

# **REVISED MODEL GST LAW**

## **JOB WORK AND CONSTRUCTION CONTRACTS**

**Presented by:**

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# DEFINITION OF “JOB WORK” UNDER GST

- Section 2(61)
- “Job work” means undertaking any treatment or process by a person
- on goods belonging to another registered taxable person and
- the expression "job worker" shall be construed accordingly.

## **Note:**

1. “Job Work” is to be treated as supply of service. [Schedule II] – Clause 3(a) reads as under
  - **Treatment or Process** – Any treatment or process which is being applied to another person’s goods is a supply of services

# DEFINITION OF “CAPITAL GOODS” UNDER GST

- Section 2(19)
- “**Capital goods**” means 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 business.

There are **2 options** for job work:

A. On payment of GST: - **1<sup>st</sup> Option**

- If the manufacturer will send the goods to a job worker located in another State he will charge IGST as this transaction will be treated as supply in GST regime
- CGST and SGST will be levied when goods are sent for job work within the State.
- As the levy of tax will be on Value of supply and threshold limit is only Rs. 20 Lakhs -  
Contd....

- most of the job workers will be required to be registered in GST regime.
- Tax would be payable on supply of materials by the principal to the job worker unless there is any exemption notification [like agriculture related processing].
- The job worker would supply back on the gross value including his charges and GST would be charged on that value.
- Job worker would be eligible to input tax credit on capital goods, inputs used and input services.

# **JOB WORK [SECTION 55 OF CGST ACT, 2016]- 2<sup>nd</sup> Option**

- A registered taxable person (Principal) may,
- **under intimation** and subject to conditions as may be prescribed,
- **send any inputs and/or capital goods [taxable goods],**
- **without payment of tax**, to a Job worker [J/W] for job-work and
- from there subsequently to **another J/W** and likewise, and shall- **contd....**

(a) **Bring back** such goods to any of his place of business [defined u/s 2(74)] **without payment of tax.**

(b) **Supply such goods** on payment of taxes within India or **with or without payment of taxes** for export as the case may be.

- **[Within 1 year** for inputs and **3 years** for capital goods of being sent out]

contd...



- Principal **shall not supply** such goods from the J/W premises on payment of taxes within India , or with or without payment of taxes for export, as the case ,may be.
- **UNLESS**, principal declare the place of business of J/W as his additional place of business, **except-**

contd....

(i) **J/W** is registered taxable person u/s 23  
[Registration]

(ii) Where the "principal" is engaged in the supply of such goods as may be notified by the commissioner in this behalf.

- Responsibility for accountability of the inputs and/or capital goods sent to J/W shall lie with the “principal”

# TREATMENT OF WASTE & SCRAP

- 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**.

[Section 55(5) of CGST Law]

## NOTE:

- **Moulds and dies, jigs and fixture, or tools are not covered in this section**
- The provision of job work shall be applicable if the goods are received from a registered taxable person only.

# **INPUT TAX CREDIT IN RESPECT OF INPUTS/CAPITAL GOODS SENT TO A JOB-WORKER [SECTION 20]**

- **IN RESPECT OF INPUTS/CAPITAL GOODS**

Subject to such conditions and restriction as may be prescribed

- The "**principal**" referred to in section 55 (job work-Special procedures for removal of goods for certain purposes)
- shall be allowed input tax credit on inputs/capital goods sent to a job-worker for job-work.

- Principal shall be entitled to take credit of input tax on inputs/capital goods
- even if the inputs/capital goods are directly sent to a job worker for job-work
- without their being first brought to his place of business.
- Further-
  - If the inputs/capital goods sent for job-work contd...

- **Not received back** by principal after completion of job-work or not supplied from the place of business of the job-worker
- Within **1 year/ 3year** from the date input/ capital goods have been sent to job worker
- It shall be **deemed** that input/ capital goods have been **supplied by the principal** to job worker on the day when such inputs/capital goods were sent out and

- Where the inputs/capital goods are sent directly to a job worker, the **period of 1 year/ 3 year shall be counted from the date of receipt of inputs/ capital goods by the job worker.**
- **IN RESPECT OF MOULDS AND DIES, JIGS AND FIXTURES, OR TOOLS**  
Nothing contained in above sub-section shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job-worker for job-work.
- **NOTE:** Nothing is mentioned in this section that if inputs/capital goods are received back late then tax paid by principal should be refunded to him or these cases may call for reversal of credit in view of Rule 4(5) of Cenvat Credit Rules.



## **175. Inputs removed for job work and returned on or after the appointed day**

- (1) Where any **inputs received in a factory** had been **removed as such** or
- **removed after being partially processed to a job worker** for further processing, testing, repair, reconditioning or any other purpose
  - in accordance with the **provisions of earlier law prior to the appointed day** and

- are returned to the said factory on or after the appointed day,
  - no tax shall be payable if such inputs, after completion of the job or otherwise, are returned to the said factory within six months from the appointed day:
- 
- Provided that the aforesaid period of six months may, contd.....

- On sufficient cause being shown,
- **Be extended by the competent authority for a further period not exceeding two months.**
- Provided further if such inputs are **not returned within a period of six months or the extended period ,**
- as the case may be, from the **appointed day**
- **the input tax credit shall be liable to be recovered in terms of section 184.**

(2) The provisions of **sub-section (1)** shall apply only

- if the **manufacturer and the job worker declare**
  - the **details of the inputs held in stock by the job worker on behalf of the manufacturer on the appointed day**
  - **in such form and manner and**
  - **within such time as may be prescribed.**
- 
- **Note: It is not clear whether J/W will be able to take credit of input tax recovered from principal after 6 months.**

## **176. Semi-finished goods removed for job work and returned on or after the appointed day**

- (1) Where any semi-finished goods had been removed from the factory to any other premises for carrying out certain manufacturing processes in accordance with the provisions of earlier law prior to the appointed day and
- such goods (herein after referred to as “the said goods”)
  - are returned to the said factory on or after the appointed day,

- **no tax shall be payable if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said factory within six months from the appointed day:**
- **Provided that the aforesaid period of six months may,**
- **on sufficient cause being shown,**
- **be extended by the competent authority for a further period not exceeding two months:**

- Provided further that
  - if the said **goods** are **not returned within a period of six months** or the **extended period**,
  - as the case may be, from the **appointed day**:
  - The input tax credit shall be liable to be recovered in terms of section 184.
- 
- Provided also that the **manufacturer** may,
  - **in accordance with the provisions** of the **earlier law**,  
contd....

- **transfer** the said **goods** to the **premises** of **any registered taxable person**
- for the **purpose** of **supplying** there from on payment of tax in India or
- without payment of tax for exports
- **within six months** or the **extended period**,
- as the case may be, from the **appointed day**.



(2) The provisions of **sub-section (1)** shall apply only

- if the **manufacturer and the job-worker declare**
- the **details of the goods held in stock by the job-worker on behalf of the manufacturer on the appointed day**
- in **such form and manner** and
- **within such time** as may be prescribed.

**177. Finished goods removed for carrying out certain processes and returned on or after the appointed day (CGST Law)**

- Where any **excisable goods manufactured** in a factory had been **removed**
- **without payment of duty** for **carrying out tests or any other process**
- **not amounting to manufacture**, to any other premises ,                                      contd.....

- whether registered or not, in accordance with the provisions of earlier law prior to the appointed day and such goods (herein after referred to as the “**said goods**”)
- are **returned to the said factory on or after the appointed day,**
- **no tax** shall be **payable**
- if the said **goods**, after **undergoing tests or any other process,** are returned to the said factory
- **within six months from the appointed day**

- Provided that the **aforesaid period of six months** may,
  - on **sufficient cause** being shown,
  - be **extended** by the **competent authority** for a **further period of two months**:
- 
- Provided further that if **the said goods**
  - are not **returned within a period of six months** or the **extended period**,
  - as the case may be, from the **appointed day**
  - **The input tax credit shall be liable to be recovered in terms of section 184.**

- Provided also that the **manufacturer** may,
- in accordance with **the provisions** of the **earlier law**,
- **transfer** the said **goods** from the said **other premises on payment of tax in India** or
- **without payment of tax for exports**
- **within six months or the extended period**,
- as the case may be, from the **appointed day**.

## Procedure On payment of GST:

- The procedure for job work carried out by paying GST on the supply made by the principal to job worker could be as under:
  - a) The principal would charge GST to the job worker on supply of dies, moulds, capital goods or raw material/ components.
  - b) The job worker would avail the credit of GST charged and supply back with the applicable GST.

- c) The job worker would also be eligible for the credits on materials, capital goods used in his job work activity. The differentiation between the consumables and goods transferred would become irrelevant.
- d) The capital goods such as plant and machinery, mould and dies used for processing the customer's goods even when supplied free of cost to job worker would be under payment of GST.

- e) The valuation of resultant goods could be based on the present central excise rules.
- For captive consumption of principal, the value of goods supplied along with job work charges could be reckoned.
  - For supply to ultimate customer, the price to the customer may have to be adopted.
  - For supply to depot of the principal the price at depot at the time of supply could be adopted.
  - The valuation of such processed goods could be disputed.
  - We await the valuation rules for clarity.



## **Challenges/ Impact of GST on Job Work**

1. Lakhs of job workers would require to be registered under GST for the 1<sup>st</sup> time. Earlier Rs. 150 lakhs exemption for those engaged in manufacture is now only Rs. 20 lakhs.
2. They may have to learn to account and bill properly.
3. Their turnover would multiply as value of material would get added.
4. There could be valuation issues at the job workers end unless the valuation rules ( to be notified) are followed.

- 5) The job worker who is required to register could become cost effective if they were to capture all credits of capital goods/ stocks in hand (section 167/ 168/ 169) under central excise as well as VAT.
- 6) The working capital requirement of the manufacturer would increase as GST would be payable on all supplies towards job work unless special procedure under section 55 opted for.
- 7) Job workers would also need more working capital as they would need to pay the differential GST.

## Conclusion:

- The industries who were depending on the job workers for economies of cost and sticking to their core competencies may not be much affected under GST.
- The credit available to the job workers earlier being lost could be captured.
- Those who were using the job work route for claiming the SSI exemption for units under Rs. 150 Lakhs may not be able to do so under GST.

- It may take some time for the job workers to come to terms with need to be within GST.
- Extensive change management and training would be needed to get acceptability to GST.
- The manufacturer would surely see a reduced cost of manufacture due to seamless credit at all stages of job work.
- The savings in logistic costs due to GST may also be an incidental advantage.



# *CONSTRUCTION CONTRACTS*

# Definitions

- Under DVAT Act, 2004
- **Work Contracts** includes any agreement for carrying out for cash or for deferred payment or for valuable consideration, the building construction, **manufacture, processing,** fabrication, erection, installation, fitting out, improvement, repair or commissioning of any **movable or immovable property.**

- Under Revised Model GST Law
- **“works contract” means a contract wherein transfer of property in goods** is involved in the execution of such contract and includes contract for
  - building, improvement,
  - construction, **modification,**
  - fabrication, **repair,**
  - completion, **maintenance,**
  - erection, **renovation,**
  - installation, **alteration**
  - fitting out,
  - or commissioning of **any immovable property;**

**NOTE: manufacture, processing are not written in the above definition and 5 items marked dark are extra.**

2(27) “**composite supply**” means a supply made by a **taxable person to a** recipient comprising 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;

- Illustration : *Where 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.*



2(66) **“mixed supply”** means **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;

- Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

# **RELEVANT EXTRACT OF SCHEDULE II –Revised MGL**

## ***MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES***

*5. The following shall be treated as "supply of  
service"-*

*.....*

*(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,*

*Contd....*

- *except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its occupation, whichever is earlier.*

.....

*(f) Works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.”*

# COMMENTS

- ❖ It is clear from the above that **value of goods** which are transferred in execution of works contract will be liable to tax **as service** and not as goods.
- ❖ In many contracts value of goods is much more than value of labour and services and the **predominant object** of such contract is to **supply goods**, however **in GST** the supply of goods involved in execution of such contract will be treated as '**supply of services**'.

- ❖ To decide whether supply is **intra-state or inter-state** or deciding point of tax or rate of tax, **rules as applicable to supply of services shall apply.**
- ❖ With the clarity that “Works Contract” including goods transferred in execution of work contract shall be considered as “Service”, **the principle of Dominant Intention** and its irrelevancy as set out in various landmark judgments including BSNL, L&T etc **has been put to rest.**

- **No valuation procedure** has been prescribed in case of works contract where **land** is involved. How the value of land involved in works contract can be excluded still requires clarification.

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# INPUT TAX CREDIT [SECTION 17]

- “(4) Notwithstanding anything contained in Section 16(1) and sub-section (1), (2), (3) and (4) of Section 18, input tax credit shall not be available in respect of the following:
- (c) works contract services when supplied for construction of 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 received by a taxable person for construction of an immovable property, other than plant and machinery, for self, even when constructed for renting or leasing.”

## **TREATMENT OF LONG TERM CONSTRUCTION / WORKS CONTRACTS [SECTION 186]**

- The goods and/or services 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.



# Thank you All !!!

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