

Specific issues under Stock transfer: Consignment Sales, Inter unit transaction (Separate and Centralized Registration within State), E-commerce, Job work, Captive consumption”.

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The Indian market will be integrated into a single market. Introduction of GST will be a game changer for the enterprises. Concepts like manufacture, captive consumption, inter-unit supply, branch transfer, consignment sale, sale at factory gate, etc. will lose their meanings under the GST regime. GST will ensure optimal allocation and utilization of resources based on pure commercial reasons. It is also expected that consequent to elimination of cascading effect of tax, goods and services will become cheaper as well as broaden the tax base.

Section 6A was inserted in Central Sales Tax Act, 1956 by The Central Sales Tax (Amendment) Act, 1972. Under the scheme of this section, there is rebuttable presumption that every inter-State movement of goods is sale from originating State to destination State. The presumption is rebuttable by originating State dealer by obtaining a form called 'Form F' from the destination State dealer. This presumption is there even if the movement of goods is pursuant to a contract of job work or even pursuant to inter-State purchase return. [Ambica Steels Limited v. State of U.P. [2008] 12 VST 216 (Allahabad HC) affirmed [2009] 24 VST 356 (SC)].

THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016: India, being a federal country has dual taxes and therefore the constitutional provisions are amended. The present amendments would subsume a number of indirect taxes presently being levied by Central and State Governments into GST thereby doing away the cascading of taxes and providing a common National Market for Goods and Services.

Section 1: Short title and Commencement

According to this Section, the Act shall be called, the Constitution (One Hundred and First Amendment) Act, 2016 and it shall come into effect as the Central Government may, by notification in the Official Gazette notify.

Section 2: New Article 246A Inserted-Special provision with respect to goods and service tax

As per this section, the parliament and the legislature of every state have power to make laws with respect to GST imposed by the union or by such state. Parliament has exclusive powers to make law pertaining to GST in the course of Interstate trade or commerce.

Section 8: Amendment of Article 269

Article 269 talks about taxes on the sale or purchase of goods and taxes on the consignment of goods levied and collected by union but assigned to the states. The present amendment has been made effect to the insertion of new Article 269A which provides for levy of goods and service tax on supplies in the course of interstate trade or commerce. Hence, except as provided in article 269A all other taxes on sale or purchase of goods and taxes on the consignment of goods can be levied and collected by union but assigned to the states.

Section 9: Insertion of New Article 269A – levy and collection of goods and service tax in course of interstate trade or commerce

GST on supplies in the course of Interstate trade or commerce shall be levied and collected by the Government of India. Such IGST will be appropriated between union and states in the manner specified by GST Council. The import into the territory of India will be deemed as supply of goods or services or both in course of Interstate trade or commerce. The amount appropriated as IGST to a state shall not be a part of consolidated fund of India. The amount

collected as IGST and is used for SGST then such amount shall not form part of consolidated fund of India. The amount collected as SGST and is used for IGST then such amount shall not form part of consolidated fund of state. Parliament can formulate the principles for determining the place of supply which takes place in the course of Interstate trade or commerce.

I) Stock Transfer

- It is common that in the business operations there will be stock transfer of its goods to its units, depots, warehouses which cater to customers' orders in different geographical area. In the current regime there is levy of excise duty on removal of goods when there is stock transfer of manufactured goods both within the state and outside the state. However there is no impact of VAT or CST in the case of stock transfer of goods. Under the GST regime there is shift of the taxable event that is supply. Schedule I of the Model GST law deems any "Supply of goods or services between related persons or between distinct persons as specified in section 10 when made in the course or furtherance of business" shall be treated as supply even if it is made without consideration. In other words, Schedule I cover the transaction of stock transfer which is without consideration.

The implication of the aforesaid provisions is as follows:

Stock transfer of goods between two states would be liable to IGST.

Stock transfer of goods between two business verticals in the same state where separate registration has been taken for each business vertical would be liable to CGST/ SGST.

Accordingly all transactions qualifying as a supply would be subjected to either levy of CGST/SGST or IGST depending upon whether it is intra state or interstate. As per Section 2(50) of Model GST law "IGST" means the tax levied under the Integrated Goods and Service Tax Act 2016. IGST is one of the three components of GST tax system in India. The charging section of the IGST Act provides for the levy of IGST on the supply of goods made in the course of interstate trade or commerce.

Since the registration under GST is based on PAN and there is also state wise registration the stock transfer made from one registration of the taxable person to another registration will be intra state (where the registration is business vertical wise) and interstate in all the cases.

As per Rule 3(5) of the GST Valuation Rules when goods are stock transferred from one place to another of the same business the value of such supplies shall be transaction value. There should be specific valuation mechanism for stock transfer preferably cost plus percentage otherwise it will increase the administration and compliance cost. The GST paid by one unit of the tax payer would be available as credit to another unit of the tax payer.

The movement of goods or services from one State to another on transfer basis would be leviable to IGST. The transfer of goods or services within a State would be leviable to SGST and CGST. In both the cases the branch/ consignment agent could avail the credit which will results in reducing costs.

Stock transfers to a branch or consignee have been the norms of trade in both pre and post VAT regime. Further, Stock Transfer can be both inter-state and intra-state. Various businesses contemplate options of selling the goods to another dealer or opening up a branch in another state, sending the goods on stock transfer and then selling from that branch.

In the existing regime Inter-state sales are covered by Central Sales Tax Act and presently, the transfer of goods without payment of CST is permissible when one transfers it to self or agent against submission of declaration form 'F'. GST regime is 'formless' regime as all forms under CST Act shall be abolished with the introduction of GST. However, presently the problem is that State VAT laws require reversal of input tax credit on purchases made in the same state if such goods are transferred otherwise than by way of sale like stock transfer to branch or agent as the case may be. Due to this reversal cost of product increases.

However, taxation of stock transfer is in effect only a pre-payment of tax on output which will primarily impact the working capital requirements. The quantum of impact will vary depending on stock turnaround time at warehouse, credit cycle to customer, quantum of stock transfer, etc. Thus, working capital requirements of a trader shall increase in GST Regime.

Therefore Stock transfer is treated as supply. Therefore IGST is mainly charged on interstate supply of goods and services. The IGST is charged on interstate stock transfer of goods from one state to another. The GST was intended to tax only interstate stock transfers and not intra state stock transfers. Stock transfer within the state between the distinct persons is not liable to GST. Stock transfer of goods between two business verticals in the same state where separate registration has been taken for each business vertical would be liable to CGST/SGST.

The GST Valuation Rules provide that the value of the goods shall be transaction value. Where goods are transferred from one place of business to another place of business or the principal to an agent or vice versa whether or not situated in the same state the value of such supply shall be transaction value. The Transaction value is the price paid or payable for the supply of goods. As there is no price paid or payable for the supply of goods this provision cannot be implemented.

These Valuation Rules will have be relevant in cases such as free supply of goods and/or services, supply of goods and/or services to related parties, captive consumption of goods and /or services, transaction between branch and head office, stock transfer between factory and warehouse, cost allocation of shared services, etc.

The Valuation Rules as per Model GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 will be applicable if valuation is not possible as transaction value. Such Rules shall apply to the supply of goods and or services under the IGST/CGST/SGST bill. Some of the methods prescribed for valuation are given hereunder:-

Transaction value of goods or services of like kind:

where value of supply cannot be determined under previous method the value shall be determined on the basis of transaction value of goods or services of like kind and quality supplied at or about the same time to customers

Computed value method:

Where value cannot be determined under previous method it shall be based on computed value which shall include cost of production, manufacture or processing of the goods or, the cost of the provision of services, the charges if any for design and brand and amount towards profit and general expenses.

Residual method:

Where the value cannot be determined under the computed value method the value shall be determined using reasonable means consistent with the principles and general provisions of these Rules.

Therefore the GST Valuation Rules provides that if the transaction value is not available, then the transaction value of goods of like kind and quality should be considered. Further, if goods of like kind and quality are not available, then the computed value, i.e. the cost of production, general expenses and profit, should be adopted. Hence, for stock transfers, where a supply for a

consideration of goods of like kind and quality is available, such transaction value is to be adopted, and if there is no such supply, then the cost of sales would have to be adopted. There should be a consistent basis for the valuation of stock transfers.

Under proposed GST scheme, if stock transfers are made liable to tax in originating State, businesses may land in a situation of funds blockage. Entrepreneur will have to pay in cash (or through accumulated credit) in the month/quarter of despatch. Though equal amount will be available as set-off in arrived State, money will come into circulation only when goods are sold in the arrived State. In many of the seasonal industries, where production continues on 24X7 basis but sale happens in specific periods (fertiliser, woollen clothes etc), if the goods are warehoused in a state other than the State of manufacture, blockage of funds may be for a considerably long period. Even in industries where production and sale is evenly distributed throughout the year, certain level of inventory needs to be maintained in different states. Funds will always remain blocked to that extent. This will add to carrying cost of inventory. To avoid this situation, entrepreneur will be tempted to maximize warehousing in the State of manufacture itself.

II) Consignment Sales

- “agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services on behalf of another, whether disclosed or not.
- “Principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods and/or services; The expression “recipient” shall also include an agent acting as such on behalf of the recipient in relation to the goods and/or services supplied.
- “Place of business” includes
 - (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods and/or services; or
 - (b) a place where a taxable person maintains his books of account; or
 - (c) a place where a taxable person is engaged in business through an agent, by whatever name called;
- In the existing regime sometimes the goods are not sold but are transferred to branch/agent. In case such branch is outside the state it is called interstate stock transfer and in case such agent is outside the state it is called as interstate consignment transfer. No CST is imposed on consignment/stock transfer. The burden of proving that the movement of these goods was occasioned not by reason of sale shall be on the dealer transferring the goods to his branch/agent/principal. F Form is given in case of Interstate sale to consignment agent, Interstate sale to Branch and Interstate sale to Job worker.
- The matters to be treated as supply even if made without consideration in terms of clause (c) of sub section (1) of section 3 of Model GST law 2016 includes supply of goods (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- Therefore where goods are transferred from one place of business to another place of the same business or from the principal to an agent or from an agent to the principal,

whether or not situated in the same State, the value of such supply shall be the transaction value.

- The Agent is making the supplies not on his own account but on behalf of principal.
- IGST levied and collected by the Centre applicable to interstate supplies of goods/services in India and interstate stock transfers of goods.
- Persons who supply goods and/or services on behalf of other taxable persons whether as an agent or otherwise, irrespective of the threshold specified are required to get registered irrespective of the threshold limit.
- Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall be jointly and severally liable to pay the tax payable on such goods under the Act.
- Expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of the taxable service if specified conditions are fulfilled.
- Special Issues/Impact on Stock Transfers
 - In the current system stock transfer are exempted under section 6A of the CST Act
 - Input Tax reversal
 - Depots and Godown have been created for non business reasons
 - Excise Duty is payable on stock transfer
 - Interstate stock transfers would attract IGST
 - Currently manufacturers pay excise duty and not traders
 - Huge cash flows on stock transfer
 - Depots can avail IGST Credit subject to that sale happens
 - Dealers willingness to hold stock
 - Relevance of depots/godown/C&F

III) Inter unit transaction (Separate and Centralized Registration within State),

- Distinct Persons: As per section 10(2) of the Model GST law a person who has obtained or is required to obtain more than one registration, whether in one state or more than one state shall in respect of each such registration be treated as distinct persons for the purposes of this Act/ As per section 10(3) of the Model GST law, an establishment of a person who has obtained or is required to obtain registration in a state, and any of his other establishments in another state shall be treated as establishments of distinct persons for the purposes of this Act.
- It is pertinent to discern that a person who has obtained registration in more than one state or more than one registration in a single state shall be treated as distinct persons
- If the taxable person is transferring any goods or services from one branch to another branch in the same state having the same GST registration Number then the taxable person is not required and will not be liable to pay GST on such transactions. They have to redesign business procurement models accordingly.

- On Intra – State supplies of goods and/ or services – CGST & SGST shall be levied by the Central and State Government respectively, at the rate to be prescribed. The elaborative Rules have been provided to determine the place of supply.
- Intra state supply of goods and or services where the location of the supplier and the place of supply are in the same state.
- As per section 2(18) Business Vertical means “business vertical” means a distinguishable component of an enterprise that is engaged in supplying an individual product or service or a group of related products or services and that is subject to risks and returns that are different from those of other business verticals;
- Explanation: Factors that should be considered in determining whether products or services are related include:
 - (a) the nature of the products or services;
 - (b) the nature of the production processes;
 - (c) the type or class of customers for the products or services;
 - (d) the methods used to distribute the products or provide the services; and
 - (e) if applicable, the nature of the regulatory environment, for example, banking, insurance, or public utilities.
- PAN based registration from each state from where the taxable supplies are being made. A person having multiple business verticals in a state may obtain separate registration for each business vertical.
- The registration is to be given by both Central and State Authorities on a common e application.
- Every person who is liable to take a Registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of Sub-section (1) of Section 23 of Revised Model GST Law.
- In terms of Sub-Section (2) of Section 23, a person having multiple business verticals in a State may obtain a separate registration for each business vertical, subject to such conditions as may be prescribed.
- The cancellation of registration under one Act (say CGST Act) shall be deemed to be a cancellation of registration under the other Act (i.e. SGST Act). (Section 26 (6)).
- There is no option for centralized registration for services under Model GST law
- If the tax payer has different business verticals in one state it is not mandatory that he should obtain separate registration for each vertical in the state.
- However the taxpayer has the option to register such separate business verticals independently in terms of Section 23(2) of Model GST Law.
- The Input service distributor registration is for one office of the tax payer and it will be required to register separately irrespective of the threshold.
- The Tax payer can have multiple ISDS and different offices of a tax payer can apply for ISD registration.
- Even the service provided by the Head office to branches or from one branch to another branch or from Head office to Branch will be leviable to IGST if they are in different states and IGST would be payable on such supplies.
- In many instances the entries are not recorded in books of accounts for service provided by Head office to Branch or vice versa and therefore there will be implication of GST

even if it is not recorded in books of Accounts or even if the entity (Head office/Branch) is not charging for such intra company service

- The taxable persons will not be eligible to opt for composition scheme only for one out of 3 business verticals as such composition scheme would be applicable for all business verticals/ registrations, which are separately held by the person with same PAN. If any 1 business vertical of a taxable person becomes ineligible for paying tax u/s 9 (composition scheme), then all other business verticals of the said taxable person shall become ineligible for paying tax u/s 9 (composition scheme).
- Input Service Distributor should distribute the credit where distributor and recipient being business vertical are located in same states as CGST and IGST as CGST and SGST and IGST as SGST.
- In terms of Sub-Section (2) of Section 23, a person having multiple business verticals in a State may obtain a separate registration for each business vertical, subject to such conditions as may be prescribed.
- The transitional provisions would allot one registration certificate in each State based one PAN even though previously such person had multiple registrations in a State unless they qualify as distinct business verticals under the GST law.
- All units/ business premises registered either under Central Excise or Service Tax law would be consolidated into a single CGST registration for that State, unless the qualify as distinct business verticals under the GST law.
- The services sector, which currently deals with just central service tax, will now have to contend with multiple states where they have business operations requiring registration plus the centre, unless the government finds alternative solutions. This will impact key sectors such as financial services, telecom, etc., from a compliance perspective and has been a point of intense engagement by these sectors.
- Valuation of services between branch and head office will be litigated issue.

IV) E-commerce,

- Under this type of business model, E-Commerce Portals buys the goods themselves, hosts the details of the goods on the portal and supplies it directly to the customers. This is the simplest model and is often known as direct selling or inventory model. Under this case, sales invoice are raised by the Portal and Purchase invoices are also in the name of the E-Commerce Portals as they are engaged in buying and selling of goods on their own behalf.
- Under GST, if the E-Commerce Portals engaged in buying and selling of goods on their own behalf then such E-Commerce Portals shall not be covered under the purview of electronic commerce operator. The provisions relating to TCS shall not be applicable on such portals and they shall be liable to levy and collect tax from the customers and deposit it to the appropriate government like any other supplier.

Examples:

1. Titan Company Limited selling its 'titan' brand watches through its own E-commerce portal.
2. Zodiac clothing Company Ltd. selling clothing and clothing accessories through its own E-commerce portal.

- E-Commerce Portals providing Market Place for other persons to sale the goods: These Portals allow facilitating supplies between the buyers and the sellers. Craftsvilla, Ebay, Pepperfry, Amazon, Flipkart, Snapdeal etc. are some of the business players working under this type of business model. The general modus operandi of operation of such E-Commerce Portals is that they allow sellers of the goods to upload their product details. Prospective buyers visit these portals, select the products and place order with them. The order details are then forwarded to the seller by E-Commerce portal and seller then sends the goods directly to the purchaser. Invoice towards supply of goods is raised by the seller however; payment of the goods is received by E-Commerce portal. E-Commerce portal then raises the bill of service charges towards the seller and after deducting the amount due to them towards their service charges, remits the balance amount to seller of the goods.
- E-Commerce portal that follows aforesaid business model shall fall under the ambit of electronic commerce operator and all provisions applicable to electronic commerce operator including TCS shall apply to such E-Commerce portal.
- “Electronic Commerce” means supply of goods and/ or services including digital products over digital or electronic network.
- “Electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
- Section 8(4) provides that categories of services may be notified where tax shall wholly be paid by e-commerce operators. All provisions of the GST law shall apply to such e-commerce operators as if such persons is liable to pay tax.
- Every e-commerce operator, not being an agent, has to collect 1% of net value of taxable supplies where consideration is to be collected by the operator.
- Net value = aggregate value of goods/ services [other than those notified u/s 8(4)] made during the month less returns during the month.
- The rate of tax for collection of tax source prescribed in the Revised Model GST Law is 1%. The said 1% would be on the net value of taxable supplies made through the electronic commerce where the consideration with respect to such supplies is to be collected by the electronic commerce operator.
- Net value does not include transactions where the GST is liable to be paid by the electronic commerce operator on services to be notified by the Government under section 8(4). Net value of taxable supplies is the aggregate value of taxable supplies of goods or services made during any month by all registered taxable persons through the operator as reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.
- The taxable supplies returned to the supplier on the electronic commerce are allowed as a deduction while calculating the net value.
- As per the provisions of Section 56(1), an electronic commerce operator shall collect tax at source only where the consideration in respect of supplies is to be collected by the operator. Therefore, he is not liable to collect tax in such a situation.
- Section 56(1) does not vest any powers with any authority to increase/decrease the rate of tax fixed at 1%.
- In case such supplier operates through an electronic commerce operator who is required to collected tax at source under Section 56 such supplier is required to register under

GST. Also, the threshold limit specified under Schedule V shall not apply to such suppliers. However, in case of supplier where the electronic commerce operator does not collect the consideration with respect to supplies made on electronic commerce, then in such case, such supplier will be eligible to claim the threshold benefit for registration as per Schedule V.

- The time at which the electronic commerce operator should collect the tax at source may be construed to be, the date of receipt of consideration by the electronic commerce operator on behalf of the supplier.
- The Revised Model GST Law published applies to both CGST and SGST, a view could be taken that 1% is applicable for separately for CGST and SGST aggregating to 2%.
- The amount collected by the e-commerce operator ('operator', in short) is to be paid to the credit of appropriate government within 10 days after the end of the month in which amount was so collected. The operator is required to file return online giving details of all amounts collected by him for the outward supplies made through his Portal, within 10 days of the end of the calendar month to which such statement pertains. The return should contain the names of the actual supplier(s), details of respective supplies made by them and the amount collected on their behalf.
- TCS which is deposited by the operator into government account will be reflected in the electronic cash ledger of the actual registered supplier (on whose account such collection has been made) on the basis of the valid return filed by the operator. The actual supplier can use the same at the time of discharge of tax liability in respect of the supplies.
- The details of supplies and the amount collected during a calendar month which is furnished by every operator in his return will be matched with the corresponding details of outward supplies furnished by the concerned supplier in his valid return filed under section 32 for the same calendar month or any preceding calendar month. Where the details of outward supply, on which the tax has been collected, as declared by the operator in his statement do not match with the corresponding details declared by the supplier the discrepancy will be communicated to both persons.
- The value of a supply relating to any payment in respect of which any discrepancy is communicated and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated, the same will be added to the output liability of the said supplier in the subsequent month succeeding in which the discrepancy is communicated. The concerned supplier will, in whose output tax liability any amount has been added, will be liable to pay the tax payable in respect of such supply along with interest on the amount so added from the date such tax was due till the date of its payment.
- Inventory led model is one where online retailer (E commerce player) maintains the inventory and timely delivery to customers and capital intensive model.
- In open place model product is directly shipped by reseller to customer and there is no influence on pricing and no inventory is maintained by online retailer and there is minimal capital investment Example: E bay
- In managed market place model the fast moving goods are held on consignment and some products are sold by sellers. There is lower inventory and warehousing cost. Example: Amazon
- Principal to Agent (commission charges to electronic site owner) – commission charges example: Flip kart snap deal amazon

- Aggregator services: Ola cab Uber etc
- Compliances for E-commerce operators
TCS to be paid to credit of appropriate government;
To furnish a statement of such outward supplies of goods and / or services, electronically
Both payment and statement to be made/ filed within 10 days from the end of the month in which the collection is made
Statement to contain details of amounts collected, supplier-wise in respect of all supplies effected through the website / url of the e-commerce operator during the calendar month:
- Tax credit for the concerned supplier
Amount remitted by e-commerce operator treated as tax paid by the supplier
Supplier eligible to claim credit of the same in the electronic cash ledger.
- Verification of the statement filed by the e-commerce operator
Details of the supplies furnished by the e-commerce operator to be compared with corresponding outward supplies;
Discrepancies, if any, to be communicated to both
Discrepancy, if not rectified by supplier, to be added to output liability of supplier for the month succeeding the one in which the same was communicated.
- Additional powers to the tax office
Any officer not below Joint Commissioner may call for details like supplies of goods and / or services, stock of goods etc. from supplier through notice
Details to be furnished within 15 working days from the date of notice.
For non-compliance, penalty of upto Rs. 25,000

The law envisages a new tax collection concept at source for e-commerce marketplaces, besides mandatory registration for vendors in such marketplaces without any threshold. It's important to see how this plays out for this emerging but critical channel from an ease-of-doing-business perspective.

Issues/Challenges

High Technical Barriers to Market Entry

Heavy discounts

Aggressive pricing strategies

Storage of goods

Free delivery

Return of goods

Supply chain

High Commissions to Vendors

Impact of GST on different Models: Managed Market place Model, Open Market place model,

Inventory led model, etc

Current regime challenges

Principal/Agent relationship
Place of supply of goods (Local or interstate)
Place of supply of services may give litigation

V) Job work,

Meaning of job work

- Job work is the processing or working on goods supplied by the principal so as to complete a part or whole of the process. The work may be the initial process, intermediate process, assembly, packing or any other completion process. The goods sent for job work maybe raw material, component parts, semi-finished goods and even finished goods. The resultant goods could also be a variation of the same or the complete product. The impact of GST on Job work transactions can be better understood, only if the existing taxation aspects qua such transactions are first noted. This will enable to understand whether there is any deviation in GST vis-a-vis past laws.
- Job work under Central Excise: Job work is defined in Notification No. 214/86 dated 25.03.1986 and under Rule 2(n) of the Cenvat Credit Rules, 2004 – “Job work” means processing or working upon of raw materials or semi-finished goods supplied to the job worker/ so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process. Definition of the term “job work”, makes it evident the raw materials have to be supplied by another person. In *Prestige Engineering India Ltd v CCE Meerut*, – 1994 (9) TMI 66, the Supreme Court held that when the job worker contributed his own material to the goods supplied by the customer and engaged in manufacturing, the activity was not one of job work.
- Job Work and Manufacture or Service: Since excise duty is on ‘manufacture’, duty liability arises only when the goods are manufactured during job work. The job work operations not amounting to manufacture would be regarded as service.
- Job work under Service Tax : Service tax would be on gross amount charged towards labour charges. Where the nature of work undertaken is works contract, value would be arrived at as per options provided under Rule 2A of Service Tax (Determination of Value) Rules, 2006.
- Provisions under CST/ VAT: The levy of Sales Tax/VAT is on ‘sale’ of goods. Hence job work transactions involving pure labour would not attract levy of sales tax/VAT. When materials are supplied by principal manufacturer to job worker for the purposes of job-work, there is no sale of such goods and consequently, levy of sales tax is not attracted. In case of inter-state transfers, principal manufacturer is required to follow certain procedures for the purpose of declaring such transfers as “otherwise than for sale”. Similarly, when job-worker returns the goods to principal manufacturer, after the job work is complete, he is not liable for payment of VAT/sales tax, since such transfers would not be regarded as sale. However, if the job-work results in transfer of material from job-worker to principal manufacturer, value of material so transferred attracts VAT.

Every State has its own valuation rules for determining the value of material so transferred in the course of job-work processing.

- When the job worker uses materials there would be a transfer of property in goods involved and the transaction would be taxable.
- Similarly, there could be contracts such as painting of portrait etc. in which some consumables are used. In these cases though there is a material transfer, the activity has been understood clearly to be service by the Court's by applying dominant motive test and consequently there is no liability to charge CST.
- A job worker is person who helps the manufacturer in undertaking the outsourced activity related to manufacture process. Job worker is defined under CENVAT Credit Rules, 2004 to mean as follows: "*job work*" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly.
- With GST having an impact on each stakeholder of the business, it would be interesting to analyze the impact of GST on a job worker which would inextricably also have an impact on the principal manufacturer:
- Raw material and semi-finished goods purchased by principal manufacturer are required to be supplied to the job worker for converting them into semi – finished or finished goods. As per the definition of supply read with point 2 of Schedule I under the Model GST law (MGL) - Supply of goods between distinct persons would amount to supply under GST, if the same is done in a course of furtherance of business – irrespective of receipt of consideration or not against the same.
- Section 2(61) of Model GST law states that 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.
- As per entry 3 of schedule II (Matters to be treated as supply of goods or services) state any treatment or process which is being applied to another person's goods is a supply of services.
- Principal for the purpose of Job work is a registered taxable person, who sends any inputs and or capital goods without payment of tax to a job worker for job-work and from there subsequently send to another job worker (Section 55).
- Goods sent by a taxable person to a Job Worker will be treated as supply and liable to GST only if, the conditions specified in section 55 of the Revised Model GST Law are not met.
- The deeming provision contained in section 55(3) and section 55 (4) to treat goods (the inputs and capital goods respectively) sent by the principal to job worker as supply on the day when the inputs/ capital goods were sent out to any of his place of business is applicable only when the condition of section 55(1) with respect to receiving back the inputs, after completion of job work or otherwise and/or and capital goods within the stipulated period of 1 year and 3 year respectively of their being sent, is not satisfied. However, it shall not be regarded as supply, if the conditions as specified in section 55 of Revised Model GST law are satisfied. Moreover, the above conditions does not apply to moulds and dies, jigs and fixtures, or tools sent to job worker.

- The additionally purchased material, by the job-worker, incorporated in the goods received from the principal amount to supply in the hands of the job workers and taxable at regular rates.
- The job worker is eligible to claim input tax credit since the processing charges received in respect of labor charges and additional goods added are taxable in the hands of the job worker.
- In terms of section 8(3) of the Revised Model GST Law on the specified categories of supply of goods and/or services, the recipient of such goods and/or services is liable to pay GST under reverse charge basis. Further, Section 55 of Revised Model GST Law does not provide any exemption to job worker in this regard.
- Section 55(1) of the Revised Model GST Law provides that the registered taxable person (principal) can send the taxable goods to a job-worker for job-work without payment of tax. Further, he can send the goods from one job-worker to another job worker and so on subject to certain condition. It may be noted that provisions of Section 55 are not applicable if non-taxable or exempted goods are proposed to be sent for job-work.
- As a Job-worker would be a supplier of services, he would be required to obtain registration if his aggregate turnover exceeds the prescribed threshold.
- If the goods supplied by the principal satisfies the conditions as enumerated in section 55 of the Revised Model GST Law, then the job worker will have to show the processing charges separately and charge tax only on the processing charges.
- The goods of principal directly supplied from the job-worker's premises will not be included in the aggregate turnover of the Job Worker since the responsibility of accountability of inputs and/or capital goods lies with principal.
- Moreover, Explanation 2 to clause 2 of Schedule V of the Revised Model GST Law clarifies that supply of goods, after completion of job-work, by a registered job worker shall be treated as the supply of goods by the "principal" referred to in section 55, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.
- The principal can supply the goods directly from the premises of the job-worker without bringing it back to his own premises subject to the condition that the principal should have declared the premises of such job-worker as his additional place of business or the job-worker is a registered person or where principal is engaged in supply of goods as notified by the Commissioner.
- The circumstances where the goods can be supplied directly from the place of business of job-worker without declaring it as additional place of business in two circumstances where the job worker is a registered taxable person or where the principal is engaged in supply of goods as may be notified by the Commissioner in this behalf.
- In the Revised Model GST Law, aspects relating to availment of input tax credit in respect of inputs sent for job-work have been specifically dealt with in Section 20, which provides that the principal shall be entitled to avail credit of inputs sent to a job worker if the said inputs, after completion of job-work or otherwise are received back within a period of one year from the date of being sent to a job worker. In case the inputs are sent directly to the job-worker, the date shall be counted from the date of receipt of inputs by job-worker. Further, if such inputs are not received back within a period of one year then it shall be deemed that the inputs has been supplied by principal to the job worker on the day when the said inputs were sent out.

- In the Revised Model GST Law, aspects relating to availment of input tax credit in respect of capital goods sent for job-work have been specifically dealt in Section 20, which provides that the principal shall be entitled to avail the credit of taxes paid on capital goods if the said capital goods, other than moulds & dies, jigs & fixtures, or tools, after completion of job-work or otherwise are received back within a period of three years from the date of being sent to the job worker. In case, the capital goods are sent directly to the job-worker, the date shall be counted from the date of receipt of capital goods by job-worker. Further, if such capital goods, other than moulds & dies, jigs & fixtures, or tools, are not received back within a period of three year then it shall be deemed that such capital goods have been supplied by the principal to the job worker on the day when the said capital goods were sent out.
- In terms of section 55(3), if the said inputs are not received back within the stipulated time i.e., one year, then it shall be deemed that the said inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.
- In terms of section 55(3), if the said inputs are not received back within the stipulated time, then it shall be deemed that the said inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out. Accordingly, such goods will become the inputs of the job-worker and he can avail the input credit of tax on the same if the principal issue a tax invoice and the same is declared in the return of the principal in terms of section 33 and by the job worker in terms of section 34 of the Model GST law. Further the value of such goods will be included in the computation of aggregate turnover of the job-worker.
- In terms of section 55(4), if the said capital goods, other than moulds & dies, jigs & fixtures, or tools, are not received back within the stipulated time i.e., 3 years, then it shall be deemed that the said capital goods had been supplied by the principal to the job-worker on the day when the said capital goods were sent out.
- Job-worker can take the input credit subject to section 33 of the Model GST Law. Further, such credit shall not be allowed after furnishing of return under section 34 for the month of September following the end of the financial year to which such details pertain or furnishing of the annual return, whichever is earlier.
- The principal can move the goods to a job-worker place under the cover of a deliver challan and such other documents which may be prescribed only if the goods are removed in terms of section 55 of the Revised Model GST law.
- The principal is required to raise a taxable invoice on the day immediately after the expiry of the one year or three years period of their being sent out, for inputs or capital goods the case may be.
- If the principal does not receive the goods within one year or three years period for inputs or capital goods (other than moulds & dies, jigs & fixtures, or tools) as the case may be, then it will be considered as supply in terms of section 20 and 55. In such cases the principal has to declare it as an outward supply and pay the GST along with interest calculated from the date such goods are sent to job-worker.
- In terms of section 20(2) of the Revised Model GST law the principal shall be eligible to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without their being first brought to his place of business.

- ITC can be taken in respect of moulds & dies, jigs & fixtures, or tools sent to a Job Worker as there is no time limit prescribed to receive back such goods from job worker, as Section 55(4) specifically excludes moulds & dies, jigs & fixtures, or tools.
- The job worker can sell directly any waste and scrap generated during the job work and job worker shall discharge the tax if job worker is registered otherwise principal has to discharge the tax liability.
- Section 55 allows only a registered taxable person to send goods without payment of duty. Therefore, principal supplying goods to job worker is compulsorily required to be registered as a taxable person
- Job worker may not be required to register compulsorily as the Section 55 of the Revised Model GST law does not prescribe any such condition. Hence, the threshold benefit of registration is equally applicable even in case of a job worker.
- To conclude, the study of implications under GST law on the aspects related to valuation of job-work transactions is very crucial having regard to various issues raised above and wherever there is a scope for ambiguous situation, necessary clarification is required in the GST Act, in order to save the job work industry from possibility of litigation in future.

Issues/Challenges

- Registration of Job workers within the state and outside the state
- Turnover will include the addition of material
- Accounting and Invoicing of Receipt of goods and return of goods and services is Required
- Valuation of the Job worker turnover
- Capturing Input Credit in GST unlike missed credits in Excise and VAT
- No statutory form for movement of goods from principal to job worker and job worker to Principal.

VI) Captive consumption

‘Captive Consumption’ means the consumption of goods manufactured by one division or unit and consumer by another division or unit of the same organization or related undertaking for manufacturing another product. Captive consumption means the consumption of goods manufactured within the same factory or transfer of goods to a sister unit or another factory of the same company/firm for further use in the manufacture of goods. The goods internally consumed to manufacture the final products is termed as intermediate goods. If the intermediate goods are used to manufacture final product which is duty chargeable then on removal of the intermediate goods for internal use duty is not payable to the Government. And if the intermediate goods are used to manufacture final products which is exempted from duty then on removal of the intermediate goods for internal use duty is payable to the Government.

The liability of excise duty arises as soon as the goods covered under excise duty are manufactured but excise duty is collected at the time of removal or clearance from the place of manufacture even if such removal does not amount to sale. The assessable value of goods used for captive consumption is based on cost of production. For the purpose of arriving at cost of

production of goods dispatched for captive consumer adjustment for stock of work-in-progress, finished goods, recoveries for sales of scrap, wastage etc., shall be made.

According to the Central Excise Valuation (Determination of Price of Excisable Goods), Rules, 2000 the assessable value of goods for captive consumption is 110% (w.e.f. 5.8.2003) of cost of production of such goods and as may be prescribed by the Government from time to time. The Cost Accounting Standard 4 (CAS-4), issued by the Institute of Cost Accountants Of India, is to be followed for determining the cost of production to arrive at an assessable value of excisable goods used for captive consumption.

Stock of work-in-progress shall be valued at cost on the basis of completion as per the cost accounting principles. Similarly stock of finished goods shall be valued at cost. Opening and closing stock of work-in-progress shall be adjusted for calculation at cost of goods produced and similarly opening and closing stock of finished goods shall be adjusted for calculation of goods dispatched.

Can one construe Captive Consumption as Deemed Supply. Yes the word supply is very wide term and it includes the captive consumption. This is the new provision for supply of goods and services. The valuation of the captive consumption is litigated issue. It is in provisions in line with customs valuation are incorporated. Now goods/services supplied even for captive consumption to related parties then valuation is to be made in accordance with computed value based on cost accounting standards.