that such capital goods had been supplied by the principal to the job worker* on the day when the said capital goods were sent out.
- S.143(5)- Notwithstanding anything contained in sub-sections (1) and (2), any *waste and scrap generated* during the job work *may be supplied by the job worker directly* from his place of business on payment of tax, *if such job worker is registered, or by the principal*, if the job worker is not registered. Explanation. —For the purposes of job work, *input includes intermediate goods* arising from any treatment or process carried out on the inputs by the principal or the job worker.

Gist of S.19:- permits availment & retention of credit even without possession of goods

- ITC on inputs/capital goods sent for Job worker is allowed to Principal. S.19(1 & 4)
- Even when sent directly to JW without first being brought to his POB. S.19(2 & 5) [overrides S.16(2)(b)]
- S.143 allows tax free job work movement (to & fro, also JW1 to JW2 and back to principal) of inputs/CG if the processed goods are back within 1yr / 3 yrs. If timeline expires, then inputs are deemed to have been supplied on the date when they were initially sent out for job work. [S.19(3) for inputs & S.19(6) for CG]
- Timeline not applicable to moulds and dies, jigs and fixtures, or tools. [19(7)]
- Principal means registered person who sends for job work. [explanation to S.19]

Gist of Rule 45:- movement on Rule 55 challan; Quarterly ITC-04, delayed return to be reported in GSTR-1

- Movement on Rule.55 challan
- Quarterly ITC-04 [\[>>>>\]](#)
- delayed return to be reported in GSTR-1
- Tax with interest payable

Disposal of waste / scrape generated s.143(5)

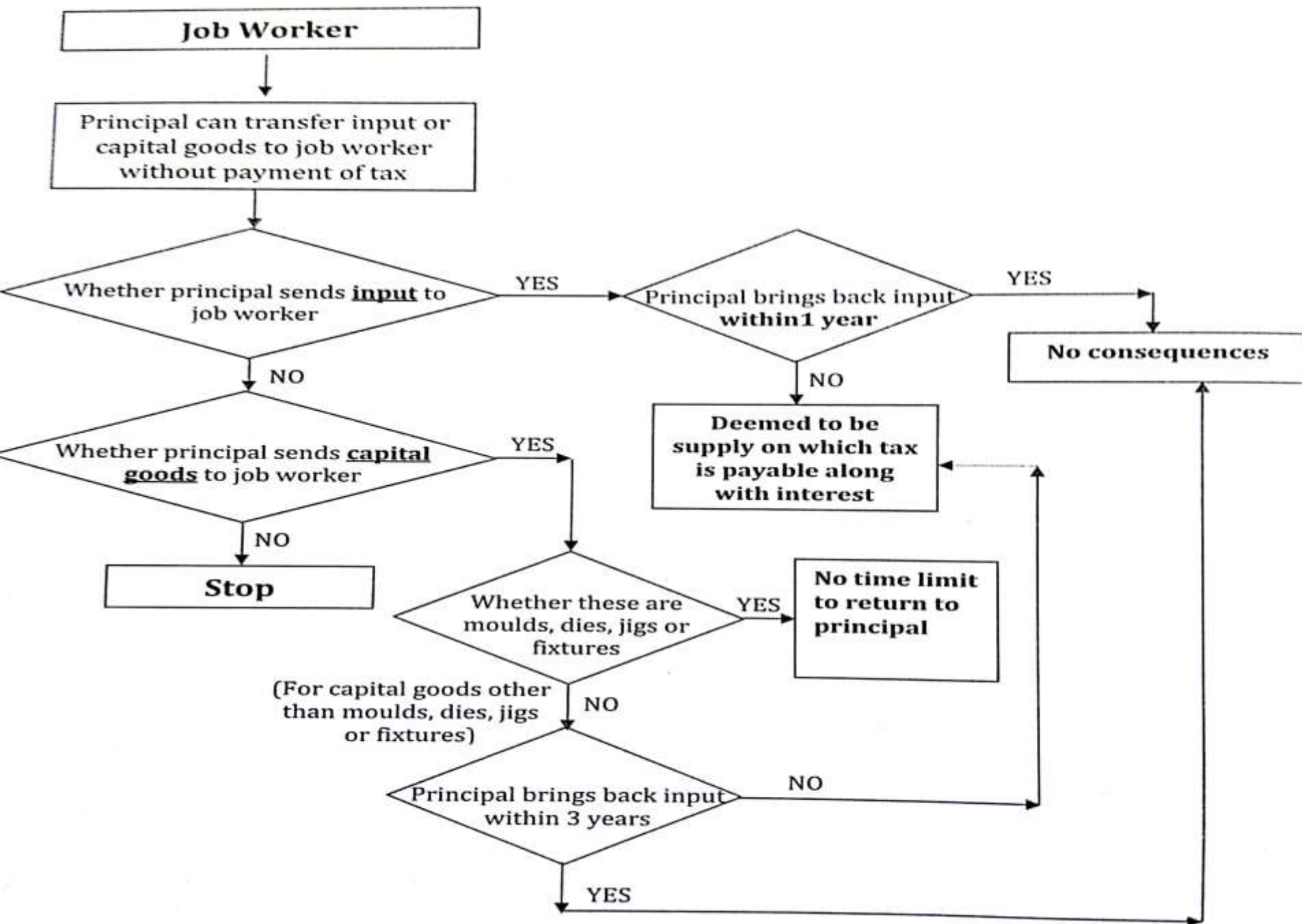
If waste / scrap arise in the course of job work, then –

- RD job worker will return or clear on tax payment.
- If URD job worker, then Principal will pay tax
- Principal will maintain records for it.

Contents of Challan – Rule 45(1) r/w Rule 55

- i. Number and date of the delivery challan
- ii. Name, address and GSTIN of consignor, if registered.
- iii. Name, address and GSTIN or UIN of the consignee, if registered.
- iv. HSN code and description of goods.
- v. Quantity (provisional if exact not known)
- vi. Taxable value
- vii. Tax rate and tax amount (c/s/i/cc) where the transportation is for supply to the consignee
- viii. Place of supply, in case of inter-state movement
- ix. Signature.

JOB WORK PROCEDURE



Transitional Provisions for Job Work

Gist of S. 141 (Transitional Provision)

- Simultaneously applicable to inputs, semi-finished goods and finished goods.
- Purposes include further processing, testing, repair or any other purpose.
- **Return** of goods within **6 [+2] months** from AD will be **GST free** (but only if **stock declared** by both).
- **If not** returned in time – then Principal will reverse ITC [u/142(8)(a)] which will not be taken as credit again (i.e. will lapse)
- Semi finished or finished goods can be transferred to any taxable person for final clearance therefrom.

Gist of S. 141 (Transitional Provision)

[tax free return, but only if within 6 months & stock declared by both. Otherwise non-creditable reversal of initial credit]

Return of goods within 6 months from AD will be GST free (but only if stock declared by both).

If not returned in time – then Principal will reverse ITC which will not be taken as credit again (i.e. will lapse)

S.141		Transitional provisions relating to job work
141(1)	Inputs [for processing, testing, repair, reconditioning, other]	<p>Inputs as such or partially processed inputs removed to job worker before AD, but are returned after AD : -</p> <ul style="list-style-type: none"> •If returned within 6 months from AD (+ upto 2 moths by Commr) >> then NO GST payable. •If not > then credit recoverable in accordance with S.142(8)(a) [ie. Proceedings initiated earlier, but recovered now – then ITC of recovered amount will not be allowed] •Back to same premises, and not to another job worker or out and out. After job work or as it is. ?
141(2)	Semi-finished goods [for manufacturing]	<p>Similar treatment</p> <p>Note- Out and out clearance from Job worker's premises- Manufacturer can transfer (as per existing law) the job-worked goods from the job-worker's premises to any registered person for the supply there from on payment or for export.</p>
141(3)	Finished goods [for testing, other]	<p>Similar to above.</p> <p>Goods after test repair can be cleared out and out on payment in India, for on/without payment for export.</p>

NOTE- In case of above three [ie input, semi-finished and finished goods sent out] tax will be free only when both the manufacturer and the job worker declare the details of stock with job worker on AD.

Goods type	Sec #	Proce-ssing	Test-ing	Rep-air	Recon-dition-ing	Manuf-acturing	Other purpo-se
Inputs <i>as such</i>	141(1)	✓	✓	✓	✓	✓	✓
Inputs <i>Semi-processed</i>	141(1)	✓	✓	✓	✓	✓	✓
Semi-finished	141(2)	✗	✗	✗	✗	✓	✗
Finished	141(3)	✗	✓	✗	✗	✗	✓

Section Ref #	Trsf to anthr Reg. Prms	Supply to RD	Supply to URD	Exports
141(1)	✗	✗	✗	✗
141(2)	✓	✓	✗	✓
141(3)	✓	✓	✗	✓

Circulars on Job Work

From new Circular no. 38/12/2018 dt 26.3.2018

- Activity whether amounts to job work or not is decided on **case to case basis**.
- Job worker can use his **own goods**.
- Job work benefit is **optional**
- Job worker will take **registration only after crossing 20/10 lakh** (except J&K) turn over regardless of whether the principal and job worker are located in the same or in different States.
- Out and out supply from the job worker's place is **supply by Principal** (and not by job worker)
- Rule 45/55 amended by Notfn 14/18-CT dt 23.3.18 to provide that –
 - In case of P to JW, JW1 to JW2, Input manufacturer to JW directly, the Job worker can **endorse the challan** issued by the Principal.
 - Principal will include these **details in ITC-4**.
 - Also, **for every movement** the principal (or the registered job worker) will generate **Eway bill** (for any value)

- Eway Bill- Rule 45 says that the Principal will issue Delivery challan, while Rule 55 says that consignor will issue delivery challan.
- Principal will issue Eway bill, if job worker is URD.
- P to JW:-
 - ITC 4 will serve as **intimation**
 - Principal will prepare **3 copies of DC**, will send two copies to JW. Job worker will return one copy with the job worked goods.
- JW1 to JW2
 - **Either Principal or Job worker will issue DC**
 - Or else, job worker will endorse the one copy of DC (out of two received initially from Principal while receiving inputs) in the name of JW2.
 - JW2 (or Principal) can issue fresh DC or the JW2 will send to JW3 or back to Principal by re-endorsing the copy received from JW1.
- Supplier to JW (directly)
 - Goods **may move on supplier's invoice up to JW** (invoice showing sold to Principal & consigned to job worker)
 - **Principal will issue DC and will send to job worker directly.**
 - Similarly **imported input** can go from Port to Job worker on copy of Bill of entry, and importer Principal will send a DC directly to job worker.
- Where job worker returns or sends to another job worker the goods in **piecemeal**, then Principal or he will prepare fresh challan i.e. **endorsed challan will not do.**

- **Principal will be responsible** for including all the movements / transactions under each and every such challans in quarterly ITC-4 and file by 25th of next quarter.
- Supply of **Job work services**:
 - Job worker will pay **GST on job charges** if he is liable to be registered.
 - He will issue **invoice at Time of Supply** u/s 13.
 - S. 15 value on invoice will be **his job charges + value of his own goods used** (if recovered from Principal)
 - **Value of moulds, tools etc supplied by Principal may not be included** if it is factored in deciding the job work charges (i.e. price of job work service).
 - **If job worker is URD, then Principal will pay GST** on procurement of job work services from URD u/s 9(4).
- For out and out sale from job worker's place:
 - The **Principal will issue invoice and execute LUT**, if exported from there.
 - **Inter / intra nature** will be decided with reference to Principal's location as 'From' and recipient's location as 'To' **regardless of location of job worker**.
 - Invoice will be issued by the Principal to the recipient, and goods will move from job worker to recipient.
- Supply of Waste / scrap
 - **Can be sold directly by RD job worker on payment** or by principal if job worker is URD.
 - **Inter / intra** will be decided as above (mutatis mutandis)
 - Whose supply will it be if RD job worker directly sells the scrap?

- Violation of Section 143: If neither returned, nor out-and-out cleared within 1/3 yrs, then:
 - Principal will issue an invoice (on self?) and report / show it in GSTR-1
 - He will pay GST + interest [will JW get credit of it?]
 - Subsequent return i.e. delayed return will be treated as supply by the job worker to Principal.
 - Therefore, job worker will pay GST on full value (ie goods value + job charges) as supply of goods. [will Principal get credit of it?]
- Credit availability to Principal and JW
 - RD job worker will take credit on his own goods used in doing job work.

From Circular No.
47/21/2018-GST dt
8.6.18

Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case?

1.1 Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis **does not constitute a supply as there is no consideration** involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is **no requirement for reversal of input tax credit** availed on such moulds and dies by the OEM.

1.2 It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis **shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer** and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the Central Goods and Services Tax Act, 2017 (CGST Act for short).

1.3 **However**, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, **the amortised cost of such moulds/dies shall be added to the value of the components. In such cases, the OEM will be required to reverse the credit** availed on such moulds/dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.

RECENT CHANGES:-

CBIC vide **Circular No. 126/45/2019-GST, dated November 22, 2019** has clarified that manufacturing services carried out on physical inputs (goods) which are owned by unregistered persons shall be taxable at rate of 18% GST.

doubts have been raised with regard to scope of the notification entry at item (id) under heading **9988** of Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 inserted with effect from 1-10-2019 to implement the recommendation of the GST Council to reduce rate of GST on all job work services, which earlier attracted 18% rate, to 12%. It has been stated that **the entry at item (id) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 inserted with effect from 1-10-2019, prescribes 12% GST rate for all services by way of job work.** This makes the entry at item (iv) which covers "manufacturing services on physical inputs owned by others" with GST rate of 18%, redundant.

In view of the above, it may be seen that there is a clear demarcation between scope of the entries at item (id) and item (iv) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017. Entry at item (id) covers only job work services as defined in section 2(68) of CGST Act, 2017, that is, services by way of treatment or processing undertaken by a person on goods belonging to another **registered** person. On the other hand, **the entry at item (iv) specifically excludes the services covered by entry at item (id), and therefore, covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under the CGST Act.**

Classification & GST Rates on Job Work

Classification of Job work:-

- Job work is supply of service as per Sch II.
- Service classification for manufacturing services on physical inputs (goods) owned by others (job work) is **9998**.

Recent changes:-

- The new entry inserted at item (id) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 with effect from 1-10-2019, to prescribe **12% GST rate for all services by way of job work**.
- **1.5% rate on Services by way of job work in relation to diamonds** falling under chapter 71 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) [n/n 20/19 CTR and 19/19 ITR dt 30.9.19]
- **18% rate on Services by way of job work in relation to bus body building** .
[n/n 20/19 CTR and 19/19 ITR dt 30.9.19]

- In case of material recovery services, the GST rate is 18%
- if person sending goods for job work is unregistered, GST rate is 18%

Concessional rate of 5% on job work services in relation to:

- i. Manufacture of umbrella
- ii. Printing of all goods of chapter 48 & 49, which attract IGST @ 12%.
- iii. Printing of newspapers, books, journals, periodicals [but 12% if only content is supplied by publisher, and physical inputs including paper etc belongs to printer.]
- iv. Processing of hides, skins and leather of ch 41
- v. All food and food products of ch 1 to 22
- vi. All products of ch 23 except dog and cat food...
- vii. Manufacture of clay bricks

- Jewellery Job work – 5%

[rate on jewellery is 3%. However jeweller has to pay 5% on making charges of jewellery, but will be able to recover only 3%. Input credit of 3% will be available as refund on making charges if any.]

- Job work of cultivation of plants and rearing of animals- Exempt. [Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce is exempt from GST. This service falls under 9986. (n/n 12/17 CTR & 9/17 ITR both dt 28.6.17 wef 1.7.17)]

➤ **Job Work services-**

- in relation to manufacture of those handicraft goods in respect of which the casual taxable person has been exempted from obtaining registration--- reduced to 5% with full ITC.
- Tailoring – 5%
- Textile printing – 5%
- Jewellery – 5%
- Leather goods & footwear – 5%

Registration for job worker

- The their circular No. 38/12/2018, dated 26.03.2018 clarifies the issue on the requirement of obtaining registration by job workers when they are located in the same State where the principal is located or when they are located in a State different from that of the principal.
- The circular clarifies that the job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit (Rs.20 lakhs or ₹ 10 lakhs in case of special category of States except Jammu & Kashmir) in case both the principal and the job worker are located in the same State.
- Where the principal and the job worker are located in different States, the job worker is required to be registered compulsorily under the provisions of section 24(i) of the Act which provides compulsory registration of suppliers making any inter-State supply of services. However exemption from registration has been granted in case the aggregate turnover of inter-State supply of taxable services does not exceed ₹ 20 lakhs or ₹ 10 lakhs vide Notification No. 10/2017-Integrated tax, dated 13.10.2017.
- As such the circular clarifies that the **job worker is to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.**

Quarterly Return for Job Worker (ITC-04)

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➤ As per Rule 45(3) r/w circular No. 38/12/2018, dated 26.03.2018

- The principal is required to file Form ITC – 04 every quarter furnishing the details of challans in respect of goods sent to a job worker or received from a job worker or sent from one job worker to another job worker by 25th day of the month succeeding the quarter or within such period as may be determined by the Commissioner.
- It is the responsibility of the principal to include the details of all challans relating to goods sent by him to one or more job worker or from one job worker to another and its return there from.

LATER CHANGES:-

The Central Government vide Notification No. 38/2019- CT dated 31 st August, 2019 have notified a special procedure for the class of registered persons required to furnish the details of challans in FORM ITC-04 under sub-rule (3) of rule 45 of the CGST Rules, 2017 that

- the said persons shall not be required to furnish FORM ITC-04 for the period July, 2017 to March, 2019.
- However, the said persons shall furnish the details of challans in respect of goods dispatched to a job worker in the period July, 2017 to March, 2019 but not received from a job worker or not supplied from the place of business of the job worker as on the 31 st March, 2019, in serial number 4 of FORM ITC-04 for the quarter April-June, 2019.

➤ [Notification No. 38/2019-C.T., dated 31-8-2019]

Job work — Furnishing of details in FORM ITC-04, in respect of goods dispatched to a job worker during July, 2017 to March, 2019

- In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the registered persons required to furnish the details of challans in **FORM ITC-04 under sub-rule (3) of rule 45** of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), read with section 143 of the said Act, as the class of registered persons who shall follow the special procedure such that the said persons shall not be required to furnish **FORM ITC-04** under sub-rule (3) of rule 45 of the said rules for the period July, 2017 to March, 2019 :
- Provided that the said persons shall furnish the details of all the challans in respect of goods dispatched to a job worker in the period July, 2017 to March, 2019 but not received from a job worker or not supplied from the place of business of the job worker as on the 31st March, 2019, in serial number 4 of **FORM ITC-04** for the quarter April-June, 2019.

Eway Bill i/r/o job work

➤ As per Rule 138 r/w circular No. 38/12/2018, dated 26.03.2018

- Rule 138 provides that an e-way bill is required to be generated by every registered person who causes movement of goods of consignment value exceeding ₹ 50,000/-.
- The third proviso to Rule 138 provides that the e-way bill **shall be generated by the principal or by the registered job worker irrespective of the value of the consignment**, where goods are sent by a principal located in one State/Union territory to a job worker located in any other State/Union territory.
- The circular clarifies the e-way bill shall be generated by the principal, wherever required in case the job worker is unregistered.

TOS & VOS in case of Job Work

➤ Clarification to the issue of invoice, time of supply and value of supply

- The circular clarifies that the job worker is liable to pay tax if he is liable to be registered. He shall issue an invoice at the time of supply of the services. The value of services would be determined in terms of section 15 and **would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal.**
- The circular clarifies that the **value of moulds and dies, jigs and fixtures or tools may not be included in the value of job work services, provided its value has been factored in the price for supply of such services by the job worker.**
- If the job worker is not registered the principal is liable to pay tax under reverse charge mechanism. [kept in abeyance on 13.10.17]
- If the goods are sent from the principal to the job worker, the circular clarifies that the **time, value and place of supply would have to be determined in the hands of the principal irrespective of the location of job worker's place of business. The invoice should have to be issued by the principal. In case of exports directly from the job worker's place of business, the LUT or bond shall be executed by the principal.**

Place of supply in case of Job Work

- As per circular No. 38/12/2018, dated 26.03.2018, place of supply will be determined in the hands of the principal irrespective of the location of job worker's place of business.
- In S.13(3)(a)- the Second proviso was substituted with a new one, saying that, Temporary import for repair / job work:- 'actual performance location' rule will not apply. That means POS, as per default rule will be 'recipient location', which will be outside India, and therefore, no GST. [job work included now in addition to repair]

THANK YOU

ACS TAXCON

Lawyers and Tax Consultants



[FORM GST ITC-04]

Form No. 49

[See rule 45(3)]

Details of goods/capital goods sent to job worker and received back

1. GSTIN -
2. (a) Legal name -
(b) Trade name, if any -
3. Period : Quarter - Year -
4. Details of inputs/capital goods sent for job work (includes inputs/capital goods directly sent to place of business/premises of job worker)

GSTIN/ State in case of unregistered job worker	Challan No.	Challan date	Description of goods	UQC	Quantity	Taxable value	Type of goods (Inputs capital goods)	Rate of tax (%)			
								Central tax	State/ UT tax	Integrated tax	Cess
1	2	3	4	5	6	7	8	9	10	11	12

5. Details of inputs/capital goods received back from job worker or sent out from business place of job work
- (A) Details of inputs/capital goods received back from job worker to whom such goods were sent for job work; and losses and wastes :

GSTIN/ State of job worker if unregistered	Challan No. issued by job worker under which goods have been received back	Date of challan issued by job worker under which goods have been received back	Description of goods	UQC	Quantity	Original challan No. under which goods have been sent for job work	Original challan date under which goods have been sent for job work	Nature of job work done by job worker	Losses & wastes	
									UQC	Quantity
1	2*	3*	4	5	6	7*	8*	9	10	11

- (B) Details of inputs/capital goods received back from job worker other than the job worker to whom such goods were originally sent for job work; and losses and wastes :

GSTIN/State of job worker if unregistered	Challan No. issued by job worker under which goods have been received back	Date of challan issued by job worker under which goods have been received back	Description of goods	UQC	Quantity	Original challan No. under which goods have been sent for job work	Original challan date under which goods have been sent for job work	Nature of job work done by job worker	Losses & wastes	
									UQC	Quantity
1	2*	3*	4	5	6	7*	8*	9	10	11

- (C) Details of inputs/Capital goods sent to job worker and subsequently supplied from premises of job worker; and losses and wastes :

GSTIN/ State of job worker if unregistered	Invoice No. in case supplied from premises of job worker issued by the Principal	Invoice date in case supplied from premises of job worker issued by the Principal	Description of goods	UQC	Quantity	Original challan no. under which goods have been sent for job work	Original challan date under which goods have been sent for job work	Nature of job work done by job worker	Losses & wastes	
									UQC	Quantity
1	2	3	4	5	6	7*	8*	9	10	11

Instructions :

1. Multiple entry of items for single challan may be filed.
2. Columns (2) & (3) in Table (A) and Table (B) are mandatory in cases where fresh challan are required to be issued by the job worker. Otherwise, columns (2) & (3) in Table (A) and Table (B) are optional.
3. Columns (7) & (8) in Table (A), Table (B) and Table (C) may not be filled where one-to-one correspondence between goods sent for job work and goods received back after job work is not possible.

6. Verification :

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature

Place :

Name of Authorised Signatory

Date :

Designation/Status.....]
