

RJA

Rajput Jain & Associates

Chartered Accountants

Levy of GST

About Us

Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.

Rajput Jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields

Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

GST: Simple or Complex



Good and Simple
Tax

OR



Gabbar Singh
Tax

As per Finance Minister
Simple

As per WORLD BANK
Most Complex out of 115 countries

Contents

- Taxable Event – Supply
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- Schedule II - Deemed Supply of Services or Goods
- Schedule III – Activities neither Supply of Services nor Goods
- Composition Scheme
- CGST Amendment Act – Definition of Supply

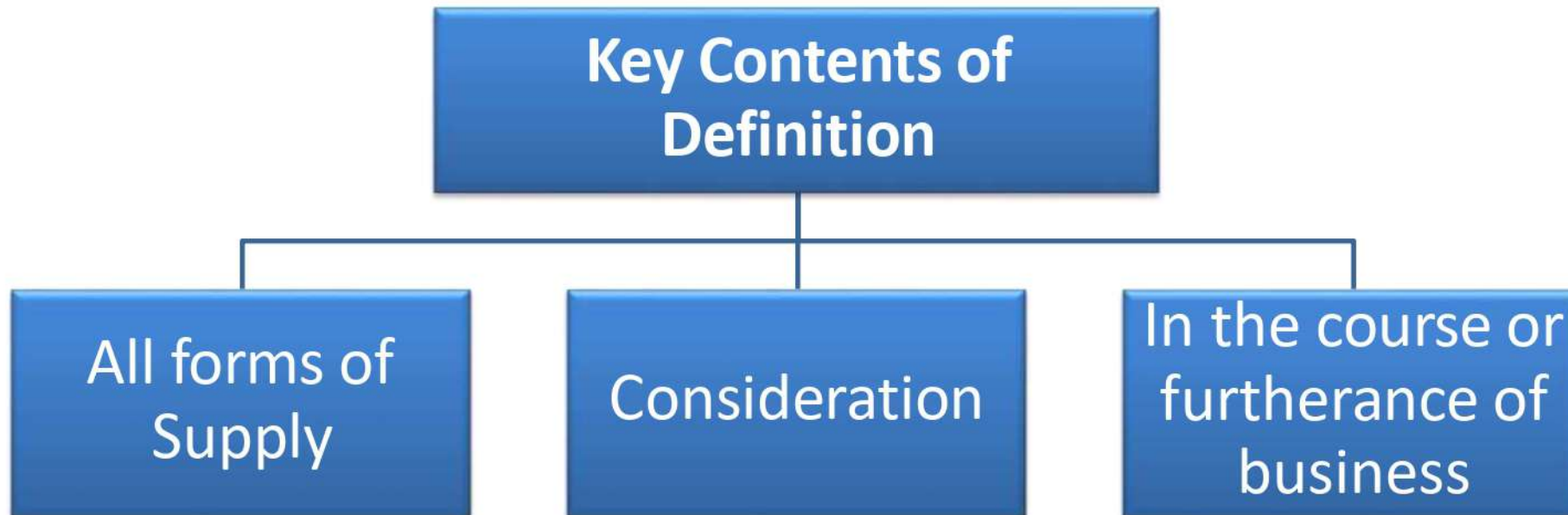
Taxable Event - Supply



Section 7 of the CGST Act

(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.



Meaning in Common Parlance

- To furnish or to serve
- A Word of Widest Import

Malaysian GST

- All forms of Supply, including supply of imported services, done for a consideration.

Australian GST

- A Supply is any form of Supply whatsoever.

UK VAT

- Includes all forms of supply, but not anything done otherwise than for a consideration.

Specific Inclusive Clauses:

- Supplies for a Consideration {Section 7(1)(a)}
- Import of services {Section 7(1)(b)}
- Supplies Without Consideration (**Schedule I**) {Section 7(1)(c)}
- Deemed supply of goods / deemed supply of services (**Schedule II**) {Section 7(1)(d)}

Excludes:

- Activities of Schedule III {Section 7(2)(a)}
- Notified activities of CG, SG or local authority {Section 7(2)(b)}

Section 2(52) of the CGST Act

*(52) “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;*

Section 2(102) of the CGST Act

*(102) “services” means – **anything other than goods, money and securities** but includes activities 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;*

Circular No. 47/21/2018

The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case.

Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

Consideration



“Consideration”

Section 2(31) of the CGST Act

“Consideration” in relation to the supply of goods or services or both 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 or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*

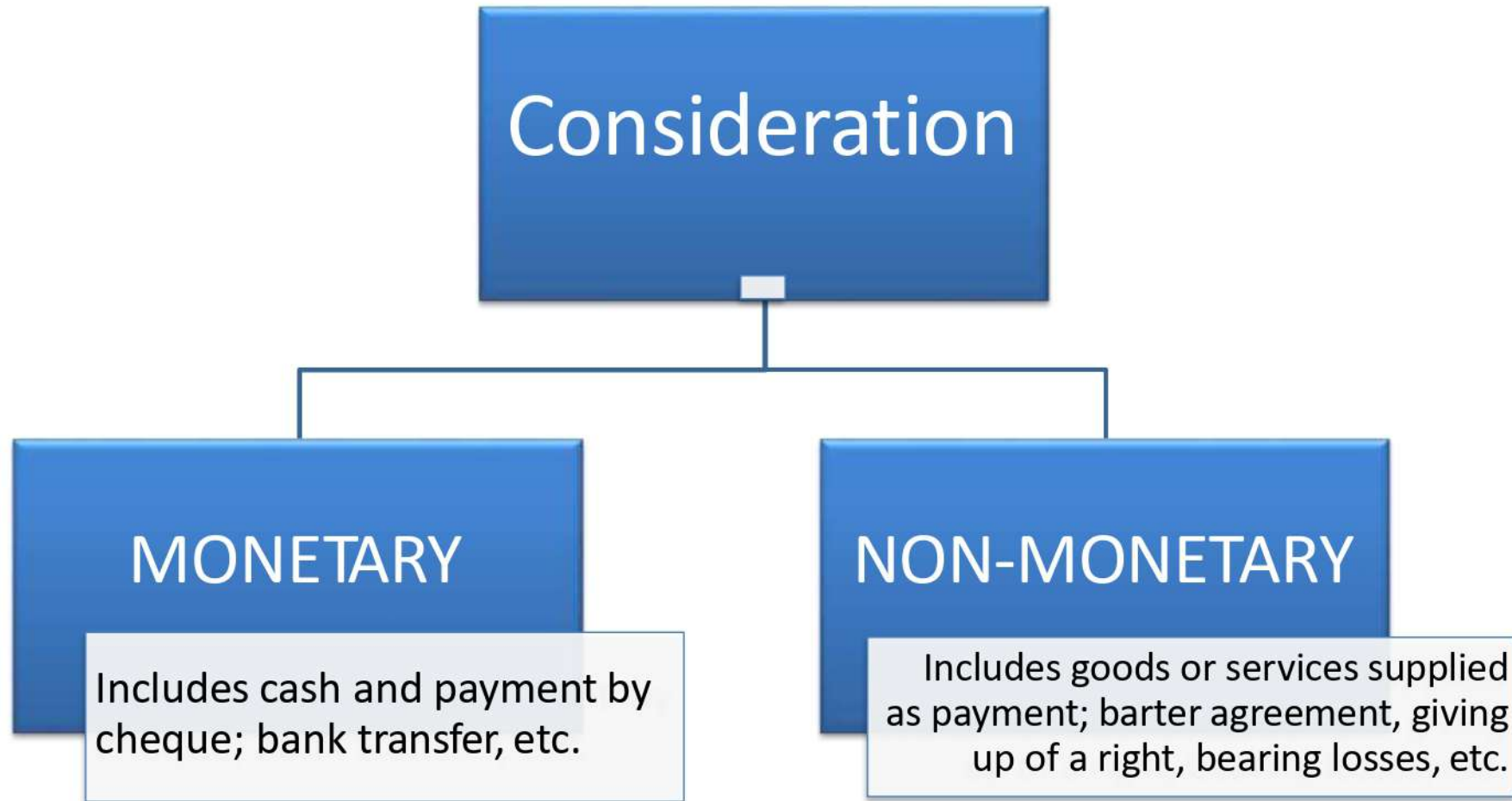
Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;



For a payment to be considered a 'security deposit' for the purposes of Division 99, it should have the following characteristics:

- *Be held as a security for the performance of an obligation*
- *The contract, conduct and intent of the parties to the contract must be consistent with the payment being a security deposit*
- *Be at risk of forfeiture upon failure to perform the obligation, and*
- *Be a reasonable amount*

“Consideration”



“Consideration”

Section 2(d) of the Indian Contract Act, 1872

“Where , at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called consideration for the promise.

Points under Consideration:

- Embodies the concept of *quid-pro-quo* (something in return)

Foreign Jurisprudence:

Malaysian GST: Any payment made or to be made, whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, supply of goods or services, whether by person or any other person.

Australian GST: Any payment, or any act or forbearance, in connection with a supply of anything.

Nexus test between Supplies and consideration:

1. R.J. Tolsma and Inspecteur der Omzetbelasting Leeuwarden (ECJ-C-16/93):

- 'direct link' - *playing music on the public highway,*

2. Apple and Pear Development Council and Commissioners of Customs and Excise (ECJ-Case 102/86):

- No direct link with the benefits accruing to individual grower and annual charges paid to council

Issues related to Supply:

- Facilities provided to employees by the employer without any consideration.

(Press Release dated 10.07.2017 clarifying that perks part of employment contract can be said to be not a supply by employer to employee)

- Recovery from employees on account of various reasons.

Import of Services

“Import of services” means the supply of any service, where -

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India.



Schedule I – Supply Without consideration



Supply Without Consideration - Schedule I

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

Issues:

1. Business Assets is not defined?



Business Asset?

Brochures, Pamphlets

- According to the Transfer of Business as a Going Concern Guide- Malaysia Goods and Service Tax, “business assets” are **any assets of a business** whether movable or immovable and **include trading stock, machinery, furniture, fixture and fittings and premises.**
- According to Capital Gains Tax, U.K., ‘business assets’ includes land and buildings, fixtures and fittings, plant and machinery, eg a digger, shares, registered trademarks and business’s reputation.

Customs and Excise Commissioners v West Herts College 2000 WL 33201420:

- Prospectuses were not, at any stage in their life, while in the ownership of the college, part of the assets of the business. They were instead simply part of the means by which the business was conducted and promoted.

Supply Without Consideration - Schedule I

(2) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business

Concept of distinct Persons:

Case 1: Supply between 2 different GSTN located in one or more states or union territories.



XYZ H.O.
Delhi

Crane, Forklifts?



XYZ, Project office
in U.P.



XYZ, Delhi
GSTN - 1

Support service?



XYZ, Gujarat
GSTN - 2

Case 2: Supply between Establishments of one person located in two or more states.

Case Study:

Office Accessories/Equipment(s) are procured centrally by the Head Office of XYZ. Now, the H.O. of XYZ is transferring such laptops to its other offices. Whether it would amount to Supply?

Circular No. 21/21/2017-GST

Inter-State Conveyance Movement

Further exclusions in respect of inter-State movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the said Act, not involving further supply of such conveyance, including trains, buses, trucks, tankers, trailers, vessels, containers, aircrafts

Carrying goods or passengers or both or

For repairs or maintenance

Except where such movement is for further supply of the same conveyance

inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]

Supply Without Consideration - Schedule I

Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business

Related Persons:

- **Explanation stated under Section 15:**

- Officers or directors of one another's businesses
- Legally recognised partners in business
- **Employer and Employee**
- Person directly or indirectly controls, owns more than 25 percent of outstanding voting stock or share
- One directly or indirectly controls the other
- Both directly or indirectly controlled by a third person
- Together directly or indirectly control a third person
- Members of the same family

Example:

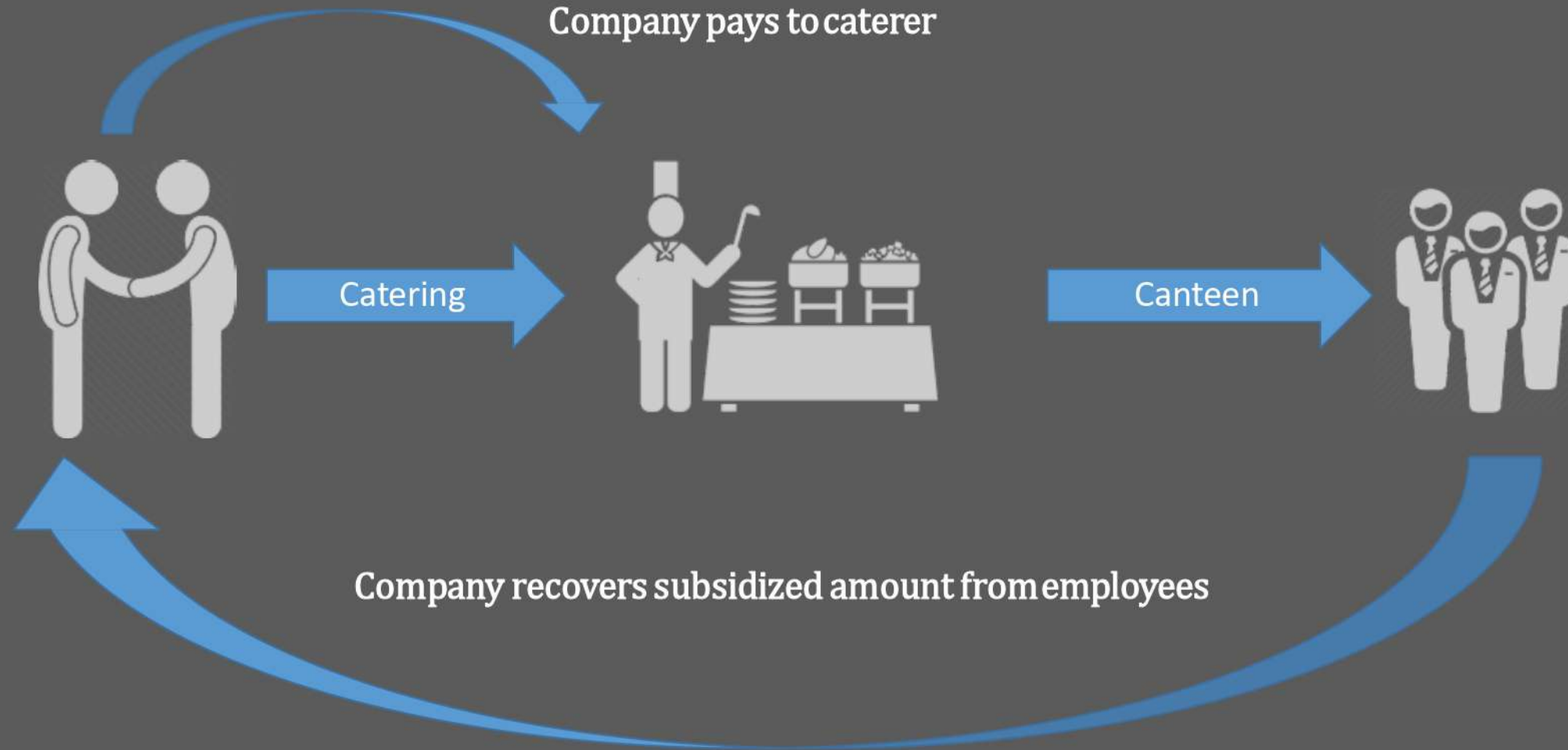
- Canteen services provided to employees by the employer.
- Bus Service

Specific exception to the aforesaid clause:

In case, the employer supply goods or services **by way of gift** to its employee for a value **not exceeding rupees fifty thousand** would not constitute as supply. **Whether gift include service?**

Employee recoveries.

Canteen recovery (exempt under service tax)



Whether **GST payable?**

Canteen recovery: Advance Ruling

2018-VIL-04-AAR: M/s CALTECH POLYMERS PVT LTD

- *From the plane reading of the definition of "business", it can be safely concluded that the supply of food by the applicant to its employees would definitely come under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business.*
- *Even though there is no profit as claimed by the applicant on the supply of food to its employees, there is "supply" as provided in Section 7(1)(a) of the GST Act, 2017. The applicant would definitely come under the definition of "Supplier" as provided in sub-section (105) of Section 2 of the GST Act, 2017.*
- *Since the applicant recovers the cost of food from its employees, there is consideration as defined in Section 2(31) of the GST Act, 2017.*
- *It is hereby clarified that recovery of food expenses from the employees for the canteen services provided by company would come under the definition of 'outward supply' as defined in Section 2(83) of the Act, 2017, and therefore, taxable as a supply of service under GST.*

Supply of used motor vehicle



Car purchased by company

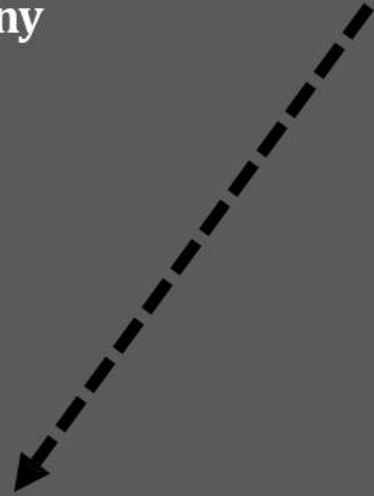
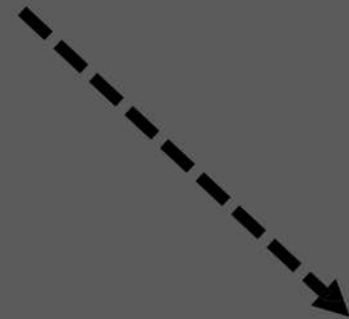
GST: 28%

Cess: 15%



Credit of GST and Cess
not available in terms of
Section 17(5)(a)

Sold at WDV Value



Value capitalized and
depreciation claimed



Whether GST payable?

GST: 28%

Cess: 15?

Sale of used motor vehicle : Advance Ruling

2018-VIL-18-AAR: CMS INFO SYSTEMS LIMITED

- *The disposal of the scrap vehicles for consideration is a sale and section 7 explaining the expression 'supply' covers supply of goods such as sale or disposal made for a consideration. Section 7, further, says that the supply has to be in the course or furtherance of business.*
- *With regard to this, we see that the applicant is in the business of having a cash management network involving transportation of cash. The disposal of the cash carrying vans is a transaction in connection with or incidental or ancillary to the business of having a cash management network.*
- *As and when the vehicles become scrap, they have to be disposed off and the proceeds therefrom to be identified as income for the business which is reflected in the Profit & Loss Account of the business.*
- *Buying new assets and discarding the old and unusable assets is an activity in the course of carrying on of the business.*
- *Hence, we conclude that supply of such motor vehicles as scrap after its usage is an activity of 'supply' in the course or furtherance of business and such transaction would attract GST.*

GST Rate on supply of used motor vehicle

NN 37/2017-CTR
(w.e.f. 13.10.2017)

65% of Normal Tax and Cess

NN 8/2018-CTR
(w.e.f. 25.01.2018)

18%/12% on margin* | Cess 'Nil'

How to calculate margin*

- (i) in case of a registered person who has claimed depreciation under section 32 of the **Income-Tax Act, 1961**(43 of 1961) on the said goods, the value that represents the margin of the supplier shall be the difference between the **consideration received** for supply of such goods and the **depreciated value** of such goods on the date of supply, and where the margin of such supply is negative, it shall be ignored; and
- (ii) in any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.

Sale of used motor vehicle : Conditions of rate notifications

NN 37/2017-CTR

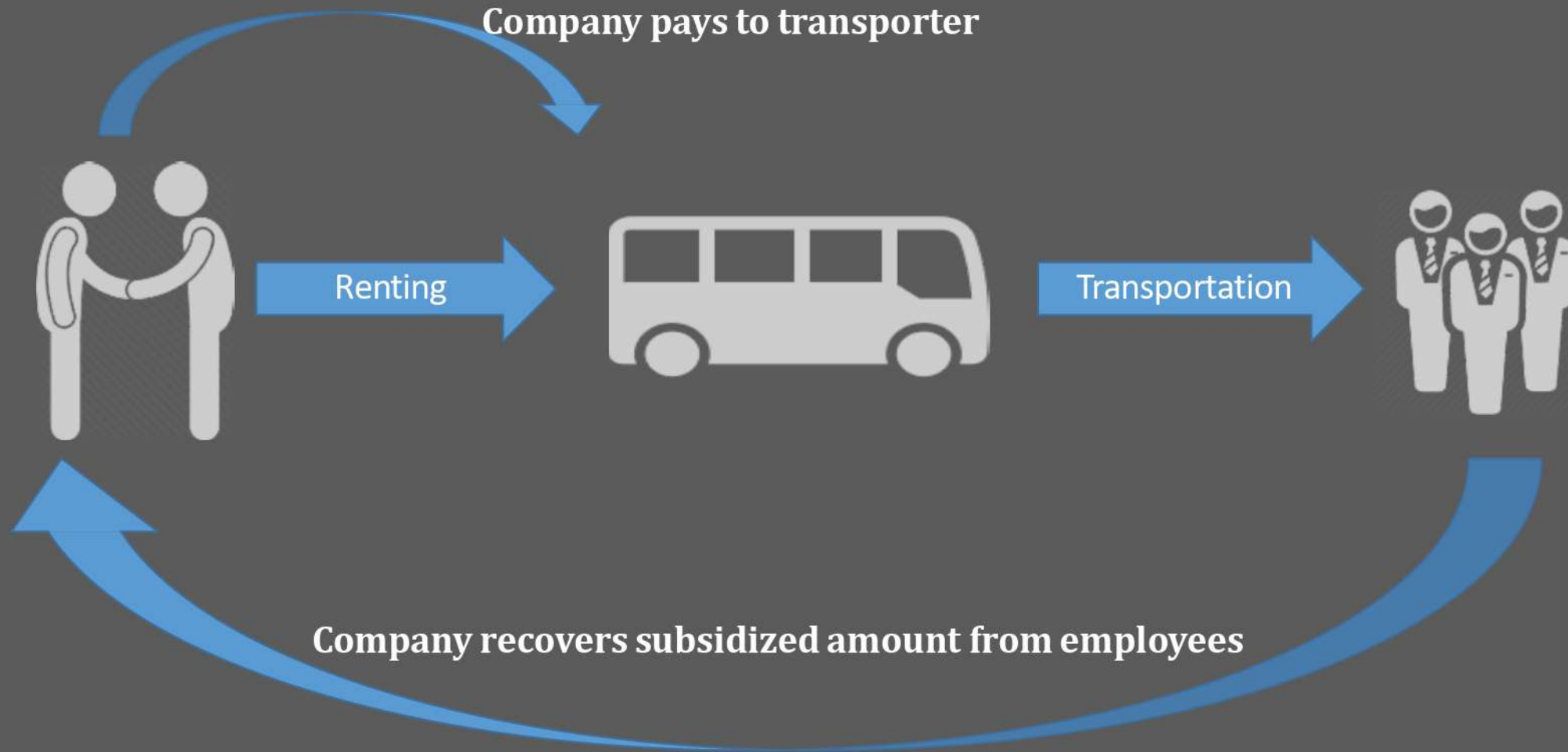
1. The Motor Vehicles were purchased by the lesser prior to 1st July 2017 and supplied on lease before 1st July 2017;
2. (i) The supplier of the motor vehicle is a registered person, and
(ii) Such supplier had purchased the Motor Vehicle prior to 1st July 2017 and has not availed input tax credit of Central Excise Duty, Value Added Tax or any other taxes paid on such vehicles.

NN 8/2018-CTR

With respect to the option of paying GST/Cess under NN 8/18-CTR and NN 1/18-Cess, it may be noted that the benefit of Notification is not available if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such goods.

Does the Notifications apply to used motor cycles?

Transportation recovery



Whether **GST payable?** What if **non-AC?**

GST Rate on transportation recovery

Chapter Section or Heading	Description of Service	Rate (per cent)	Condition
Heading 9964 (passenger transport services)	<ul style="list-style-type: none"> Transport of passengers by <u>any motor vehicle</u> designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient. Transport of passengers by non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; 	5%	Same line of business credit available
		Or	
		12%	N/A
		0%	

Other taxable Employee Recoveries

Recovery of Mobile phone/Laptop/Club expenses?

Recovery for guest house stay (Declared Tariff > 1000)

Recovery of medicine charges (no exemption)

(3) Supply of goods—

- (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.**



Principal in Haryana

**Deemed Supply,
Credit passed on to
agent**



Agent in Delhi

**Agent charges GST,
utilizing GST charged
by principal**



Customer in Delhi

Circular No. 57/31/2018-GST dated 04th September 2018 – Invoice issued/ received by agent in its own name?

Circular No. 73/47/2018-GST dated 05th November 2018 – Del Credere agent whether covered under Schedule I

Without Consideration - Schedule I

(4) Import 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.

- **Import of Services**

- the supplier of service is located outside India,
- the recipient of service is located in India,
- the place of supply of service is in India, and
- the supplier of service and the recipient of service are not merely establishments of a distinct person

Issues:

- **Whether management support received from parent company without any consideration will attract GST?**
- **Implications on employees deputed by foreign entity in India.**

Schedule II – Deemed Supply of Services or Goods



▶ Transfer

- (a) any transfer of the title in goods is a supply of goods
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services
- (c) Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods

▶ Treatment or process

- ▶ Any treatment or process which is applied to another person's goods is a supply of services

▶ Supply of services

- ▶ The following shall be treated as supply of services, namely:—
 - (a) renting of immovable property;
 - (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier

▶ Composite supply

- ▶ The following composite supplies shall be treated as a supply of services, namely:—
 - (a) works contract as defined in clause (119) of section 2; and
 - (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

- Any transfer of right in goods or of undivided share in goods without the transfer of title (*Clause b to S.No 1 of Schedule II*)

Points under consideration:

TRUG vs STGU dispute no more relevant

- Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed (*Clause c to S. No 1 of Schedule II*)

Issue: Whether supply of goods on lease basis wherein lessee has been given an option to purchase goods at Rs. 1 after the lease period will be considered as supply of goods {Clause (c) to S.No 1} or supply of services {Clause (b) to S.No 1} ?

Issue: One time lease premium for lease of 60 Years (BHC says supply of service)

What is Job work

Any treatment or process undertaken by a person on goods belonging to another registered person

Schedule II: Any treatment or process ~~job-work~~ which is applied to another person's goods is a supply of services

Section 143 allows sending of inputs without payment of GST

Examples of job work

Undertaking manufacturing activity on the inputs/semi-finished goods belonging to another person

Performing any testing on the goods belonging to another person

Repairing the goods belonging to another person

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Examples of job work

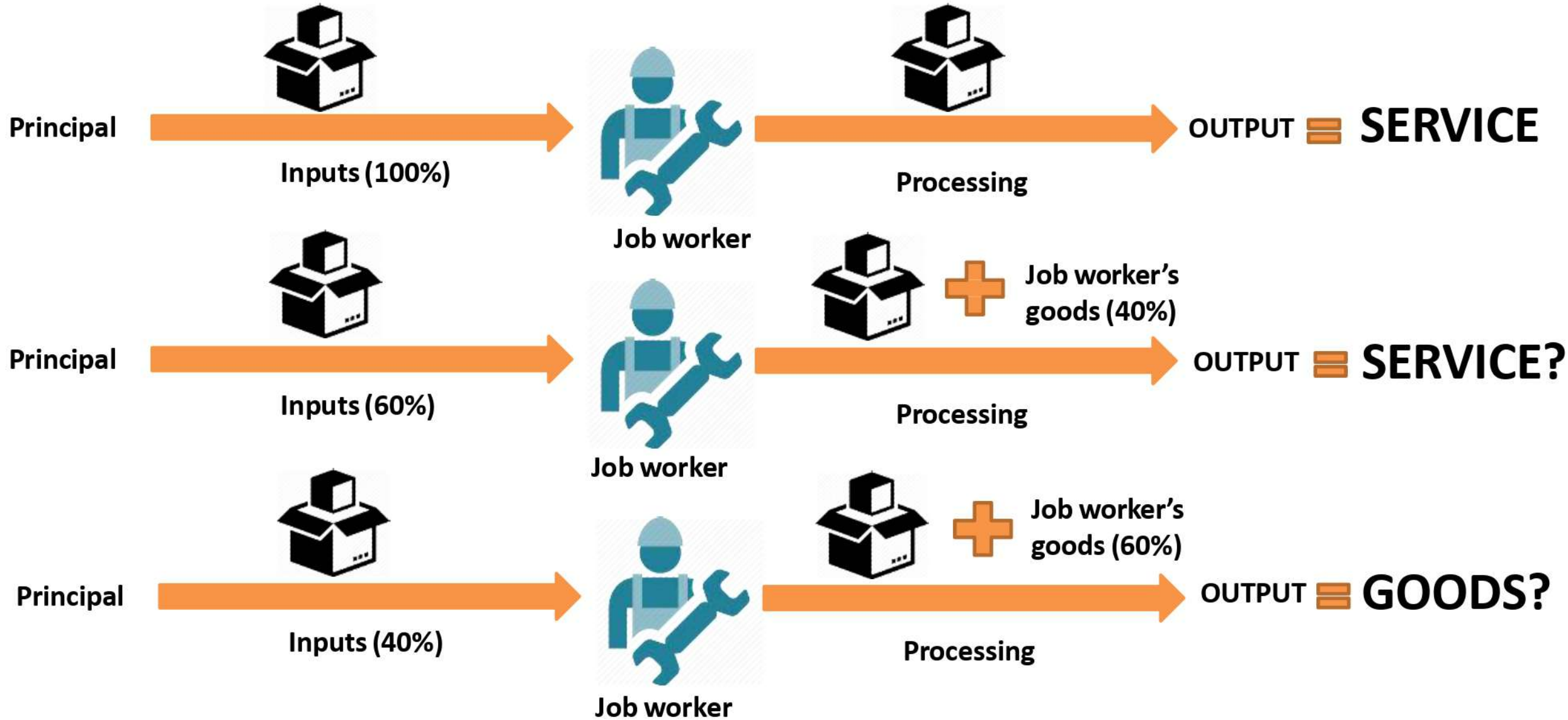
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Job work: Services vs. Goods

Prestige Engg. (India) Ltd.



Singapore, Schedule II

Where a person produces goods by applying to another person's goods a treatment or process, he shall be treated as supplying those goods.

Malaysian, Guide

Treatment involves changing the nature of goods, for example, heat treatment and sand-blasting.

Whereas, process involves a continuous action, operation, or series of changes taking place in a definite manner in the production of goods, for example, varnishing, painting, moulding and assembling.

As long as the treatment or process activity is done on someone's goods, it is a supply of services

Scope of Job work (is it really that simple to figure out)?

Circular No. 34/8/18:

Bodybuilding is a composite supply of goods & services

Predominant Element:

On the basis of quality or quantity (functional)?

Canada GST Circular:

Accessory material (glass, claws, teeth) used in creating a manikin on which animal skin (provided by customer) is mounted is not a separate supply of goods but part of the taxidermy service. Supply of goods will take place when the skin is purchased by taxidermist and then mounted and sold.

Manufacture is not job work? AAR (JSW)

Whether undertaking certain processes on coal to convert the same into power is job work?

- *Treatment or process in this definition would mean some processes on the goods but would definitely not mean a complete transformation of the input goods into a new commodity.*
- *The impugned activity undertaken by the applicant to convert the coal into electricity would not be covered by the words 'treatment or process' as found in the definition of 'job work'. Here, the intent of the legislation is not to cover such treatment or process as would result into a distinct commodity. The activity, in fact, is a manufacture of electricity. And we find that the activity of 'manufacture' has been defined in the GST Act which is as follows:*
- *"manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;"*
- *As can be seen the definition itself says that the emergence of a new product from the processing of the inputs would be a manufactured product. In the instant case the end product i.e., "electricity" has a distinct name, character and use than the inputs i.e., "coal".*
- *Thus, when the Legislature has provided for the definition of 'job work' as well as 'manufacture', the meaning as understood by the definition of 'manufacture' cannot be read into the words 'treatment or process' as found in the definition of 'job work'. 'Treatment', 'Process' and 'Manufacture' are three different activities recognized by the legislature.*
- *The intent of the Legislature is to restrict the scope of 'job work' to 'treatment' or 'process' and not to extend the same to 'manufacture'. We need not deliberate more on the issue as the emergence of a distinct commodity is very obvious and therefore beyond the applicability of the definition of 'job work' under the GST Act.*

WORKS CONTRACT

Definition and Implication



Works Contract as defined in clause (119) of Section 2

Meaning of Works contract as per Section 2(119) of CGST Act:

- A contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning **of any immovable property** wherein **transfer of property in goods** (whether as goods or in some other form) is involved in the execution of such contract;

Clause 6(a) of Schedule II

- The following composite supplies shall be treated as a supply of services, namely:—
 - (a) works contract as defined in clause (119) of section 2;

Emerging Issues

- Movable vs Immovable.
- Cross breach clause
- “of” immovable property

Movable vs Immovable

- Section 2(26) of the General Clauses Act, 1897, states that immovable property shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.
- Similar definition is given by the Registration Act, 1908 which specifies that immovable property includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass

Movable vs Immovable

- Explanation to sub clause (x) of clause 5 of Section 11 of the Income Tax Act, 1961 clarifies that immovable property does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth.

Test of permanency

Municipal Corporation of Greater Bombay & Ors. v. Indian Oil Corporation Ltd.

The tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, they have permanently been erected without being shifted from place to place. Permanency is the test. The chattel whether is movable to another place of use in the same position or liable to be dismantled and re-erected at the latter place? If the answer is yes to the former it must be a movable Property and thereby it must be held that it is not attached to the earth. If the answer is yes to the latter it is attached to the earth.

Test of permanency

Triveni Engineering and Indus. Ltd. vs. CCE

Whether an article is permanently fastened to anything attached to the earth, require determination of both the intentions as well as the factum of fastening to anything attached to the earth and this must be ascertained from the facts and circumstances of each case.

Circular No. F. No. 154/26/99-CX.4

In Para 4(v) of the said Circular, it has been clarified that in case the items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods.

Test of permanency

Sirpur Paper Mills Ltd. v. Collector of Central Excise, Hyderabad

It was for the operational efficiency of the paper making machine that it was attached to earth. If the appellant wanted to sell the paper-making machine it could always remove it from its base and sell it. thus, the Apex Court decided that the paper printing machine, in the given case, was a movable asset.

Blue Star Ltd. v. CCE, Delhi reported at 2002 (143) ELT 391 (Tri Del)

The court held that as dismantling of the system would lead to irreparable damage to certain components (ducting and piping), the dismantled parts would not constitute a complete central air conditioning system but rather only consist of the parts which were not damaged. Accordingly, on dismantling, as the air conditioning plant loses its identity as a system and would not be marketable as a system, the same cannot be said to be in the nature of excisable goods.

Cross breach clause

IAC Electricals AAR

Facts:

Entered into two separate contracts - one for supply of materials at ex-factory price (hereinafter referred to as "the First Contract"), and the other for supply of allied services like transportation, insurance, loading/unloading etc for delivery of materials at the contractee's site (hereinafter referred to as "the Second Contract"). The Applicant states that as per the Second Contract, since they are not a Goods Transport Agency they arrange for the supply and delivery of materials through various other suppliers of these services. The Contractee is charged for these services at a pre-fixed rate, irrespective of the actual cost incurred

Cross breach clause

IAC Electricals AAR

Judgement:

The two contracts are, therefore, linked by a **cross fall breach clause** that specifies that breach of one contract will be deemed to be a breach of the other contract, and thereby turn them into a single source responsibility contract. Composite nature of the contract is clear from the clause that defines satisfactory performance of the First Contract (supply of goods) as the time when the goods have been transported to the Contractee's site under the Second Contract.

The two promises - supply of the goods and their transportation to the Contractee's site - are, therefore, not separately enforceable in the present context. The supplies of goods and services of transportation etc are, therefore, naturally bundled.

The recipient has not contracted for ex-factory supply of materials, but for the composite supply involving delivery of the goods at the contractee's site, which includes transportation, in-transit insurance etc. Terms of the contracts are such that all these supplies are inseparable and, therefore, naturally bundled

'Of' Immovable property

Illustrations

1. Thermoplasting road marking paint
2. Sound systems

- **Clause (e) to S.No. 5 of Schedule II to CGST Act states that agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act shall be considered as supply of services.**
- **FAQs issued by Government: FAQ 1 Question: Whether deduction of Liquidity Damage (LD)/Penalty deduction from contractor's bills and charging Penalty for non-lifting of coal till targeted minimum level to Annual Contractual Quantity (ACQ) will attract GST?**

Answer: Yes, it is a service being "tolerating an act" as per Schedule II of the CGST Act,2017 thus GST shall apply.

FAQ 2 Question: What is the significance of services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority ?

Answer: Non-performance of a contract or breach of contract is one of the conditions normally stipulated in the Government contracts for supply of goods or services. The agreement entered into between the parties stipulates that both the service provider and service recipient abide by the terms and conditions of the contract. In case any of the parties breach the contract for any reason including nonperformance of the contract, then such person is liable to pay damages in the form of fines or penalty to the other party. Non-performance of a contract is an activity or transaction which is treated as a supply of service and the person is deemed to have received the consideration in the form of fines or penalty and is, accordingly, required to pay tax on such amount.

- Whether the following deductions would be covered under the above entry:-
 - Liquidated damages/Penalty etc. deducted from vendor's bill on account of delayed delivery/low quality etc.
 - Notice pay recovery from employees wherein employer is agreeing to terminate employee prior to due date in lieu of consideration (recovery from notice pay).

- GST applicable on liquidated damages under the above entry:-
 - Advance Ruling by Maharashtra State Power Generation Company Limited **{2018-VIL-33-AAR}**
 - Affirmed by Maharashtra Appellate Authority for Advance Ruling **{2018-VIL-12-AAAR}**

Foreign Jurisprudence:

- The GST Ruling **GSTR 2001/4 (GSTR)**, issued by the Australian Tax Office (ATO) explains the GST treatment of court orders and out of court settlements. In the said ruling at Para 73, it has been clarified that the damages is the most common form of remedy arising out of the termination or breach of contract. This damage, loss or injury, being the substance of the dispute, cannot in itself be characterized as a supply made by the aggrieved party. This is because the damage, loss or injury in itself does not constitute a supply under the provision of Australian GST.
- Further, under **GSTR 2003/11** which has been issued under Australian GST to answer the question as to whether GST is payable on a payment made on early termination of a lease of goods. In the said Ruling, it has been clarified that a payment received to compensate the lessor for damage or loss flowing from early termination as a result of a default by the lessee is not consideration for a supply, even though the lessor brings the lease to an end by exercising the right to terminate the lease. The Ruling further provides that in such cases, there will be no taxable supply because a payment for genuine damages, which is not consideration for any earlier or current supply, cannot be said to be made in connection with any supply.


Schedule III – Activities neither Supply of Services nor Goods



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- **Services by an employee to the employer in the course of or in relation to his employment.**

Issue:

1. **Expenses incurred on behalf of company where invoice is in the name of employee?**
- **Services by any court or Tribunal established under any law for the time being in force.**
 - **Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;**

- 
- The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or**
 - The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.**
 - Services of funeral, burial, crematorium or mortuary including transportation of the deceased.**
 - Actionable claims, other than lottery, betting and gambling.**

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

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

Issue:

Sale of land and building together?

Composition Scheme



A registered person, whose aggregate turnover in the preceding financial year **did not exceed fifty lakh rupees**, may opt to pay, in lieu of the tax payable by him **{{under sub-section (1) of section 9}}**, an amount of tax calculated at such rate as may be prescribed, **but not exceeding**, —

- (a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,
- (b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
- (c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers,

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore **{{and fifty lakh}}** rupees, as may be recommended by the Council.

Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher

CGST Amendment Act – Definition of Supply

Section 7 – Definition of Supply

Section 7 (1): For the purposes of this Act, the expression “supply” includes – –

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I made or agreed to be made without a consideration; ~~and~~

~~(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.~~

(1A) Certain activities or transactions, when constituting a supply in accordance with the provisions of sub-section (1), shall be treated either as supply of goods or supply of services as referred to in Schedule II

➤ Issue – The definition of supply is an ‘inclusive’ definition.

(Advance Ruling in the case of M/s Rajshri Foods Pvt. Ltd., 2018-TIOL-36-AAR-GST)

Section 7 – Definition of Supply

Prior to Amendment –

- Even a transaction not in the course or furtherance of business or without consideration was becoming a supply, if it was covered in Schedule II
 - 1. Transfer
 - (a) any transfer of title in goods is a supply of goods.
- Sale of personal effects – Old newspaper, furniture, etc.

After Amendment –

- Now an activity or transaction will have to first satisfy clause (a), (b) or (c) of section 7(1).
- Schedule II will be relevant only for classification of supply into goods or services.

- Exchange of gold jewellery - Supply by unregistered person?
 - Press Release dated 13th July, 2017
- Renting of commercial property.

Section 7 – Widening the Scope of Supply.

Schedule I (Section 7):

4. Import 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.

Prior to Amendment –

- Para 4 of Schedule I – Applicable only to registered person or person liable to be registered.
 - 2. (107) “taxable person” means a person who is registered or liable to be registered under section 22 or section 24.
- Person importing a service from a consideration was covered by section 7(1)(b).

After Amendment –

- Even a person making only exempt supplies or supplies on which tax is payable under RCM will be required to obtain registration and pay tax.

- Section 23(2) – Government may notify person who are exempted from obtaining registration.
 - Notification No. – 5/2017 CT(R): Person making supplies on which tax is payable under RCM.
- Section 24 (iii) – persons who are required to pay tax under reverse charge.

Section 7 (continued)

Schedule III – Neither supply of goods nor supply of services

Paragraph 7:

Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into the taxable territory.

- Tax implication on transaction done before amendment:
 - Export of goods means ‘taking goods out of India to a place outside India’.
 - Section 7(5)(a) – supplier is located in India and place of supply is outside India. The section is needed to tax export transaction and grant refund of tax.
 - Merchant Trading – The taxability, if any, will not fail for want of territorial nexus. Location of supplier/residence in India is sufficient nexus.
 - Supply under section 7(1)(a)/(c) read with section 10 and 11 of the IGST Act?
 - ITC Reversal – Exempt supply?
- This issue does not arise in case of export of services as there is no condition of physical movement in case of services.
- Australian GST – “supply is connected with Australia”.

- **Section 5 (1) of the IGST Act** inter alia provides that there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person
- **Proviso to Section 5 (1) of the IGST Act** provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962
- Further, **Section 7(2) of the IGST Act** provides that supply of goods imported into the territory of India **till** they cross the customs frontier of India shall be treated as a supply of goods in the course of inter-state trade or commerce.
- As per **2(10) of IGST Act**, "**import of goods**" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India
- Section 2(4) of the IGST Act defines '**Customs frontier of India**' as the limits of the customs area as defined in Section 2 of the Customs Act, 1962 (hereinafter referred to as the "Customs Act").
- As per Section 2(11) of the Customs Act, 'Customs frontier of India' is an area of a customs station **or a warehouse (inserted vide Taxation Amendment Act 2017)** and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities

Bombay High Court judgement

Batliboi & Company Pvt. Ltd. v. The State of Maharashtra (1981 47 STC 321 Bom HC)

- Section 4 only deals with sales and purchases within India and it lays down the principles for determining when a sale or purchase can be said to be in any given State in the country itself.
- A sale which is inside one State is deemed to be outside all other States.
- Accordingly, Section 4 has no application to sales or purchases which have taken place outside the country altogether.
- Sales which are not in any State in India but are outside the country altogether are not governed by section 4 of the CST Act.

Section 7 (continued)

Schedule III – Neither supply of goods nor supply of services

Paragraph 8 :

(a) Supply of warehoused goods to any person before clearance for home consumption.

*(b) Supply of goods **by the consignee** to any other person, by **endorsement of documents of title** to the goods, after the goods have been dispatched from the **port of origin** located outside India but before clearance for home consumption.*

Explanation.- For the purposes of this clause, the expression “warehoused goods” shall have the meaning as assigned to it in the Customs Act, 1962 (52 of 1962)

- Whether SEZ is a warehouse?
- The supply “by the consignee” is only covered. Taxability of second High Seas Sale?
- Endorsement v/s Transfer – Document of title.
- Document of title –
 - Airway bill is not document of title.
 - Whether delivery order is document of title?
 - Whether multi-modal bill of lading is document of title?
- Transfer of document of title before port of origin – Taxability?

Circulars issued earlier

- **Circular No. 33/2017-Customs dated 1.8.17 – High Seas Sale:**
 - IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation.
 - The importer (last buyer in the chain) would be required to furnish the entire chain of documents

- **Circular No. 46/2017-Customs dated 24.11.2017 – Sale of goods in bonded warehouse**
 - Such a transaction squarely falls within the definition of “supply” as per section 7 of the CGST Act, and
 - Shall be taxable in terms of section 9 of the CGST Act read with section 20 of the IGST Act.

- **Circular No. 3/1/2018-IGST dated 25th May, 2018 – Sale of goods in bonded warehouse**
 - IGST shall be levied and collected at the time of final clearance of the warehoused goods for home consumption.
 - In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of IGST.

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