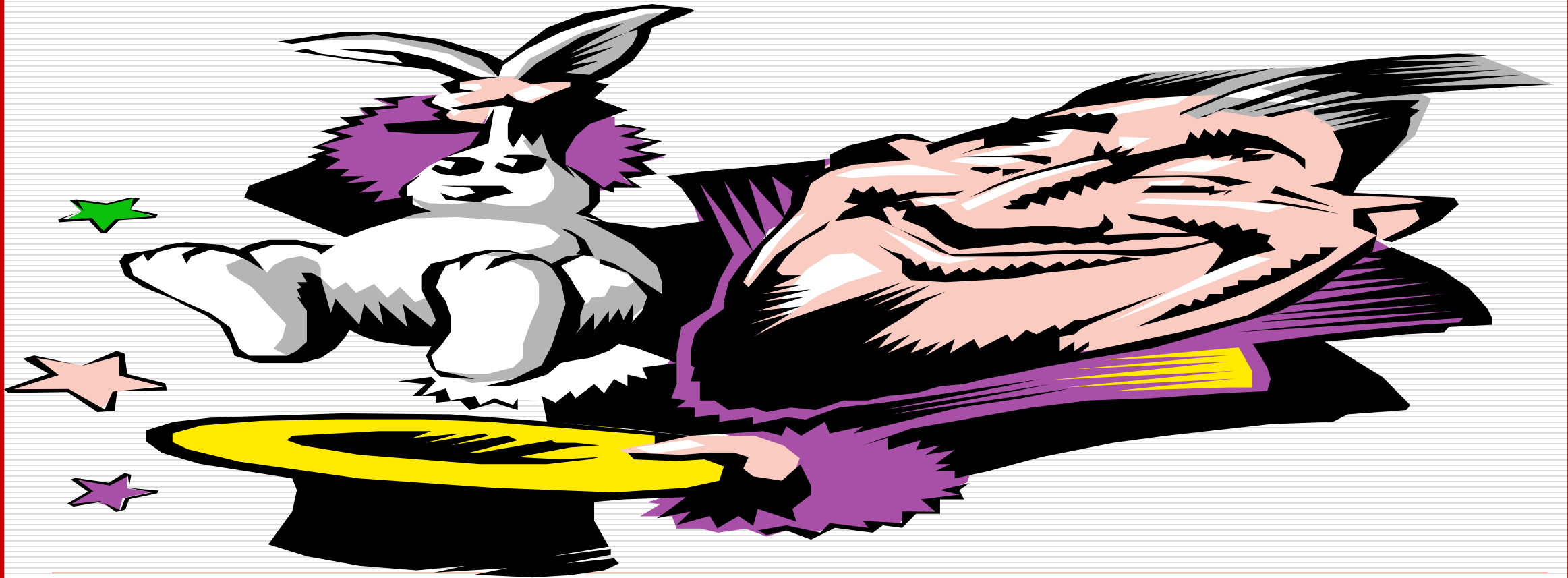


Taxability of Works Contract and Job works under GST Laws

By

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Status of Works Contract – Time to Time

Till 1st June 2007

1st June 2007- 1st July 2012

1st July 2017- till GST

In GST Regime

Works Contract under Sales Tax Act / VAT Act

State of Madras v. Gannon Dunkerley & Co., (Madras) Ltd. - AIR1958 SC 560,

- ❑ “in case of a works contract, the dominant intention of the contract is the execution of works, which is a service and there is no element of sale of goods (as per Sale of Goods Act)”.

State of Madras v. Gannon Dunkerley & Co., 2015 (330) E.L.T. 11 (S.C.)

- ❑ the expression “sale’ in *nomen juris* would only mean and include transfer of property in goods as “Chattle Qua Chattle” and would not cover within its ambit, sale of goods in an indivisible works contract.
- ❑ a divisible contract of sale and service can be taxed on the “sale” portion whereas an indivisible works contract cannot be taxed as “sale’.

Works Contract under Sales Tax Act / VAT Act

Kone Elevator India Private Limited v. State of Tamil Nadu reported in 2014 (304) E.L.T. 161 (S.C.),

- if the terms of the contract disclose or lead to a definite conclusion that it is not a **“works contract”**, but one of outright sale, the same will have to be declared as a **‘sale’** attracting the provisions of the relevant sales tax enactment. Therefore, the manufacture, supply and installation of Lifts/Elevators comes under definition of **“sale”** and not **“works contract”** and accordingly overruled the earlier decision rendered in ***State of A.P. v. Kone Elevators* - 2005 (181) E.L.T. 156 (S.C.)**.

After Article 366 clause 29 (A) post the 46th amendment – Till 1st June 2007

❑ The relevant clause reads as follows-

❖ "(29A) tax on the sale or purchase of goods includes
(b) a tax on the transfer of property in goods (whether as goods or in some other form) invoked in the execution of a works contract;"

Builders Assn. of India v. Union of India [1989] 2 SCC 645 .

"After the 46th Amendment the works contract which was an indivisible one is by a legal fiction altered into a contract which is divisible into one for sale of goods and the other for supply of labour and services. After the 46th Amendment, it has become possible for the States to levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in the building contract which had been entered into in two distinct and separate parts as stated above."

After Article 366 clause 29 (A) post the 46th amendment – Till 1st June 2007

Dominant intention- A contract shall be divided into two separate parts i.e.,

- ❖ Sale of goods and
- ❖ Supply of services,

□ **A dominant intention to transfer property in goods :** when intent is to transfer the property.

□ **Not:** when materials used or transfer of property takes place incidentally while providing services

- ❖ *Hindustan Aeronautics Ltd. v. State of Karnataka* [1984] 55 STC 314 and
- ❖ *Maharashtra Mudran Parishad v. State of Maharashtra* [2005] 139 STC 193 (Bom.).

What Prompted Govt. to Levy Tax on WC Services

Delim Industrial co ltd. V. State of Assam(2003)130 STC53(Gau)

➤ **WC tax payable only on goods not on design & engineering.**

CCE&C v. Larson & Toubro Ltd. 2004 (174) ELT 322 -Tri-Del

➤ **lump sum works contract cannot be vivisected & part of it can not be subjected to service tax**

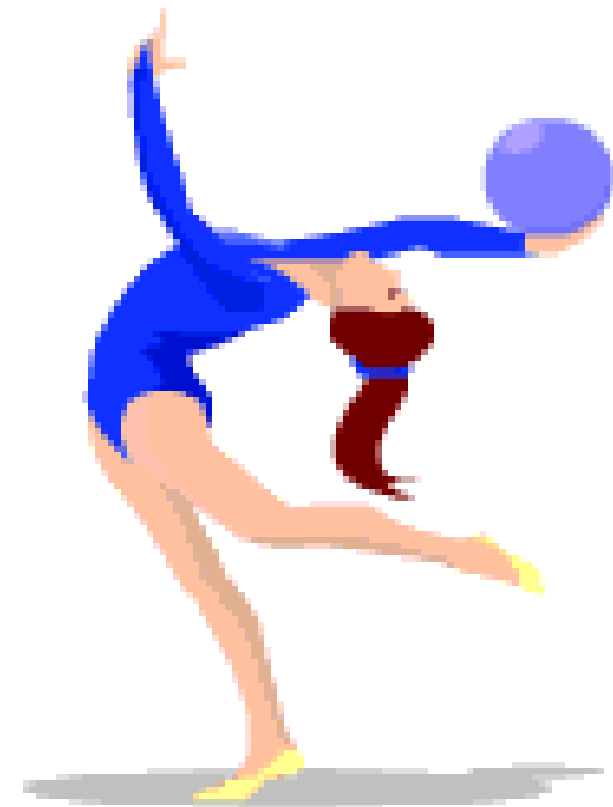
**Daelim Industrial Co Ltd V. CCE Vadodora,
2003(155)ELT457-Tri-Del**

➤ **Turnkey contract can not be vivisected artificially**

➤ **No levy service tax on design,& detailed engineering, commissioning of plant.**

Supreme Court in BSNL's case [2006(2) STR 161 (SC)],

➔ **a works contract can be segregated into a contract of sale of goods and contract of provision of service.**



Bharat Sanchar Nigam Ltd. v. Union of India
[2006] 3 SCC 1 , on 2 March, 2006,

"Before levy of sales tax all other transactions would have to qualify as sales within the meaning of Sale of Goods Act, 1930... But these services do not involve a sale for the purpose of Entry 54 of List II (State List) of Schedule VII to the 7 Constitution even after the Forty-sixth Amendment for reasons ultimately attributable to the principle enunciated in Gannon Dunkerley's Case (1958) 9 STC 353 (SC), viz. if there is an instrument of contract which is composite in form, in any case other than the exceptions specified in Article 366 (29A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, the State would have no power to separate the 'agreement to sell' from the 'agreement to render service' and impose tax on the sale element. The test therefore for composite contracts other than those mentioned in Article 366 (29A) continues to be: did the parties have in mind or intend separate rights arising out of the sale of goods, and if there was no such intention there is no sale even if the contract could be disintegrated."

Works contract - 1st June 2007- 1st July 2012

- ☐ Notification No. 23/2007-ST – Covered under Service tax - Section 65(105)(zzzza)
- ☐ Rule 2A of the Service Tax (Determination of Value) Rules, 2006:
- ☐ Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007

Section 66E: Declared Services -1st July 2012- Till GST

Works contract is given in section [65B\(54\)](#)

"Works contract means 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

Works Contract under GST Laws.

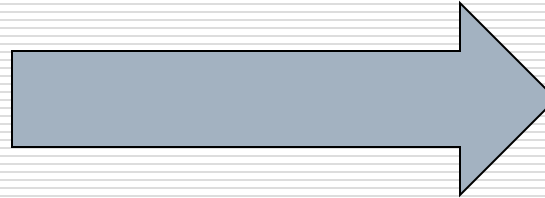
- Activities covered under **Schedule II** are to be treated as a **supply** of the nature described under **section 7(1A) of the GST Act.** (**Section 7(1A)** is inserted *by the Central Goods and Services Tax (Amendment) Act 2018 (No. 31 of 2018)* **which is applicable w.e.f. 01.02.2019**
- As per **Para 6 (a) of Schedule II** to the **CGST Act, 2017**, **works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a supply of services.**

GST Schedule II (Entry 6(a))

“Works Contracts” - Section 2(119) of the CGST Act, 2017.

❑ *“works contract” - 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.”

GST Schedule II (Entry 6(a))

“Works Contracts” - Section 2(119) of the CGST Act, 2017.

- ❑ Expression ‘**works contract**’ is limited to contracts to do with **immovable property**.
- ❑ A contract will amount to a ‘**works contract**’ only **where there is a transfer of property** in goods, while such a transfer may result in goods or anything else (i.e., immovable property).
- ❑ Example: Contract has been restricted to contract for building construction, fabrication installation , repair , renovation, modification etc of any immovable property only.
- ❑ Any such **composite supply undertaken on goods which are movable will not** fall within the definition of term works contract per se under GST.

Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST.

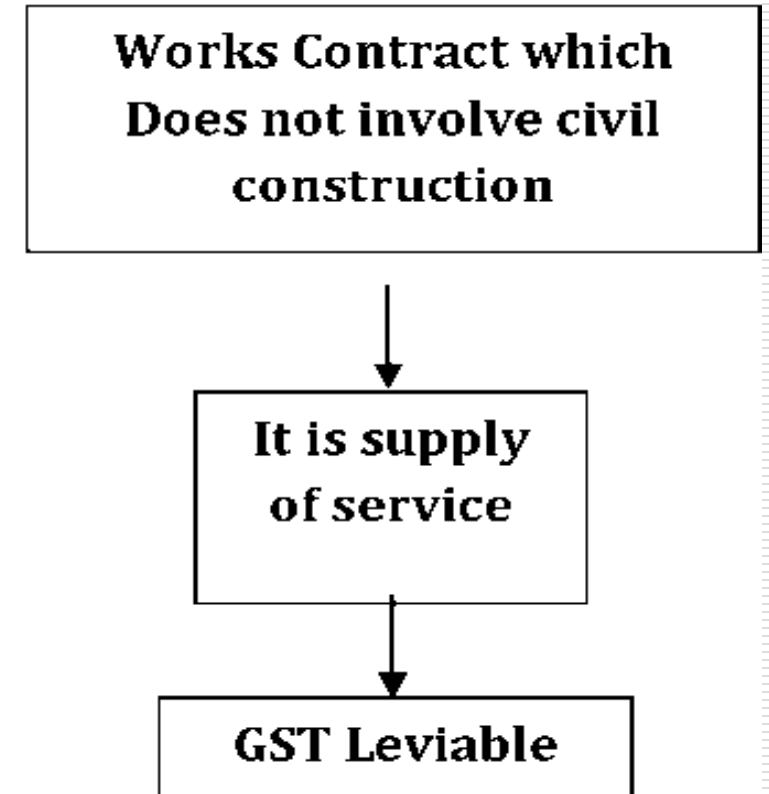
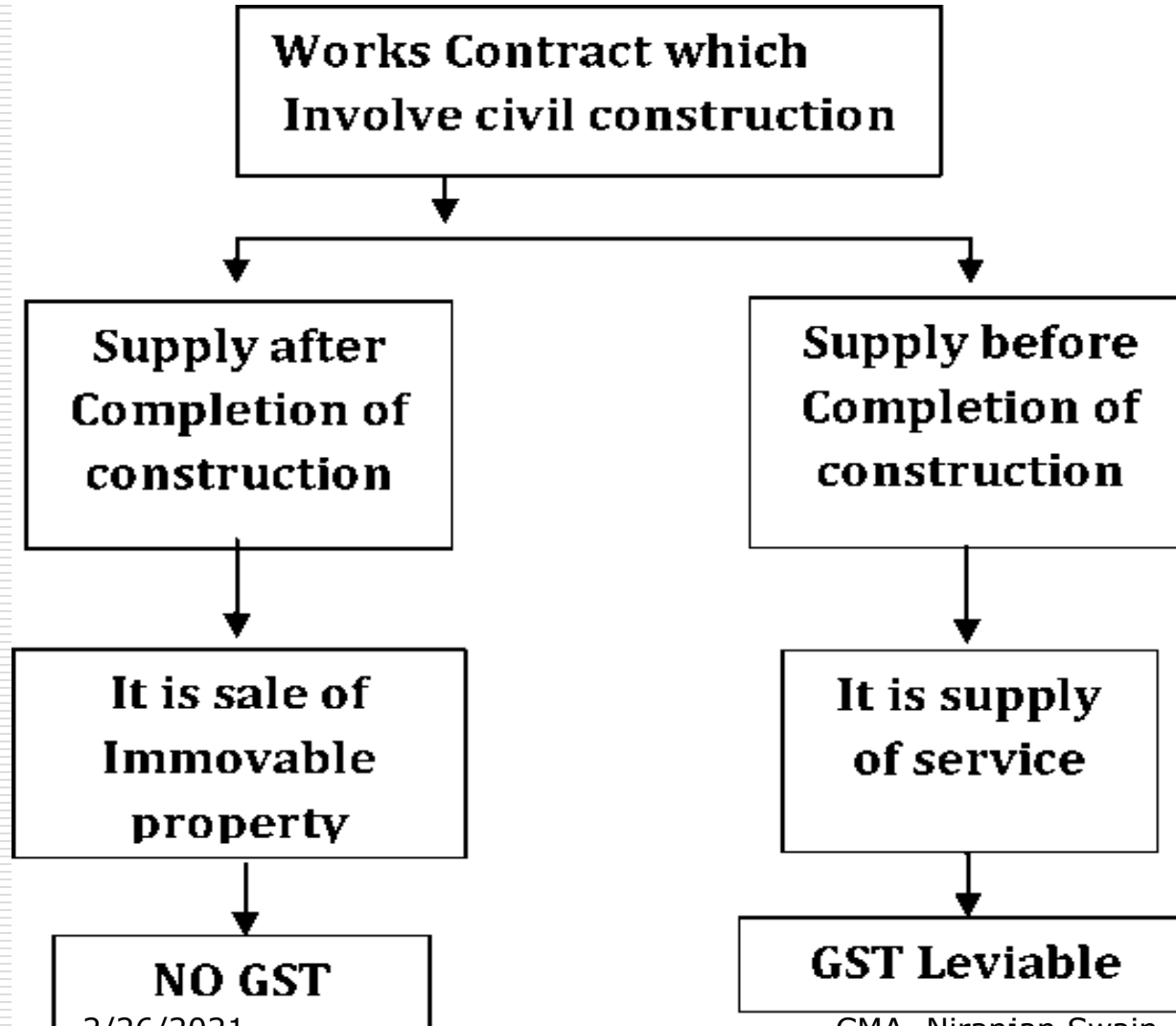
What is Composite Supply & its taxability

- ❑ **Composite Supply:** *two or more supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.*
- ❖ **Example:** *CIF supply (goods are packed and transported with insurance - the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply).*
- ❑ Taxable at the rate applicable to Principal supply

What is Mixed Supply – how taxable

- ❑ **Mixed Supply:** two or more individual supplies of goods or services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.
- ❑ **Example:** a supply of package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juice when supplied for a single price.
- ❑ **Taxable at the highest rate of tax applicable** among the supplies made.

Works Contract – Under GST



Meaning of Immovable Property Meaning

- ❑ The term “immovable property” is not defined under GST Laws.
- ❑ Section 3(26) of the General Clauses Act 1897: mean,

“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”

**“Attached to the earth” is not defined in the GST law,
Section 3 of the Transfer of Property Act, 1882 :
it as anything**

- ❖ Rooted to the earth, as in case of trees and shrubs;
- ❖ Imbedded in the earth, as in the case of walls and buildings
- ❖ Attached to what is so imbedded for the permanent

Meaning of Immovable Property Meaning

Section 2 (6) of the Registration Act, 1908 : immovable property means –
“Immovable Property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;”

Section 3 of the Transfer of Property Act

□ *“immoveable property” does not include standing timber, growing crops or grass;”*

Meaning of Immovable Property Meaning

In case of Sirpur Paper Mills Ltd v. Collector of Central Excise, Hyderabad (1998) 1 SCC 400 it was held that –

Excise duty on paper making machine – Attached to earth for operational efficiency – If the appellant wanted to sell the paper-making machine it could always remove it from its base and sell it – Held as movable.

In case of G. Industries Ltd. V. CCE, Raipur (2004) 167 ELT 501 (SC) it is held that –

Machinery was erected at the site on a specially made concrete platform at a level of 25 ft. height – Considering the weight and volume of the machine and the processes involved in its erection and installation – held as immovable property which could not be shifted without dismantling the same.

Meaning of Immovable Property Meaning

❑ **Quality Steel Tubes Ltd. Vs. Collector 1995 (75) ELT 17 (SC)**

where in the supreme court was called upon to decide whether a tube mill and welding head which were erected and installed by the appellant to form part of a tube mill were excisable. *It was held that the goods which are attached to the earth & thus become immovable do not called as goods as per the meaning under the act.*

❑ **Shapoorji Pallonji & Co. Vs. UOI 2005 (192) ELT 92 (Bom),** held that *trusses, columns and purlins made by cutting/ drilling/welding steel channels, angles, plates, and erecting them on concrete columns with nuts and bolts whereby they became part of structure embedded to earth being immovable property would not excisable.*

Meaning of Immovable Property Meaning

Commissioner of Central Excise vs. Corrodt Egg. Works 2010 (252) ELT 481 (SC)

Apex court while deciding whether setting up of an Asphalt Drum Mix Plant were immovable property or whether the assessee was engaged in making of components of such plant

Once such a machine is fixed, embedded in a permanent structure, the movable character of the machine becomes extinct.

Meaning of Immovable Property Meaning

- **M/S. T.T.G. Industries Ltd., Vs Collector Of Central Excise [2004(167) ELT 501 (SC)]**. The contract here was for the design, supply, supervision of erection and commissioning of four sets of Hydraulic Mudguns and Tap Hole Drilling Machines required for blast furnace and the issue was whether the same is immovable property. The Apex Court observed :-

” Keeping in view the principles laid down in the judgments noticed above, and having regard to the facts of this case, we have no doubt in our mind that the mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence not excisable goods but immovable property which could not be shifted without first dismantling it and then re-erecting it at another site. We have earlier noticed the processes involved and the manner in which the equipments were assembled and erected. We have also noticed the volume of the machines concerned and their weight. Taking all these facts into consideration and having regard to the nature of structure erected for basing these machines, we are satisfied that the judicial member of the CEGAT was right in reaching the conclusion that what ultimately emerged as a result of processes undertaken and erections done cannot be described as “goods” within the meaning of the Excise Act and exigible to excise duty”

Meaning of Immovable Property Meaning

Following deciding factors may be taken to determine whether something is immovable or movable:

- ❖ Degree of permanency of the attachment to the earth,
- ❖ Intent of the Use of the goods / property is essentially of Immovable nature,
- ❖ Cannot be detached from earth without causing substantial damage to it,
- ❖ Identity of the goods as such post removal is lost

Difference between Works Contract & Composite Service

- ☐ There is a supply by the supplier to recipient
- ☐ consist of element of both goods and services

- ☐ **Test** - a contract is for 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 , if the **answer is affirmative then as per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts as defined in section 2(119) of the CGST Act, 2017 it shall be treated as a supply of services.**

- ❖ **If the answer is negative, then the same will be classifiable as composite supply or mixed supply depending on the facts and circumstances as per Section 2(30) & 2(74) of CGST Act 2017 respectively.**

Example: Works Contract under GST Laws

Vihan Enterprises, 2020 (35) G.S.T.L. 241 (A.A.R. - GST - M.P.) held

*Supply of goods under works contract included in the value of contract for supply of service only where transfer of property in goods involved in the execution of contract, **Civil Works and Installation Services (installation, erection, testing and commissioning) part of the contract regarded as works contract as per the contract.** In the supply of equipment for sub-station and transmission line, transfer of property is not in the execution of a works contract. Consequently, in the supply of equipment for sub-station and transmission line, the supply is that of goods and accordingly the rates given in Notification No. 1/2017-C.T. (Rate) applicable. **Further, in the case of erection, testing and commissioning, as well as in civil work for sub-station, the supply to be taxable as service and rates applicable to a works contract shall apply.***

Example: Works Contract under GST Laws

M/s RFE Solar Pvt Ltd, 2019 (23) G.S.T.L. 378 (App. A. A. R. Rajasthan - GST) held that

Single Contract is for supply of 'Solar Power Plant' including engineering, design, procurement, supply, development, testing and commissioning of plant. Contract fulfilling condition of composite supply that is supply of goods and services provided as package and different elements, integral to flow of supply. There are two taxable supplies, one of goods and other of services and both are naturally bundled which said composite supply falls within definition of works contract under Section 2(119) of Central Goods and Services Tax Act, 2017 (SAC 9954) - Section 2(30) of Central Goods Services Tax Act, 2017. In view of holding the transaction as a 'Works contract' and Para 6 of SCHEDULE II of CGST Act treating 'Works contracts' as supply of 'services', there arises no occasion to go into the issue of 'Principal supply'

Example: Works Contract under GST Laws

M/s RFE Solar Pvt Ltd, 2019 (23) G.S.T.L. 378 (App. A. A. R. Rajasthan - GST) held that

So, for deciding whether a property is movable property, it is to be seen what is the mode of necessary embedding in the earth and the object of embedding in the earth. If object is so embedded that it cannot be removed without causing damage to the land then it gives a reasonable ground for holding that it was intended to be embedded in perpetuity. Also whether the intention of the parties while erecting the system was that the plant has to be moved from place to place in the near future would also make a difference.

Principles on Input Tax Credit

- System for a seamless flow of credit
- ITC available on Intra State Supplies as well as Inter State Supplies
- Credit utilization would be as follows [Sec 49(5)]:

Credit of:	Allowed for Payment of		
	IGST	CGST	SGST
IGST	✓ (1)	✓ (2)	✓ (3)
CGST	✓ (2)	✓ (1)	
SGST	✓ (2)		✓ (1)

*The numbers represent the order of utilization of credit

**Section 2(59) CGST Act-
Input means**

**any goods other
than capital goods**

**used or intended
to be used by a
supplier**

**in the course or
furtherance of
business**

**Section 2(60) CGST Act-
Input service means**

any service

**used or intended
to be used by a
supplier**

**in the course or
furtherance of
business**

Capital Goods Sec 2(19) of the CGST Act, defines:

‘Capital goods’ means

- goods, the value of which is capitalised
- in the books of accounts of the person claiming the Input Tax credit and
- which are used or intended to be used
- in the course or furtherance of business.



Conditions for Availment of ITC by a Registered Taxable Person – Sec 16

- ☐ Tax invoice / debit note issued by a registered supplier, or other prescribed taxpaying document
- ☐ *Invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies (introduced in budget 2021)*
- ☐ Goods and/or services have been received
- ☐ Tax actually paid by the supplier to the credit of the appropriate Government, either in cash or by utilization of ITC
- ☐ Furnished the monthly return in FormGSTR-3 under Section 39

Conditions for Availment of ITC by a Registered Taxable Person – Sec 16

Note: Credit only upon receipt of the last lot/ instalment in case of goods received in lots / instalments.

- Goods deemed to be received by a taxable person when the supplier delivers the goods to the recipient/ any other person, on the direction provided by the taxable person to the supplier.
- Exception in case of goods being directly sent to job worker
- If the recipient of services fails to pay (value + tax) within 180 days from date of invoice, (ITC availed + interest @ 18%) shall be added to his output tax liability. ITC available when amount discharged later

How can the recipient penalized for the Supplier – debarred from ITC

Arise India Limited and Ors. v. Commissioner of Trade & Taxes, Delhi and Ors [W.P.(C) 6093/2017 & connected matters dated 26.10.2017] – SLP filed by the revenue has been dismissed with no discussions on merit by the Hon'ble SC in [Special Leave to Appeal (C) No(s). 36750/2017 dated 10.01.2018].

In pre-GST regime jurisprudence supports the view that as long as the purchasing dealer has taken all the steps required for being eligible for ITC, he could not be expected to keep track of whether the selling dealer has in fact deposited the tax collected with the government or has lawfully adjusted it against his output tax liability-

ITC in case of Capital Goods

Depreciation claimed on Tax component of the cost of capital goods under IT Act

ITC not Available

Example:

Cost of asset	=	Rs. 100
Tax-10%(say)	=	<u>Rs. 10</u>
Total Cost		<u>Rs. 110</u>

If Depreciation charged on
Rs.100

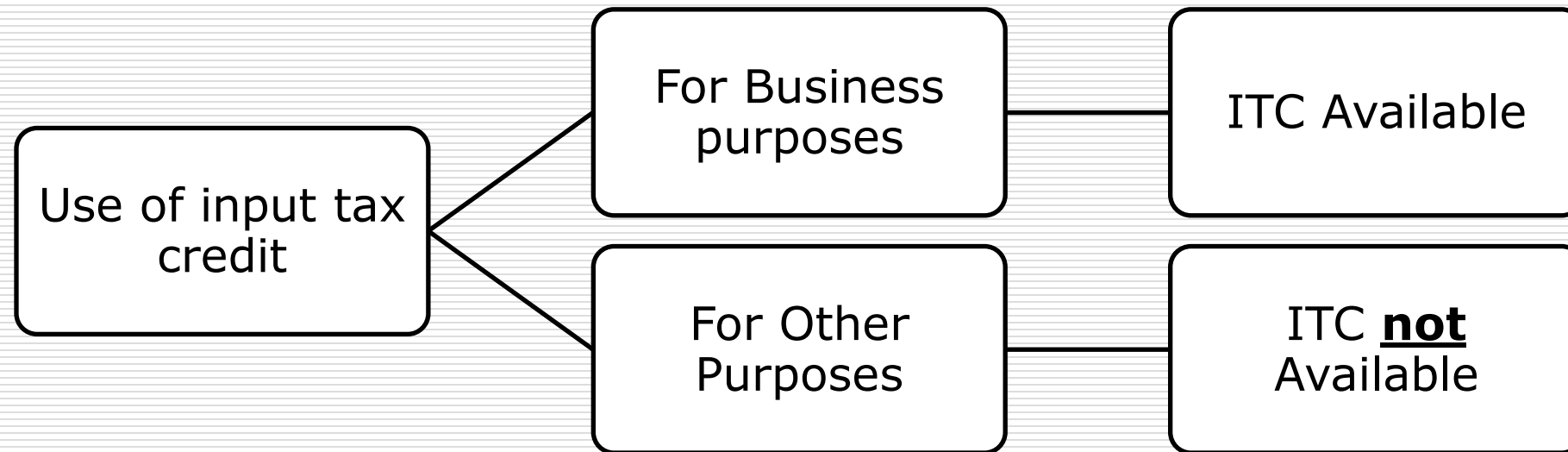
ITC Available

If Depreciation charged on
Rs.110

ITC not Available

“capital goods” means the goods, the value of which is capitalized in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of the business

ITC on the Basis of use of Inputs – Sec 17



***Note:** Attribution of ITC to be made as per the manner prescribed in the ITC Rules*

“input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business

“input service” means any service used or intended to be used by a supplier in the course or furtherance of business

Blackened Credit u/s 17(5)© & (d)

Clause (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.

Distinction between Section 17(5)(c) and Section 17(5)(d) of the CGST Act, 2017:

Section 17(5)(c), deals with works contract services i.e when such services are received under composite contracts and used for the purpose of construction of an immovable property (other than plant and machinery).

Section 17(5)(d), deals with situations when goods or services or both are received under different independent contracts i.e supply of goods and supply of services under separate contracts for the construction of an immovable property (other than plant and machinery).

For the purpose of section 17(5)(c) & (d) the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Restrictions on ITC – Sec 17(5)

Blocked credits

c) Construction of Immovable Property (other than plant and machinery)

Works contract services, except where it is an input service for further supply of works contract service

Goods or services received by a taxable person for construction of an immovable property on his own account *even when used in course or furtherance of business;*

ITC not Available

Construction includes re-construction, renovation, additions or alterations or repairs to the extent of capitalisation

Plant and Machinery:

‘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:

- ❖ land, building or any other civil structures
- ❖ telecommunication towers; and
- ❖ pipelines laid outside the factory premises.

Input tax credit (ITC) shall not be available in respect of the following [Section 17(5) of the CGST Act, 2017]:

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

Explanation: For the purpose of Chapter V (i.e Input Tax Credit) and Chapter VI (i.e. Registration), 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 support but excludes-

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

ITC Restriction – Advance Rulings under GST Laws

Western Concessions (P.) Ltd. In re [2019] 106 taxmann.com 186 (AAR - Maharashtra).
Pipeline outside factory for carrying LPG not eligible - ITC of GST paid on goods and services used for construction of Tie-in pipeline, for delivery of re-gasified LNG from FSRU to National Grid is not eligible, as it does not fall within definition of ‹plant and machinery› -

Maruti Ispat and Energy P Ltd. In re (2018) 99 taxmann.com 103 (AAR-AP).

Shed to protect plant and machinery is civil structure and its ITC is not available -

ITC Restriction – Advance Rulings under GST Laws

M/s Vindhya Telelinks Ltd. [2018] 97 taxmann.com 564 (AAR- Uttarakhand) / 2018 (17) G.S.T.L. 649 (A.A.R. Uttarakhand - GST) has held that

the infrastructure provided by the applicant is different from “Telecommunication Tower” and accordingly applicant can avail ITC on GST paid on the goods (Goods and services used for erection of infrastructure for Telecom operators, Poles of heights varying from 7m to 9m erected by applicant used for stringing of fibre and do not contain antennas electronic communications equipment, No cell site where antennae and electronic communication equipment are placed. Infrastructure affixed to earth in such way that without any damage to entire infrastructure it can be moved to another place for use) & services in terms of Section 16(1) of CGST/SGST Act, 2017, consumed while providing the supply in question.

Abstract – ITC on Works Contract

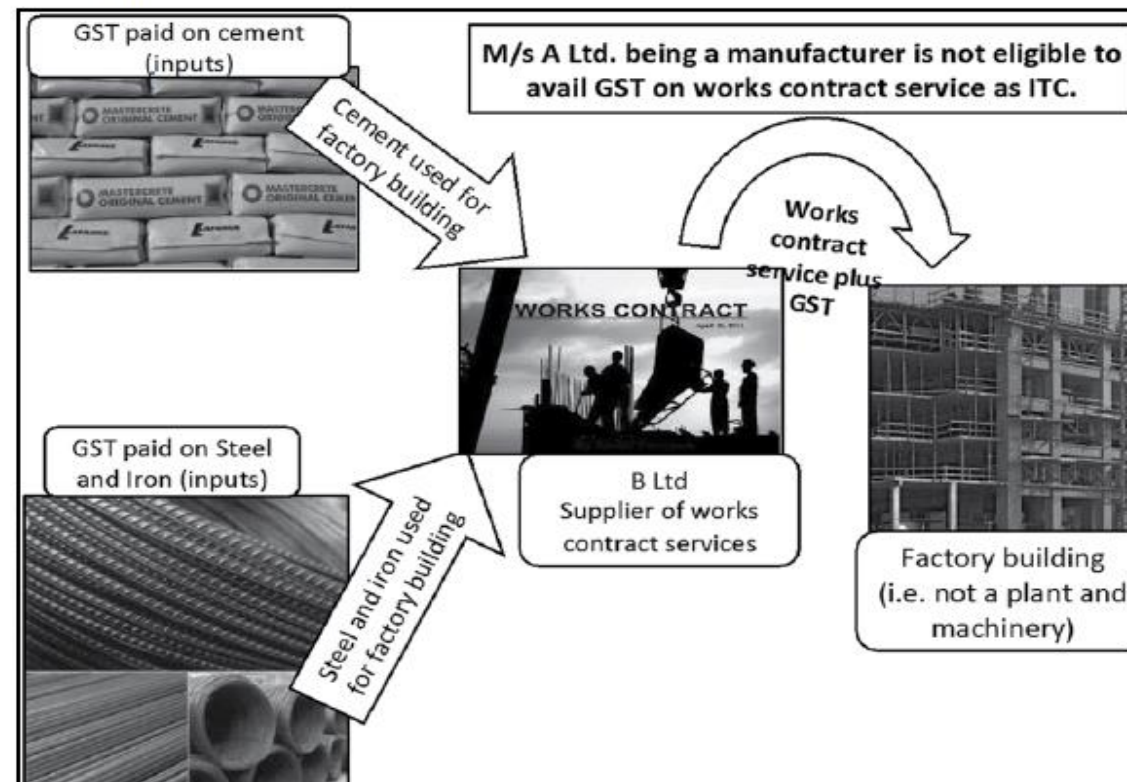
ITC Not Available :

- ❖ In relation to construction of immovable property
- ❖ If works contract service for immovable property is to be capitalized in the business;
- ❖ Goods or services or both which are to be used for construction of immovable property;

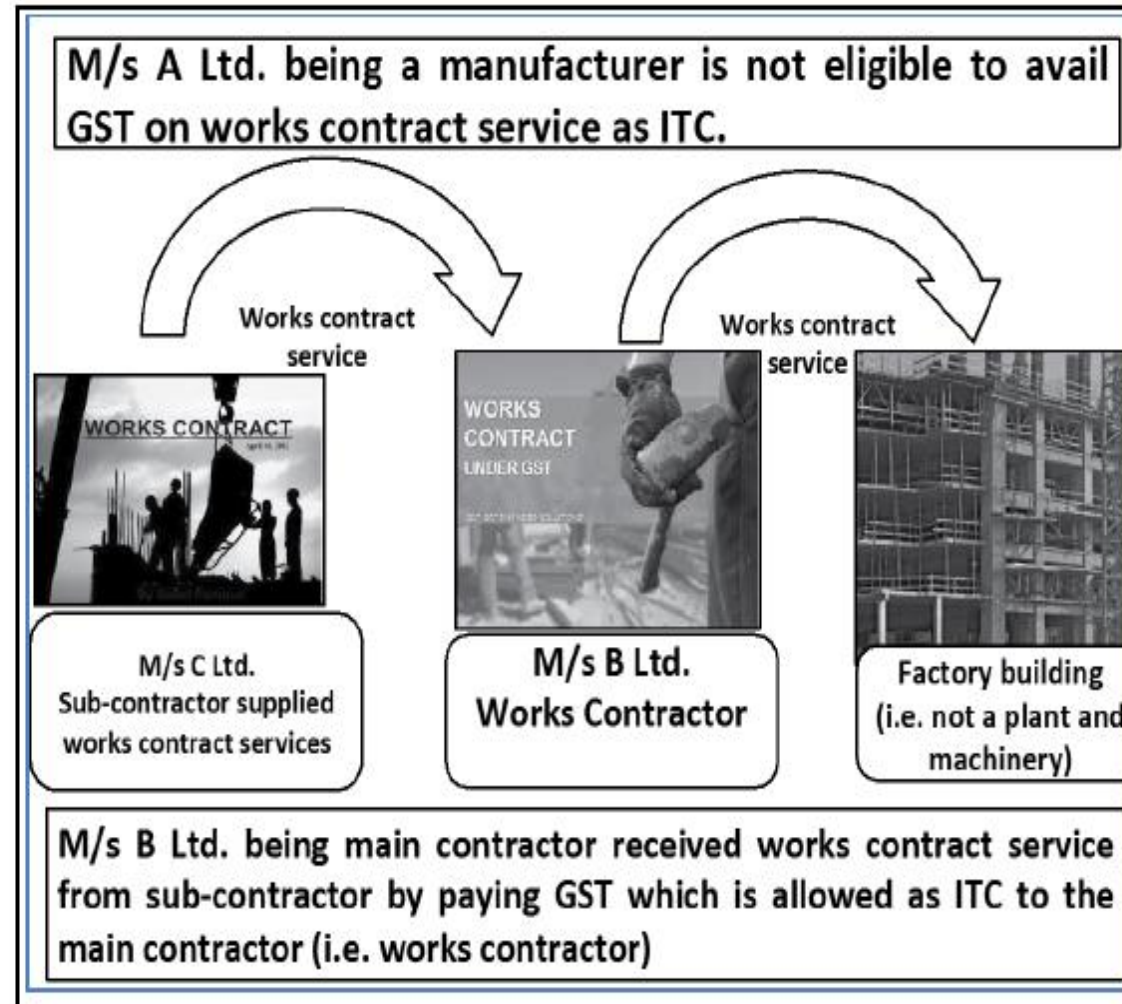
ITC Available on Works Contract:

- ❖ If such service is to be used for plant and machinery;
- ❖ If such service is to be further supplied by the recipient.

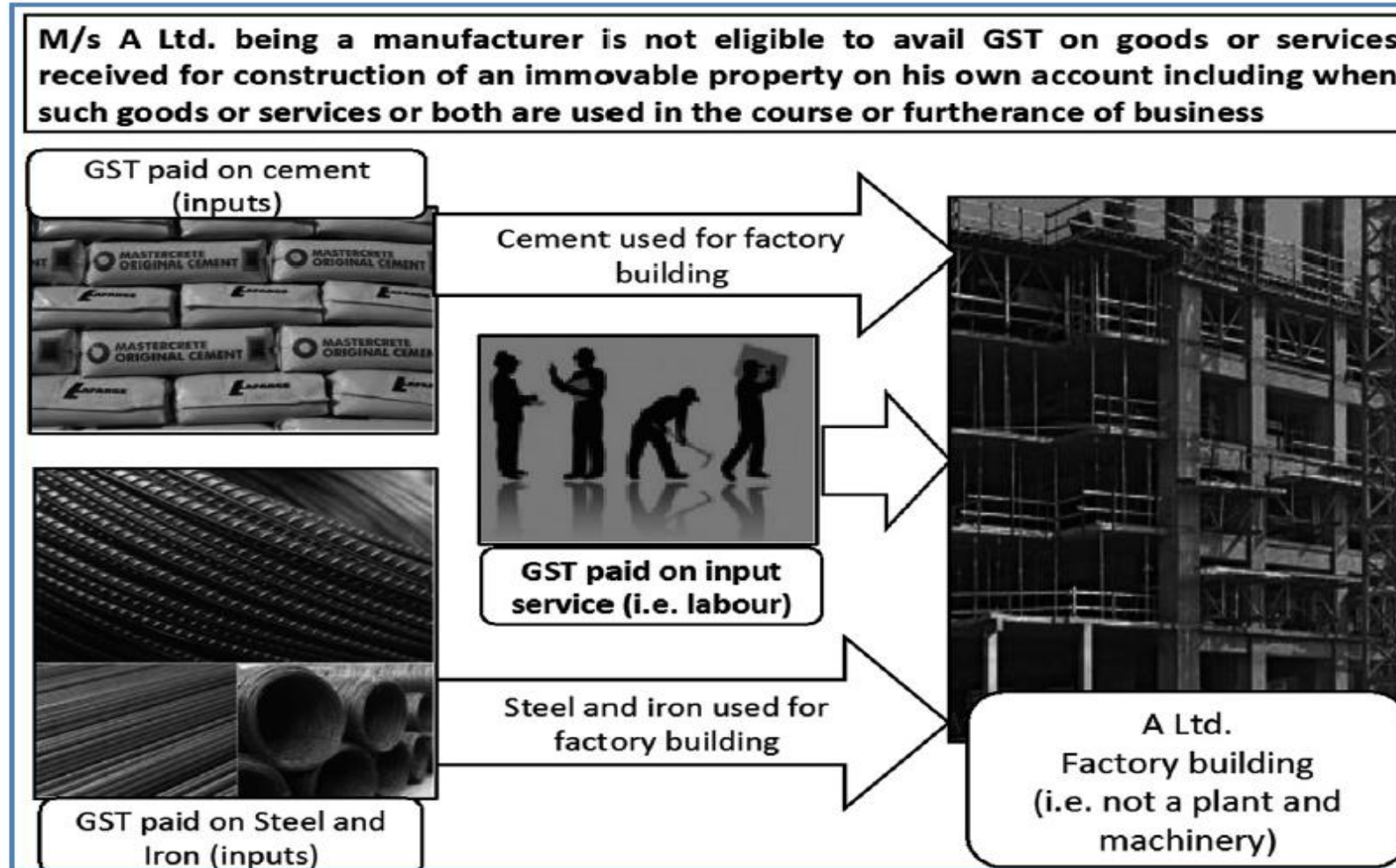
M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises.



M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises. Accordingly M/s B Ltd. sub-contacted works contract service to M/s C Ltd.

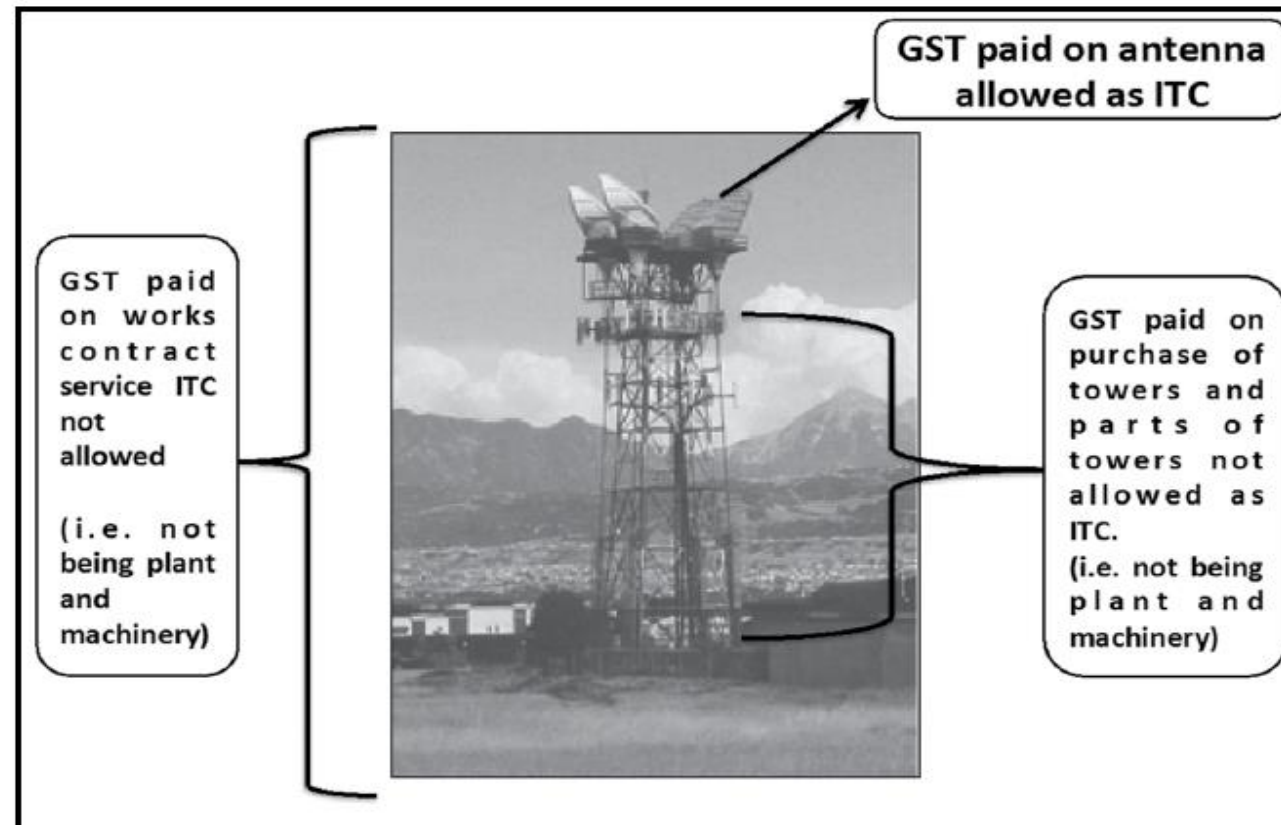


M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises. M/s B Ltd. agreed to undertake only labour contract plus GST. Material supplied by M/s C Ltd, plus GST.




M/s Bharti Airtel Limited purchased antennas, towers and parts thereof by paying GST. Company also received works contract service from M/s B Ltd. for its installation by paying GST thereon. Finally towers and parts thereof are fastened and are fixed to the earth and after their erection become Immovable. Find the eligibility of input tax credit to M/s Bharti Airtel Limited.

Answer:



M/s Indian Oil Corporation wants to lay down pipeline from Bhubaneswar to Chennai. Company awarded this contract to M/s B Ltd. for a consideration plus GST. Is it input service to M/s Indian Oil Corporation.



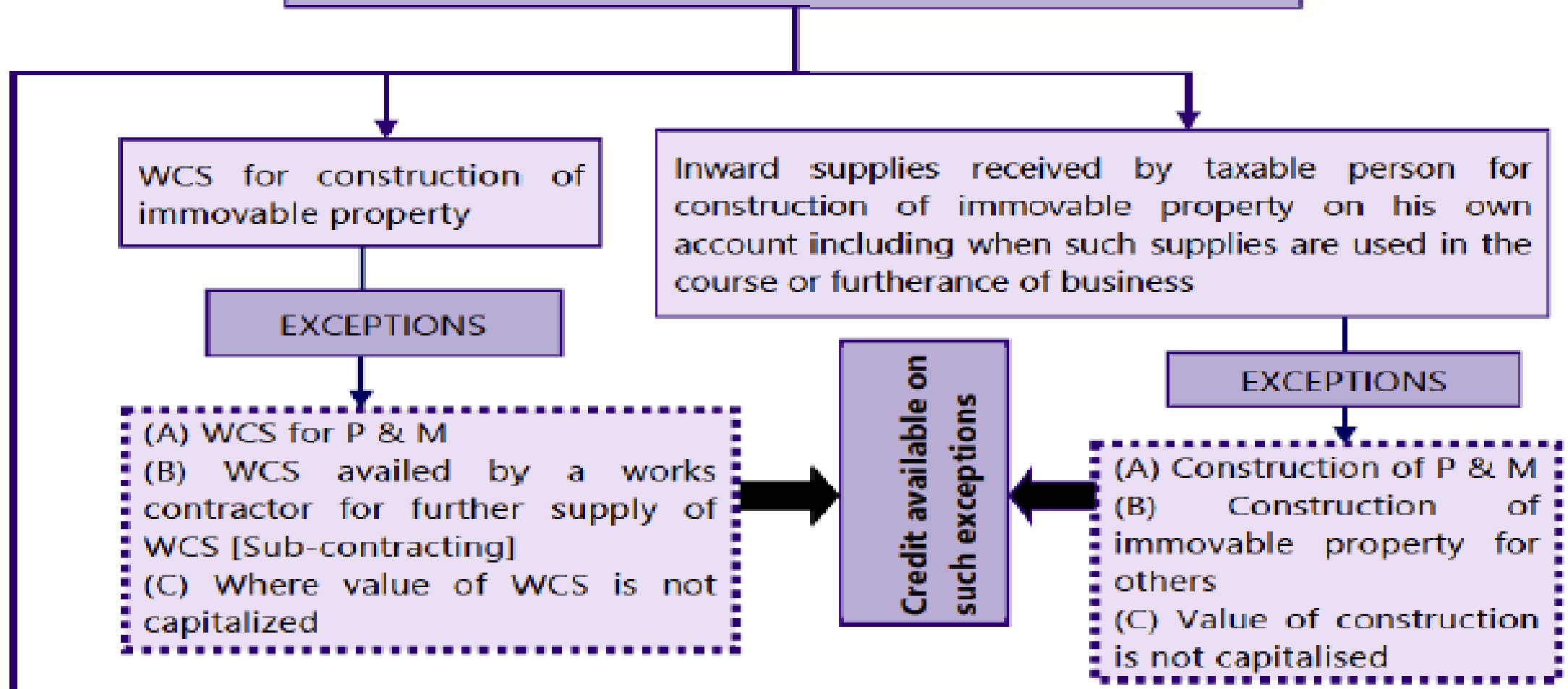
M/s B Ltd supplied works contract service in relation to lay down pipeline outside the factory premises of M/s Indian Oil Corporation.

It is not input service to avail the ITC on works contract service by M/s A Ltd.

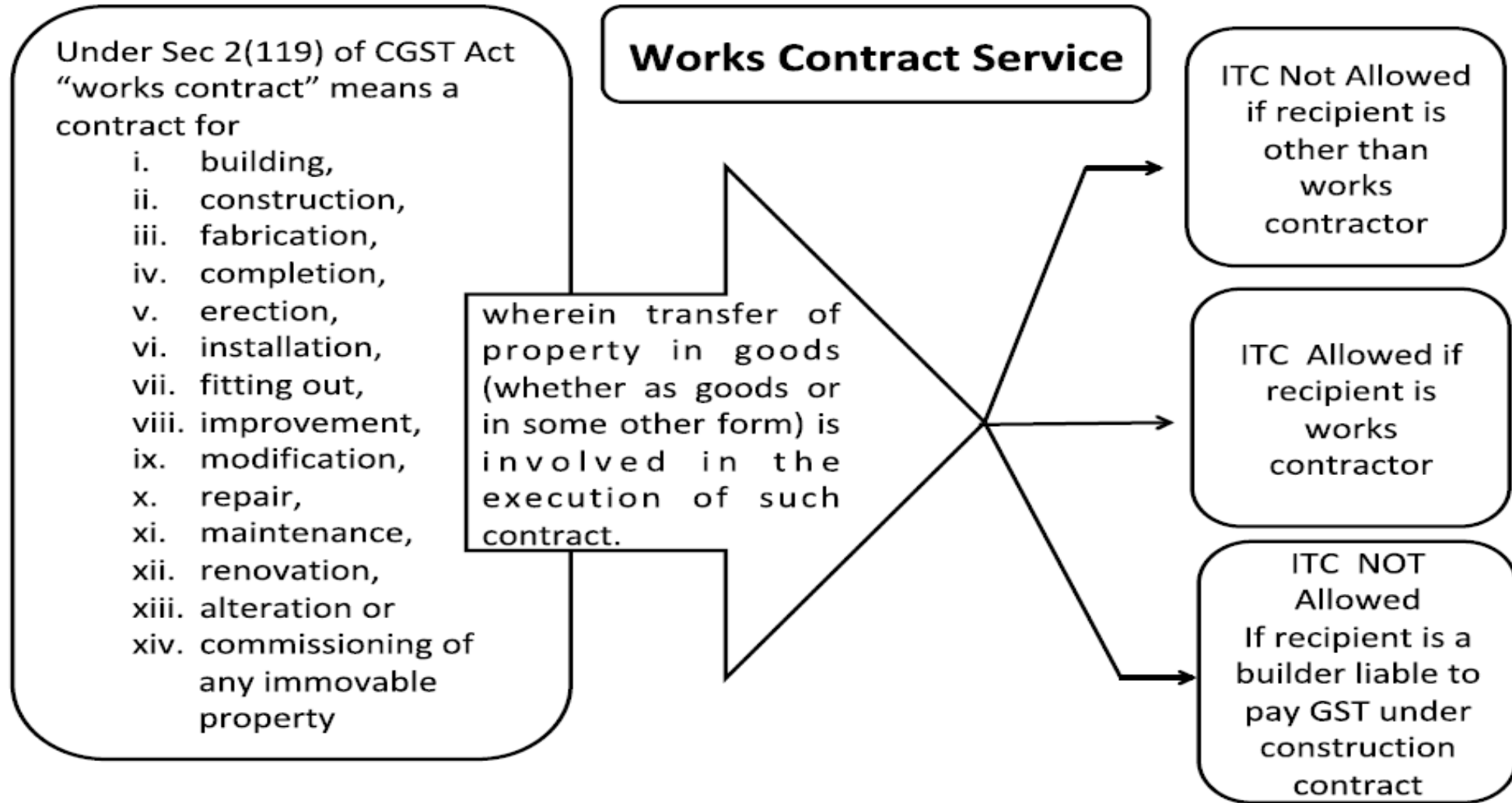
Therefore, M/s A Ltd is not eligible for ITC.

Not treated as Plant and Machinery

BLOCKED CREDITS PART-B



Concept of Input Tax Credit in Real Estate Industry:



This concept further elucidated in the following table:

Nature of service	ITC	Remarks
Cement is used for construction of administration building	Not allowed	Building is not plant and machinery.
Cement is used for foundation of pillars supporting a boiler	Allowed	As such structural support for plant and machinery is included in definition of plant and machinery.
Works contract services is provided by sub-contractor to a contractor	Allowed	Works contracts service is excluded except when used for providing work contract service
Steel and other structural supports are used for Land, building or any other civil structures; or setting up a telecommunication tower; or pipelines laid outside the factory premises	Not allowed	These are specifically excluded from the term plant and machinery. Note: Credit of tax paid on goods and services used for construction of immovable property including work contract service has been allowed only if such immovable property is in the nature of "plant and machinery".
GST paid on parts of telecommunication towers or parts of pipelines.	Not Allowed	GST paid on any inputs or capital goods used for construction of telecommunication towers, pipeline laid outside the factory, will not be available as input tax credit.

Grant of Occupancy Certificate:

In case of M/s Bindu Ventures, 2019 (20) G.S.T.L. 616 (A.A.R. Karnataka - GST) held that,

- the date of Occupancy Certificate issued by the competent authority, i.e. Bruhat Bengaluru Mahanagara Palike should be treated as the date of completion of the construction. If any part of the consideration is received before such date of completion, then the transaction would be considered as the supply of services in terms of entry 5 of Schedule II to the GST Acts, and liable for GST. If the entire consideration is received after the date of completion, then the transaction would not be liable to GST.

Notification No. 11/2017-CT(R) dated 28.06.2017, reproduced below are part of consideration, refers.

- *C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.*

M/s Bengal Peerless Housing Development Company Limited, 2019 (30) G.S.T.L. 652 (App. A.A.R. - GST) held that

- *Car Parking Charges (CPC) cannot be called a part of composite supply of Construction services because it is not naturally bundled with main supply of construction inasmuch as it is attributable to choice of purchaser based on location / direction / floor of flat and is not compulsory/uniform in every case. **Case law at 2019 (25) G.S.T.L. 59 (Tri. - All.)** relied by assessee*

M/s Kara Property Ventures LLP, 2019 (23) G.S.T.L. 287 (A.A.R. Tamilnadu- GST) held that

- The value of supply of services provided by the Applicant in the project 'One Crest' in Chennai, wherein the Applicant has entered into two separate agreements, viz., one for 'Sale of undivided share of land' and the other for 'Construction' with the customers, the measure of levy of GST on the supply of service of 'Construction' shall be 2/3rd of the 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.***

Nipro India Corporation Ltd, 2018 (18) G.S.T.L. 289 (A.A.R. Maharashtra - GST)

- ☐ Internal and domestic water distribution supply system installed in order to comply with mandatory requirements of Factories Act, 1948 and Maharashtra Factory Rules, 1963, not eligible as goods used for construction of immovable property not used for making outward supply of goods or services.
- ☐ External sewage system used partly for disposal of sewage generated during production process and Partly admissible. Internal sewerage and venting system used for disposal of sewage generated during production process, admissible –
- ☐ Gardening water supply system not used in furtherance of business and not eligible
- ☐ Internal fire hydrant system, Sprinkler works, Extinguishers, Fire documentation not being “plant and machinery”, not eligible - Other works held admissible except for civil constructions if any -

Nagpur Mukangarh Highways Pvt Ltd, 2018 (18) G.S.T.L. 652 (A.A.R. Rajasthan - GST) held that

Construction of Road/bridges on Design, Build, Operate and Transfer (DBOT) basis in terms of provisions of GST law, is a composite supply of service and GST is liable to be paid on full value of construction during construction period, notwithstanding receipt of some consideration being spread to further period. As regards Input Tax Credit, since applicant is constructing road and bridges on behalf of Government and is not owning or capitalizing immovable property so constructed, restrictions contained in Sections 17(5)(c) and 17(5)(d) of Central Goods and Services Tax Act, 2017, are not applicable. Thus, applicant entitled to full ITC during construction period - Sections 16 and 17 of Central Goods and Services Tax Act, 2017.

Las Palmas Co-operative Housing Society Limited, 2020 (34) G.S.T.L. 293 (A.A.R. - GST - Mah.)

GST is paid on replacement of existing lift / elevator to registered vendor by Co-operative Housing Society Lift, after erection and installation becomes an immovable property and considered as integral part of building itself. Manufacture, Supply, Installation and Commissioning of lifts/elevators in nature of works contract activity which results in creation of immovable property. Society not entitled to take credit of such tax for payment of GST on maintenance charges collected from its members - Section 17 of Central Goods and Services Tax Act, 2017.

M/s Jabalpur Entertainment Complexes P. Ltd. 2018 (17) G.S.T.L. 690 (A.A.R. - GST) / 97 taxmann.com 587 (AAR-MP)

We hold that the ITC of GST paid on goods purchased for the purpose of maintenance of Mall such as Vitrified Tiles, Marble, Granite, ACP Sheets, Steel Plates, TMT Tor (Saria), Bricks, Cement, Paint, Chemicals, Sanitary Items like wash basin, urinal pots and toilet accessories shall not be admissible to the Applicant in terms of clause (c) of Section 17(5) of the GST Act, 2017;

We hold that the ITC of GST paid on Works Contract Service received by the Applicant for maintenance contract of building shall not be available to them in terms of clause (d) of Section 17(5) of the GST Act, 2017.

Maintenance of records – Works Contracts

- ❑ 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.

Place of Supply of Works Contract service



Simply, place of supply will be the location of the property

In case the immovable property is located outside India, and the supplier as well as recipient both are located in India, the place of supply would be the location of recipient as per proviso to Section 12(3) of the IGST Act, 2017.

Supply of service	Place of supply
Directly in relation to an immovable property. Including services provided by <ul style="list-style-type: none">architectsinterior decorators, surveyorsengineersOther experts or estate agentsService of grant of rights to use immovable propertyCarrying out/co-ordination of construction work	Location at which the immovable property (boat/vessel) is located (or intended to be located).
	If immovable property (boat/vessel) is located outside India, then the place of supply shall be the location of the recipient

Time of Supply:

- ❑ Works contract is a continuous service:
- ❑ Time of supply for 'continuous supply of services' shall be determined as per general provision given to determine time of supply of service which will be earlier of:-
 - ❖ (i) date when invoice is actually issued or required to be issued
 - ❖ (ii) date of receipt of payment

Time Limit to issue Tax Invoice:

- ❑ *When due date of payment is ascertainable from the contract:* the invoice shall be issued on or before due date of payment.
- ❑ *When due date of payment is not ascertainable from the contract:* the invoice shall be issued before or at the time when supplier receives payment.
- ❑ *When payment linked with completion of event, i.e., milestones:* the invoice shall be issued on or before date of completion of that event.

GST Rates of Works Contracts:

- ❑ Pl refer to [http:// www. cbic. Gov . in / resources // htdocs – cbec / gst / Consolidated notification CGST 11. pdf](http://www.cbic.gov.in/resources/htdocs-cbec/gst/Consolidated_notification_CGST_11.pdf) for updated rate of GST applicable to different types of works contracts / construction contracts.
- ❑ Ref: SI No. 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and subsequently a series of amendments have been taken place.

2020 (32) G.S.T.L. 487 (A.A.R. - GST - A.P.)
BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, ANDHRA PRADESH
.S/Shri D. Ramesh, Member (State Tax) and S. Narasimha Reddy, Member (Central Tax)
IN RE : SHIRDI SAI ELECTRICALS LIMITED
AAR No. 02/AP/GST/2019, dated 30-1-2019

Works contract - Works executed by applicant including design, manufacture, test, deliver, install, complete and commission facilities for conversion of existing LT Net Work into High Voltage Distribution System being industrial in nature, squarely falls under “works contract” and falls under Entry No. (ii) of S. No. 3 of the table of Notification No. 11/2017-C.T. (Rate) as amended and applicable rate of tax is 18% (9% under Central Tax and 9% under State Tax) - Benefit of NIL rate of GST under Sl. No. 10A of Notification No. 12/2017-C.T. (Rate), amended by Notification No. 14/2018-C.T. (Rate) being available only to Services supplied by Electricity Distribution Utilities, not applicable to applicant who render services to the Electricity Distribution Utility, i.e., the contractee. *[paras 5.1, 5.2]*

2020 (32) G.S.T.L. 435 (A.A.R. - GST - A.P.)
BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, ANDHRA PRADESH
IN RE : KSR & COMPANY

■
AAR No. 07/AP/GST/2019, dated 14-2-2019

Input Tax Credit - Works Contract service provided by applicant for construction of road for the State of A.P. and not for himself - Applicant eligible for Input Tax Credit (ITC) in respect of GST paid on goods and services in execution of “Works Contracts” - Input Tax Credit restriction under Sections 17(5)(c) and 17(5)(d) of Central Goods and Services Tax Act, 2017 not applicable to applicant, his output being works contract services. *[para 7]*

■

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, KARNATAKA
IN RE : TARUN REALTORS PRIVATE LIMITED
Advance Ruling No. KAR ADRG 103/2019, dated 30-9-2019

Input Tax Credit (ITC) - Provision of facilities like transformers, sewage treatment plant, Electrical Wiring and Fixtures, Surveillance systems, D.G. Sets, Lifts, Air Handling Units, etc. are sine qua non for a commercial mall and hence cannot be considered separate from the building or civil structure - Provision of these facilities being either statutory for a building or defines the nature of the building as a commercial mall, input tax credit on the inward supplies of goods or services involved in the construction of immovable property which is a civil structure or building is not available to the applicant and blocked - Section 17(5) of Central Goods and Services Tax Act, 2017. *[para 5.10]*

Valuation of Works Contract

Where the supplier and the recipient of the supply are not related	Where the supplier and the recipient of the supply are related	
Value shall be the transaction value (open market value), which is the price actually paid or payable for the said supply of goods or services or both	As per this rule 28 of CGST	
	a. if open market value of such supply is available	Open Market Value
	b. if open market value of such supply is not available	like kind and quality
	If price cannot be determined as per (a) or (b) above	110% of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such service

Valuation of Works Contract

Valuation of a works contract service is dependent upon whether the contract includes transfer of property in land as a part of the works contract.

□ As per explanation 2 of **Notification no 11/2017 CGST (rate)** In case of supply of service, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, **in such supply shall be deemed to be one third of the total amount charged for such supply.**

It may be noted that in case of **M/s Logic Infrastructure Pvt Ltd, 2019 (25) G.S.T.L. 59 (Tri. - All.)** which is not accepted by Appellate Authority of Advance Ruling, it was held that

- *"the components such as preferred location charges, external development charges etc. are part and parcel and for various elements of the main service which is Residential Complex Service and therefore the entire consideration received by the appellants are eligible for abatement under said Notification No. 26/2012-S.T."*

**Dholera Industrial City Development Project Ltd,
2019 (29) G.S.T.L. 40 (A.A.R. – GST, Gujarat)**

Compensation for breach of Contract: Compensation on breach of contract being a part of consideration is liable for GST. Further, toleration of any act or situation is statutorily deemed supply of service. Applicant liable to ***GST - Para 5 of Schedule-II of Central Goods and Services Tax Act, 2017.***

Liquidated damages – LD for non-fulfilment of Targets by contractors, charges being a part of consideration is liable for GST. Further, toleration of any act or situation is statutorily deemed supply of service - Applicant liable to GST - Para 5 of Schedule-II of Central Goods and Services Tax Act, 2017.

Interest - Deferment of liquidated damages is taxable, since liquidated damages are liable to GST. Interest on its deferment is also taxable same being a part of such damages under Para 5 of Schedule-II of Central Goods and Services Tax Act, 2017.

Free Supply of Material for Works Contract

Section 15(2)(b) of CGST Act 2017 provides that the amount that the supplier is liable to pay but which has been incurred by the recipient, this amount will be added only if there is a contractual liability on the supplier to make those supplies and in other words it is included in the contract price / consideration.

Situation -1:

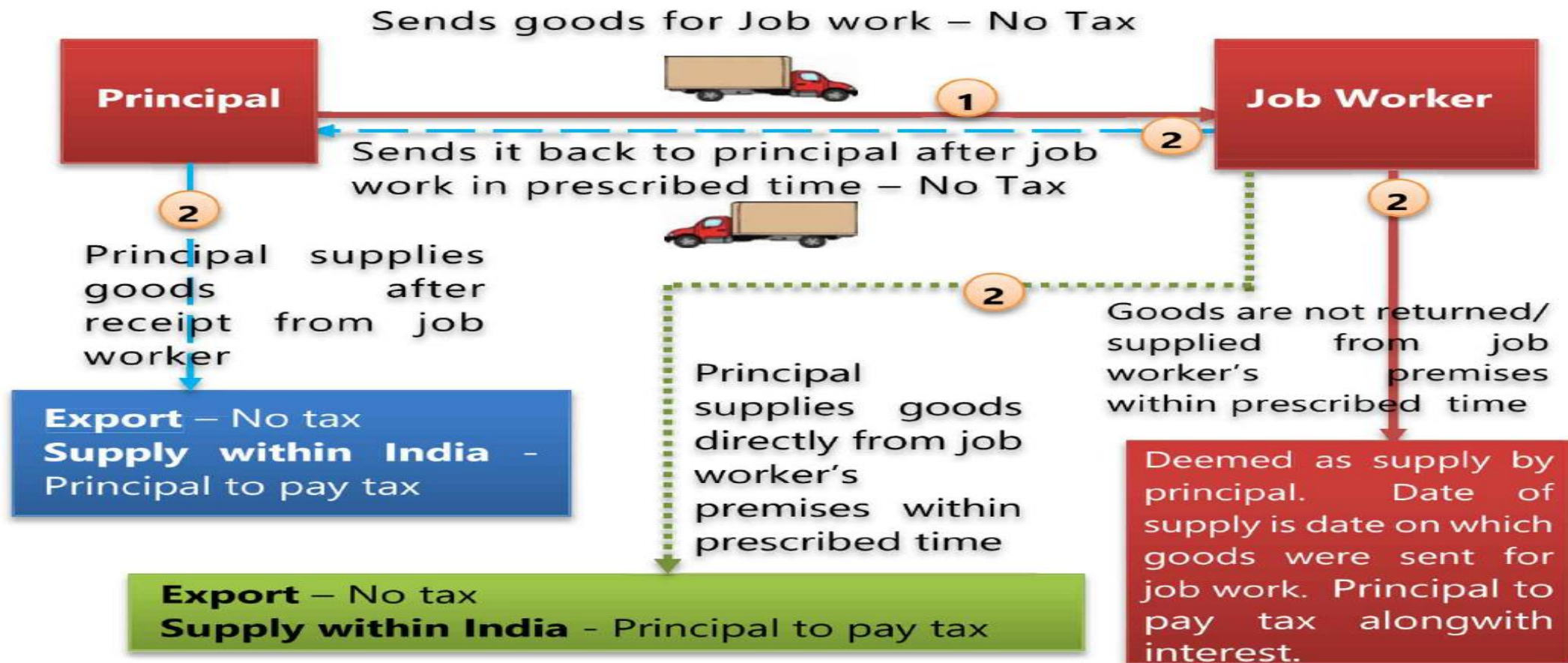
Where the cost of materials supplied free of cost by the owner/ contractee to the Contractor for execution of works contract which is not part of the contract price / consideration, the same shall not be includible as transaction value, hence not liable to GST.

Situation – 2:

Where the contractor could not supply the materials as per scope of work (material cost is part of contract price/ consideration), may be due to non-availability or supplied at the request of the contractor and the cost of such materials is adjusted to contract price shall be part of transaction value in lieu of section 15(2)(b) of CGST Act, 2017 and liable to GST.

Ref: Circular issued by the CBIC vide no. 47/21/2018 – GST dated 08.06.2018

Job Work



(i) Credit on inputs and/or capital goods sent for job work [Sub-sections (1), (2), (4) and (5) of section 19]

- ☐ A principal is entitled to take the credit of input tax paid on inputs and/or capital goods sent to the job-worker for the job work.
- ☐ The principal can also take ITC even when the inputs and/or capital goods have been directly sent to the job worker without being brought into his premises. The principal need not wait till the inputs and/or capital goods are first brought to his place of business *[See definition of place of business]*.



 **Job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered⁴.**

- ❑ Principal can take credit on goods (inputs and capital goods) sent for job work.
- ❑ Credit can be taken even if the said goods are sent directly to job worker without being first brought to the principal's place of business.

Time limit for return of goods sent for job work/supply from job worker's place of business

- ◆ **Inputs** - 1 year (extendible by another 1 year)
- ◆ **Capital goods** - 3 years (extendible by another 2 years)

from the date of sending the same for job work or from the date of receipt of the same by the job worker.

- ❑ On failing to comply with the timelines, the goods will be deemed to have been supplied to the job worker on the day they were sent out.
- ❑ Principal is liable to pay tax along with applicable interest on such supply.
- ❑ Subsequent return of the goods by the job worker will be treated as a separate supply.

Time-lines do not apply to moulds and dies, jigs and fixtures or tools sent out for job work.