

Works Contract in GST

Introduction:

What is a works contract?

Simply put, a works contract is essentially 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.

In a general sense, a contract of works, may relate to both immovable and immovable property. E.g. if a sub-contractor, undertakes a sub-contract for the building work, it would be a works contract in relation to immovable property. Similarly, if a composite supply in relation to movable property such as fabrication/painting/annual maintenance contracts etc. is undertaken, the same would come within the ambit of the broad definition of a works contract.

Works Contract – the position in VAT & Service Tax

A works contract has elements of both provision of services and sale of goods, and was therefore taxable under both laws.

VAT

In the case of *Gannon Dunkerly*, the Hon'ble Apex 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). 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.

SERVICE TAX

Works contract has been defined in section 65B of the Finance Act, 1994 as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as 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 or for carrying out any other similar activity or a part thereof in relation to such property.

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.

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:

(i) 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. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9% CGST + 9% SGST
(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017	9% CGST + 9% SGST
(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -	6% CGST + 6% SGST

<p>(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal</p>	
<p>(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-</p> <p>(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;</p> <p>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;</p>	<p>6% CGST + 6% SGST</p>

<p>(c) a civil structure or any other original works pertaining to the “In-situ rehabilitation of existing slum dwellers using land as a resource through private participation” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers;</p> <p>(d) a civil structure or any other original works pertaining to the “Beneficiary led individual house construction / enhancement” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>(e) a pollution control or effluent treatment plant, except located as a part of a factory; or</p> <p>(f) a structure meant for funeral, burial or cremation of deceased</p>	
<p>(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-</p>	<p>6% CGST + 6% SGST</p>

<p>(a) railways, excluding monorail and metro;</p> <p>(b) a single residential unit otherwise than as a part of a residential complex;</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’ framed by the Ministry of Housing and</p>	
<p>Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-</p> <p>(1) the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government;</p> <p>(e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or</p> <p>(f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages</p>	

(vi) Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.	6% CGST + 6% SGST
(vii) Construction services other than (i), (ii), (iii), (iv), (v) & (vi) above	9% CGST + 9% SGST

Valuation

Valuation of a works contract service is dependent upon whether the contract includes transfer of property in land as a part of the works contract.

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 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.
