

All About Works Contract under GST



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Background and the Position in Pre-GST Regime

Taxation of Works contract has always been a subject matter of litigation because of involvement of both Supply of Goods and Services and it creates confusion whether it is supply of services or supply of goods.

In the case of *State of Madras v. Gannon Dunkerly & Co.* [1958] 9 STC 353 the Hon'ble Supreme Court had held that in case of a works contract, the dominant intention of the contract is the execution of works, which is a service and there is no element of sale of goods (as per Sale of Goods Act, 1930). The contract being one indivisible contract, it cannot be broken up to levy VAT on sale of goods involved in the execution of works contract. This decision led the Government to amend the Constitution of India and insert Article 366(29A)(b) which enabled the State Governments to levy tax (VAT) on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

Position Under GST

It is pertinent to mention here that in the Pre-GST regime, all types of works contracts whether related to movable property or immovable property were covered under the definition of works contract. However, under GST laws, the definition of "Works Contract" has been restricted to any work undertaken for an Immovable Property. In the GST regime the taxation of Works Contract has been dealt separately and is treated as a contract of service which may also involve supply of goods in the execution of the contract. It is basically a composite supply of both services and goods, with the service element being dominant in the contract between parties.

As per Section 2(119) of the CGST Act, 2017,"Works Contract means 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."

From the above definition, it can be seen that the works contract has been restricted to immovable properties only. Any other contracts, like fabrication, repair work done in automobile workshop shall not be considered under works contract instead that shall be considered as composite supply as defined under section [2\(30\)](#) of the CGST Act, 2017.

Further, as per **Para 6(a) of Schedule II** to the CGST Act, 2017, works contract as defined in Section 2(119) of the CGST Act, 2017 shall be treated as a Supply of Services. Thus, there is a clear demarcation of a works contract as a supply of service under GST.

As per **Entry 5(b) of Schedule II**, 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 shall be treated as supply of service.

However, if entire consideration on works contract has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier than no GST is leviable on such supply as this become immovable property and GST cannot be levied on sale of immovable property.

As per **Entry 5 of Schedule III**, sale of land and subject to clause(b) of paragraph 5 of Schedule II, sale of building shall be treated neither as supply of goods not a supply of service.

Input tax credit not available on certain works contract services:

- 1. As per Section [17\(5\)\(c\)](#) of CGST Act 2017**, works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.
- 2. As per Section [17\(5\)\(d\)](#) of CGST Act 2017**, goods or services or both received by a taxable person for construction of immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Plant and Machinery in certain cases when affixed permanently to the earth would constitute immovable property. When a works contract is for the construction of plant and machinery, input tax credit of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. Works contract in respect of plant and machinery comes within the exclusion clause of the negative list and input tax credit would be available when used in the course or furtherance of business.

Value of supply of works contract

In the case of a works contract supply involving the transfer of property in land or an undivided share of land, the value of the service and commodities, element of the supply shall be equal to the entire amount charged for the supply less the value of the land or undivided share of land as the case may be. 1/3rd abatement towards value of land is prescribed in Para 2 of Notification No. 11/2017 Central Tax (Rate) dated 28th June 2017 and in other cases it will be considered as transactional value.

Place of supply of works contract services

Under GST regime, works contract necessarily involves immovable property. As a result, where both the supplier and the recipient are located in India, Section [12\(3\)](#) of the IGST Act, 2017 governs the location of supply. Hence, the location of the immovable property would be the place of supply.

- ◆ If the immovable property is located outside of India but both the Supplier and the Recipient are in India, the place of supply will be location of recipient as per proviso to Section 12(3) of the IGST Act, 2017.
- ◆ When either the Supplier or the Recipient is located outside India, the place of supply is the place where the immovable property is located or intended to be located, according to Section [13\(4\)](#) of the IGST Act, 2017.

Time of Supply

As per Section 13(2) of CGST Act 2017, Time of Supply of service shall be determined as earliest of the following:

- (a) the Date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the Date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
- (c) the Date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

Furthermore, in case of works contract services there are contracts wherein period of contract extends to more than 3 months, which is defined as "continuous supply of services" under section 2(33) of CGST Act, 2017 and accordingly Section 31(5) thereof has to be applied to determine the time limit for issuance of tax invoice:

- (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment.
- (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment.
- (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Maintenance of accounts and records by works contractor

The works contractor is required to keep separate accounts under Rule [56\(14\)](#) of CGST Rules as mentioned below:

- ◆ The name and address of the person on whose behalf the works contract is being executed,
- ◆ Description, value and quantity of goods/services received for the execution of works contract,
- ◆ Description, value and quantity of goods/services utilized for the execution of the works contract
- ◆ Details of payment received against each works contract, and

- ◆ The name and address of the suppliers from whom the goods/services are received.

Important Advance Rulings/Judgements related to Works Contract

Input Tax Credit

1. Safari Retreats Private Limited is involved in construction of large shopping malls for the purpose of letting out its property. The company is also paying GST on its rental income. The company had accumulated input tax credit of GST paid on purchases of inputs in the form of goods and services. The Hon`ble Odisha High Court in the said case has held that input tax credit will be available on expenses used for construction of building where taxpayer will rent the building Hon'ble High Court struck down the conditions prescribed u/s 17(5)© of CGST Act 2017 and rejected the narrow interpretation of the section 17(5)(d) of the CGST Act done by the department and held that the benefit of input tax credit would be available to assessee on goods or services used in construction of immovable property if the assessee is required to pay GST on the rental income arising out of the investment on which he paid the GST.

[Safari Retreats (P.) Ltd. v. Chief Commissioner of CGST [2019] 105 taxmann.com 324/74 GST 500 (Orissa)]

2. Sital Kumar Poddar is involved in providing supplying works contract service to Kolkata Municipal Corporation to construct buildings for various projects. The Hon'ble AAR of West Bengal held that he is making an outward supply of works contract service and is not prohibited from claiming input tax credit either under clause © or clause (d) of section 17(5) of CGST Act 2017. Thus, the applicant is eligible to claim the input tax credit on the inward supplies of the goods and services used for supplying the works contract service to State Municipal Corporation for construction of an immovable property.

[15/WBAAR/2020-21 dated 11-01-2020]

The above landmark Judgement of Hon'ble Odisha HC and Ruling of AAR-West Bengal gives respite to the applicants. The Hon'ble Orissa HC held that a person engaged in letting out the property cannot be said to be using the property "on his own account and rejected the narrow interpretation of the section 17(5)(d) of CGST Act 2017. In both the ruling & judgement, more emphasis has been given to the taxpayer because he is availing input tax credit against providing outward taxable services. Hence, restriction for availment of ITC u/s 17(5) of CGST Act 2017 does not arise.

3. Tarun Realtors Private Limited is involved in developing shopping Mall Mantri Arena Mall including a hypermarket, multiplex cinema theatre complex, departmental stores, retail shops and food courts. The company had accumulated input tax credit of GST paid on purchases of inputs/input services for procurement and installation of various equipment i.e. Chillers, Air Handling Unit (AHU), Lift, Escalators, and Travellator, Water Treatment Plant (WTP), Sewage Treatment Plant (STP), High Speed Diesel Yard (HSD), Mechanical Car Park (MLCP), Indoor/Outdoor Surveillance System (CCTV), D.G.Sets, Transformers, Electrical wiring and fixtures, Public Health Engineering (PHE), Fire-fighting and water management pump system. The Hon'ble AAR of Karnataka held that the input tax credit on the goods or services or both received by a taxable person in respect of such construction is not available as it is covered under the expression "construction of an immovable property and blocked under section 17(5) of CGST Act 2017.

[KAR ADRG 103/2019 dated 30-09-2019]

4. M/s Rambagh palace Hotels Pvt. Ltd is running five-star deluxe heritage hotel under the brand name Taj group. It has incurred expenditure on

construction, renovation, repairs, and maintenance of hotel's immovable and movable property. Hon'ble Rajasthan AAR held that ITC will not be available under works contract services to the extent of capitalization of building materials, services, and electrical fittings. However, input tax credit would be available on GST paid on labour services, purchase of wood, board, mica, tapestry, paint, polish, and other consumables meant for repair of existing furniture & fixtures in accordance with Section 16 of CGST/RGST Act, 2017.

[RAJ/AAR/2019-20/05 dated 30-04-2019]

The above AAR rulings are based on the relevant provisions mentioned under section 17(5)(c) and 17(5)(d) of CGST Act 2017. However, in case of *Safari Retreats (P.) Ltd. (supra)* and Sital Kumar Poddar the Hon'ble Odisha HC and AAR-WB pronounced favourable judgements for the taxpayers with a different legal interpretation overriding the conditions mentioned u/s 17(5) of CGST Act 2017.

Applicability of GST Rate

1. Bindu Projects & Co. (Applicant) was awarded a contract by South western Railways, Bengaluru for new works, repair works, additions, and alterations to existing structures in service buildings like stations, PWI offices, RPF Barricades, etc. and in welfare buildings like Railway Hospitals, Colonies, etc. Where the Applicant is executing two types of works contract as mentioned below ;
 - (a) Construction of new building
 - (b) Repair and reconstruction of old structures.

According to Hon'ble AAR the above activities cannot be a composite supply of works contracts as there is no principal supply and the works are not naturally bundled. AAR also held that it cannot be a mixed supply because each of the supply of works are valued separately, and they would amount to separate contracts.

Therefore, the Hon'ble Karnataka AAR held that new construction (original works) undertaken under contract with South western Railways, Bangalore Division is liable to 12% GST in terms of Entry No. 3(v) of [Notification No. 11/2017-Central Tax \(Rate\) dated 28th June 2017](#) along with repair, renovation and maintenance works of old construction meant for use of railway employees is liable to tax also at 12% as per Entry 3(vi) of the said Notification. However, for other repair works of old construction involved in the contract are liable to tax @18% as per Entry 3 (xii) of the said notification as amended from time to time.

[Advance Ruling No. KAR ADRG 40/2021 dated 30-07-2021]

2. RFE Solar Private Limited, the applicant raised the question for advance ruling, "whether contract for Erection, Procurement and Commissioning of Solar Power Plant shall be classifiable as Supply of Goods or Supply of Services under the provisions of the CGST Act, 2017 and Rajasthan SGST Act, 2017?"

The Authority (AAR Rajasthan) held that the solar power plant is a big project and has a permanent location for onward sale of power to the consumer. Such plant would therefore have an inherent element of permanency and it cannot be shifted to any other place without dismantling the same. Further it is a tailor-made system which cannot be sold as it is to the other person. Therefore, the contract for Erection, Procurement and Commissioning of Solar Power Plant falls under the ambit "works contract services" (SAC 9954) of [Notification No. 11/2017 Central Tax \(Rate\) dated 28th June, 2017](#) and attracts 18% rate of tax under IGST Act, or 9% each under the CGST and SGST Acts, aggregating to 18%.

[Advance Ruling No. RAJ/AAR/2018-19/08 dated 1-06-2018]

3. Sreepati Ranjan Gope & Sons was involved in providing maintenance related services in respect of railway tracks which involved cleaning, surface preparation and painting of rails, welding of joints, fabrication of guard rails, etc. The applicant during personal hearing the applicant has referred to an exemption granted *vide* Notification No. 12/2017-CT (Rate) dated 28/06/2017 under the CGST Act, 2017 (and as amended on 25-1-2018) . The applicant further contended that the services provided by it were in the nature of composite supply of works contracts involving predominantly earth work (that is constituting more than 75% of the value of services provided, *inter alia*, to Central Government) and thus leviable to GST at 5%. The Authority (AAR West Bengal) held that condition for availing exemption requires the composite supply (wherein the value of the goods supplied is not more than 25% of the total value of the supply) to be provided, *inter alia*, to Central Government by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function Page 3 of 3 entrusted to a Municipality under article 243W of the Constitution. Once again, the conditions laid down are not applicable to the instant case. Hon'ble AAR also held that work executed in respect of maintenance of railway tracks undertaken by the applicant involves repair, maintenance, and fitting of immovable property *viz.* railway tracks which includes transfer of property in goods in course thereof and therefore, it is a composite supply of labour and goods in the nature of "works contract". Accordingly, it was held to be a works contract leviable to GST at 18%, rejecting applicant's claim of applicability of 5% GST stating that only a fraction of work involved that could be described as earth work.

[Advance Ruling No. 03/WBAAR/2018-19 dated 3-05-2018]

4. Allied Digital Services Ltd. Had entered into a contract for setting up of a comprehensive CCTV based city surveillance system for the city of Pune and Pimpri-Chinchwad with the Government of Maharashtra. The question before the Authority was whether the same was a works contract leading to creation of an immovable property and thus leviable to GST at 18%.

The Authority (AAR Maharashtra) held that applicant provides different services that are integrated in such a way that it would constitute a Composite Supply u/s 2(30) of CGST Act 2017. The liability of applicant does not end at supply of goods, but extends to successful testing, commissioning and maintenance of system and it is permanently fastened to things attached to earth and it cannot be shifted without first dismantling and then, erecting at another sight. Therefore, the said activity result into installation/commissioning of immovable property wherein transfer of property in goods is involved in the execution of the contract. Thus the 'Surveillance Project' is a works contract as defined in Sub-section 119 of Section 2 of the GST Act and is supply of services as per 6(a) of Schedule II of the GST Act. Therefore, the amount received for the supply of services post GST are taxable under the provision of GST Act. AAR also relied upon ruling of Hon'ble Apex Court in the case of *TTG Industries Ltd. v CCE 2004 167 ELT 501* in which Hon'ble Supreme Court held that the concrete platform at a level of 25 ft height was immovable property which could not be shifted without dismantling the same.

Hence, AAR held that the amount received towards supply of services to Government of Maharashtra (GOM) to setup a comprehensive CCTV based City Surveillance system for the city of Pune and Pimpri -Chinchwad, taxable under CGST/SGST Act at 18% GST.

[Advance Ruling No. GST-ARA- 90/2018-19/B-159 dated 19-12-2018]

From the above rulings by various state AAR's we can conclude that different GST rate may apply against a single lumpsum contract consisting of multiple works contract. It is very difficult to analyse the activity whether it will fall under composite or mixed supply. The term "Original works" is always debatable since Pre-GST regime. As per the Notification No 12/2017 (CT-Rate) dated 28th June 2017 "original works" has been defined that, all new constructions including all types of additions and

alterations to abandoned or damaged structures on land that are required to make them workable and erection, commissioning or installation of plant, machinery or equipment or structures, whether prefabricated or otherwise. Hence it is very thin line when it comes to defining original works to qualify for a reduced rate of tax.

Supply Under "Works Contract Services"

5. Precision Automation and Robotics India Limited, the Applicant sought for the advance ruling on the question "whether the activity of supply and installation of 'car parking system' would qualify as immovable property and thereby 'works contract' as defined in Section 2(119) of the CGST Act, 2017?"

The Authority (AAR Maharashtra) held that the impugned car parking system, be it installed on a vacant plot of land or in a building, does not result into supply as chattel. In fact, before installation, there can be no goods as such which could be called a 'car parking system'. The system requires substantial work to be done at the site to be called a 'car parking system'. Once made operational the 'car parking system' obtains a state of permanency. It is not such as can be easily removed from the existing place and put into place at some other location. Therefore, it will qualify as per the definition of "works contract" under the GST Act in relation to immovable property.

[Advance Ruling No. GST-ARA-39/2017-18/B-46 dated 13-06-2018]

Under GST Regime immovable property has not been defined, so in most of the cases the decisions of judicial authorities are based on cardinal principles of interpretation. However, the above ruling can be challenged at higher stage in case the applicant has sufficient evidence to prove that car parking system can be reassembled and installed at any place without substantial damage to their components and it will not fall under works contract services.

Conclusion

Several complexities and restrictions are embedded under Works Contract Services. There are few judgements/rulings available to define the works contract services under the ambit of original works which will qualify for reduced rate of tax. Hon'ble Odisha HC also allowed the taxpayer to avail input tax credit against GST paid on procurement and labour supply for construction of immovable property. There are also some contradictory rulings as discussed above, where availment of input tax credit is restricted for works contractor for construction of immovable property, on his own, account even if it is for the furtherance of business as per section 17(5) of CGST Act 2017. These rulings will create undue hardship for a genuine taxpayer. Works Contractors should also be careful and take into consideration various applicable tax compliances and precautions to safeguard themselves against Anti Profiteering Provision u/s [171](#) of CGST Act 2017.

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