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WORKS CONTRACT UNDER GST

by

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OBJECTIVES

- Definition
- Position under Service Tax and VAT
- Position under GST
- Composite supply
- Taxability of Works contract
- Provisions relating to Input tax credit

DEFINITION

➤ **As per previous law:**

Works Contract has been defined in section 65B of the finance Act, 1994 as a Contract where in transfer of property in goods is involved in the execution of such contract and leviable to sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property.

POSITION UNDER SERVICE TAX AND VAT

- Involving provision of service as well as transfer in the property in goods.
- Constitutional amendment was made inserting article 366(29A)(b) entitling the state authorities to levy VAT on the value of goods being transferred.
- Since the contract is an indivisible contract Service Tax and VAT are charged on the value calculated as per the determination of the value rules under.

DEFINITION

- **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.

POSITION UNDER GST:

- Execution of the contract involves provision of service as well as transfer in the property of goods.
- Works contract definition is restricted to the work done with respect to immovable property.
- Works done related to movable property may be treated as Composite supply as per section 2(30) of CGST Act, 2017 in most of the cases. There may also be a possibility that supplies relating to movable property be treated as a mixed supply which differs from case to case.

POSITION UNDER GST

- **Illustration:** *If we see the example of car taken for service involving supply of material as well as service, it can be treated as a composite supply by considering both the supplies are naturally bundled and the entire transaction is taxed as per the principal supply. But there may also be a perception from the authorities that it can also be treated as two separate supplies provided combinedly and considered as mixed supply and entire transaction is taxed at rate which attracts the highest rate.*
- Works contract relating to the immovable property is treated as service as per Schedule 2 (6)(a) of CGST Act, 2017.

COMPOSITE SUPPLY:

- **SECTION 2(30):**

Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, 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.

- As per Section 8 of CGST Act, 2017 the entire supply of composite supply shall be treated as supply of the 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 a principal supply
- Booking of a Rajdhani train ticket which includes meal, it is a bundle of supplies. It is a composite supply where the products cannot be sold separately. You will not buy just the train meal and not the train ticket. The transportation of passenger is, therefore, the principal supply.

HOW TO DETERMINE THE TAXABILITY OF WORKS CONTRACTS???

- **VALUE**
- **PLACE OF SUPPLY**
- **RATE OF TAX**



Value of the Supply:

- Generally determined as per section 15 of the CGST Act, 2017.
- Consideration charged for supply of the service, where price is the sole consideration.
- Includes taxes, duties paid other than taxes paid under Goods and Service Tax, 2017.
- Incidental expenses related to supply.
- Expenses incurred by the recipient on behalf of the supplier.
- Includes late fees and delayed fees charged.

Rate of Tax on Works Contract:

- **Notification No. 01/2018 CT rate dated 25th of January 2018**
- ✓ Generally the rate of tax applicable for works contract services is 18%.
- ✓ There are various other rates depending upon the nature of service receiver. For detailed rates, please refer to the notification.

Place of Supply:

- Section 12(3) of the IGST Act, 2017:
 - Directly in relation to an immovable property, including services for carrying out or co-ordination of construction work.
 - The location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.
 - location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Illustration:

- *M/s ABC Pvt Ltd is engaged in the business of Construction Services having registered place of business in Telangana and entered into contract with the client in AP.*

Here the place of supply is the place where construction work is held i.e. AP as per section 12(3) of IGST Act, 2017

Since the supplier is providing construction services in AP and having fixed establishment in AP for carrying the construction work, required to obtain registration in AP

The place of service provider (fixed establishment) and place of the supply is in the same state and it is an Intra state supply

Hence, CGST and SGST should be charged accordingly.

Provisions relating to Input Tax Credit-Section 16 of CGST Act, 2017:

16(2)(a)

- Recipient should be in possession of tax invoice or debit note or any other document issued by the supplier

16(2)(b)

- Has received goods or services or both

16(2)(c)

- Tax has been paid to the government on the respective supply either in cash or through utilisation of Input tax credit

16(2)(c)

- Furnished return under section 39

Section 17(5) of CGST Act, 2017:

Restriction of credit:

(c) 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.

(d) goods or services or both received by a taxable person for construction of an 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

At

Venue: SBS AND COMPANY LLP
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Thank you!!!

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