

WORKS CONTRACT UNDER GST PRAYAGRAJ ZONE



***WHAT IS WORKS CONTRACT?**

***SECTION 2(119) OF THE CGST ACT, 2017-**

“works contract” means 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 to the CGST Act, 2017, works contracts shall be treated as a supply of services.

Taxability of Works Contract under GST

Unlike the previous VAT and Service Tax regulations, under GST the term “Works Contract” has been limited to any work performed for an “Immovable Property”. Whereas, erstwhile laws considered contracts for movable property into account.

With regard to Works Contract Schedule II of the GST Act clearly mentions the following entries as “supply of service” –

Entry No. 5(b) which states as under -

Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer will be treated as a supply of services.

Entry No. 6(a) which states as under -

Composite supply like Works Contract will be treated as supply of service.

Thus, GST has removed the confusion regarding the tax treatment. This means works contract will be treated as service and tax would be charged accordingly (not as goods or part goods/part services).

Change of tax rate related to works contract services

With effect from 18-07-2022, Works contract services provided to Central and State Government, or Local Authorities, which were earlier eligible for concessional rate of 12% GST, would attract GST at the rate of 18% in view of amendment carried out in notification no.11/2017-Central Tax (Rate) vide notification No.03/2022-Central Tax (Rate).

Check- In cases where the supply happens during such a change in rates, the applicable tax rate needs to be calculated by determining the time of supply of works contract services.

Time of Supply of service (change in rate of tax)
Where services have been supplied before the change in rate of tax Sec-14(a)

S.No.	Date of supply of services	Date of issue of invoice	Date of receipt of payment	Time of supply shall be	Applicable rate
1	Before the change in rate of tax	After the change in rate of tax	After the change in rate of tax	Date of receipt of payment or Date of issue invoice, whichever is earlier	New rate
2		Before the change in rate of tax	After the change in rate of tax	Date of issue of invoice	Old rate
3		After the change in rate of tax	Before the change in rate of tax	Date of receipt payment	Old rate

Where services have been supplied after the change in rate of tax sec-14(b)

S.No.	Date of supply of services	Date of issue of invoice	Date of receipt of payment	Time of supply shall be	Applicable rate
1	After the change in rate of tax	Before the change in rate of tax	After the change in rate of tax	Date of receipt of payment	New rate
2		Before the change in rate of tax	Before the change in rate of tax	Date of receipt of payment or Date of issue invoice, whichever is earlier	Old rate
3		After the change in rate of tax	Before the change in rate of tax	Date of issue of invoice	New rate

Place of Supply of Works Contracts

Immovable property would be required for a GST works contract. As a result, where both the supplier and the recipient are located in India, Section 12(3) of the IGST Act, 2017 governs the location of supply. The location of the immovable property would be the place of supply.

If the immovable property is located outside of India but both the supplier and the recipient are in India, the place of supply will be determined by the proviso to Section 12(3) of the IGST Act, 2017.

When either the Supplier or the Recipient is located outside India, the place of supply is the place where the immovable property is located or planned to be located, according to Section 13(4) of the IGST Act, 2017.

VALUE OF SUPPLY OF WORKS CONTRACT-

There is no specific valuation rules prescribe for Works Contract service. However the following can be taken as reference while determining the value of supply-

Works Contract where value of land/ undivided share of land is included-

Value of supply = total amount charged for such supply – value of the share of land/ undivided share of land

One third of the entire price paid for such supply will be deemed to constitute the value of land or an undivided share of land, as the case may be.

Works Contract where value of land/ undivided share of land is not included-

Value of supply = transaction value

Input Tax Credit shall not be available to the Recipient on some Works Contract Services- Sec 17(5)(c) & Sec 17(5)(d) Sec 17(5)(i) of GST Act.

GST Law mentions that input tax credit is not available for- Works contract **services** when supplied for construction of immovable property, (other than plant and machinery,) except where it is an input service for further supply of works contract service.

Goods or Services or both received by a taxable person for construction of an immovable property, (other than plant and machinery,) on his own account even when such goods or services or both are used in course or furtherance of business.

Any tax paid in accordance with the provisions of sections 74,129 &130 shall not be available as ITC.

Input tax credit is available to both a builder and a taxable person while constructing plant and machinery. But input tax credit is not available to any taxable person who constructs on his own account even if it is for business use.

LEVY OF TAX On Works Contract Services at a Glance

SAC	SERVICE	SUPPLIER	RECIPIENT	RATE OF TAX
9954	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer.	Taxable person	Any person	18%

SAC	SERVICE	SUPPLIER	RECIPIENT	RATE OF TAX
9954	(i) Composite supply of works contract. (ii) Composite supply of works contract in relation to (a) Historical monument; (b) Canal, dam, etc; (c) Pipeline, conduit or plant for water supply.	Taxable person Taxable person	Govt. Or Local authority Or Govt. Authority Or Govt. Entity	18%

SAC	SERVICE	SUPPLIER	RECIPIENT	RATE OF TAX
9954	(i) Composite supply of works contract in relation to- (a) Road, bridge, tunnel for road transport for use by general public; (b) Works pertaining to JNNURM or Rajiv Awaas Yojna;	Any person	Govt. Or Local authority Or Govt. Authority	18%

SAC	SERVICE	SUPPLIER	RECIPIENT	RATE OF TAX
9954	<p>(i) Composite supply of works contract in relation to-</p> <p>(a) Road, bridge, tunnel for road transport for use by general public;</p> <p>(b) Works pertaining to JNNURM or Rajiv Awaas Yojna;</p>	Any person	Govt. Or Local authority Or Govt. Authority	18%

SAC	SERVICE	SUPPLIER	RECIPIENT	RATE OF TAX
9954	<p>(c) Civil Structure under PMAY for existing slum dwellers;</p> <p>(d) Beneficiary led individual house construction under PMAY;</p> <p>(e) A pollution control or effluent treatment plant except located as a part of a factory;</p> <p>(f) A structure meant for funeral, burial or cremation of deceased.</p>	Any person	Govt. Or Local authority Or Govt. Authority	18%

SAC	SERVICE	SUPPLIER	RECIPIENT	RATE OF TAX
9954	(i) Composite supply of works contract in relation to- (a) Railways, excluding monorail and metro; (b) Single residential units; (c) Low cost houses (d) &(e) Post harvest storage infrastructure including cold storage or	Any person	Govt. Or Local authority Or Govt. Authority	18%

SAC	SERVICE	SUPPLIER	RECIPIENT	RATE OF TAX
9954	(f)- Mechanized food grain handling system for units processing agricultural produce excluding alcoholic beverages.	Taxable person	Govt. Or Local authority Or Govt. Authority	18%

SAC	SERVICE	SUPPLIER	RECIPIENT	RATE OF TAX
9954	(i) Construction services in relation to – (a) Civil structure (b) Educational, clinical, (c) Art or cultural establishment (d) Residential complex (i) Works Contract services involving predominantly earth work	Taxable person	Govt. Or Local authority Or Govt. Authority Or Govt. Entity	12%

SAC	SERVICE	SUPPLIER	RECIPIENT	RATE OF TAX
9954	<p>(i) Composite supply of works contract and associated services in respect of offshore works contract relating to oil and gas exploration and production</p> <p>(ii) Works contract services provided by a sub-contractor to main contractor providing Works contract services involving predominantly earth work</p>	<p>Taxable person</p> <p>Sub contractor to main contractor</p>	<p>Any person</p> <p>Government</p>	<p>12%</p> <p>12%</p>

SAC	SERVICE	SUPPLIER	RECIPIENT	RATE OF TAX
9954	<p>(i) Works contract services services provided by a sub-contractor to main contractor providing services at item (vii)</p> <p>(ii) Housekeeping services supplied through ECO</p> <p>(iii) Cons. Services other than (i) to (xi) above</p>	<p>Sub contractor to main contractor ECO Taxable person</p>	<p>Government Any person Any person</p>	<p>12% 5% No ITC 18%</p>



Tax Evasion Practices related to Works Contract Services

•Fraudulent availment of ITC

- There is a tendency of receiving bogus ITC through bogus invoices for construction material.
- Dis- proportionate use of Construction Materials such as Iron steel & Cement to make excessive claim of ITC.

•Check- Fraudulent availment of ITC

- ITC claims in such cases needs to be examined carefully.
- The consumption for High Rated goods should be verified with the established construction norms and the nature of construction. Also check use of bitumen, non vatable goods, such as diesel petrol etc.
- Downloaded E waybill and check capacity of used vehicle and also check location of vehicle from portal. Also check the type of vehicle from VAHAN App.
- Rent of machinery,(Pokland Machine, JCB, Road Roller, etc.) whether its from registered or unregistered person.
- ITC according to section 16(2)(c) should be carefully checked
- Rate of tax under different HSN code should be thoroughly check.
- It has been examined that the Works Contractor is claiming refund of inverted duty structure (unutilised ITC), where the credit has been accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. In above scenario (claiming refund of inverted duty structure) the consumption of High Tax Rated goods should be verified with the established construction norms and the nature of construction.

• TDS vs GSTR-3B

As per section 51, Government Dept making Contractual payments to suppliers (where total value of such supply under contract exceeds Rs. 2.5 Lakhs) shall deduct 2% of the total payment made as TDS. The TDS deducted by the deductor automatically reflects in the electronic ledger of the deductee (supplier) once the deductor files his/her returns FORM GSTR 7. Tax Liability according to time of supply (Invoice or Payment).

Checks- The details of the supply recorded in GSTR-7 should be cross-checked with the details provided by the supplier in his FORM GSTR-3B.

.....**THANK YOU**