

SIRC- ICAI

Modular Workshop on GST

**Job work, Stock transfer, Repair, Warranty,
Returns of Goods, Free Supply, Work
contract, Donation.**

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Certain Fundamental Concepts - What is

GST???

- The definition of GST as per Article 366(12A) of constitution is as follows:

“any tax on supply of goods or services or both except taxes on supply of the alcoholic liquor for human consumption”

- Definitions of goods and services (Section 2):

(49) **“goods”** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

(92) **“services”** means anything other than goods;

Explanation 1.- Services include transactions in money but does not include money and securities;

Explanation 2.- Services does not include transaction in money other than an activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Central GST / State
GST payable in case
of **intra-State trade
or commerce**

CGST + SGST

Levied by
the Central
govt.

Levied by
the State
govt.



**Integrated GST
(IGST) payable in
case of Inter-state
trade or commerce
as well on imports.**

IGST

Levied by
the Central
govt.

How to Determine which GST to be paid??

A. Definition of supply. SUPPLY (Section 3)

The section 3 defines meaning and scope of supply which is reproduced below:

.(1) Supply includes—

.(a) all forms of supply of goods and/or services such as sale, transfer, barter,

.exchange, license, rental, lease or **disposal made or agreed to be made for a consideration** by a person in the course or furtherance of business,

.**(b) importation of services, for a consideration whether or not in the course or furtherance of business, and**

.(c) a supply specified in Schedule I, made or agreed to be made without a consideration.

- The definition of phrase “consideration” is defined as follows:

*(28) “**consideration**” in relation to the supply of goods and/or services to any person, includes-*

-
- a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person;
 - b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person:

Provided that a deposit, whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;

MATTERS TO BE TREATED AS SUPPLY WITHOUT CONSIDERATION

1) 1. Permanent transfer/disposal of **business assets where input tax credit has been availed on such assets.**

2. Supply of goods or services **between related persons**, or between distinct persons when made in the course or furtherance of business.

Meaning of distinct persons (section 10):

- i. A person who has more than one registration, whether in one State or more than one State, shall be treated as distinct persons for the purposes of this Act.
- ii. An establishment of a person who has registration in a State, and any of his other establishments in another State shall be treated as establishments of distinct persons.

➤ Definition of Related Person [Section 2(84)]

(82) persons shall be deemed to be “**related persons**” if only -

(a) they are officers or directors of one another's businesses;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) any person directly or indirectly owns, controls or holds **twenty five** per cent or more of the outstanding voting stock or shares of both of them;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) they are members of the same family;

MATTERS TO BE TREATED AS SUPPLY WITHOUT CONSIDERATION

3. Supply of goods— SCHEDULE I

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

“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;

4. Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

I. The tax liability on a composite or a mixed supply shall be determined as follows **COMPOSITE AND MIXED SUPPLY**

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;

(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.

I. The tax liability on a composite or a mixed supply shall be determined as follows:

COMPOSITE AND MIXED SUPPLY

(b) a mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

(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.

VALUATION PROVISIONS

Section 15 read with GST Valuation Rules 2016 makes provision for determination of value of supply of goods or services.

Transaction value – (i) Section 15(1) is shows as below: _____

VALUATION RULES TO COVER OTHER TRANSACTIONS NOT NOTIFIED.

Unique Provisions of electronic filing and matching

- The portal of Government will indicate credit availed and utilized. The credit will be availed based on details of invoices declared by taxable person in portal.
of credit Electronic Credit Ledger
- Computation of tax payable, by the GSTN network and Maintenance of electronic credit and cash ledger in the system by Government
- Uploading of details of each invoice for business to business (B2B) customer and for Business to consumer (B2C) for specified categories.
- Accreditation and blacklisting of registered taxable person
- Disallowance of credit when tax is not paid by the supplier. (matching of credit principle.)



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5. Taxable outward supplies to a registered person

(figures in Rs)

GSTIN/ UIN	Invoice						IGST		CGST		SGST		POS (only if different from the location of recipient)	Indicate if supply attracts reverse charge \$	Tax on this Invoice is paid under provisional assessment (Checkbox)	GSTIN of e- commerce operator (if applicable)
	No.	Date	Value	Goods/ Service	HSN/ SAC	Taxable value	Rate	Amt	Rate	Amt	Rate	Amt				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)

GST Returns and matching of credit

1) The various types of return specified in business process note are as follows:

Sr. No.	Return/ Ledger	Applicable for	To be filed by	
a.	GSTR-1	Outward supplies made by taxpayer (other than compounding taxpayer and ISD)	10th of the next month	
b.	GSTR-2	Inward supplies received by a taxpayer (other than a compounding taxpayer and ISD)	15th of the next month	
c.	GSTR-3	Monthly return (other than compounding taxpayer and ISD)	20th of the next month	
d.	GSTR-4	Quarterly return for compounding Taxpayer	18th of the month next to quarter	

Sr. No.	Return/ Ledger	Applicable for	To be filed by	
e.	GSTR-5	Periodic return by Non-Resident Foreign Taxpayer	Last day of registration	
f.	GSTR-6	Return for Input Service Distributor (ISD)	13th of the next month	
g.	GSTR-7	Return for Tax Deducted at Source	10th of the next month	
h.	GSTR-8	Annual Return	By 31st December of next FY	

Present Law

Excise	Service Tax	VAT
Excise duty is payable when activity under J/w results into manufacture	Service tax is payable when activity under J/w does not result into manufacture	VAT is payable in case when there is transfer of goods by J/w,
Rule 10A of Central Excise Valuation Rules, 2000 deal with valuation of excisable goods manufactured by job worker on behalf of principal or value is COP + job charges	No specific valuation provision If there is transfer of goods, then service tax is not applicable on the value of goods transferred.	Payable on value of material transferred.
J/w exempt if principal undertakes the liability to pay duty	J/w exempt if value of J/w is included in the final product on which principal manufacturer undertakes the liability to pay duty	No VAT is payable in case of job work operations involving pure labour.

TRANSITIONAL PROVISIONS FOR JOB WORK - Input removed for Job work and returned on or after the appointed day (Section 175)

- No tax shall be payable if the inputs removed from factory 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 if such inputs after completion or otherwise, **are returned to the said factory within six months from the appointed day:**
- The period of six months may, may be extended for a further period not exceeding two months, on sufficient cause being shown.
- If such inputs are not returned within a period of six months or the extended period from the appointed day the input tax credit is recoverable as arrears of tax under section 184.
- Input credit is not admissible for amounts which are recovered under section 184.
- What if the goods are returned after 6 months - Is duty payable again and whether earlier re-credit admissible?
- The benefit of the above provision will 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 prescribed form and manner.

▪ **Similar provisions under SGST law.**

Semi Finished goods removed for job work and returned on or after the appointed day (Section 176)

- No tax shall be payable 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 are returned to the said factory after undergoing manufacturing processes or otherwise, within six months from the appointed day. Period can be extended for a further period not exceeding two months.
- Is exemption applicable for inter-state movement also?
- If the said goods are not returned within six months or the extended period the input tax credit shall be liable to be recoverable as arrears of tax under section 184.
- Input credit is not admissible for amounts which are recovered under section 184.
- What if the goods are returned after 6 months - Is duty payable again and whether earlier re-credit admissible?
- The manufacturer may, in accordance with the provisions of the earlier law, transfer the said goods to the premises of any registered taxable person for the purpose of supplying therefrom on payment of tax in India or for exports within six months or the extended period.
- Manufacturer and job-worker need to declare the details of the goods in such form and manner and within such time as may be prescribed. Similar provisions under SGST

Finished goods removed for carrying out certain processes and returned on or after the appointed day (Section 177)

- No tax shall be payable 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, in accordance with the provisions of earlier law and such goods, are returned to the said factory after undergoing tests or any other process, to the said factory within six months from the appointed day or extended period of further period not exceeding two months..
- Is exemption applicable for inter-state movement also?
- If the said goods are are not returned within a period of six months or the extended period from the appointed day the input tax credit shall be liable to be recovered.
- Input credit is not admissible for amounts which are recovered under section 184.
- What if the goods are returned after 6 months - Is duty payable again and whether earlier re-credit admissible?
- The manufacturer may, in accordance with the provisions of the earlier law, transfer the said goods to the premises of any registered taxable person for the purpose of supplying therefrom 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. **Similar provisions under SGST law.**

Transitional provisions for capital goods sent to Job-worker.

- a.** Currently capital goods can be sent to job worker without reversal of the credit.

- b.** The credit is required to be reversed if the capital goods are not received back within 2 years.
- c.** No Specific transitional provisions for capital goods which have been sent to job-worker prior to GST.
- d.** Thus if the capital goods are not returned within 2 years then the credit availed under earlier law will be recoverable.

Definition of Job Work under GST

Job work has been defined in section 2(62) as follows.

law

(62) **“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;

Job-work definition under Central Excise currently.

n) “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;

Whether job work is supply of goods or service.

Schedule II.

3. Treatment or process

(a) Any treatment or process which is being applied to another person's goods is a supply of services.

Thus job work activity is a service activity.

Status of value of goods / consumables used while undertaking job worker.?

Job Work

Special procedure for removal of goods for certain purposes (Section 55)

- i. A “principal” may, under intimation and subject to such conditions, send 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 like-wise.

- ii. The “principal” can bring back the goods **to any of his place of business** _without payment of tax; within the following time
 - bring back inputs, after completion of job-work or otherwise, **within one year** of their being sent out.

 - **bring back** capital goods, other than moulds and dies, jigs and fixtures, or tools, **within three years, respectively**, to any of his place of business, without payment of tax;

Impact on Inter-state Job work movement.

Job Work. Contd (Section 55)

iii. The principal also has the option to supply such goods on payment of tax within India or export without payment of tax directly from the premises of the job-worker after completion of job-work within one year for inputs and three years for capital goods, respectively, of their being sent for job-work.

iv. The option of direct supply from the job-workers place is available only when if the “principal” declares the place of business of the job-worker as his additional place of business except where the job worker is registered under section 23.

v. No requirement to take registration as a additional place of business if the “principal” is engaged in the supply of notified goods

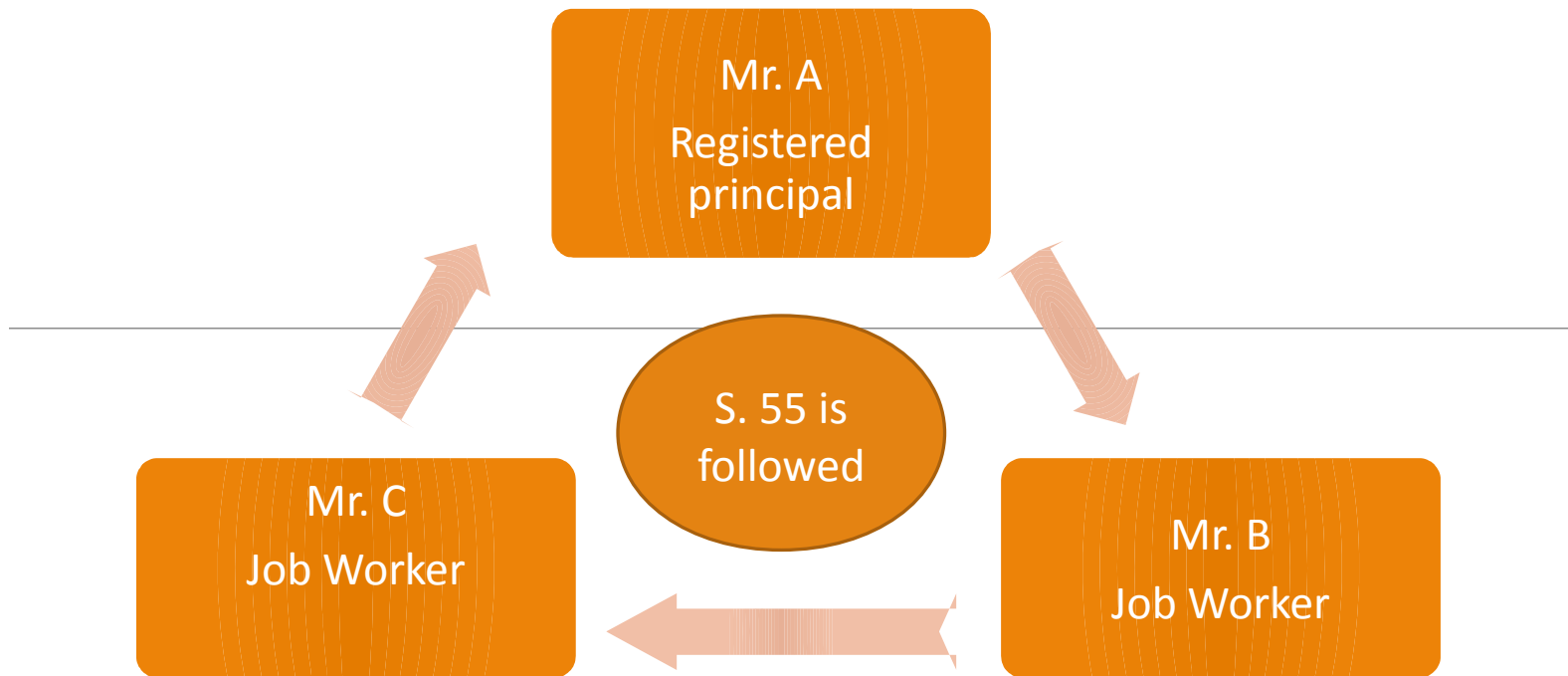
Implications of direct dispatch-

i. Applicable GST. ii. Manner of invoicing. iii. Reconciliation with books and returns. iv. Accounting at receiver end for matching of credit.

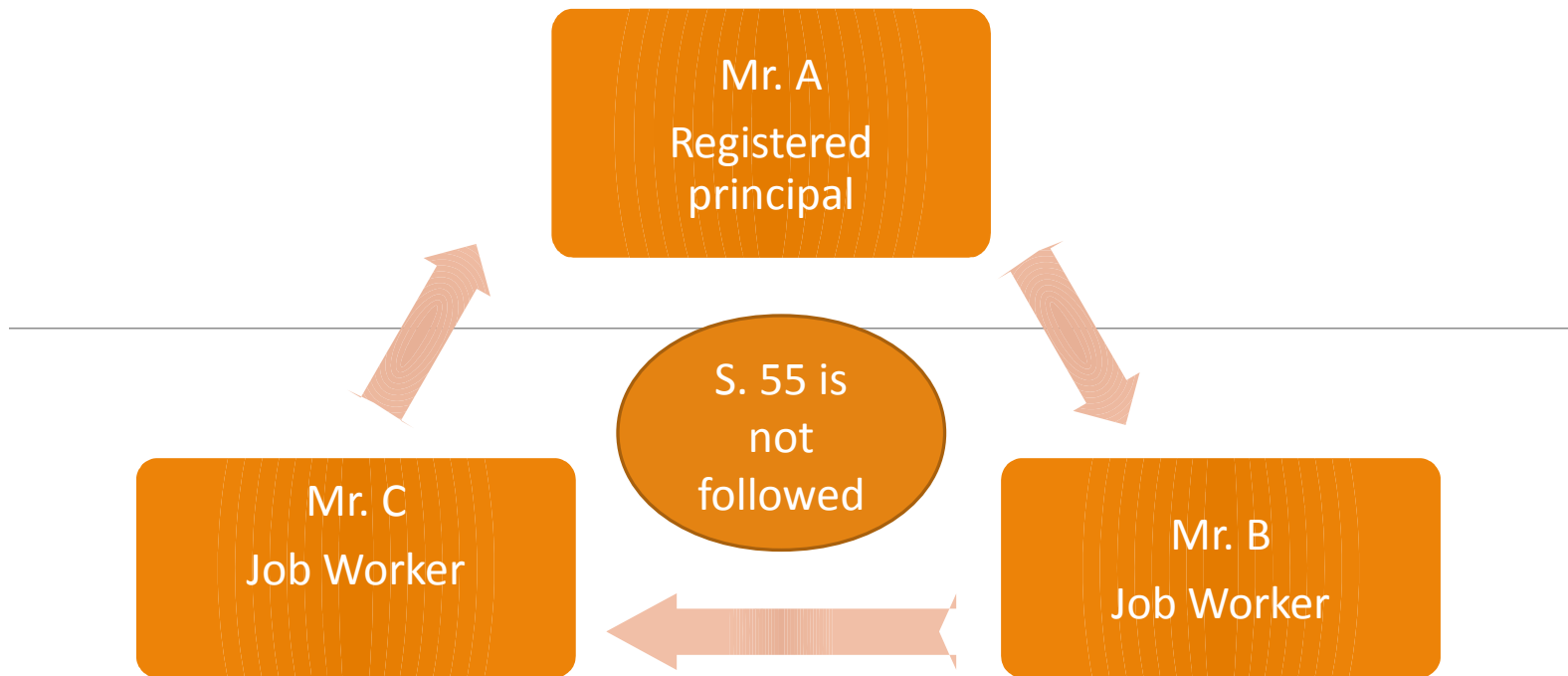
v. Accumulation of credit at one location. vi. Practical issues at taking registration at job workers end.

Job Work. Contd (Section 55)

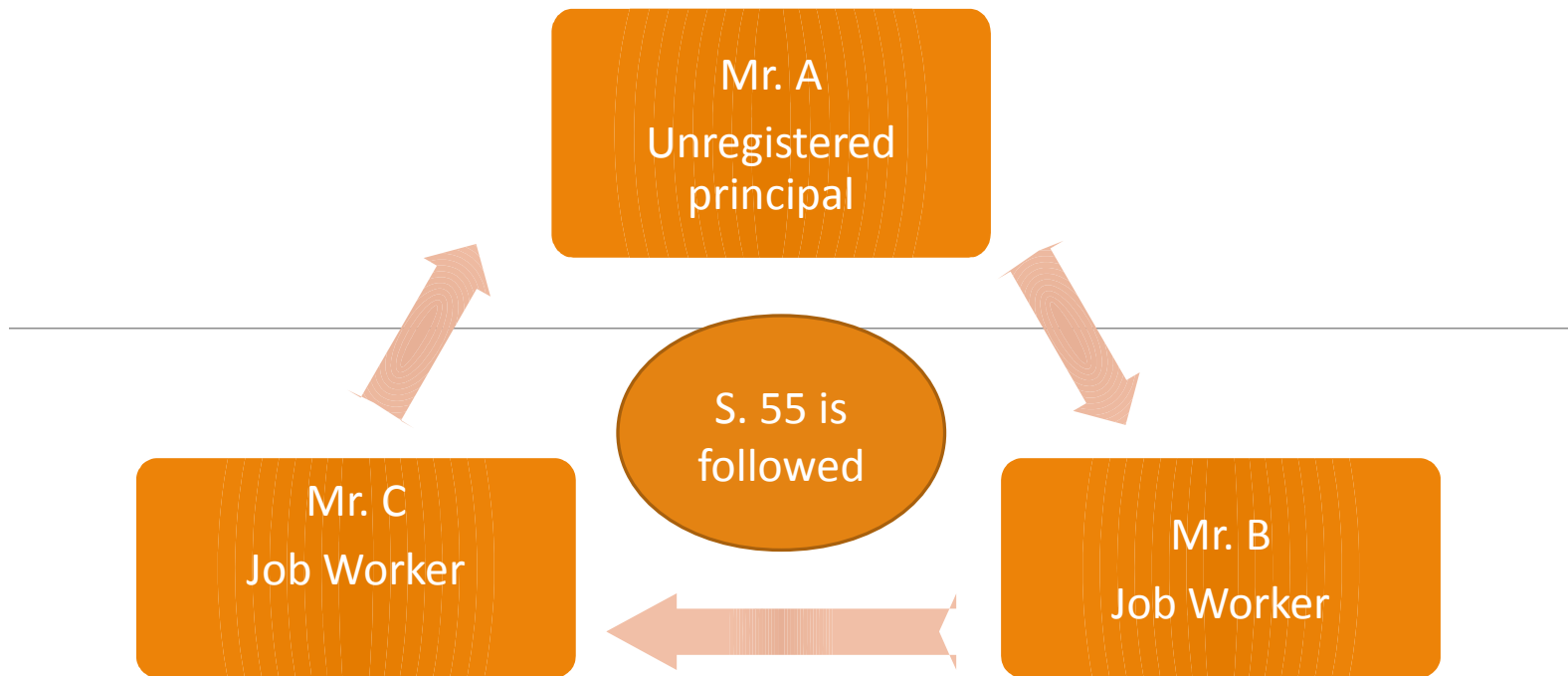
- vi. Where the inputs sent for job-work are not received back by the “principal” or supplied within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.
- vii. Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job-work are not received back or supplied within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job-worker on the day when the said capital goods were sent out.
- viii. Thus interest will be payable from the date of dispatch of inputs or capital goods.
- ix. 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.



SR. No.	Various Supply	Taxability	Remarks
1	Supply of Goods from Mr. A to Mr. B	GST is not payable	AS procedure u/s 55 is followed
2	Job work service of Mr. B	GST is payable	GST is payable on job work charges
3	Job work service of Mr. C	GST is payable	GST is payable on job work charges
4	Supply of Goods from Mr. C to Mr. A	GST is not payable	As procedure u/s 55 is followed



SR. No.	Various Supply	Taxability	Remarks
1	Supply of Goods from Mr. A to Mr. B	Is GST payable ???	As procedure u/s 55 is not followed
2	Job work service of Mr. B	GST is payable	GST is payable on job work charges
3	Job work service of Mr. C	GST is payable	GST is payable on job work charges
4	Supply of Goods from Mr. C to Mr. A	Is GST payable ???	As procedure u/s 55 is not followed



SR. No.	Various Supply	Taxability	Remarks
1	Supply of Goods from Mr. A to Mr. B	GST is not payable	As Mr. A is not registered taxable person
2	Job work service of Mr. B	GST is payable	GST is payable on job work charges
3	Job work service of Mr. C	GST is payable	GST is payable on job work charges
4	Supply of Goods from Mr. C to Mr. A	Is GST payable ???	

Computation of aggregated turnover for threshold exemption.

- *Explanation 2* under point 1 of Schedule I prescribes that
 - - That the supply of goods, after completion of job-work, by a registered job-worker shall be treated as the supply of goods by the “principal” as per section 55.
 - - Thus such value of goods shall not be included in the aggregate turnover of the registered job worker.
 - - The value of the job-charges recovered for the activity of job-work will form the part of the aggregate turnover of the registered job-worker.

Section 20 - Taking input tax credit in respect of inputs / capital goods sent for job work

- The “principal” referred to in section 55 shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax on inputs sent to a job-worker for job-work.
- Principal shall be entitled 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.
- Where the inputs sent for job-work are not received back by the “principal” after completion of job-work within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.
- In case inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

Impact on goods sent – interstate jobwork.

Section 20 - Taking input tax credit in respect of inputs / capital goods sent for job work

- Principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job-work without their being first brought to his place of business.
- where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.
- Reversal if credit not required in case of moulds, dies, jigs and fixtures or tool sent out to job worker for job work.

1. Stock Transfer is not defined in GST Law.

- Generally means transfer of ~~stock~~ ~~from one place to~~ ~~another~~. Stock transfer does not result in change of ownership.

- Sales generally involve stock transfer whereas Stock transfer may not always imply sale.

- Transfer of goods to agent is also treated as stock-transfer.

2. Taxability of Stock Transfer under Current Law.

a. Excise is on manufacture and therefore excise duty is levied even in the case of stock transfer from factory or from one factory to another also.

b. VAT / Sales tax is on sales and thus stock transfer without sales is not subject to VAT / Sales tax. However there may be reduction in input tax credit for branch transfer outside State.

Taxability of supply of goods in certain cases (Section 189)

- Tax in respect of the taxable goods shall be payable under the earlier law to the extent the **point of taxation** in respect of such goods arose before the appointed day.

Explanation: Where the portion of the supply of goods is not covered by this section, such portion shall be liable to tax under this Act.

Similar provisions are there under SGST Law.

TRANSITIONAL PROVISIONS.

194. Treatment of branch transfers

Notwithstanding anything to the contrary contained in this Act, any amount of input tax credit reversed prior to the appointed day shall not be admissible as credit of input tax under this Act.

(SGST)

Tax paid on goods/ Capital Goods lying with agents to be allowed as credit (Section 192 & 193) (SGST LAW)

- Where any goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent shall be entitled to take credit of the tax paid on such goods subject to fulfilment of the following conditions:
 - the agent is a registered taxable person under this Act;
 - both the principal and the agent declare the details of stock of goods lying with such agent on the date immediately preceding the appointed day in such form and manner prescribed in this behalf;
 - the invoices for such goods had been issued not earlier than twelve months immediately preceding the appointed day; and
 - the principal has either reversed or not availed of the input tax credit in respect of such goods.

3. Impact of GST under various scenario of stock transfer.

STOCK TRANSFER

- A. Stock transfer of finished goods from the factory to the depot within the same state.**

- B. Stock transfer of finished goods from the factory to the depot outside the state.**

- C. Stock transfer of intermediate goods from one factory to another factory
Inter-depot transfer of raw material (within state / Outside State).**

- D. Inter-branch transfers within state and outside State.**

- E.** Stock transfer of goods to consignment agent / commission agent for onward sales on behalf of the supplier within state.

STOCK TRANSFER

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- F.** Stock transfer of goods to consignment agent / commission agent for onward sales on behalf of the supplier outside the state.

- G.** Stock Transfer of goods sent for auction.

- H.** Stock transfer of goods to the marketing agent for distribution to the customers or demo to the customers.

- I.** Stock transfer of goods sent for exhibition from where it may be sold also.

A. Current position:

- i. Excise Duty- Warranty ~~After sales services charges~~ Warranty/ Guarantee recovered by the manufacturer will be part of the assessable value.**

(d) “transaction value” means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.]

- ii. VAT – Leviable to VAT is part of the price.**
- iii. Repairing during warranty not to be treated as a separate service is price included in the goods and excise duty or VAT paid.**

Valuation under GST.

The value of a supply of goods and/or services shall be the transaction value, that is the price actually paid or payable for the said supply of goods.

Sub section (2) of section 15 provides that the **transaction value shall include-**

incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services;

Issues under warranty / Guarantee.

- a. Is repairing under warranty a separate supply of service and the manner of attribution of consideration.

- b. Replacement of parts during warranty period.
- c. Exchange of parts during Guarantee period.
- d. Exchange of parts after guarantee period.
- e. Eligibility of input credit for items used in warranty / Guarantee.
- f. Manner of invoicing and reflection in return.

Return of Goods.

- a.** Reasons for Return of Goods can be bad quality, goods not required, excess billing, termination of contract, Sale or return basis.
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b. Return of Goods can be of two types

- Sales return from customers.
- Purchase return to vendors.

c. Impact of GST

- Transitional Provisions of return of goods which were supplied under earlier law.
- GST provisions.
- Changes in invoicing and disclosures in returns due to matching concept.

Duty/ Tax paid goods returned to the place of business on or after appointed day (Section 174)

- Where any goods on which duty/ Tax (in SGST Act) had been paid under the earlier law at the time of removal, not being earlier than six months prior to the appointed day,
- returned to any place of business on or after the appointed day, **the registered taxable person shall be eligible for refund of the duty paid under the earlier law where such goods are returned by a person, other than a registered taxable person,** to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:
- **PROVIDED that if the said goods are returned by a registered taxable person the return of the goods shall be deemed to be a supply.**

173. Exempted goods returned to the place of business on or after the appointed day

Where any goods on which duty had been exempt under the earlier law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, no tax shall be payable thereon if such goods are returned to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

PROVIDED that tax shall be payable by the person returning the goods if the said goods are liable to tax under this Act and are returned after a period of six months from the appointed day.

PROVIDED FURTHER that no tax shall be payable if the goods are returned by a person who is not registered under the Act..

195. Goods sent on approval basis returned on or after the appointed day

Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned 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.

Credit Note (section 24):

A. Where a tax invoice has been issued for supply of any goods and/or services and

- the taxable value and/or tax charged in that tax invoice is found to exceed the taxable value and/or tax payable in respect of such supply, or

- where the goods supplied are returned by the recipient, or

- where services supplied are found to be deficient,

then a credit note can be issued.

B. Credit note need to be declared in the return for the month during which such credit note has been issued but not later than September following the end of the year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier.

C. Reduction of liability on account of credit note will be allowed only when input tax credit has been reversed by the recipient of the service.

D. However, no reduction in output tax liability if the incidence of tax and interest on such supply has been passed by recipient to any other person.

Issues in GST regime.

A. Whether return of goods by the GST registered customers to be treated as a supply of goods.

B. Whether return of goods by the Consumer (person not registered under GST) to be treated as a supply of goods.

C. Currently suo-motto credit available under central excise on manufacturer own invoice – whether the same will be permissible under GST.

E.g. Goods returned by the chemist after expiry of medicines.

D. Whether return of goods to be treated as turnover of goods for the purpose of threshold exemption.

In the annual return, sales return is shown as a part of expenditure and purchase return is also shown as income.

Matching, reversal and reclaim of reduction in output tax liability (Section 38)

- Details of every credit note relating to outward supply furnished by supplier for a tax period shall be matched-
 - with the corresponding reduction in the claim for input tax credit by the recipient in GSTR -2
 - for duplication of claims for reduction in output tax liability.

- The claim for reduction that matches with the corresponding reduction in the claim for input tax credit shall be finally accepted and communicated to the supplier.

- Process to be following is similar as done for matching of the input credit.

Issues in GST regime.

E. Issues on account of mandatory issue of credit note and matching of credit note.

- i. Scenario of excess dispatch of goods which are not accepted by the customer.
- ii. Provisional acceptance of goods by the customer and return thereafter at the time of actual consumption of the goods.
- iii. Short-shipment of goods.
- iv. Loss during transportation – Normal loss and exceptional loss.
- v. Raising of invoice at a rate which is more than the agreed rate in the purchase order.

Free Supply.

A. Free supply taxable only if covered under Schedule I i.e. supply to agent, related person, permanent disposal of assets.

B. *Negative List of Input credit as per Model GST Law.*

As per section 17(4) input tax credit will not be available for following:

(g) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

B. Impact of GST on transactions:

i. Distribution of free sample likes medicines, Diwali gifts, product samples, etc to customers.

ii. Transfer of free samples from factory to depot / additional other place of business in same state or in another state.

iii. Transfer of free samples from factory to customers in same state or other state.

iv. Free facilities/ services to the employees.

v. Free services to group companies such as common premises, common IT,

WORKS CONTRACT.

Kone Elevator India Pvt Ltd. (2014 (304) E.L.T. 161 (S.C.)).

Works contract - Indivisible Composite Contract for sale and services - Sales tax - Works contract - Prior to insertion of clause (29A) in Article 366 by Constitution (Forty-sixth Amendment) Act, 1982, whether a contract was for sale of goods was dependent on dominant intention as reflected from terms and conditions of contract and many other aspects - There was no straitjacket formula for determination of nature of contract and it depended on facts and circumstances of each case - State Legislatures did not have legislative competence to charge sales tax under Entry 48 List II of Seventh Schedule of Constitution on indivisible contract of sale of goods which had component of labour and service, and assessing officer could not dissect indivisible contract to distinguish sale of goods constituent and labour and service component - **However, after insertion of clause (29A) ibid, Apex Court has interpreted contract involving transfer of property and element of service as works contract.** [Majority per : R.M. Lodha, C.J.I., A.K. Patnaik, Sudhansu Jyoti Mukhopadhyaya and Dipak Misra, JJ.]. [para 27]

WORKS CONTRACT.

Current Position

A. Transfer of property in goods is treated as deemed sales of goods under Article 366(29A) of the Constitution and therefore is liable to VAT. _____

B. Service Portion in the execution of the works contract is treated as a provision of service and is accordingly liable to service tax.

C. Levy of VAT and Service Tax was mutually exclusive however practical difficulties in segregating the value of goods and services.

D. Composition rates provided under VAT and Service Tax with different % which led to double taxation.

Transitional provisions for works contract.

186. Treatment of long term construction / works contracts

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.

CGST Law & SGST Law.

Transitional provisions for works contract.

Progressive or periodic supply of goods or services (Section 187)

- GST shall not be payable on the supply of goods and/or services made on or after the appointed day where the consideration, whether in full or in part, for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law.

Taxability of supply of goods in certain cases (Section 189)

- GST in respect of the taxable goods shall be payable under the earlier law to the extent the **point of taxation** in respect of such goods arose before the appointed day.

Explanation: Where the portion of the supply of goods is not covered by this section, such portion shall be liable to tax under this Act.

WORKS CONTRACT.

Definition of works contract.

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

Scope of works contract.

WORKS CONTRACT.

SCHEDULE II

MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES

1. Any transfer of the title in goods is a supply of goods.

.....

5. The following shall be treated as “supply of service”.

(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;

Thus works contract will be treated as a service supply under GST.

Liability to Registration in each State?

- As per ~~section 23~~, every taxable person is required to take separate registration in each State from where he makes taxable supply of goods/services.
-

- The terms place of business is defined as follows:

(74) “**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;*

(20) “**casual taxable person**” means –a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business; _____

A. registration to be valid for 90 days.

B. Tax payment to be made as a deposit.

Implications of registration at the site with respect to credit accumulation and levy of GST.?

Typical Features of WORKS CONTRACT.

1. Valuation for the said contract.

*GST is payable on the price **actually paid or payable** for the said supply of goods and/or services for non-related transactions and price is the sole consideration for the said supply.*

2. Free supply made by the recipient.

BHAYANA BUILDERS (P) LTD. 2013 (32) S.T.R. 49 (Tri. - LB) it has been observed that free supply cannot be treated as an consideration for the services provided by a construction contractor.

Ratio to apply in GST also.

Free Supplies not covered in the deemed inclusion list also.

Sub section (2) of section 15 provides that the transaction value shall include the following:

- a) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services.
- b) **any taxes, duties, fees and charges levied under any statute other than the SGST Act or the CGST Act or the IGST Act or GST compensation act.**
- c) incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services;
- d) subsidies provided in any form or manner, linked to the supply excluding subsidy provided by central and state government.

Valuation for Post – Supply discount

- It is specifically provided that discount or incentive which have been provided subsequent to supply of service will not be permitted unless it is
 - ❑ established in terms of the agreement entered into at or before the time of supply, and
 - ❑ specifically linked to the relevant invoice.
 - ❑ The input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier.
- Thus all the 3 conditions must be satisfied. **If these 3 conditions are satisfied, value will not include discount.**

Time of Supply of service – Other than RCM

} Whichever
is earlier

} Whichever
is earlier

Change in rate of tax in respect of supply of services- Section 14

Provision of service	Payment made	(a) Invoice Issued	Time of Supply (earlier Point of Taxation)	Rate Applicable
1. Before change of rate	After rate change	After rate change	Date of issue of invoice or date of payment, whichever is earlier.	New rate
	After rate change	Before rate change	date of issue of invoice	Old rate
	Before rate change	After rate change	Date of payment	Old rate

Section 14 (b)

Provision of service	Payment made	Invoice Issued	Time of Supply (earlier Point of Taxation)	Rate Applicable
2. After change of rate	After rate change	Before the rate change	Date of payment	New rate
	Before rate change	Before rate change	Date of issue of invoice or date of payment, whichever is earlier	Old rate
	Before rate change	After rate change	Date of issue of invoice	New rate

Time of Supply of services – under reverse charge

(d) If date is not available for above activities then Date of debit in books of accounts

Negative List of Input credit as per Model GST Law.

As per section 17(4) input tax credit will not be available for 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 on his own account, other than plant and machinery, even when used in course or furtherance of business;

Explanation 1.- For the purpose of this clause, the word “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Explanation 2.- ‘Plant and Machinery’ means apparatus, equipment, machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes land, building or any other civil structures.

SERVICES BY BUILDERS - Schedule II entry.

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier.

Explanation.- For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;

1. Taxability of Donation / Contribution received.

TAXABILITY OF DONATION. (T) held that Receipt of donations from recipient as compulsory condition for booking of hall for social function is value of taxable service.

Circular No. 127/9/2010-S.T., dated 16-8-2010.

2. The matter has been examined. The important point here is regarding the presence or absence of a link between 'consideration' and taxable service. It is a settled legal position that unless the link or nexus between the amount and the taxable activity can be established, the amount cannot be subjected to service tax. Donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. Between the provider of donation/grant and the trainee there is no relationship other than universal humanitarian interest. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

Guiding factor is whether the donor has received any consideration against the donation.

2. Donation of old laptops / PC by a corporate to NGO at the time of upgradation of IT infrastructure on which input tax credit was availed.

TAXABILITY OF DONATION.

3. Donation of old laptops / PC by a corporate to NGO at the time of upgradation of IT infrastructure on which cenvat credit was availed of central excise.

3. Donations of Physician Medicines by Pharma Companies.

a. Currently excise duty is payable even if goods are donated.

b. Under VAT no tax payable as no sales, however input set-off not available in few states.

c. In GST whether such supply can be treated as transfer of business assets ?

Presented by: **CA. VINOD AWTANI**
THANK YOU

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