Job work under indirect tax laws

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A large number of industries are dependent on outside support for completing their manufacturing activities. The activity undertaken by small industries to complete the process on raw material/semi-finished goods as desired by principal manufacturer is known as **"Job Work".** It has various nomenclatures â€“ **"job work" or "sub-contracting"** in engineering industry, **"processing"** in chemical or textile industry and **"a loan licensee"** in pharmaceutical industry.

This article explores the provisions of job work under the Central as well as the State laws.

A) Job work under Central Excise Laws

Job work is defined in Notification No. 214/86 dated 25.03.1986 and rule 2(n) of the Cenvat Credit Rules, 2004 thus -

> *Explanation I. -*
> For the purposes of this notification, the expression "job work" means processing or working upon of raw materials or semi-finished goods supplied to the job worker/ so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process.
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> (n) "job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly;

Some of the important issues in this regard are given below:

1. Occurrence of invisible loss in job work allowed and no duty will be applicable, even if losses were higher than those permitted by raw material supplier who issues debit note for excess charges - *Galaxy Surfactants Vs. CCE* **2005-TIOL-1205-CESTAT-MUM**.

2. An intermediate product in nature of final product can be sent outside for job work under CENVAT provision for further processing. Central Excise Rule 16B of Central Excise Rules allows clearance of semi finished excisable goods for processing outside the factory - *Everest Industries Ltd vs. CCE 2005(186) ELT 570 (CESTAT)* .

3. Job worker is not required to return the waste and scrap to raw material supplier and the raw material supplier is not required to pay any duty on the scrap - *CCE Vs. Rocket Engineering Corporation* - ***(2006-TIOL-442-HC-MUM-CX)***.

4. Goods can be cleared directly from the place of job worker to the customer [Para 2 of Notification No. 214/86-CE]

5. The raw material supplier registered under Central Excise Act, in case of non-availability of manufacturing facility can send material for job work and the duty liability is on raw material supplier. [*SG Zaveri Pharmapack vs. CCE (2007)217 ELT 591 (CESTAT)*]. Non-availability of manufacturing facility cannot be a bar for denial of Cenvat Credit [*CCE vs. Vaishali India* **2008-TIOL-18-CESTAT-Mum**].

6. Use of incidental material is no bar in job work [*Prestige Engineering V CCE,* **2002-TIOL-151-SC-CX**]

7. There is no bar under Central Excise Rules from using own material in addition to the material supplied by principal manufacturer and recovery of the charges from the principal manufacturer while availing exemption under notification no. 214/86 â€“CE dated 25.3.1986. [*Shakti Insulated Wires Ltd vs. CCE* **2002-TIOL-390-CESTAT-Mum.**

8. If identity of goods gets lost, still exemption under above notification is allowed [
Haldia Petrochemicals vs. CCE (2005) STT 261 (CESTAT)].

B) Job Work under Service Tax Laws

With effect from 10.09.2004, under the entry "Business Auxiliary Services" a job worker who engages in production of goods **for or on behalf of client** would be liable to pay service tax provided the process carried out does not amount to "manufacture" under Section 2 (f) of the CEA, 1944. The definition above suggests that what is chargeable is **"service in relation to"** production or processing of goods **"for"** and **"on behalf of "** client, but not production or process itself. The word **"For"** suggests that a job worker, as a service provider does what client wants. The word **"On behalf of"** would suggest that the job worker (service provider) does something the client ought to have done.

Further, the Government vide notification no. **8/2005** dated 01 **-03-2005** granted exemption for the taxable service of production or processing of goods " **for " or "on behalf of client ",**
to a person producing /processing goods from the inputs received from a manufacturer and sending the resultant product to the same manufacturer for further manufacture of the final products, which are cleared on payment of excise duty.

Prior to 1-09-2009, **the activity amounting to "manufacture"**
was excluded from the levy of service tax, thereby, it was not necessary that the manufacture results into the manufacturing of excisable goods. The Finance (No.2) Act, 2009 has amended section 65 (19) w.e.f 01-09-2009 to **exclude the activities from the levy of service tax** only if the activity results in the **manufacturing of excisable goods.**
The impact of such change is that if the process of goods is undertaken under job work but the resultant product does not fall in the category of excisable goods, such as alcoholic beverages, service tax would be attracted, however, this is subject to the exemption granted to Job workers under Notification No. 8/2005-ST dt. 01-03.2005.

Job work is understood as carrying on processes on the goods supplied by the customer. In this sense, there can be no job work of services.

The services of carrying out an intermediate production process as Job work are exempted which are in relation to -

â€¢Â Agriculture , printing or textile processing

â€¢Â Cut and polished diamonds and gemstones; or plain and studded jewellary of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act,1955 (5 of 1986)

â€¢Â Any goods on which appropriate duty is payable by the principal manufacturer ; or

â€¢Â Processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto back, during the course of manufacture of parts of cycles or sewing machines up to an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred fifty lakh rupees during the preceding financial year.

In respect of tax liability of a person carrying out intermediate production process as job work for his clients, it has been clarified in the above education guide that any process amounting to manufacture or production of goods is in the negative list. But if the process does not amount to manufacture or production of goods, and is further not covered in mega notification, the same is liable to service tax.

C) Job work under Customs Laws and Foreign Trade Policy

Under Customs laws, there is provision of importation of raw material for jobbing both in domestic tariff area and EOU/SEZ environment. The word â€˜jobbing' has been defined in Foreign Trade Policy 2009-14 and it reads â€“

"Jobbing" means processing or working upon of raw materials or semi-finished goods supplied to job worker, so as to complete a part of process resulting in manufacture or finishing of an article or any operation which is essential for aforesaid process".

i) Duty free Importation of raw material/semi finished goods for jobbing for export for units located in Domestic Tariff Area

A job worker can import goods without payment of Customs duty under Customs Notification No. 32/97-Cus dated 01.04.1997 subject to the condition that the goods are exported within a period of six months from the date of clearance. Further, the Customs Circular No.18/2004 dated 20.02.2004 clarifies that use of indigenous materials in jobbing work will not take the process undertaken out of 'job-work'.

ii) Duty free Importation of raw material/semi finished goods for jobbing for EOU units

Job worker operating as Export Oriented Unit can import goods without payment of duty on job work basis for executing export order.

â€¢Â Para 6.14(b)(ii) of FTP and Customs Notification 52/2003-Cus dated 31.03.2003 provides that an EOU operating as job worker can import goods without payment of duty for executing an export order of a foreign supplier subject to condition that no DTA clearance shall be allowed.".

â€¢Â Job worker is required to obtain a procurement certificate from the jurisdictional Central Excise officer specifying the purpose for which the goods are being imported i.e. for job work purposes.

â€¢Â Notification No. 52/2003-Cus does not make any distinction between the goods imported for job work or otherwise. Therefore, it can be inferred that the period of three years applicable in case of goods imported for manufacturing in India would also be applicable for goods imported on job work basis.

D) Job work under VAT and Central Sales Tax Act

The consideration for job work made liable under the sales tax/VAT laws is akin to Works contract. Works contract is the works rendered by a contractor using his own goods, labour and skill. The works contract is composite/indivisible contract which cannot possibly be divided in order to tax them. In year 1982, 46 th amendment of the Constitution was passed enabling the State Legislature to levy sales tax on work contract by legal fiction which led to the introduction of the concept of deemed sale in State Sales Tax/VAT Laws. The term "sale" was given expanded meaning which included the transfer of property in goods in execution of works contract (whether as goods or in other form).

In respect of distinction between a contract for sale and a contract for work and labour, Hon'ble Supreme Court in the case of Hindustan Aeronautics Limited v. The State of Orissa (1984) 55 STC 327 has held that whether a particular contract was one of **"sale"** or for **"work and labour"** depends upon the main object of the contract. If the predominant nature of the contract is work and labour, it would be contract for work whereas if the main object of the party is to transfer the property and delivery of possession of a chattel, then it would be contract for sale.

Under Section 2(g)(ii) of the Central Sales Tax Act, 1956, a transfer of property in goods whether as goods or in some other form involved in execution of works contract is included in the definition of sale. Section 6 is the charging section and creates liability on inter-state sales. Section 6A provides for exception as regards the burden of proof in the event a claim is made that transfer of goods had taken place otherwise than by way of sale. Such tax would not be leviable either on seller or the purchaser under the State tax laws of the appropriate State if that sale has been taken place inside the State.

Conclusion

Considering the job worker's increasing role and contribution in the economy and the symbiotic relationship they maintain with the large scale units, it should be the endeavour of the law making authorities to simplify the law so that these job worker's are not drawn into the vortex of litigation which they can ill afford.

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