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COMMERCIAL TAXES DEPARTMENT

NOTIFICATION

26th August, 2022

Sub: Standard Operating Procedure (SOP)/Directive for post-GST payments of pending bills related to work orders issued during pre-GST period.

S.O. No. 33 Dated 26 August, 2022--The matter relates to the Works Contract awarded by the State Government departments/ local authorities in the pre GST period and payments and execution of those Works Contract Services (partly or wholly) is to be made in the post GST period i.e. from 1.07.2017.

The Goods and Services Tax (GST) has come into force w.e.f 1st July 2017 by subsuming various indirect taxes such as Central excise duty, Service tax VAT, CST, Entry tax, etc. Subsequent to the enactment of GST Act w.e.f. 01.07.2017, different work departments of State Government have sought clarifications on modalities of treatment of pending bills of different contractors where in the contract was awarded in pre-GST regime, i.e., VAT regime and the works has completed partly/wholly after the implementation of GST. Hon'ble Jharkhand High Court has directed the Government of Jharkhand to issue guidelines on this matter in its order dated 16-03-2021 in WP (T)-2108/2019.

The main issue under consideration is for the payment of pending bills related to work order issued during pre GST period and supply of Works Contract services is executed under GST regime which is discussed as below:-

1. The term "Works Contract" is defined under sec 2(lxiii) of JVAT Act, 2005 as follows-
" Works Contract" means and includes any agreement for carrying out for cash or deferred payment or other valuable consideration, for assembling, construction, fabrication, erection, installation, modification, fitting out, improvement or repair of any building, road, bridge or commissioning of any other immovable or movable property.
2. The term "**Works Contract**" is defined under sec 2(119) of JGST Act, 2017 as follows-
" 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".
As per Para 6(a) of schedule II of JGST Act, 2017, Works Contract as defined in Sec 2(119) shall be treated as supply of Services.
3. Under JVAT Act 2005, works contracts covered both movable and immovable property whereas "Works Contract" under GST is restricted only to immovable property. In this context, under GST, construction, building, erection, installation services etc. involving supply of both taxable goods along with labour and other services may be construed as composite supply*.
4. The term composite supply is defined under Sec 2(30) of the GST Act as follows:-
*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.
In such cases the rate of tax shall be determined by applicable rate on principal supply.
5. Before introduction of the GST, the tax was levied separately on services as service tax by the central government and on goods used in the works contract attracted central excise duty of centre and vat of state government. For any Works contract, the goods attracted central excise duty and VAT and Services attracted service tax.

Works Contract tasks	Tax type
Supply of Goods	VAT
Supply of Services	Services Tax
If a new product emerges while a Work Contract is being completed	Central Excise Duty

6. During VAT regime materials used in works contract or the goods as it may be called, were taxable @5%, 5.5% or 14.5% or 14% and labour charges were not taxable. Also, the rate of Tax Deduction under JVAT Act was at Source (TDS) @ 4%. Whereas the Central taxes were levied as service tax on services given by way of labour, design, architect etc. and central excise duty on such goods manufactured.

7. Keeping in view the difficulties faced and feedback received so far and in compliance to the direction given by the Hon'ble High Court of Jharkhand an SOP is being issued in consultation with the departments concerned and after the approval of the Competent Authority.

8. Under the GST tax regime, the rate of GST on Works Contracts for Government work was notified at 18% vide notification no-11/2017,CT(R) dated 28.06.2017. However, the rate of GST on Works Contracts for Government work was reduced to 12% [Notification no. 20/2017-CT (Rate) dated 22.08.2017].

However, **vide Notification No. 22/2021,CT (Rate) Dated – 31/12/2021, rate has been changed to –**

Services	Rate of Tax	w.e.f
Work contract services provided to Government authorities and Government entity.	18%	01-01-2022

Vide Notification No. 03/2022, Dated – 13/07/2022

Services	Rate of Tax	W.e.f
Work contract services provided to central Government, state Government and local authorities.	18%	18-07-2022
Composite supply of works contract involving predominantly earth work (that is constituting more than 75 % of the value of the work contract) provided to the central Government, state Government, local authorities.	12%	18-07-2022

So in the period between 22.08.2017 till 17.07.2022 the rate of GST on Works contract has been @ 12% for the service supplied to central government state government and local authority.

9. Incidence of applicable taxes of Service Tax/VAT/ GST

Incidence of the applicable taxes shall be as follows:-

Sr. No.	Completion of work contract	Invoice Date	Payment Date	Applicability of Taxes			Applicable TDS
				Service Tax	VAT on Material used	GST	
1	Up to 30.06.2017	Up to 30.06.2017	Up to 30.06.2017	Yes	Yes	No	VAT TDS
2	Up to 30.06.2017	Up to 30.06.2017	After 30.06.2017	Yes	Yes	No	VAT TDS
3	Up to 30.06.2017	After 30.06.2017	After 30.06.2017	No	No	Yes	GST TDS *
4	From 01.07.2017	From 01.07.2017	From 01.07.2017	No	No	Yes	GST TDS *
* TDS under GST is made applicable w.e.f. 01.10.2018. Provision of TDS was not applicable between 01.07.2017 to 30.09.2018							

10. Availability of Input Tax Credit (ITC) under GST

- i. Unlike the VAT regime, where ITC of central taxes (Service tax and central excise duty) were not available for discharging state tax liability, and the credit of CST was also not available, under GST all these taxes whether levied under SGST, CGST and IGST are available for ITC credit (Except for credit of SGST/CGST only restricted to SGST/CGST liability respectively). Further the ITC of both goods and services are now available. Thus it removes the cascading effect of tax by facilitating seamless flow of credit. The aim of GST is to remove the restrictions of ITC credit in the supply chain.

In the GST regime, the input tax credit of IGST, CGST and SGST charged on any supply of goods and/or services used or intended to be used in the course of furtherance of business is permissible. Works Contractor is eligible to avail ITC credited to his electronic credit ledger on GST portal subject to conditions prescribed therein.

It is also pertinent to mention that under GST regime cross utilization of credit of Goods and Services are available to offset one's liability which was not available during the pre GST regime.

- ii. It is also important to mention that under GST works contractors are eligible for availing transitional ITC on stock of Goods purchased from 01.07.2016 onwards and declared in the returns filed, by way of filing TRAN-1 and TRAN-2.

11. Payments for Work Contracts

The contract price is generally inclusive of all taxes in most of the contracts; these taxes have now been subsumed under GST. In order to arrive at the incidence of applicable VAT/ Service Tax/ GST as mentioned at Para 9 above, the total work shall be categorized as follows:

- (i) Works completed up to 30.06.2017 and Billing completed by 30.06.2017.
- (ii) Works completed up to 30.06.2017 and Billing not completed by 30.06.2017.
- (iii) Works yet to be completed as on 01.07.2017.

JGST Act, 2017 shall be applicable for all the works mentioned above at (ii) & (iii).

12. Following procedure may be adopted by various Executing Agencies/Authorities for calculating the incidence of tax while making payments as per the provisions in the contracts:-

- i. The Goods and Services in the various project under different major heads (like Earth, Sand, Steel, Cement, Bitumen etc.) and for services (design, consultancy, security, architect etc.) are to be intimated by the contractor and checked/ confirmed by the respective executing agencies/authorities in consultation with the concerned higher authority/technical wing for each of the Project.
- ii. In order to compile the above information, an indicative Excel format is suggested for guidance and attached as (Annexure-1). It indicates various Goods and Services in the various project which attract various rates of taxes including Central Excise Duty, CST, VAT and other taxes, which were already included in the contract price as per the original contract.
- iii. **Under VAT regime, Rate of tax on major commodities used in Works contract were as under:-**

Commodities	VAT(Rate of Tax)	Central Excise Duty (Rate of Tax)
Steel	5 %	12.36 %
Cement	14.5 %	12.36 %
Bitumen	5.5 %	12.36 %

For rate of Tax on other commodities Part B of schedule II of JVAT 2005 and First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 may be referred to.

Similarly under GST, Rate of Tax on Goods and Services were:-

Commodities	GST(Rate of Tax)
Steel	18 %
Cement	28 %
Bitumen	18 %

For detailed rates of tax on other Goods and Services involved in execution of work contracts, schedule I, II, III and IV to JGST 2017 may be referred to.

iv. The same format can be used to compile the information for each ongoing project. The Goods and Services in the various project should be checked and verified by the concerned works department on the basis of bill of quantity, estimate, schedule of rate and other technical specifications. The Pre-GST rate of tax such as Central excise duty/ VAT on materials and service tax on services and post-GST rates (of SGST, IGST, CGST) on supply of works contract should be checked and verified.

v. After completion of the said exercise, the costs on account of the subsumed taxes under pre GST and post GST in the particular contract are to be finalized and agreed by concerned state department and Contractor. That is to say the incidence of tax in pre GST and post GST should be calculated that has been factored in the cost of project. The cost so arrived at be compared from the original contract price to arrive at the actual balance of cost of the project i.e. whether there is an increase or decrease in cost of the project.

vi. The state work department may receive certification from any accredited agencies/chartered accountant as deemed fit and accordingly the concerned state department shall assess the incidence of total tax (inclusive of central and state taxes) applicable in the pre GST regime and compare it with the total incidence of tax as applicable on such goods and services under the GST regime.

vii. While calculating the positive or negative impact of GST, the state department must keep in mind the availability of ITC of goods and services both in case of GST unlike in the VAT regime where ITC of services were not available.

13. After comparing the net increase/decrease in tax liability to the total tax levied under VAT regime and GST regime and also accounting the ITC availability, any conclusion regarding negative or positive impact on cost may be arrived at.

14. It may be clarified that under no circumstances there will be a revision of any contractual values in the contract, in cases where the work has to be completed before 30.06.2017 as per the contract, but the execution got delayed as a result of delay on part of the contractor.

15. No revision of contractual value should be considered if there is no clause for revision in contractual value due to change in the rate of tax is mentioned in the contract.
16. As per section 51 of the Jharkhand GST Act, 2017 / the Central GST Act, 2017, GST-TDS @ 2 % (1% CGST + 1% SGST) must be deducted after 01.10.2018 from payments to contractors / suppliers.
17. The Administrative Departments should issue suitable instructions to the competent agency/authority responsible for making payments to the works contractors to implement this directive/SOP.
18. For the sake of convenience and to explicitly explain the procedure for calculation of incidence of tax in Pre and Post GST regime is being explained with an example in Annexure I.

(File No. Va.Kar/Vividh/20/2020)

By the order of the Governor of Jharkhand,

Aradhana Patnaik,
Secretary,
Commercial Taxes Department,
Jharkhand, Ranchi.

Project/ Contract details

Table- I

Gross Original Value of the Works Contract given prior to GST implementation	Value of of the Works Contract rendered upto 30.6.2017 as per original contract	Balance value of the Works Contract to be rendered after 01.07.2017	Remarks
Rs. 200000	Rs. 100000	Rs. 100000	Half value of the work completed before GST and rest after GST

*** Considering half the value of work i.e. of Rs. 1,00,000 is done in the post GST period i.e. after 01.07.2017, the breakup of the material/service cost is as under-**

Table- II

Project Contituents	Percentage of Contituents	Gross Original Value of the Contract Total	Pre GST	Post GST
(a) Gross Value of Contract		200,000	100,000	100,000
(b) Less: Margin		20,000	10,000	10,000
(c) Cost of the Project (a-b)	-	180,000	90,000	90,000
(d) Bitumen	17%	30,600	15,300	15,300
(e) Steel	8%	14,400	7,200	7,200
(f) Cement	12%	21,600	10,800	10,800
(g) Aggregates, Sand etc	16%	28,800	14,400	14,400

(h) Pipes	1%	1,800	900	900
(i) Oth. Materials	1%	1,800	900	900
Electrical item	15%	27,000	13,500	13,500
Labour	30%	54,000	27,000	27,000
	100%	180,000	90,000	90,000

Project/ Contract details

The request from the works contractor has come for the escalation in the cost of contract, post GST allegedly on account of increase in incidence of tax due to implementation of GST. A comparison has been made on that half value of the left work i.e. Rs. 1,00,000 with incidence of tax in pre and post GST and their effective cost on the project on account of these taxes thereof.

Table- III

GST Implications (For balance work)	Pre GST					GST				
	Basic price (Cost excluding Output VAT, Input VAT & Excise/ Service Tax)	Excise duty/ service tax rate and its amount of Excise duty/Service tax	Input VAT rate and amount of input VAT	Output VAT rate and output VAT considering VAT Input	Cost Incl. all taxes & duties	GST rate	GST Amount	GST 12% work contract	Total cost under GST considering GST Input	Excess cost due to GST
1	2	3	4	5	6	7	8	9=(2+8) @ 12%	10=(2+8)	11
Cost of the project (a-b)					90,000			12%		
Bitumen	12,912	12% (1549)	5.5% (795)	5.5% (44)	15,300	18%	2,324	1,828	14,740	
Steel	6,108	12% (733)	5% (342)	5% (17)	7,200	18%	1,099	865	6,973	
Cement	8,270	12% (992)	14.5% (1343)	14.5% (195)	10,800	28%	2,316	1,270	9,540	
Aggregates, Sand etc	13,612	0% (0)	5.5% (747)	5.5% (41)	14,400	5%	681	1,715	15,327	
Pipes	763	12%	5%	5%	900	18%	137	108	871	

		(92)	(43)	(2)						
Oth. Materials	693	12% (83)	14% (109)	14% (15)	900	18%	125	98	791	
Electrical items	10,337	12% (1240)	14.5% (1679)	14.5% (244)	13,500	0%	0	1,240	11,577	
Labour	23,478	15% (3522)	0% (0)	0% (0)	27,000	0%	0	2,817	26,295	
Cost of the project	76,173	8211	5058	558	90,000		6,682	9,943	86,115	-3,885

Pre GST

In above example it is assumed that cost of project inclusive of all taxes and duties excluding
* profit margin is Rs. 90,000 as shown in column '6'.

The base price in column 2 has been arrived by back calculation from column 6 after deducting VAT
* output considering VAT input, VAT input and Excise duty/service tax as mentioned in column 5,4,3 respectively .

So the aggregate cost arrived at in pre GST is Rs. 76173 + Rs. 8211(on account of central excise duty/
* service tax) + Rs. 5058 (VAT on the raw material) + Rs. 558 (VAT on final works contract adjusting ITC) totaling to Rs. 90,000.00.

* For sake of convenience, the education cess and secondary & heigher education cess has not been considered for calculation of central taxes in above example.

GST

Considering the base price of goods and services as specified in column 2, and applying the applicable
* GST rate on such material/ services, the GST amount of RS. 6,682 has been calculated in column 8.

* During the period of 22.08.2017 to 17.07.2022 the GST rate on works contract has been 12%.

* The GST rate of 12% on supply of works contract services would be applicable on the sum of basic price of Rs. 76,173 specified in column 2 and GST amount as specified in column 8.

So the aggregate cost arrived in GST period is Rs. 76,173 + Rs. 9,943 adjusting the ITC, totaling amount
* Rs. 86,115 which is Rs. 3,885 less than pre GST period.
