By virtue of Section 66E of Finance Act, 1994, the service portion involved in the execution of works contract was a declared service. Hence Service Tax could be levied only on the service element of the works contract. The principles of segregation of the value of goods were provided in Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

Position under GST
Under GST laws, the definition of “Works Contract” has been restricted to any work undertaken for an “Immovable Property” unlike the existing VAT and Service Tax provisions where works contracts for movable properties were also considered.

The Works Contracts has been defined in Section 2(119) of the CGST Act, 2017 as “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.”

Thus, from the above it can be seen that the term works contract has been restricted to contract for building construction, fabrication etc. of any immovable property only. Any such composite supply undertaken on goods say for example a fabrication or paint job done in automotive body shop will not fall within the definition of term works contract per se under GST. Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST.

As per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts 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 section 17(5)(c) of the CGST Act, 2017, input tax credit shall not be available in respect of the 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.

Thus, ITC for works contract can be availed only by one who is in
the same line of business and is using such services received for further supply of works contract service. For example a building developer may engage services of a sub-contractor for certain portion of the whole work. The sub-contractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his sub-contractor as his output is works contract service. However if the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the IT Company.

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, the ITC of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list and ITC would be available when used in the course or furtherance of business.

Position Maintenance of records:
As per Rule 56 (14) of the CGST Rules, 2017, every registered person executing works contract shall keep separate accounts for works contract showing - (a) the names and addresses of the persons on whose behalf the works contract is executed; (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract; (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract; (d) the details of payment received in respect of each works contract; and (e) the names and addresses of suppliers from whom he received goods or services.

Rate of GST
The rate of GST for Works Contract service has been prescribed in serial number 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017 & notification no.24/2017-Central Tax (Rate) dated 21.09.2017 and is as under.

<table>
<thead>
<tr>
<th>Description</th>
<th>CGST Rate</th>
<th>SGST Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction of a complex, building, civil structure or a part thereof,</td>
<td>9%</td>
<td>9%</td>
</tr>
<tr>
<td>intended for sale to a buyer, wholly or partly, except where the entire</td>
<td></td>
<td></td>
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<tr>
<td>consideration has been received after issuance of completion certificate,</td>
<td></td>
<td></td>
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<tr>
<td>where required, by the competent authority or after its first occupation,</td>
<td></td>
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<tr>
<td>whichever is earlier. (Provisions of paragraph 2 of this notification shall</td>
<td></td>
<td></td>
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<tr>
<td>apply for valuation of this service)</td>
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</table>

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In case of supply of service, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

**Explanation.** – For the above purpose, “total amount” means the sum total of–
(a) consideration charged for aforesaid service; and
(b) amount charged for transfer of land or undivided share of land, as the case may be

**Place of Supply in respect of Works Contract**
Works Contract under GST would necessarily involve immovable property. In view of the same the place of supply would be governed by Section 12(3) of the IGST Act, 2017, where both the supplier and recipient are located in India. The place of supply would be where the immovable property is located.

In case the immovable property is located outside India, and the supplier as well as recipient both are located in India, the place of supply would be the location of the recipient as per proviso to Section 12(3) of the IGST Act, 2017.

As per Section 13(4) of the IGST Act, 2017, in cases where either the Supplier or the Recipient are located outside India, the place of supply shall be the place where the immovable property is located or intended to be located.

**Conclusion**
A works contract is treated as supply of services under GST. Under the previous indirect taxes dispensation, there were issues in tax treatment of works contract. Both the Central Government (on the services component of a works contract) & the State Governments (on the sale of goods portion involved in the execution of a works contract) used to levy tax. Thus the same contract was subject to taxation by both Central and State Government. GST aims to put at rest the controversy by defining what will constitute a works contract (applicable for immovable property only), by stating that a works contract will constitute a supply of service and specifying a uniform rate of tax applicable on same value across India. Thus, under GST, taxation of works contract will be simpler and easier to administer.
GST (GOODS AND SERVICES TAX)

Provisional Assessment in GST

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