JOb Work under Central Excise & Service Tax

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The manufacturing industries depends now a days stick to their core competencies and get most jobs done on outsourced basis.

The sending of raw materials/semi-finished materials for some process as per the directions of principal manufacturer is known as job work.

The industries who undertake the work of job work should be aware of the provisions under central excise and service tax applicable to them, so that can be compliant and not face demands of levy or excess availment of credit .

Even principal manufacturer should be aware of the provisions applicable for job work not only for the purpose of enabling them to plan their processes effectively but also to cut manufacturing costs.

Meaning of Job work under Central Excise

Job work is defined in Notification No. 214/86 dated 25.03.1986

> 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.

And under Rule 2(n) of the Cenvat Credit Rules, 2004

> (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;

If one were to go by the definition of the term “job work”, it is evident the raw materials have to be supplied by another person. In **Prestige Engineering India Ltd v CCE Meerut, - 1994 (9) TMI 66 - SUPREME COURT OF INDIA**, the Supreme Court held that when the job worker contributed his own material to the goods supplied by the customer and engaged in manufacturing, the activity was not one of job work. However, minor additions by the job worker would not take away the fact that the activity was one of job work.

Job Work and Manufacture (under Central Excise)

Since excise duty is on 'manufacture', duty liability arises only when the goods are manufactured during job work. The test as to whether the process amounts to manufacture or not would be determined as per section 2(f) ofCentral Excise Act, 1944 which is relevant defines manufacture as including any process incidental or ancillary to the completion of the manufactured product….. Various decision of the Supreme Court have arrived at a conclusion that where the product undergoes a change whereby a new article having a distinctive name, character or use emerges or not from the said process in manufacture (Honorable Supreme Court in Delhi Cloth and General Mills Co. Ltd Vs UOI 1962 (10) TMI 1 - SUPREME COURT OF INDIA)

If the process undertaken by the job worker amounts to manufacture/ deemed manufacture as per the definition or decided case laws, the job worker would be liable to pay duty of excise on the goods so manufactured unless the principal manufacturer who has supplied him the goods for job work, furnishes a declaration under Notification No. 214/86 dated 25.03.1986 which exempts goods manufactured by a job worker from duty of excise provided the said goods after job work are returned to the principal or cleared for export or cleared for home consumption on payment of duty of excise. Where the goods are returned to the principal, the principal should either clear it on payment of duty or use it in his manufacturing process which should result in a dutiable product being manufactured.

The declaration as stated above should be given to the Assistant Commissioner of Central Excise who has jurisdiction over the factory of the job worker. This is rarely done in practice.

If the principal manufacturer sending the goods for job work activity is a SSI unit, availing the benefit of exemption, the benefit of Notification No. 214/86 dated 25.03.1986 cannot be claimed by the job workers, as the person sending the raw materials would not be paying duty of excise on the final products. For these purposes, Notifications 83/94 and 84/94 have been issued. The said notification provides exemption to job worker from payment of duty of excise in such cases.

Job work & SSI exemption

Notification No. 214/86 CE (NT) specifies that where the job worker also avails the benefit of notification 8/2003 CE (NT) dated 01.03.2003, the **job work done under this notification would not be included** for the purpose of determining whether or not his turnover has exceeded the said limit of Rs. 150 lakhs for the purpose of determining duty liability if any or Rs. 400 lakhs for the purpose of determining eligibility to exemption u/n 8/2003 CE in the subsequent financial year.

Job work under Service Tax

Where the processing undertaken by the job worker does not amount to manufacture, the said job worker could be liable to service tax.

Prior to Negative list regime[1.7.2012]:

Service Tax on job work where the process does not amounts to manufacture was levied under 'Business Auxiliary Service' as per which, the activity of **production or processing of goods for, or on behalf of the client would be taxable**. The liability in terms of job work can arise where the processing is done for the client. However one should note that where the processing amounts to manufacture, the same would not be taxable under service tax and the liability if any would have to be studied under Central Excise. Even if the taxability of the processing is to be seen under Business Auxiliary Service, the job worker would be **entitled to exemption from service tax under notification 8/2005 ST** where the goods after processing are returned to the principal for use in or in relation to manufacture of dutiable goods which are cleared on payment of duty of excise. Where the goods to be cleared by the principal are exempted goods or goods which are chargeable to nil rate of duty, the exemption to the job worker u/n 8/2005 ST would not be available and he would be liable to service tax.

Post Negative list regime (after 01.07.2012):

Even after introduction of negative list, we require to refer rule 2(n) of Cenvat Credit Rules, 2004 for understanding what is job work.

Under Negative list regime, one should analyze the negative list which contains 17 services which are out of the purview of service tax. As per Section 66D(f) of the Finance Act, 1994 **any process amounting to manufacture or production of goods is not taxable service**. Accordingly, it is clear that if the process amounts to manufacture, then no service tax liability arises.

Further what is "Process amounting to manufacture or production of goods", which is defined under section 65B(40)of act, means,

> a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force.

Hence, it is clear that even under negative list regime, if the process amounts to manufacture service tax is not application and one should refer negative list serial number (f) for the same.

Next, what happens if the process does not amount to manufacture; the job worker should refer

to the exemption provided in Notification No. 25/2012 ST 20.06.2012 (called as Mega Exemption Notification). As per the said Notification, **job work in relation of any goods on which appropriate duty is payable by the principal manufacturer, is exempted**.

What is appropriate duty? Which is defined in the Notification and accordingly it means "duty payable on manufacture or production under a Central Act or a State Act, but shall not include 'Nil' rate of duty or duty wholly exempt".

Job work & Cenvat Credit

The concept of cenvat credit is relevant from the angle of principal manufacturer who sends the raw material / semi-finished goods for job work. The provisions of cenvat credit with regard to availment of credit is provided in Rule 4(5)(a) of the Cenvat Credit Rules, 2004. The principal manufacturer can avail the Cenvat credit on materials sent for job work as per rule 4(5)(a) of the Cenvat Credit Rules, 2004.

This has to be established from the records, challans or memos or any other document produced by the manufacturer taking the Cenvat credit that the goods have been received back in the factory within 180 days of goods being sent to the job worker. Therefore maintenance of proper inventory accounting records, job work register, details of nature of processing undertaken and quantities received back along with scrap generated would gain importance. The movement should be under a challan giving the particulars as to the Rule under which the same is being sent. The challan would be in triplicate with two copies of the same accompanying the goods to the job worker who would return one copy with the goods being sent back to the principal after completion of the process. Where the goods are sent back in lots, he is free to send his own delivery challan with the goods and send back the original delivery challan received from the principal, with the final consignment being sent to the said principal.

If the inputs or the capital goods are not received back within one hundred and eighty days, the manufacturer shall pay an amount equivalent to the Cenvat credit attributable to the inputs or capital goods by debiting the Cenvat credit account with the amount so attributable to the inputs or capital goods not received. But the manufacturer can take once again the Cenvat credit so debited when the inputs or capital goods are received back in his factory.

The Cenvat credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to a job worker for the production of goods on his behalf and according to his specifications. The restriction with regard to the requirement of receiving the goods back within 180 days from the date of sending would not apply to such tools, dies, fixtures and moulds.

The job worker who is paying the service tax or working under Notification No. 214/86 where he

carries out processes which are part of manufacture, can also avail the credit on inputs and consumables and pay the service tax leviable thereon.

Valuation under Central Excise – Job Worker

Prior to 2007 valuation of job work was as per the ratio of **Ujagar Prints 1989 (1) TMI 124 - SUPREME COURT OF INDIA** case; It was clearly held that in respect of goods manufactured on job-work basis, assessable value would be the job charges (including the profit of the job-worker if not already included in the job-charges) plus the cost of the materials used in the manufacture of the item (including the cost of the materials supplied free of cost to the job-worker).

Rule 10A had been introduced in Central Excise Valuation (Determination of Price of Excisable goods) Rule 2000, vide Notification No. 9/2007-C.E. (N.T.) dated 1.3.2007 in respect of the goods produced or manufactured by Job Worker which stipulate that,

- Where the goods are sold by the raw material supplier/principal manufacturer from the factory of job worker - the value would have to be the transaction value of the goods so sold by the raw material supplier/principal. This will apply only when the raw material supplier and the buyer of the goods are not related and price is the sole consideration for the sale and the goods are sold for delivery at the time of removal from the job worker's factory.

- Let the value of raw materials supplied by principal be Rs. 1,00,000 and the job workers conversion cost be Rs. 15,000 and his profit margin be Rs. 5,000. If the principal sells the goods processed by the job worker at Rs. 1,50,000. Then assessable value would be Rs. 1,50,000 (that is the price charged by the principal for sale of the processed goods).

- In a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of the job worker - the normal transaction value of such goods sold from such other place at or about the same time has to be adopted. This, in other words follows the principle of depot based valuation under Central Excise applicable where goods are cleared to depots of manufacturers and sold therefrom. Where such goods are not sold at or about the same time, then the normal transaction value of such goods at the time nearest to the time of removal of said goods from the factory of job worker is to be adopted. The cost of transport from the premises where from the goods are sold, to the place of delivery, would not be included in assessable value.

Precautions to be taken by the principal manufacturer generally

The principal manufacturer is responsible for the duty payment on the scrap generated at the job worker’s premises. The job worker may also remove such scrap on payment of appropriate duty of excise and in which case principal manufacturer will be relieved from his duty liability. The principal manufacturer should therefore have a proper mechanism for the purpose of tracking the quantum of waste or scrap generated at the job worker's premises.

Further, the principal manufacturer availing the benefit of cenvat credit should maintain proper records to prove that the material are received within 180 days as per Rule 4(5)(a) of Cenvat Credit Rules, 2004. In case not received the reversal of cenvat credit attributable to such materials and once such material received back (that is after 180 days) credit should be taken back. To comply with these provisions the principal manufacturer requiresto maintain proper job work control register plus security records (returnable).