

Treading the GST Path – XII

All about job work - 1

(G Natarajan, Advocate, Swamy Associates)

1.0 As per section 2 (62) of the model CGST / SGST Acts "job work" means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression "job worker" shall be construed accordingly. It may at the outset be noted that only when undertaken for a registered taxable person it shall qualify as "job work" and if undertaken for any unregistered person, it cannot be considered as "job work". It may be noted that when the principal sends the goods to the job worker, there is a supply of goods and when the processed goods returned by the job worker to the Principal, there is again a supply of goods. The liability to pay tax on such supplies needs to be seen. Further, as per Para 3 of Schedule II under the model Act, which holds certain supplies either as supplies of goods or supplies of services, "any treatment or process which is being applied to another person's goods is a supply of service". Further, it is also relevant to note that as per the provision under S.No. 5 of Schedule I of the model Act, "the supply of goods by a registered taxable person to a job worker in terms of section 43 A shall not be treated as supply of goods.

2.0 As per Section 43 A of the Act, the Principal, who intends to send taxable goods, without payment of tax, to a job worker for job work, shall obtain permission from the Commissioner. It defies logic when supply of goods by a registered taxable person to a job worker is not at all supply of goods (Proviso under S.No. 5 of Schedule I of the Act) where is the question of the Commissioner permitting such clearances without payment of tax? Movement from one job worker to another job worker without payment of tax can also be permitted by the Commissioner under Section 43 A. Finally, as per Section 43 A, the processed goods can also be brought back from the premises of the job worker to the premises of the Principal, without payment of tax and thereafter cleared by the Principal either on payment of tax or without payment of tax for export. Such removals on payment of tax or without payment of tax for export can also be made directly from the premises of the job worker. All the above is subject to the permission granted by the Commissioner. Further, in order to avail the above facilities, the Principal should declare the place of business of the job worker, as his additional place of business. But the Principal need not declare the place of business of the job worker as his additional place of business, if (i) the job worker is registered under Section 19 of the Act; or (ii) the Principal is engaged in supply of such goods as may be notified in this behalf. The entire responsibility as to accountability of the goods including payment of tax thereon shall lie with the Principal. From the above it may be observed that the movement of goods from the Principal to Job worker, one Job worker to another job worker and from the job worker back to Principal, can all be made without payment of any tax.

3.0 Section 16 A enables a Principal to take input tax credit in respect of the inputs and capital goods which are sent to the job worker. In other words, after availing input tax credit, the inputs or capital goods can be removed to the premises of a job worker by the Principal, subject to a condition that such inputs or capital goods, must be received back from the job worker, within 180 days / 2 years, respectively. Input tax credit would also be admissible, even if the inputs or capital goods are directly delivered at the job worker's premises, without first bringing them to the premises of the Principal. If the goods are not received back by the Principal within the above said period, the Principal shall pay an amount equal to the input tax credit availed on such goods along with interest. As and when the goods are then received by the Principal, the amount paid earlier and the interest paid, can be claimed back as credit (in the electronic credit ledger and cash ledger respectively).

3.1 There is a logic in requiring reversal of the input tax credit availed, if the goods are not received back within the specified period, in order to bring in responsibility for receiving back the goods and allowing the credit once again as and when the goods are received back. But, when it is proposed to refund the interest paid as and when the goods are received back, as to why there should be a demand of interest at all at the first place?

Is it not better to have all provisions relating to job work in one place, instead of having them under Section 16 A and 43 A?

4.0 Further as per Explanation 2, under S.No. 1 of Schedule III (Liability to be registered), supply of goods by a registered job worker after completion of job work shall be treated as the supply of goods by the Principal and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

4.1 The above provision creates some confusion. It makes sense that if a job worker is also engaged in supply of goods and services on his own account, in order to determine his turnover threshold for the purpose of registration, if the supplies made by him to the Principal, of the job worked goods are excluded (Anyway the Principal would be registered and pay tax on the final products). But if the job worker is already registered, what is the purpose of excluding the value of job work supplies from the computation is his aggregate turnover? Does it mean that if the job worker is not registered, in order to determine his turnover threshold for claiming exemption from registration, the value of supply of job worked goods shall also be considered?

4.2 With regard to the above, Answer to Q 5 of Chapter 9 – Job work of the FAQ issued by the CBEC throws some light. To quote,

Q 5. Whether the goods of principal directly supplied from the job-worker's premises will be included in the aggregate turnover of the jobworker?

Ans. No. It will be included in the aggregate turnover of the principal.

It seems from the above that the Explanation refer to the direct removal of goods from the job worker's premises. But the wording of the Explanation is wide enough to cover return of processed goods to the Principal also and hence needs proper amendment.

5.0 We have seen from the definition of the term "job work", only if the job work is done for a registered person (Principal), the benefits of the above provisions can be claimed. What if the Principal is not registered? Then, if the Principal is within his threshold of exemption limit, he can clear the goods to job worker without payment of tax. In other words, the value of supply of goods by an unregistered person (Principal), to a job worker would also be taken into account, for determining the turnover threshold for exemption. If the principal is not registered, the job worker also cannot claim exemption from payment of tax on return of processed goods to the principal. If the value of supplies of the job worker on his own account, including the value of supply of job worked goods is within the turnover threshold for claiming exemption from registration, the job worker need not pay tax on his clearances to the Principal. The above can be understood with the following example.

S.No.	Status of Principal	Supplies by the Principal to Job worker for job work	Return of job worked goods by the Job worker to the Principal
1	Registered person	Can be made without payment of tax.	Can be made without payment of tax.
2	Unregistered person (If the principal is not registered, the job worker would not satisfy the definition of job worker at all. But he is referred to as job worker in the example, for ease of understanding)	If the value of supply of all goods and services by the Principal, including the value of supplies made to job worker, are within the threshold exemption limit, the supply to job worker can be made without payment of tax. Once the threshold limit crosses, the	If job work is undertaken for an unregistered person, it will not qualify as job work at all. So the supply of job worked goods by the job worker to the Principal should be made only on payment of tax. But, if the value of all supplies by the Job worker including the

		Principal should obtain registration and thereafter also he can supply the goods to job worker without payment of tax.	value of supply of processed goods to the Principal, is within the threshold exemption limit, he need not pay tax on the supply of processed goods back to the Principal.
--	--	------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6.0 Apart from the above, it may be noted that the activities undertaken by a job worker is a supply of service as per Para 3 of Schedule II of the Act and for the consideration thereof (labour charges), the job worker is liable to pay appropriate GST.

7.0 There are also some transitional provisions relating to job work, which are discussed below.

8.0 As per Section 150 (1) of the model Act, if the inputs (either as such or partially processed) are removed to a job worker, before introduction of GST are returned to the principal within six months (or within such extended period as may be allowed by the competent authority) from the date of introduction of GST no GST shall be payable on such return of goods. If the processed goods are returned by the job worker after six months or after the expiry of extended period as the case may be, the job worker is liable to pay GST on such goods (if the job worker is within the threshold exemption limit, including the value of supply of processed goods to the principal after expiry of the above period he need not pay GST). If the processed goods are not returned to the Principal, within six months of introduction of GST or within the extended period , the Principal shall also pay GST on the inputs removed to the job worker.

8.1 As per the above, let us assume that inputs were cleared by the Principal to the job worker before 01.04.2017 (let us assume that GST is introduced from 01.04.2007) but the processed goods were not received back by the Principal from the job worker until 30.09.2017 (no extension of time is sought). In that case, the Principal shall pay GST on the input removed to the job worker (removed before 01.04.2007) and the job worker shall also pay GST on the processed goods returned to the Principal on or after 01.10.2017. Further, the job worker shall also be liable to pay GST on his supply of services, i.e. processing undertaken. It is not clear as to why the Principal also be asked to pay GST on the inputs supplied prior to introduction of GST, when the job worker is also required to pay GST on the return of processed goods. It is also not clear as to whether the GST thus paid on the inputs supplied by the Principal would be allowed as ITC to the job worker, who is also required to pay GST on the return of processed goods.

8.2 As per sub section (2) of Section 150, the above provisions under sub section (1) would be attracted only if the principal and the job worker declare the details of inputs held in stock by the job worker on behalf of the principal on the date of introduction of GST. Does it mean that if no such declaration is filed, the job worker is not liable to pay tax, on the return of processed goods by the job worker beyond a period of six months or extended period as the case may be? Does this not encourage non filing of declarations?

9.0 Section 151 contains similar provisions with regard to semi finished goods removed by the principal to the job worker, prior to introduction of GST and subsequent return of the goods by the job worker. Section 152 contains similar provisions with regard to finished goods removed for carrying out certain processes and returned after introduction of GST.

(Published in www.taxindiaonline.com on 17.10.2016)