

Treading the GST Path – 55

Job work under Customs Notification 32/97 and GST implications

(G. Natarajan, Advocate, Swamy Associates)

Notification 32/1997 Cus. Dated 01.04.1997, permits import of goods without payment of customs duties, for carrying out job work and re-export of the same. Consequent to introduction of GST from 01.07.2017, the exemption under Notification 32/1997 was not extended to the IGST payable on the imported goods and hence IGST is payable even when the goods are imported for job work purposes and re-export.

In this connection, the following issues are relevant.

- (i) Whether GST is payable on the job charges claimed from the foreign principal?
- (ii) Can the IGST paid on import of goods for job work be availed as ITC?

Whether GST is payable on the job charges claimed from the foreign principal?

It may be noted that the said job work activity would be covered under Section 13 (3) (a) of the IGST Act, which is reproduced below.

13 (3) The place of supply of the following services shall be the location where the services are actually performed, namely :-

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services.

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services.

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after such repairs without being put to any use in India, other than that which is required for such repairs.

As per the above, the place of supply of service provided by the Importer / Job worker would be the location, where such services are performed, i.e. the Importer / Job worker's location, which would be in taxable territory. Hence the transaction would not amount to export of service as one of the conditions prescribed under Section 2 (6) of the IGST Act is not satisfied. Hence, the Job worker would be

liable to charge GST on the job charges claimed from the foreign principal, even if such payment is received in convertible foreign exchange.

Can the IGST paid on import of goods for job work be availed as ITC?

The goods imported would be subjected to various job work and the resultant product, which either remains as same that of the imported goods or transformed into a different product, would be exported to the foreign principal. But it may be noted that no price for the same would be received from the foreign principal as it is their own products, returned after job work.

As per Section 2 (5) of IGST Act, "export of goods means taking goods out of India to a place of outside India" and receipt of consideration is not a pre condition to consider the transaction as export of goods. Thus the return of imported goods to the foreign principal after job work is "export of goods", which is declared as a "zero rated supply" as per Section 16 (1) of the IGST Act. Hence, the IGST paid on the import of goods for job work purpose can be availed as ITC by the importer / job worker. Such ITC can be used either

- (i) for payment of any other output tax payable by the importer / job worker; or
- (ii) for payment of GST on exported goods and claim of refund {under Section 16 (3) (b) of the IGST Act};
- (iii) or the input tax credit can be claimed as refund {under Section 54 (3) of the CGST Act}.

In the amendments carried out to IGST Act, 2017 with effect from 01.02.2019, the second proviso under Section 13 (3) (a) has been substituted as below.

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs **or for any other treatment or process** and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.

Accordingly, the place of supply of such job work services would be the location of the recipient of supply (foreign principal's location), as per Section 13 (2) *ibid*, which is outside the taxable territory. Hence, with effect from 01.02.2019, the Importer / Job worker is not liable to pay GST on the labour charges received from the foreign principal.

In so far as the entitlement to ITC in respect of the IGST paid on imported goods, the position remains the same as explained above.

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