

06-09-2020



Works contractA Dense Forest

CA AANCHAL ROHIT KAPOOR

CA NEETU SHARMA

M. No. 9988692699, 9888069269

aanchalkapoor_ca@yahoo.com





Definition of Works Contract (Sec. 2(119))



Works Contract(Sec. 2(119))

means

Contract for

- building
- construction
- fabrication
- completion
- erection
- installation
- fitting out
- improvement
- modification
- repair
- maintenance
- renovation
- alteration
- commissioning

Word means makes it restrictive and exhaustive. Therefore activities not mentioned in the definition or activities mentioned but not pertaining to immovable property will not qualify as works contract.

Not defined
in GST Act

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;**

Building

A structure with walls and roof, such as house or factory
Permanent and temporary structure enclosed with exterior walls and a roof, and **including all attached apparatus, equipment and fixtures that cannot be removed without cutting into ceiling, floors and walls.**(English Dictionary)
As a verb , it is the act of bringing into existence a building or an immovable property.(Black's Law Dictionary)

The act of building by combining or arranging parts or elements; things so built. (Black's Law Dictionary)

Construction

The act of building or making a structure.(Cambridge Dictionary)

Erection

Fixed or semi- fixed location of a complete system or self- contained unit, with its accompanying assemblies, accessories and parts. Installation generally also includes provision of or connection to services(such as power and water supply) required to make the installed equipment ready for operation. (Cambridge dictionary)

Installation

the action or process of manufacturing or inventing something.(Black' law dictionary)

Fabrication

Fitting out

Fitting-out, or "outfitting", is the process in [shipbuilding](#) that follows the float-out/launching of a vessel and precedes [sea trials](#). It is the period when all the remaining construction of the ship is completed and readied for delivery to her owners. Since most of the fitting-out process is interior work, this stage can overlap with latter stages, such as the sea trials.(Cambridge dictionary)

Improvement

Improvement has been defined to mean " An addition to property, usually real estate, whether permanent or not; especially one that increases the value or utility or that enhances its appearance(Black's law dictionary)

Modification

A change to something , an alteration or amendment(Black's law dictionary)

Repair

1. The process of restoring something that has been subject to decay, waste, injury, partial destruction, dilapidation, etc. to fix something(something broken, split or not working)
2. The condition of something after being used or fixed: esp. the quality or state of being in good or sound condition.(Black's law dictionary)

the process of preserving a condition or situation or the state of being preserved.(Cambridge dictionary)

Maintenance

the [act](#) or [process](#) of [repairing](#) and [improving](#) something, [especially](#) a [building](#) (cambridge dictionary)

Renovation

the action or process of completing or finishing something that you are doing or making (Cambridge dictionary).

Completion

Process by which equipment/ plant is tested to verify functions according to its design(near completion)

Commissioning

a [change](#), usually a [slight change](#), in the [appearance](#), [character](#), or [structure](#) of something (Cambridge dictionary)

Alteration

Extract of Definition of Works Contract

(Transfer of property in goods)

Transfer of property means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and “ to transfer property” is to perform such act.



Further **“goods”** is defined under CGST Act as per which “ goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and thing attached to or forming part of land which are agreed to be severed before supply or under the contract for supply.

- The **quantum of goods involved in the execution of contract is immaterial as long as there is some transfer of goods.**
- The Apex Court in Gannon Dunkerley II held that the value pertaining to cost of consumables like water, electricity, fuel etc. involved in **works contract cannot be taxed since there is no transfer in title of goods.**
- E.g 1 Chemicals used as cleaning agents in the business of cleaning boilers in power stations and fertilizer plants were extinguished in the process, it was held that **no tax could be levied on the same as there was no transfer of any goods.**
- E.g 2 **When the dealer used explosives for the job of blasting it was held that no sales tax could be levied on the explosives used in the works contract as the same were exhausted in its execution.**
- In the GST regime, thus, a contract where the only goods involved are consumables, would not meet the test of ‘ transfer of property in goods’ under the “ works contract’ definition and thus such contracts may not qualify as “works contract’.

The **SC in case of Larsen and Tubro Ltd. V. State of Karnataka** held that the expression “in some other form” in the bracket is of utmost significance.

By this expression the ordinary understanding of the term “goods” has been enlarged by bringing in its fold goods in the form other than goods.

Goods in some other form would thus mean goods which have ceased to be chattels or movables or merchandise and become attached or embedded to earth. In other words, goods which have by incorporation become part of immovable property are deemed as goods.

The transfer of ownership/ title in goods, whether in their original form as goods or even in a form where they have ceased to be identifiable as goods.

➤ e.g Bricks, Cement are movable but when becomes part of building becomes Immovable Property.



Evolution



1950

Constitution of India

- State power to impose taxes on goods.
- No power to tax composite supply of Goods & labour

1958

The State Of Madras vs Gannon Dunkerley & Co.

Works Contract is indivisible and cannot be subject to Sales tax by States on ground that materials transferred in the execution of a works contract did not amount to “sale” simpliciter

1983

46th amendment in constitution of India

The decision of Apex Court in Gannon Drunkerley led the Govt. to make the amendment in article 366(29A)(b) which reads as follows:-

366(29A)(b) tax on the transfer of property in goods (whether as goods or in some other form) invoked in the execution of a works contract;

1994 & 2007

Later 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 immoveable property or for carrying out any other similar activity or a part thereof in relation to such property**
- 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.** W.e.f. 01.06.2007, a separate methodology for determination of value is leviable to service tax in a works contract was also brought in by Rule 2A of the Service Tax(Determination of Value) Rules, 2006. The valuation methodology under the said rule prescribe various heads inter alia labour charges, charges for planning, cost of consumables, etc. which relates to service components of works contract, following the SC decision in Gannon Dunkerley-II.

2015

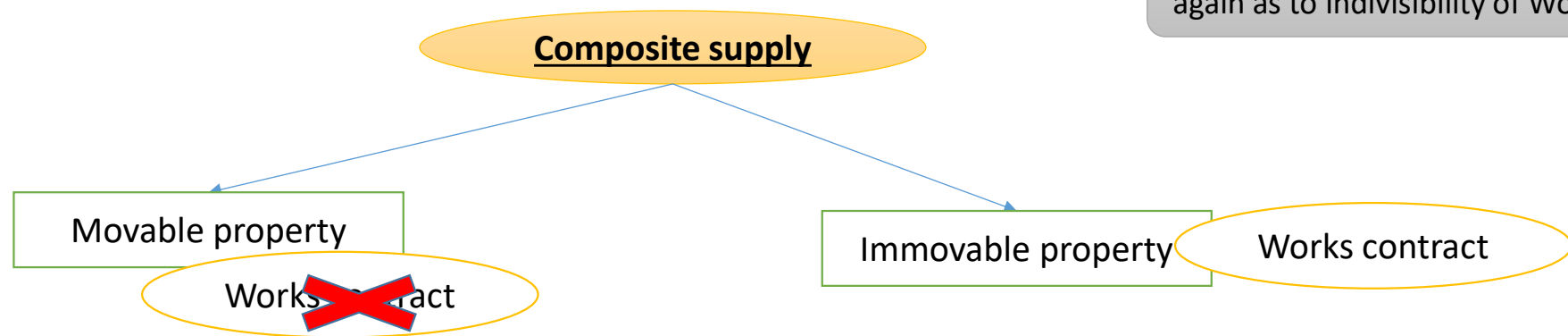
Larsen & Tubro Case law **2015 (39) STR 913 (SC)**
Service portion = service tax and Goods portion= VAT

2017
GST

The term works contract as per sec. 2(119) of CGST Act,2017 has been restricted to **contract for building construction, fabrication and other actions mentioned in definition relating to 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.

[Schedule II, Entry 6\(a\):-#Composite supply # works contract # supply of services.](#)

Back to Square 1 Gannon Dunkerley once again as to indivisibility of Works Contract



Ratio Decidendi of Gannon Dunkerley & Co. (1958 AIR 560)

Facts



Construction Company

Business of building roads, bridges



Sales tax authority sought to include value of materials in execution of building contracts



Sales tax authority

The validity of the assessment was challenged by the respondent who contended that the power of the Madras Legislature to impose a tax on sales under Entry 48 in List II in Sch. IX of the Government of India Act, 1935, did not extend to imposing a tax on the value of materials used in construction works, as there was no transaction of sale in respect of those goods, and that the provisions introduced in the Madras General Sales Tax Act, 1939, by the Madras General Sales Tax (Amendment) Act, 1947, authorising the imposition of such tax were ultra vires.

Held

They were entire and indivisible and could not be broken up into a contract for sale of materials and a contract for payment for work done. Accordingly, it held that the impugned provisions introduced by the Madras General Sales Tax (Amendment) Act, 1947, were ultra vires the powers of the provincial Legislature. In a building contract which is One, entire and indivisible, there is no sale of goods There must be an agreement between the parties for the sale of the very goods in which eventually property passes. In a building contract, the agreement between the parties is that the contractor should construct the building according to the specifications contained in the agreement, and in consideration therefor receive payment as provided therein

IMMOVABLE PROPERTY





Defined in Sale of Goods Act

Movable

Property



Immovable

Section 3 of Transfer of Property Act, 1892:-

“Immovable property” **does not include** standing timber growing crops or grass.

Sec. 3(26) of General Clauses Act, 1897:-

“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;**”

Section 2(6) of the Registration Act, 1908:-

“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;**”

- **Land means** a determinate portion of earth's surface. All the objects which are on or under the surface in its natural state are included in the term land.
- Also all objects placed by human agency on or under the surface with the intention of permanent annexation to the earth are immovable property. Eg. Building, wall, fences.

Benefits arising out of Land:-

The phrase “ benefits arising out of land” **means** profit derived from the land **without having any substantial control over the land.**

- The courts have **recognised a very limited number of 'profits a prendre'**.eg (right to fisheries as held in case of Anand bihari v. state of Orrissa).

➤ Eg. Right to collect rent of immovable property, right of fisheries etc. are held to be immovable property.

The word **“attached to the earth”** has been defined in para 6 of section 3 of Transfer of Property Act, 1882 **which means**

- a) Rooted to the earth, as in case of trees and shrubs
- b) Embedded in the earth as in case of walls or building
- c) Attached to what it is embedded for beneficial enjoyment of that to which it is attached.



➤ **Municipal Corporation of Greater Bombay and others vs. the Indian Oil Corporation Ltd. (AIR 1991 SC 686, (1991))**

The Division Bench laid down **two tests to determine whether it was attached to the land and thereby became immovable property,**

➤ the **degree or mode of annexation** and

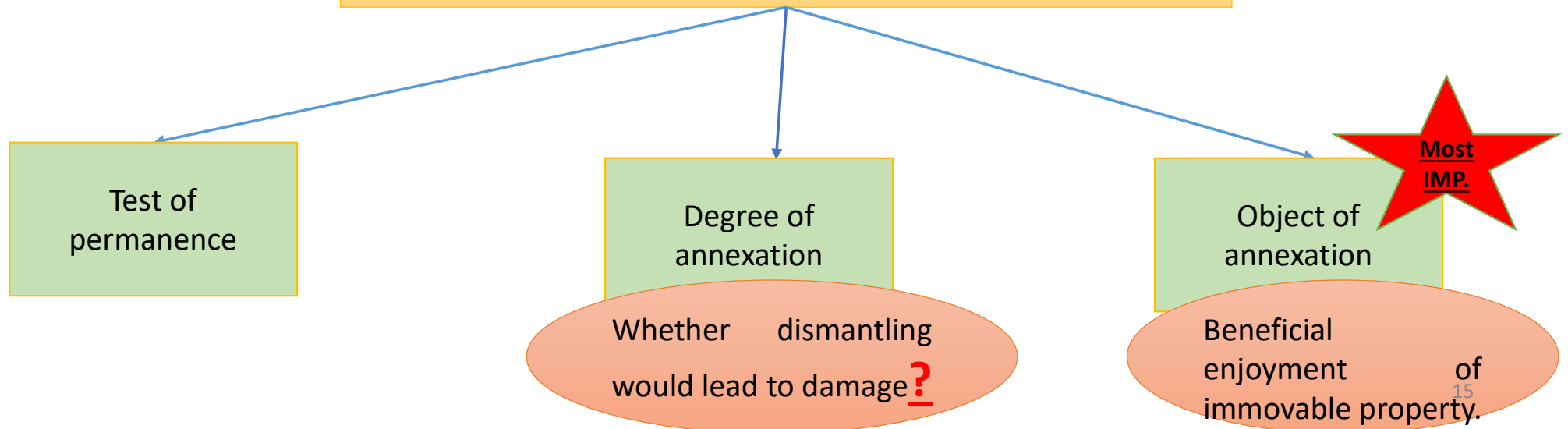
➤ **the object of annexation.**

Of the two tests **the latter is the more important**, and it is a question of fact to be determined upon **the particular facts and circumstances of each case.** In that case it was held that the (A) did not intend to annex the machinery to the land as a permanent attachment. Therefore, it was held that it is not an immovable property. This ratio in these cases is also not of any assistance to the respondent.

Asset under consideration: Big storage petrol tanks. 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.

- **Land** under GST is not a subject matter of works contract. Sale of land is outside the purview of GST.
- Things attached to earth means rooted and embedded. **Eg. Building, Tie-up seats of cinema hall, windows, doors of a house, AC plant, lift, heating plants.** Building is a civil structure and is an immovable property. So any work related to building will certainly qualify as works contract subject to other conditions. The things with object of beneficial enjoyment of Immovable property annexed to it will also form part of building i.e. immovable property.

TESTs to determine Immovable Property



Object/ Intent = Property enjoyment along with machinery = immovable property. Eg. Lifts , doors, windows for permanent enjoyment of property

Property with no link to machinery, can be removed, not for its beneficial enjoyment = Non Immovable property.
Eg. Machinery temporarily installed at lease premises to be shifted is non immovable property.

Intent is a Question of fact.



Other Case Laws on Immovable property



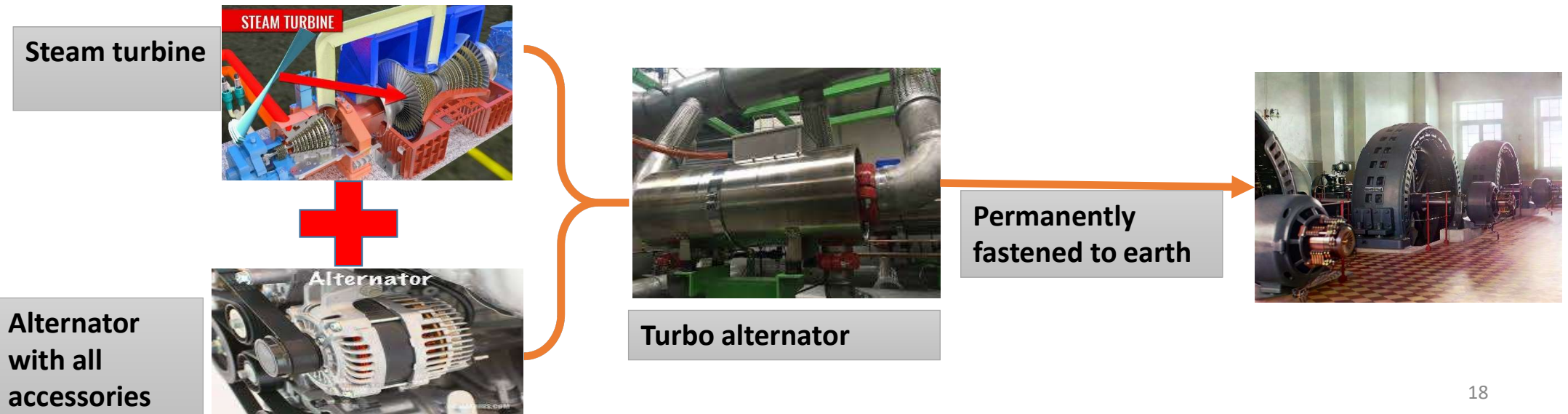


Triveni Engineering & Industries Ltd. & Anr. Vs. Commissioner of Central Excise and Anr.

In the instant case,

•It is a common ground that a **turbo alternator comes into existence only when a steam turbine and alternator with all their accessories are fixed at the site and only then it is known by a name different from the names of its components in the market.**

Whether an article is permanently fastened to anything attached to the earth requires determination of **both the intention as well as factum of fastening to anything attached to earth.** And this has to be ascertained from the facts and circumstances of each case.





Duncans Industries Limited vs. State of UP and Others (2000) 1SCC 633

Que:- Whether movable or immovable property?

Fertilizer Plant
Annexed to earth

Held

- Court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such was intended to be temporary or permanent.
- A careful perusal of the agreement of sale and the conveyance deed shows that that the machineries which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertilizer plant.
- The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time.
- Hence, the contention that these machines should be treated as movables cannot be accepted. Nor can it be said that the plant and machinery could have been transferred by delivery of possession on any date prior the date of conveyance of the title to the land."

CCE Ahmedabad v. Solid and Good construction Works

The apex court held that an **Asphalt Drum mix plant** was not per se immovable and becomes immovable only when embedded in earth. Further, it was held that the attachment of the plant with nuts and bolts **was intended to provide stability and prevent vibration/wobble free operation** and the attachment, as such, was easily detachable from the foundation and not permanent, does **not qualify for being described as attached to Earth.**





Paper Making Machine

Sirpur Paper Mills Ltd. Vs. Collector of Central Excise, Hyderabad (1 SCC 400 (1988))

Que:- Whether movable or immovable property?

Held



•The test is whether the paper making machine can be sold in the market.

•The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the company.

•Just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.

CCE v. Josts Engineering Co. Ltd. [2002] 2002 taxmann.com 93



Spray Paint Booth

Que:- Whether movable or immovable property?

Held

The apex court affirmed the tribunal finding that the

- **outside portions of the spray paint booth structure were embedded to the earth and could not have been dismantled without damaging the system and**
- hence the **said system was an immovable property.**



**Works Contract! Whether supply of
goods or service?**



Works Contract! Whether supply of goods or service?



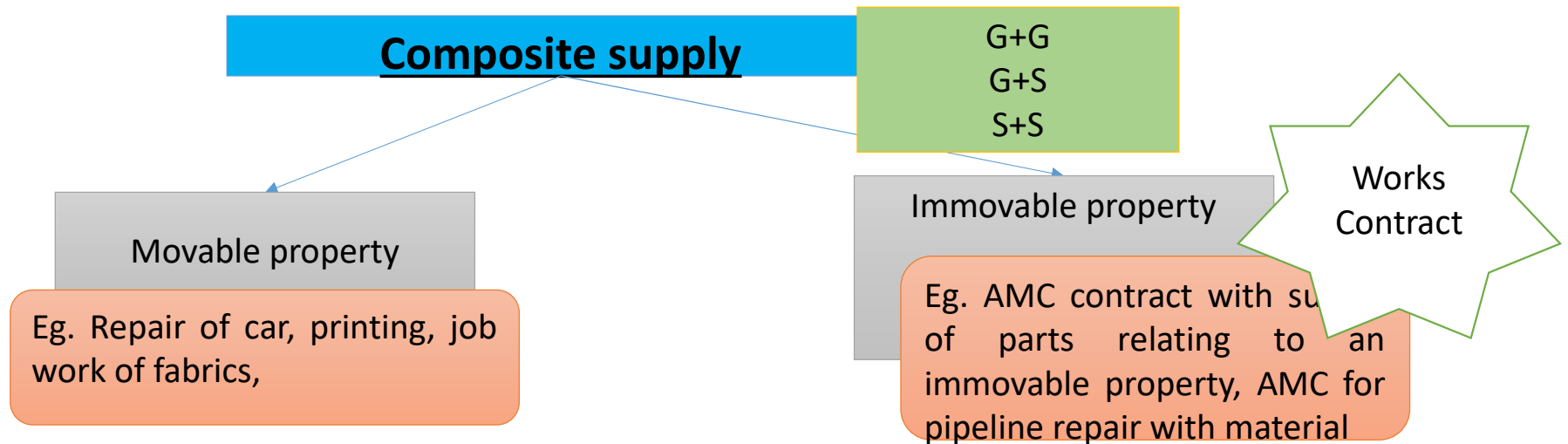
As per **para 6(a) of Schedule II of CGST Act**, The **following composite supplies** shall be **treated as a supply of services**, namely:—

- (a) works contract as defined in clause (119) of section 2; and
- (b)

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.

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**;

Sec. 2(108) **"taxable supply"** means a **supply of goods or services or both which is leviable to tax under this Act**; **i.e.** even one taxable and exempt supply which are leviable to tax =composite supply



Taxed on the basis of Principal Supply

Once it is a works contract the **pre dominant concept /principal supply** ceases and it will be taken as **supply of service as per entry No. 6(a) of schedule II**

The concept of composite works supply in GST leads to taxability of entire supply on the basis of predominant supply. However various circulars have been issued by the Govt from time to time where the bifurcation have been permitted as against the nature of composite supply

- Servicing of cars & vehicles(Cir. 47/21/2018 dated 8 June 2018)Goods will be taxable at goods rate and services will be taxable at services rate.
- Solar power panel (**Notification No. 24/2018 CT- rate) @ 30% goods and 70% services.**

Under GST, a composite supply would mean:

- 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.

Composite Supply

With respect to Immovable Property

Deemed service, Irrespective of Goods & Supply proportion

No consideration of principal supply

SAC will be applicable

Works Contract

HSN/SAC will be applicable depending on the Principal Supply item

Cannot be a Works Contract

With respect to Other than Immovable Property

It is not Deemed service

Consideration of principal supply

Two contracts: one for supply of goods and other for supply of service. Whether Works Contract!

2018 (5) TMI 964 - AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL IN RE : EMC LTD.

Activity of supply of materials and allied services for erection of towers, testing and commissioning of transmission



Two Contracts

Freight Bills



Held

- First Contract cannot be executed independent of the Second Contract
- Two contracts are linked by **cross fall breach clause** that specifies that breach of one contract will be deemed to be **breach of the other contract**. The parties are aware of such interdependence of two contract.
- It is **immediately apparent that the First Contract cannot be executed independent of the Second Contract**. There cannot be any 'supply of goods' without a place of supply.
- **As the goods to be supplied under the First Contract involve movement and/or installation at the site, the place of supply shall be the location of the goods at the time when movement of the goods terminates for delivery to the recipient, or moved to the site for assembly or installation.**

Ruling: - The applicant supplies works contract service, of which freight and transportation is merely a component and not a separate and independent identity, and GST is to be paid at 18% on the entire value of the composite supply, including supply of materials, freight and transportation, erection, commissioning etc.



Supply and Installation of Lifts is a Works Contract ; SC explains distinction between contract for sale of goods and works contract

Held that four concepts have emerged from various SC judgments. They are

- (i) The **works contract is an indivisible contract but, by legal fiction, is divided into two parts, one for sale of goods, and the other for supply of labour and services;**
- (ii) The concept of **“dominant nature test” or, for that matter, the “degree of intention test” or “overwhelming component test” for treating a contract as a works contract is not applicable;**

- If the **contract is a composite one** which falls under the definition of works contracts as engrafted under clause (29A)(b) of Article 366 of the Constitution, the incidental part as regards labour and service pales into total insignificance for the purpose of determining the nature of the contract.
- SC held **that it would not be legally correct to make such a distinction in respect of lift, for the contract itself profoundly speaks of obligation to supply goods and materials as well as installation of the lift** which obviously conveys performance of labour and service. Hence, the **fundamental characteristics of works contract are satisfied.**



Points to be considered for contract divisibility

- There **must not be any linkage between the two contracts**. The two contracts should stand independent from Beginning till end. Say, from Advertisement, Tender till Raising of Invoice, no linkage should be established.
- **The Clause of Cross Fall Breach should be taken care while drafting the agreement.**
- There should be **clear distinction as regards the consideration pertaining to supply of goods and supply of services**. Separate Invoices should be raised. Based upon the contracts, the invoicing and other documentation should be observed.
- For supply of goods, the **provisions of sales of goods act must be considered**.
- The Goods sold **must form part of stock of the contractee**, then should be issued for construction from time to time and should not be shown as Work in Progress in Books of Accounts.

Entry 5(b) vs. 6(a)

Entry No. 5 of Schedule II :- ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR 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

- Under **service tax regime** as well, **a separate class of services i.e. Construction of Complex services and Works contract (covering movable and immovable both) were defined in a similar fashion.**
- But, the definition of **Works contract is restricted to only Immovable in GST regime**. However, the change relating to above has not been considered and in GST regime also, two entries are given similarly as in earlier regime.
- Hence, it can be concluded that the activities of construction of immovable property can be classified as a supply of service either under entry 5(b) or under entry 6(a) of schedule II to the CGST Act.
- Schedule II is relevant only to the extent of determining that **whether a particular service is supply of service or a supply of goods and in both the entries it is treated as supply of service.**
- **There is overlapping of certain transactions like Construction of Building both in entries 5(b) and 6(a).**

**INPUT TAX
CREDIT**

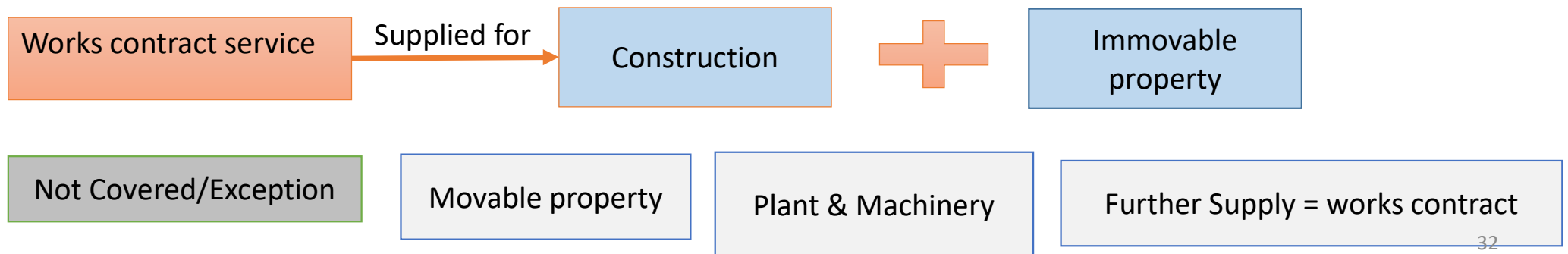
Input tax credit

Section 16 Eligibility and condition for taking input tax credit.

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Section 17 Apportionment of credit and blocked credits.

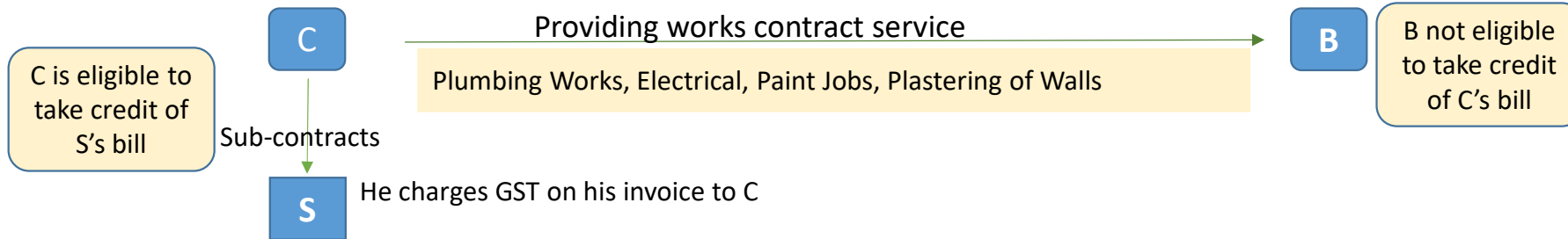
Section 17(5)(c) Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.



No ITC restricted for further supply of works contract services

- Clause (c) **does not** restrict input tax credit of works contract services when availed for further supply of works contract services.

Covers Subcontractor's bill itc being available to Main Contractor

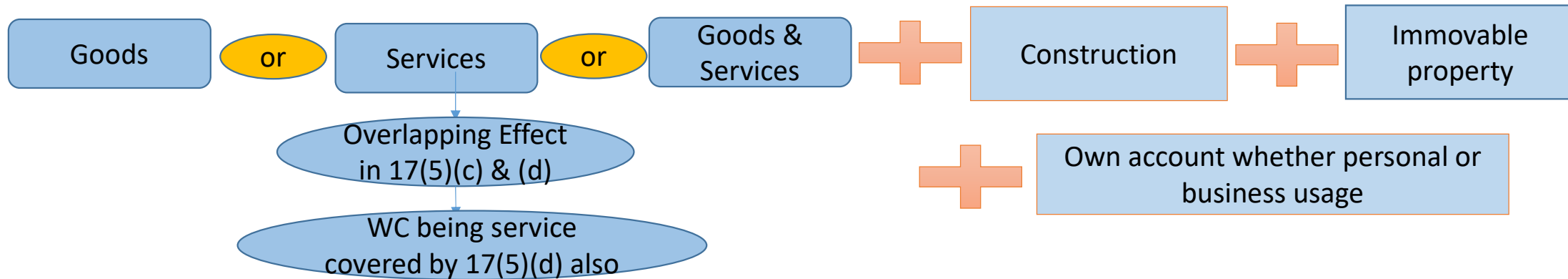


As per explanation to section 17 expression **"plant and machinery" means**

- apparatus, equipment, and machinery
- **fixed to earth by foundation or structural support**
- that **are used for making outward supply of goods or services or both** and
- includes **such foundation and structural supports** but **excludes**—
 - i. land, building or any other civil structures
 - ii. telecommunication towers; and
 - iii. pipelines laid outside the factory premises

Whether Directly or Indirectly

Section 17(5)(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.**



Not Covered/Exception

Movable property

Plant [?] OR Machinery

Not capitalised

Exception : Construction by Builder for Sale on Receiving advance before OC/CC cannot be said to be on own a/c

Illustration

- M/s Rajat & Co. gave the project to M/s Construct India to construct a Mall Building for them. M/s Rajat & Co. will not get **credit of construction Services being received on own account pertaining to Immovable property.**
- Mr. Neil gave works contract to M/s Construct India for repair and maintenance of office premises, debited as expense in the profit & loss A/c he shall be entitled to claim ITC on the works contract services provided by XY the expense is not capitalised and as per definition of 'construction' as per explanation to section 17(5)(c) covers the repairs, to the extent of capitalised to the immovable property.
- M/s Dinesh & Co. awarded a works contract to M/s Build India Pvt. Ltd. to construct a road, who further sub-contracted to M/s Opto Construction.

M/s Dinesh & Co.

Cannot claim credit of WC Service bill of M/s Build India Pvt. Ltd.

Sec 17(5)(c)

M/s Build India Pvt. Ltd.

Can Claim ITC on input WC service bill of M/s Opto Construction

Sec 17(5)(c) Exception

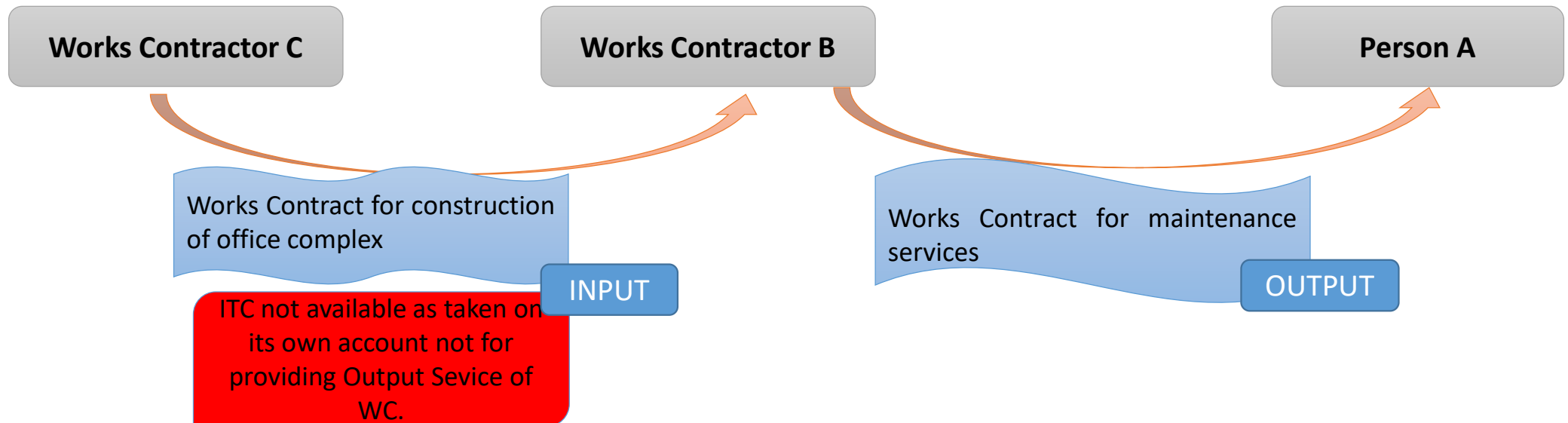
M/s Opto Construction

Can Claim ITC on Goods/ Services or Both procured for providing WC Service

No Restriction as no WC input service Sec 17(5)(c) is N.A and 17(5)(d) puts restriction on Own account and here the services are not procured on own account.

Illustration

- The works contractor B engages a contractor C for construction of B's office complex. B also separately provides certain maintenance services to person A which qualify as works contract services. Since inward works contract services from C availed by B for construction of its office complex bears no connection with maintenance services that B provides to person A, the credit of GST paid on input works contract services from C will not be available to the said works contractor b.



Explanation.—For the purposes of clauses (c) and (d), the expression **"construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation**, to the said immovable property;

ITC restricted in case of works contract services only to the extent expenses are capitalized

- ITC of **any expenditure related to construction that is capitalized in the books of accounts** shall be **blocked**.
- This shall cover the construction services like inward supply of services from real estate agent, arch decorators as these are involved in the establishment of the immovable property to the extent capitalised.
- However, for any **repairs and renovations** that are in the nature of revenue expenditure, **ITC** shall be eligible as the restriction is only in respect of goods and services used for construction **to the extent of capitalization**.
- It is pertinent to note here that General Accounting Policies must be followed strictly while capitalizing or charging the expenditure to revenue as the **accounting treatment shall be a good alibi in deciding whether or not ITC is eligible**.
- **However, mere nomenclature and capitalization in one head will not change the nature of supply and the actual intent, usage and other factors must also be vouched for.**



EXAMPLES

Services	Type of ‘Work Contract’ Services	Whether Capitalised in books of Account	Whether ITC blocked under Section 17(5)(c)
Renovation of office building , other sanitation facilities	Construction since it includes renovation	Yes	Yes
		No	No
Painting to building, factory building, sub-stations etc.	Painting services may qualify as ‘Improvement to Immovable property” and not “construction”	Irrelevant	No
Repair of Walls, Tiles etc.	Construction since it includes repairs, alterations etc.	No	No
Structural Painting	Improvement to Immovable property	Irrelevant	No

Summary of items whether considered as movable or immovable property

Sr. No	Particulars	Movable/ Immovable	Plant & Machinery/ Building	Capitalized	ITC	Supportive case law
1	Lift	Immovable	Building	Yes	No	<ul style="list-style-type: none"> •M/s. Kone Elevator India Pvt. Ltd. Vs State of Tamil Nadu and Ors. (Supreme Court of India) •[2019] 110 taxmann.com 285 (AAR - KARNATAKA) Tarun Realtors (P.) Ltd., In re •[2020] 114 taxmann.com 233 (AAR - MAHARASHTRA)/[2020] 34 GSTL 293 (AAR - MAHARASHTRA) Las Palmas Co-operative Housing Society Ltd., In re vs. •M/s Jabalpur Hoels Pvt Ltd. (2020) (7) TMI 476 [AAR- MP]
2	Storage Tanks	Immovable	Building	Yes	No	<u>Municipal Corporation of Greater Bombay . (AIR 1991 SC 686, (1991))</u>
3	Blast furnace	Immovable	P & M	Yes	Yes	T.T.G. Industries Ltd. [2004] 2004 taxmann.com 1535 (SC)
4	Windows ,doors & Shutters	Immovable	Building	Yes	No	CCE v. Solid and Correct Engineering Works 2010 (252) ELT 481 (SC)
5	AC plant(Ducting)	Immovable	Plant & Machinery	Yes	Yes	[2008] 2008 taxmann.com 1316 (Bangalore - CESTAT) CESTAT, BANGALORE BENCH Commissioner of Central Excise, Bangalore-III v. HVAC Systems (P) Ltd.* Nipro India Corporation GST AAR Maharashtra
6	Shed for Machinery	Immovable	Building	Yes	No	[2018]99 taxmann.com 103 (AAR Andhra Pradesh) Maruti Ispat & Energy (p) Ltd.

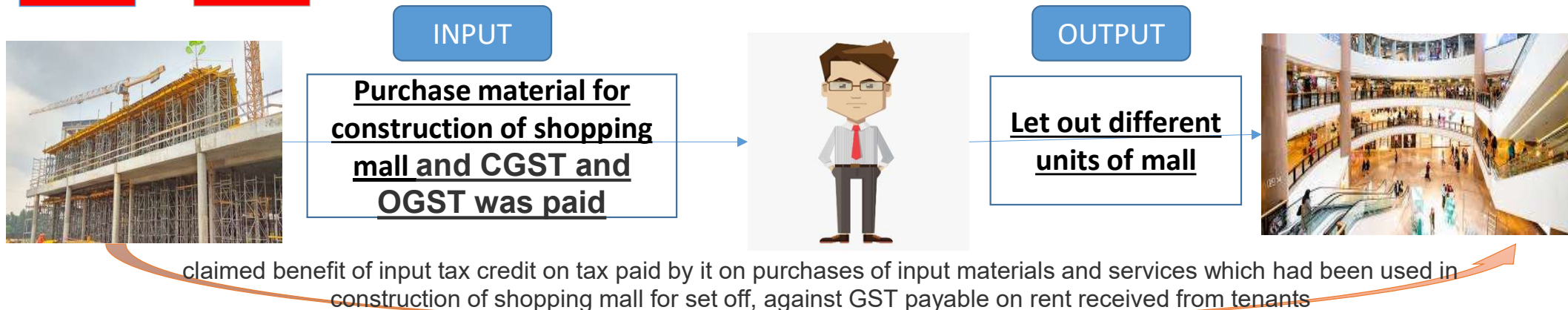
7	DG sets*	Immovable	Plant & Machinery	Yes	No	[2020] 116 taxmann.com 201 (AAAR-KARNATAKA) APPELLATE AUTHORITY FOR ADVANCE RULING, KARNATAKA Tarun Realtors (P.) Ltd., In re
8	Detachable sliding and stackable glass partitions	Movable	-	Yes (furniture and fixture)	Yes	2020 (5) TMI 388 - APPELLATE AUTHORITY FOR ADVANCE RULING, KARNATAKA IN RE: M/S. WEWORK INDIA MANAGEMENT PRIVATE LIMITED
9	Paver Blocks	Immovable	No	Yes	No	2020 (7) TMI 511 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA IN RE: M/S. SUNDHARAMS PRIVATE LTD.
10	Tiles, Stone slabs or marble	Immovable	Building	Yes	No	2019 (5) TMI 248 - AUTHORITY FOR ADVANCE RULING - RAJASTHAN IN RE : M/S RAMBAGH PALACE HOTELS PVT. LTD
11	Electric fittings	Immovable	Building	Yes	No	2019 (5) TMI 248 - AUTHORITY FOR ADVANCE RULING - RAJASTHAN IN RE : M/S RAMBAGH PALACE HOTELS PVT. LTD
12	Building repair	Immovable	Building	Yes/No	No/Yes	2019 (5) TMI 248 - AUTHORITY FOR ADVANCE RULING - RAJASTHAN IN RE : M/S RAMBAGH PALACE HOTELS PVT. LTD
13	AMC Contracts	Composite supply	-	-		2018 (10) TMI 257 - AUTHORITY FOR ADVANCE RULING - UTTAR PRADESH IN RE : <u>GE DIESEL LOCOMOTIVE PVT. LTD.</u>
14	Sanitary Fittings	Immovable	Building	Yes	No	M/s Bahl Paper Mill Ltd. (2018-VIL-43 AAR Uttarakhand)
16	Office Furniture and Air Conditioners	Movable	P & M	Yes	Yes	Bal Krishna Industries vs. CCE, Jaipur-I(2016(335)ELT559(Tri-Del)

Safari Retreats Private Limited Vs Chief Commissioner of Central Goods & Service tax
(Orissa High Court) [2019] 105 taxmann.com 324 (Orissa)

Que:- Whether if assessee is required to pay GST on rental income arising out of investment on which it has paid GST, it is eligible to have input credit on GST

HELD

yes



Authorities denied benefit of ITC in view of section 17(5)(d) - Whether since petitioner had not sold shops in mall but had let out same, petitioner was not liable to pay huge amount of GST on rent received and was entitled to utilise input credit tax charged on purchases made in construction- Yes

Reasoning: As Basic objective of GST is to allow Free flow of credit if the **output is taxable**, which is hindered by the provisions of Sec. 17(5).

As of now, SLP is filed in SC but there is no stay on order.

- **Advice:-** Avail ITC in GSTR-3B but don't utilise and stand in the books of accounts under letter to department, so that claim can stay alive, in case of favorable judgment as a safeguard against provisions of Sec. 16(4).

[2020] 116 taxmann.com 736 (AAAR-KARNATAKA)Wework India Management (P.) Ltd., In re



Procures goods and services from various contractors for fitting-out of workspaces



Provides said workspace on rent, to various companies and individuals as sharing workspaces

Que:- whether ITC can be availed by it on detachable sliding and stackable glass partition

AAR held that **input tax credit is not available on detachable sliding and stackable glass partitions - Though detachable sliding and stackable glass partition are fixed to earth with nuts and bolts but they can be dismantled without demolishing civil structure and, therefore, detachable sliding and stackable glass partitions do not qualify as immovable property –**

Whether detachable sliding and stackable glass partitions will be eligible for input tax credit and will not be hit by provisions of section 17(5)(d) –

yes [Para 17]

[2019] 105 taxmann.com 248 (AAAR-WEST BENGAL) GGL Hotel and Resort Company Ltd.



Land on lease taken from W for 32 years at a lease for Rs. 17.20 crores



Applicant



Construction of ECO Resort on design built

Project is **proposed to be completed within a period of 2 years** and **lease rent paid during preoperative period shall be capitalized in books of account by appellant** - 'W' will be charging GST at rate of 18 per cent on lease rent

Que:- Whether input tax credit is available to appellant on lease rent paid during pre-operative period –

No

Where appellant for construction of an Eco Resort on Design, Built and Operate Model has taken certain land on lease from one 'W' and **project is proposed to be completed within a period of two years** and **lease rent paid during pre-operative period shall be capitalized** in books of account by appellant and 'W' will be charging GST on lease rent, **input tax credit is not available** to appellant on lease rent paid during pre-operative period under 17(5)(d).

Registration Provisions



Registration provisions

Sec 22(1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

- On the above basis, it can be inferred that a person shall mandatorily take registration in each State **from where such person makes a supply.**
- Tax goes to the destination State but registration is required in the origin-State.

"location of the supplier of services"

As per Sec. 2(71) of CGST Act, 2017," "location of the supplier of services" means,—

- where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
 - where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
 - where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and
 - in absence of such places, the location of the usual place of residence of the supplier;
- As per Sec 2(50), "fixed establishment" means a place (other than the registered place of business) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.

Whether a works contractor is liable to obtain registration in every state where he undertakes a project?

ARGUMENTS FAVORING MULTIPLE REGISTRATION

The registration provisions require the work contractor to obtain registration in each such state, where a taxable person stores his goods or receives goods or services **Based on Concept of Place of Business(Sec2(85))...**"

Hence, in case the taxable person stores his goods at the construction site, it will be considered as his place of business and he will be liable to take registration at the construction site.

ARGUMENTS FAVORING SINGLE REGISTRATION

- Generally **most contracts are entered into by the works contractor from its usual place of business which might be registered under GST.** From this location, **the works contractor undertakes all the necessary activities like execution of the contracts, planning, scheduling, co-ordination of the supplies from the sub contractors, vendors etc.**
- The site office, if any, at the **project site is for the limited purpose** of co-ordination and supervision of the work **and the said site office would cease to exist, on completion of the project.** Further, this **contracting location will be responsible for overall execution and delivery of the solution to the project owner.**
- On the strict reading of sec. 22 of the CGST Act, it appears that the obligation for the **registration arises in the state from where taxable supplies are made.**
- 'From where taxable supplies are made' should arguably **mean a state from where overall contractual obligation to make taxable supplies is discharged and not the state where the work is physically executed.**
- The entire staff of Higher officials, decision making, purchasing, planning being done at Main office **and site office is temporary office, not fixed establishment.**

Examples

Example 1: A service provider in the business of renting of immovable property services has his registered office at Delhi (place of business) and the property for rent along with an office is located in Mumbai (place of supply).

Ans:- In this case, though the place of supply of services will be Mumbai i.e. where the immovable property is located, but the location of supplier will continue to be Delhi and accordingly IGST will be levied. **(Based on Concept of Location of Supplier of Service (Sec2(71))**). But at the same time, it has to be borne in mind that Mr. A may not be able to avail input tax credit of certain services availed for the property located in Delhi from the service providers of Delhi as they would be charging CGST and SGST (Delhi GST) for which credit will not be available at Haryana registration of Mr.A. Alternatively, depending upon business scenarios, registration in Delhi may be taken and corresponding credit may also be availed.

Example 2 : A contract is for supply, installation, testing & commissioning of fire fighting system where the duration of installation work at the site is (say) 2 months, at Chamba, HP and the fabrication of equipment undertaken at the factory at Kolkata. After the fabrication is completed, the material is transported to the site and Engineers & technical teams are deputed for installation, testing & commissioning. For the limited duration, the installation team will be present at the site Chamba HP).

Ans:- In this case, the factory will be the principal place of business (Kolkata) but the site (Chamba, HP) will NOT be regarded as a fixed establishment of the supplier.

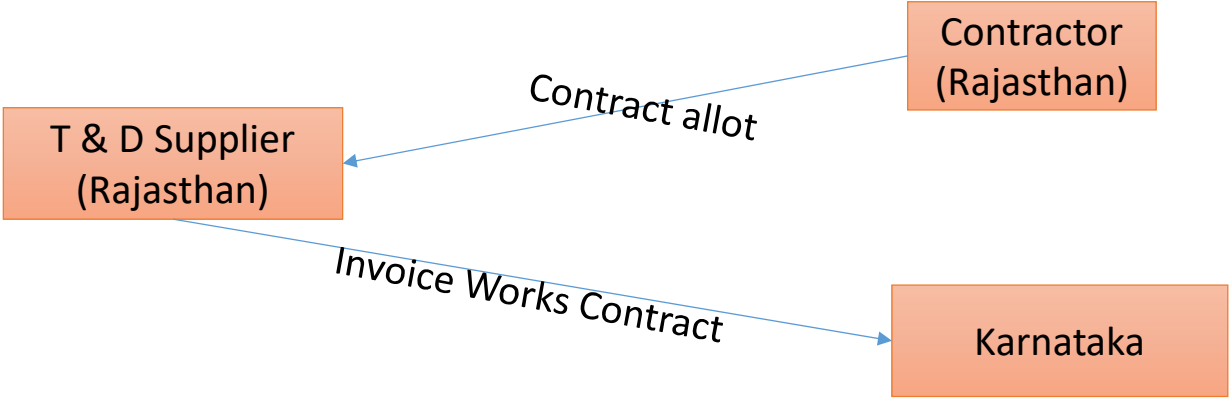
Example 3:- M/s Lanco Infratech Ltd (contractee), having its corporate office in Mumbai awarded a contract for to M/s Gammon Infra Ltd, Hyderabad (contractor) for construction of a Dam in the state of Sikkim. M/s Gammon Infra Ltd is registered under GST in the state of Telangana. The duration of the contract is 3 years. Is the contractor is required to obtain registration under GST in the state of Sikkim?

Ans:- As per Sec 22(1) of CGST Act, registration under GST is required 'in' the State 'from which' taxable supplies are made. Construction of Dam is "works contract" service being immovable in nature and place of supply is Sikkim where the immovable property is located. For the purpose of construction of Dam, huge qty. of Steel, Cement, sand , aggregates, other construction materials & engineer, technician, labour are required. The nature of supply is such that , it can not be supplied from Hyderabad, Telangana. So, a fixed establishment is required in the state of Sikkim, where the work is being carried out. Therefore, registration under GST is mandatory for M/s Gammon Infra Ltd, in the state of Sikkim.

Other View – Single Registration

2020] 116 taxmann.com 390 (AAR - KARNATAKA) T & D Electricals

Que 1:- Separate Registration required for Karnataka?
 Que 2:- Purchases at Rajasthan, whether CGST/SGST or IGST leviable?
 Que3:- Purchases at Karnataka, whether CGST/SGST or IGST leviable?



Held

Location of supplier

Location of the **supplier from where** the supply is made.

Registered office = Rajasthan
 Fixed Establishment in Karnataka = NO
 Most directly connected = Rajasthan
 So No separate registration

For Input Tax Credit

10(1)(b) Bill To ship To

Bill to Rajasthan T&D
 Ship to Karnataka

Rajasthan Purchases

C+S to T&D and T&D will charge IGST

Karnataka Purchases

I to T&D and T&D will charge IGST₄₈

Time of supply

Time of supply----section 13

Time of Supply of Services – Section 13(2)

Description of Event	Time of Supply
Normal Case – Thumb rule	<p>Earlier of the following:</p> <ul style="list-style-type: none"> a. Date of <u>Issue of Invoice</u> (if Invoice issued within time period of Sec. 31) b. Date of <u>Receipt of Payment</u> or Date of <u>Provision of Service</u> (if Invoice not issued within 30 days) c. The date on which recipient shows receipt of service in his book, in case (a) or (b) donot apply.

Sec. 31(2) before or after supply of service but within 30 days* of supply of services)

*** Rule 47 says 30 days from the date of supply of service**

Continuous supply of services (Sec. 2(33))

Section 2(33) **“Continuous supply of services” means a**

- supply of services **which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract,**
- **for a period exceeding three months**
- **with periodic payment obligations** and
- includes supply of **such services as the Government may, subject to such conditions,** as it may, by notification, specify;

- In case of continuous Supply, the provisions of time period for issue of invoice are contained in Section 31(5)

Section 31(5) of CGST Act, 2017 (Tax Invoice):-

Receipt voucher in case of advance payment

Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—

- 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.**

Continuous supply of services (Sec. 2(33))

However, there may be contracts of repair of heavy machinery where the goods are sent for repairs and the repairs takes more than 3 months. In that case, such contract would also be continuous supply of service.

- However, an area of doubt can be whether such contract can be stated to be provided continuously or on a recurrent basis under a contract.
- Normally, in case of repair contracts the time period is not fixed. There is no provision for periodic payment obligations.

In Practical Scenario, sometimes the contracts are drafted in such a way that either there are no payment linkage with event or contract results in multiple events say approval by engineers or submission of record of work completed through running measurement bills. Hence, the contracts should be properly drafted to avoid any future litigations.

Example

PQR Ltd is engaged in providing construction service and has entered into an agreement with XYZ & Company to construct a building for Rs. 10,00,000/-

Payment schedule

Events	% of payment
Advance at the time of signing the agreement	10%
On Completion of 20%	15%
On Completion of 50%	20%
On Completion of 100%	55%

The actual dates of completion are as under:

S.No.	Events	% of payment	Amount Due	Date of completion of event	Date of issue of invoice	Date of receipt of payment	Time of supply
1	Advance	10%	1,00,000/-	04.07.17	25.08.17	04.07.17	04.07.17
2	20% completion	15%	1,50,000/-	02.08.17	19.09.17	25.07.17	25.07.17
3	50% completion	20%	2,00,000/-	25.08.17	25.08.17	25.09.17	25.08.17
4	100% completion	55%	5,50,000/-	20.10.17	18.10.17	29.11.17	18.10.17
		100%	10,00,000/-				



Retention Money



Construction site-contract is of Rs. 2 Crore.

Rs. 2cr invoice to be raised on 100% of work is completed

Invoice Raised Rs. 2 crores . Tax Payable on Rs. 2 cr.

Payment made to contractor is Rs. 1.90 Crore. Rs. 10 lacs Retained.

Rs. 10 Lakhs is retained by client and will be paid to contractor on checking the contract for 8 months for leakage .

Issues w.r.t Availment of Input Tax credit on Rs. 10 Lakh ???

Non payment within 180 days criteria will hit. So agreement should be drafted in such a way that retention to be linked with Completion of an Event, so that invoice is raised later and thereby entitlement of credit on later date.



Place of supply



Section 12 Place of supply of services where location of supplier and recipient is in India.

Section 12(3) of IGST Act, “ The place of supply of services,

- a) directly in **relation to an immovable property**, including **services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or**
- b)
- c)
- d) any services ancillary to the services referred to in clauses (a), (b) and (c),

shall be the **location at which the immovable property** or boat or vessel, as the case may be, **is located or *intended to be located:**

Provided that if the 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.**

Explanation.—Where the immovable property or boat or vessel **is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.**

Note: The phrase ***‘intended to be located’** is important for pre-construction services.

Place of supply of immovable property [sec. 12(3)]
where location of supplier and recipient is in India.

The place of supply of services



directly in **relation to an immovable property,**

Location where the immovable property is located or intended to be located



Immovable property



Located / intended to be located outside India



POS = Location of recipient



Located / intended to be located multiple state or UT



POS Proportionately =

Section 13:- Place of supply of services where location of supplier or location of recipient is outside India.

13(4) :- The place of supply of services

- **supplied directly in relation to an immovable property,** including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called,
- **grant of rights to use immovable property,**
- **services for carrying out or co-ordination of construction work,** including that of architects or interior decorators,
- shall be the **place where the immovable property is located or intended to be located.**

Place of supply of immovable property [sec. 12(3)]

A Ltd. Delhi

Receiver



Mr. C Architect
Hyderabad

Provider



Proviso to Sec. 12(3)

Location of Receipt of Service

Place of supply of immovable property [sec. 13(4)]

A Dubai LLC

Receiver



Mr. C Architect
Hyderabad

Provider



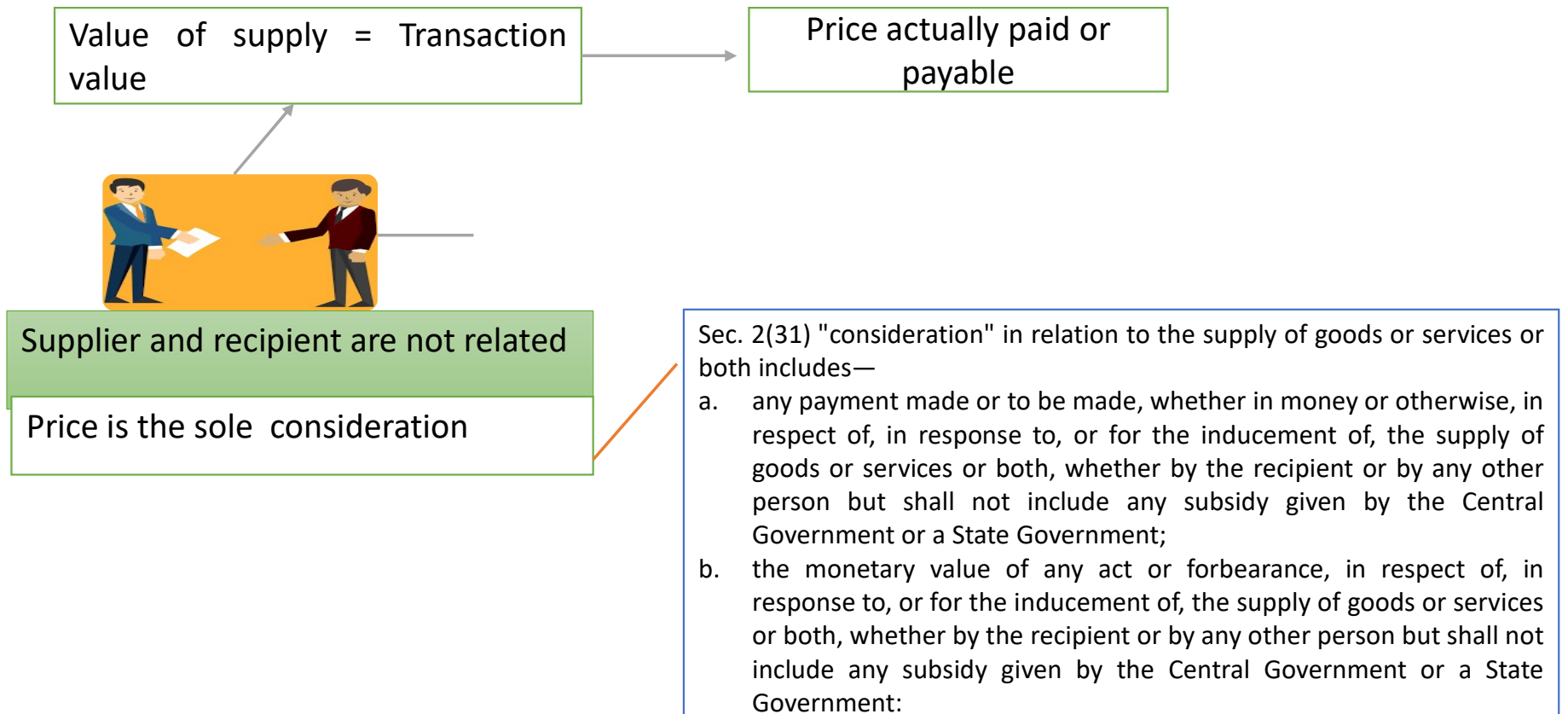
Proviso to Sec. 13(4)

Place where the immovable property is located or intended to be located

Valuation

Section 15:- Value of taxable supply.

- (1) The value of a supply of goods or services or both shall be the **transaction value**, which is the **price actually paid or payable for the said supply of goods or services or both** where the **supplier and the recipient of the supply are not related** and the **price is the sole consideration** for the supply.



Note: No GST on Advances of Goods, applicable on Services

Value of supply includes(15(2))

Any taxes, duties, cesses, fees and charges levied under any law other than this Act (Sec 15(2)(a))



Any amount that the supplier is liable to pay in relation to such supply but paid by recipient (Sec 15(2)(b))



Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier before Delivery to Recipient (Sec 15(2)(c))



Interest or late fee or penalty for delayed payment (Sec 15(2)(d))

Supplementary Invoice



subsidies directly linked to the price excluding subsidies provided by the Central Government and the* State Governments. (Sec 15(2)(e))

Subsidy directly linked to price:-
 Manufacturer receiving subsidy from NGO for installing device ---Not includible for using organic packing material-----Includible

Less

Discount

Before or At time of Supply in Invoice

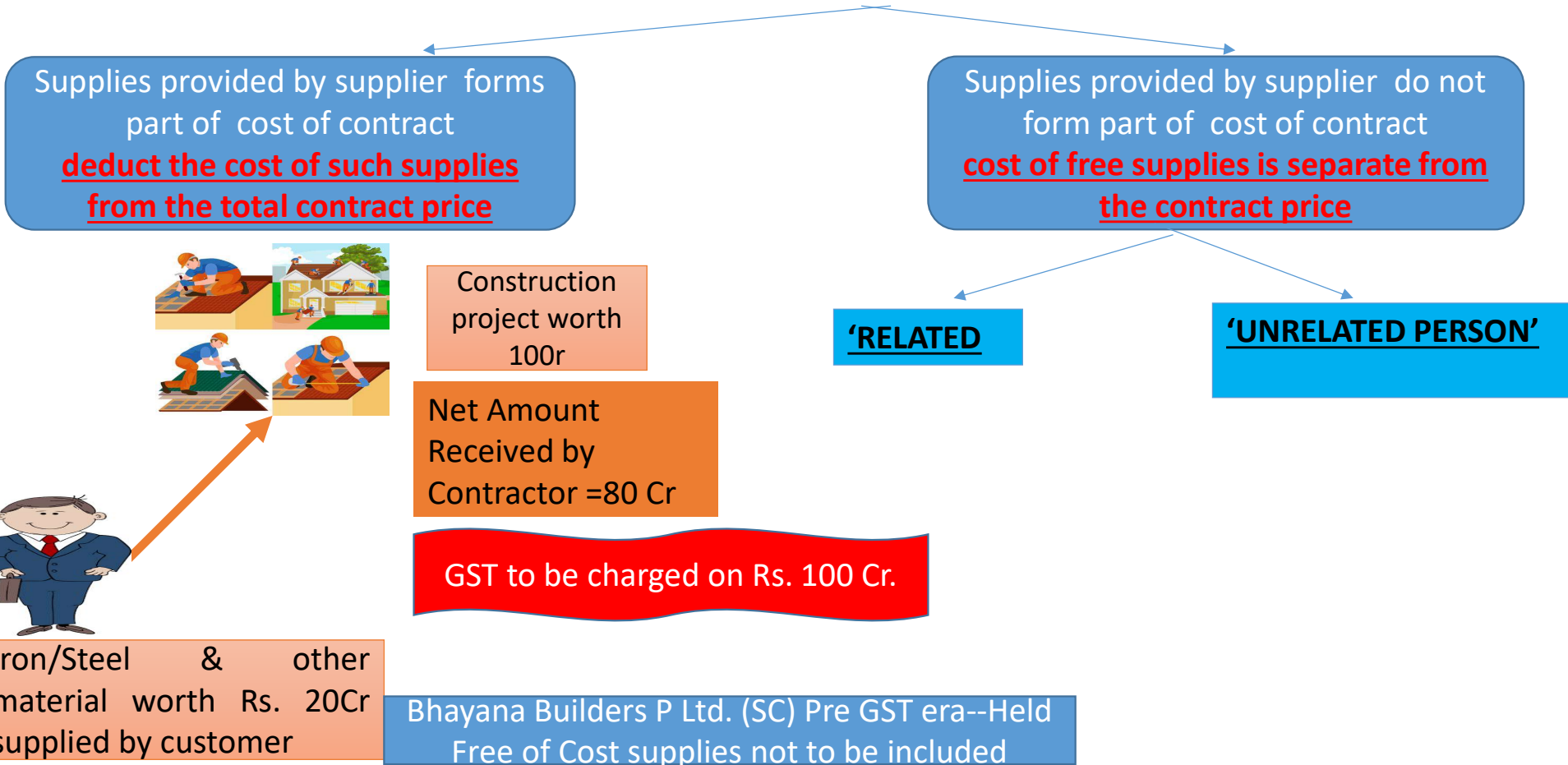
Post Supply

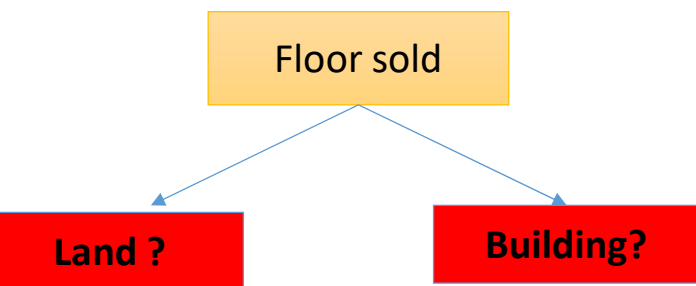
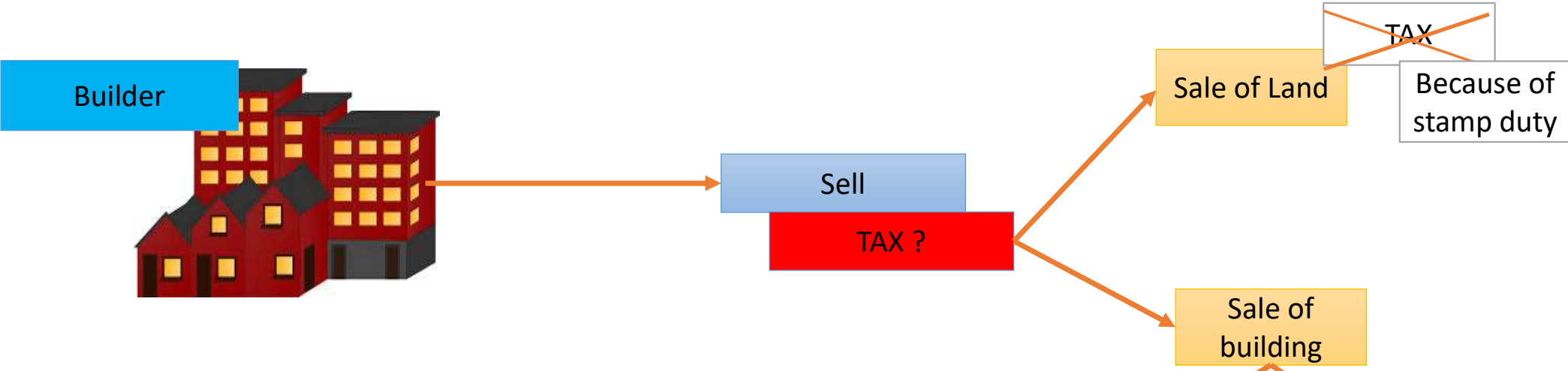
- Established in terms of agreement
- Specifically linked to relevant invoice.
- ITC has been reversed by recipient

CGST/SGST/UTGST/ Compensation Cess

Section 15 of CGST Act (Value of taxable supply)

- In the context of works contract, discussions on supplies without consideration become relevant since sometimes, the customer may provide or issue some materials to the works contractor.





Deemed value of Land = 1/3rd
 Eg . Flat = 1.20 Cr.
 Land = 1.2*1/3rd = 0.5 Cr.

- **Even if leasehold land, then even 1/3rd deduction is available.**
- Lease not separately taxed= exemption entry 41B of notification 12/2017 CT- Rate

Preferential location charges. Eg. Ocean facing, garden facing, corner plots)

Eg. Basic sales price = Rs. 10000 / Sq. feet

Preferential location charges = Rs. 1000 / sq. feet

GST = 11000-1/3rd of 11000 will be taken i.e. GST on Rs. 7333.33 is to be taken.



Notice

Litigation may arise as to 1/3rd deduction on the amount of PLC

- In this case it is better to fix PLC as part of Cost of Flat.
- No separate mention to be given in the agreement rather price should be fixed including PLC.

Interest on delayed payment

Builder charge for interest for 3 years in books

Buyer negotiate at the end of year 3

GST to be paid when buyer actually makes payment

Sec. 13(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the **supplier receives such addition in value.**



Liquidated damages

Liquidated Damages

Liquidated damages are agreed pre- estimated sums to be paid in the event of a **breach of contract** by one of the parties.

Two Views

Assessee view

1. The liquidated damages are **deducted from the contract value** i.e. there is a corresponding deduction in the contract value with the amount of liquidated damages recovered
2. There is **no separate supply, only one.**
3. Act of tolerance necessarily requires willful agreement of certain situation wherein the person would willfully/ consciously agree to suffer or restrain in exchange of consideration.

Department view

1. There are **two separate events**-supply of deliverables is one event and translation of contingent liability for delay in performance into an actual recoverable liability, due to the delay in the supply of deliverables, is the second event.
2. **Contract do not stipulate any clause providing for reduction in the contract price.**
3. **Manner of deducting** liquidated damages from the amount payable to the contractor **does not alter the valuation of supply.**

*As per Entry 5 (e) of Schedule II appended to GST Act, following is a **supply of services**:“(e) **agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act**”*

AAR Maharashtra State Power Generation Company Limited (TS-187-AAR-2018-NT) in support of department view, but it can be challenged on the ground that : As per section 73 and 74 of Indian Contract Act 1872, liquidated damages are compensatory in nature. Thus it can be argued aforesaid ruling has been passed in contravention of principle of natural justice.
A litigative issue !

Accounts & Records

Section 35 Books of Accounts

(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—

- a. production or manufacture of goods;
- b. inward and outward supply of goods or services or both;
- c. **stock of goods;**
- d. input tax credit availed;
- e. output tax payable and paid; and
- f. such other particulars as may be prescribed.

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed

Rule 56 of CGST Rules 2017

Rule 56(14) *Every registered person executing works contract shall keep separate accounts for works contract showing—*

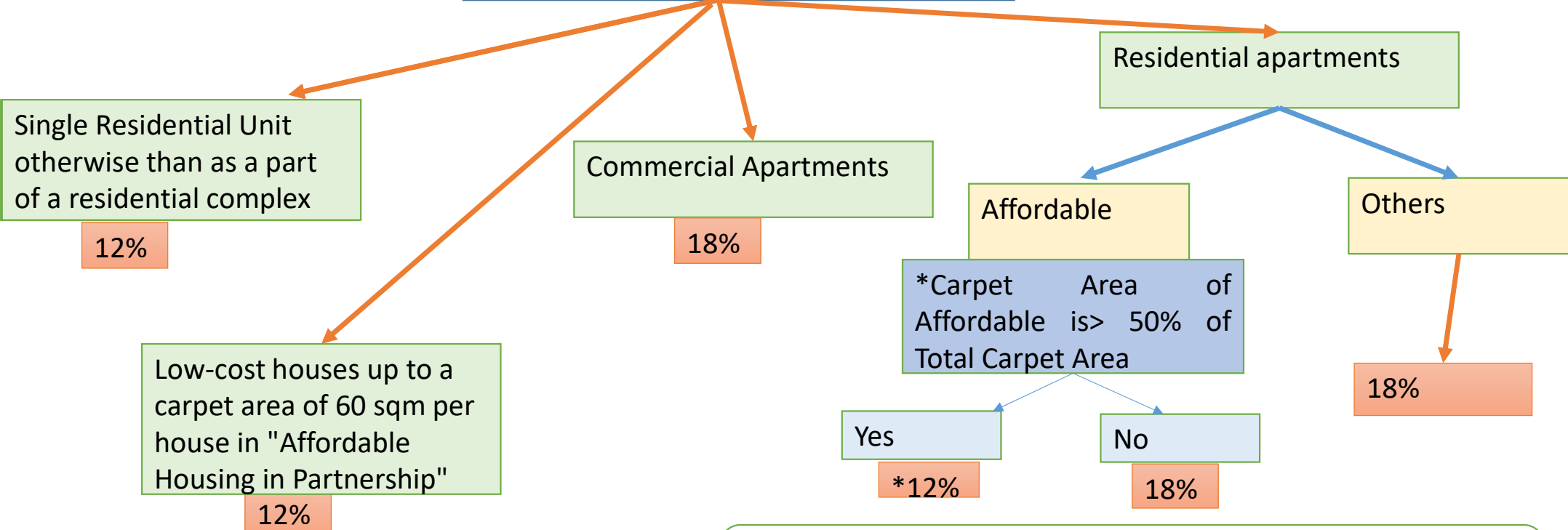
- a) the names and addresses of the persons on whose behalf the works contract is executed;*
- b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;*
- c) description, value and quantity (wherever applicable) of goods or services utilized 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.*

(15) The records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.

(16) Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

GST Rate

Works Contract Services



To determine the apartments at the time of supply of the service are affordable residential apartments or not, **value of the apartments shall be the value of similar apartments booked nearest to the date of signing of the contract for supply of the WCS*

It finally, Change in Ratio of 50% due to GAC>45 lacs , Differential Tax will be payable by Developer(Recipient) **under RCM*

Sr. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
		<u>Construction Service</u>		
3	9954	<p>iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, <u>supplied to the [Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity]</u> by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—</p> <p>a) <u>historical monument</u>, 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) <u>canal, dam or other irrigation works</u>;</p> <p>c) <u>pipeline, conduit or plant for (i) water supply, (ii) water treatment</u>, or (iii) sewerage treatment or disposal</p>	6	<p>[Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be]</p>

3	9954	<p>iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, ¹[other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above], supplied by way of <u>construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—</u></p> <p>a) a <u>road, bridge, tunnel, or terminal for road transportation for use by general public;</u></p> <p>b) a <u>civil structure or any other original works</u> pertaining to a scheme under <u>Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana;</u></p> <p>c) a civil structure or any other original works pertaining to the "In-situ redevelopment of existing <u>slums</u> using land as a resource, under the Housing for All (Urban) Mission/ <u>Pradhan Mantri Awas Yojana (Urban);</u></p> <p>d) a civil structure or any other original works pertaining to the <u>"Beneficiary led individual house construction/enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</u></p> <p>da) a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the <u>Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);</u></p> <p>db) a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for <u>Economically Weaker Section (EWS)/Lower Income Group (LIG)/Middle Income Group-1 (MIG-1)/Middle Income Group-2 (MIG-2)</u>" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);]</p> <p>e) <u>pollution control or effluent treatment plant,</u> except located as a part of a factory; or</p> <p>f) <u>a structure meant for funeral, burial or cremation of deceased.</u></p> <p>g) a <u>building owned by an entity registered under section 12AA of the Income-tax Act, 1961</u> (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.]</p>	6
---	------	--	---

Sr. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
3	9954	<p>v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, 1[other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above], supplied by way of construction, erection, commissioning, or installation of original works pertaining to,—</p> <p>a) railways, 2[including] 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 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;</p> <p>2. any housing scheme of a State Government;</p> <p>da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017;]</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>	6%	

Sr. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
3	9954	va) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered *by sub- clause (a) of clause (xvi) of paragraph 4 below, in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if), as the case may be, in the manner prescribed therein	6%	<p><i>Provided that carpet area of the affordable residential apartments as specified in the entry in column (3) relating to this item, is not less than 50 per cent of the total carpet area of all the apartments in the project:</i></p> <p><i>Provided also that for the purpose of determining whether the apartments at the time of supply of the service are affordable residential apartments covered by sub-clause (a) of clause (xvi) of paragraph 4 below or not, value of the apartments shall be the value of similar apartments booked nearest to the date of signing of the contract for supply of the service specified in the entry in column (3) relating to this item:</i></p> <p><i>Provided also that in case it finally turns out that the carpet area of the affordable residential apartments booked or sold before or after completion, for which gross amount actually charged was forty five lakhs rupees or less and the actual carpet area was within the limits prescribed in sub- clause (a) of clause (xvi) of paragraph 4 below, was less than 50 per cent of the total carpet area of all the apartments in the project, the recipient of the service, that is, the promoter shall be liable to pay such amount of tax on reverse charge basis as is equal to the difference between the tax payable on the service at the applicable rate but for the rate prescribed herein and the tax actually paid at the rate prescribed herein.]</i></p>

*Affordable Residential Apartment on or after 01-04-2019 or in an ongoing project ---for which promoter has not exercised the option as per (ie) or (if)

Sr. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
3	9954	<p>vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, ³[other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above], provided] to the <u>Central Government, State Government, Union Territory, ¹[a local authority, a Governmental Authority or a Government Entity] by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—</u></p> <p>a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>b) <u>a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</u></p> <p>c) <u>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</u></p> <p>d) Explanation.—For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities</p>	6%	[Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be]

Sr. No.	Heading	Description of Service	Rate (per cent)	Condition
3	9954	vii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.	2.5%	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be
3	9954	viii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 and associated services, in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles from the nearest point of the appropriate base line.	6%	
3	9954	ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	6%	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.

Heading	Description of Service	Rate (per cent)	Condition
9954 or 9983 or 9987	<p>Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following,-</p> <ul style="list-style-type: none"> a) Bio-gas plant b) Solar power based devices c) Solar power generating system d) Wind mills, Wind Operated Electricity Generator (WOEG) e) Waste to energy plants / devices f) Ocean waves/tidal waves energy devices/plants <p>Explanation.—This entry shall be read in conjunction with serial number 234 of Schedule I of the notification No. 1/2017- Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 673(E), dated 28th June, 2017.</p>	9%	11/2017

Sr. No.	Heading	Description of Service	Rate (per cent)	Condition
	995444	Other assembly and erection services n.e.c.	18%	
	995461	Electrical installation services including Electrical wiring & fitting services, <u>fire alarm installation services, burglar alarm system installation services.</u>	18%	
	995433	Excavating and earth moving services	18%	
	995424	General construction services of local water & sewage pipelines, electricity and communication cables & related works	18%	
	995443	Installation services of all types of <u>street furniture (e.g., bus shelters, benches, telephone booths,</u> public toilets, etc.)	18%	

Notification 12/2017 EXEMPTION

Entry No.	Description of service	Rate
3	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority ¹ [or a Government Entity] 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 entrusted to a Municipality under article 243W of the Constitution.	Nil
3A	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity 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 entrusted to a Municipality under article 243W of the Constitution.	Nil
10	Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana .	Nil
10A	Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturist for agricultural use	Nil
11	Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex .	Nil

A photograph of a bouquet of purple flowers, a pen, a 'Thank you' card, and wrapped gifts on a marble surface. The card has 'Thank you' written in purple cursive. The gifts are wrapped in white paper with red and black patterns.

Disclaimer

The views expressed are solely of the author and the content of this document is solely for information purpose and not to be construed as a professional advice. In cases where the reader has any legal issues, he/she must in all cases seek independent legal advice.

BY:

CA AANCHAL ROHIT KAPOOR

M. No. 9988692699, 9888069269

E-mail :aanchalkapoor_ca@yahoo.com