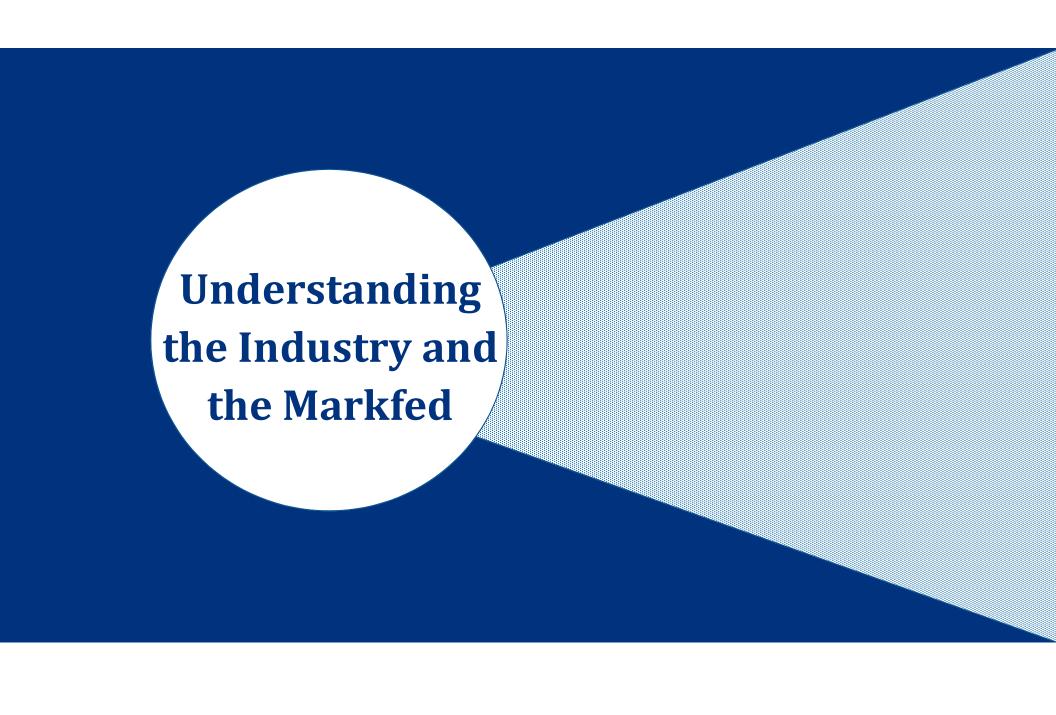
# GST Exemption to Rice Millers- Way Forward - Refund.

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#### **Contents**

- Understanding the Industry and Markfed
- Analyzing the agreement with Markfed and understanding the elements of supply and consideration (Including analysis of contrary AAR)
- Taxability of CMR charges and valuation of supply (THE BY PRODUCT DILEMMA).
- Analysis of exemption under entry 3/3A of exemption notification.
- Computation of 25 % threshold and various issues thereunder (Fortification/ Shortage etc.).
- How to claim refund of earlier paid taxes If exemption *ibid.* is available?
- Q & A

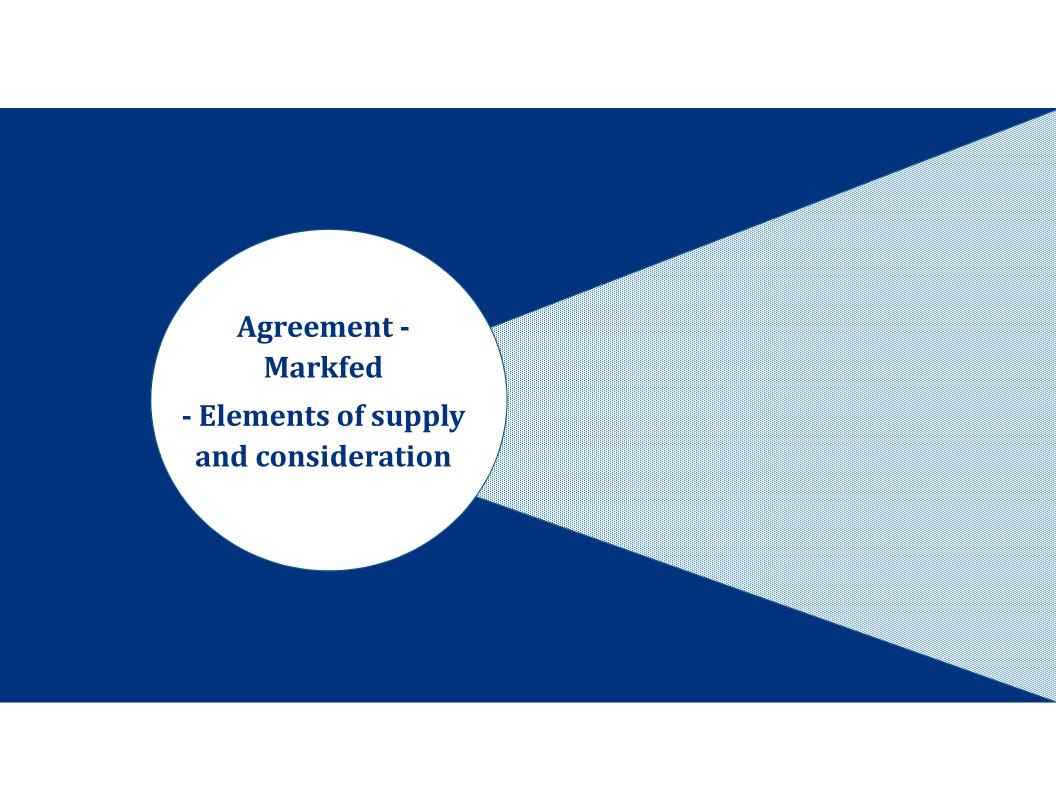


#### **Business Model**

- **Agreement -** for customs milling of paddy with the Chhattisgarh State Marketing Co-operative Federation Limited, Raipur (C.G.) (MARKFED).
- **Inward Transportation** Collection of paddy from Primary Co-operative Societies/paddy storage centers and thereafter transport it to the milling site.
- Execution Minimum 67% delivery + by products retained (broken rice/ bran/ husk etc.) [Actual Production may differ more or less]
- Outward Transportation Milling site to the various delivery centers of Nagrik Apurti Nigam/Food Corporation of India. (Bill to Ship to)
- Gunny Normally provided by Markfed, if owned gunny used Usage charges/ Gunny charges.
- Fortification Mandate by CG Few millers two models 1) procured by Millers 2) procured by MARKFED.

#### **MARKFED**

- Apex level Federation of Cooperative Marketing Societies in the State of Chhattisgarh.
- Came into existence simultaneously with the creation of new Chhattisgarh State on 1st November 2000 (earlier with M.P.)
- Markfed executes the work of paddy procurement under Price Support Scheme and supply of chemical fertilizers and plant protection material to the farmers of the state as per the instructions of Government.
- Orrisa Markfed Provides that Paid-up share Capital of MARKFED is Rs. 208.29 Cr. out of which, Govt. share is 205.39 Cr.(98.6%).
- The board majorly constitutes IAS officer the full control is with Government itself.



# Features of the Agreement V. Elements of Composite Supply

NO	Key elements of Composite Supply	Elements of agreement with MARKFED
1.	There is a Single Price, or the customer pays the same amount, no	The prices are separately indicated but not separately
	matter how much of the package they actually receive or use.	enforceable – Economic reality of transaction is milling only.
2.	The elements are normally advertised as a package	NA as not a retail sale - Agreement is a packaged one.
3.	The different elements are not available separately.	Yes, the agreement does not say - milling can solely be available.
4.	The customer perceives what they receive as a single supply, not	Yes, the agreement is entered to get the paddy milled,
	independent components.	primarily.
5.	The different elements are integral to one overall supply - if one	No Milling, - No packing / No transportation.
	or more is removed, the nature of the supply would be affected.	
6.	Some components are clearly incidental or ancillary to an	Transportation, Gunny etc. are incidental, even the value
	identifiable main supply.	of transportation may be high. Transportation is not the
		AIM.

# Certain Important principles for concluding that the supply in question is a composite one:

- Every supply of services must normally be regarded as distinct and independent supply
- The supply which comprises of a **Single Economic Service from Economic Point of view should not be** artificially split
- Essential features of transaction must be ascertained to determine **whether supplies constitutes several distinct Principal Services or a Single service.**
- The services is only Single when one (or more elements in combined) are Principal and one or more element are ancillary
- And an ancillary service is not an aim in itself, but a means of better enjoying the Principal Service.

  [Commissioners of Customs and Excise v Madgett and Baldwin]

Raigarh AAR - All the supplies are interrelated and can in no way be vivisected in the CMR contract, the primary and principal work being Customs milling of paddy.

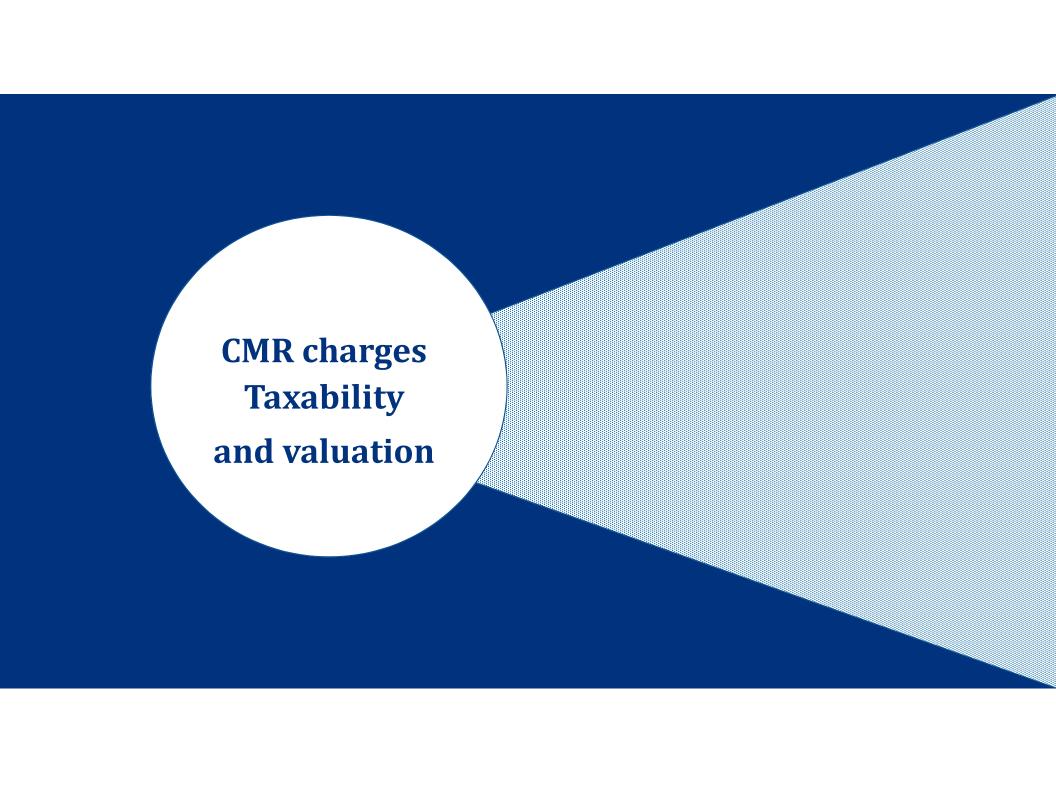
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As per Section 2(31) - Consideration is - any payment made or to be made in respect of/ response to such supply......

Elements of consideration in present case:

Sl. No.	Activity	Consideration
1.	Inward Transportation	On per K.M. basis as fixed by the State Govt. of Chhattisgarh.
2.	Customs milling charges	@ 10 or 20 / Per Qtl. of paddy as milling charged (Raw/ Per Boiled) +
		(Incentive 30 to 45/ in Raw, and 10/- per PB).
3.	Outward Transportation	On per K.M. basis as fixed by the State Govt., of Chhattisgarh.
4.	Usage charges of gunny bags	@ 3.75 or 7.32/- per bag or as fixed time to time by the MARKFED.
<b>5.</b>	Gunny bag charges	@ 14/ bag not returned by MARKFED.
6.	Fortified rice (if applicable)	@ 72/ kg.

Suggestion – Markfed module should provide lumpsum amount taxable @ 5% and other charges over the annexure.



# Taxability of CMR (if not exempt) + By Products

- The exemption to Rice millers is a conditional one so, if not exempt GST @ 5% if such composite supply is **provided to a registered person**, being a job work service.
- MARKFED is required to deduct TDS u/s 51 and hence a "Registered Person".
- Similarly clarified by Circular No. 153/09/2021-GST, issued on 17<sup>th</sup> June 2021.

#### The By Product Dilemma i.e., whether 5% to be applied value of by products also???

- FCI Circular F 19/GST/2017-18/Part III/GST 41 dated 28-11-2017 Value of by-products retained by the miller will also be included in the value of milling charges as non-monetary consideration.
- Letter issued by the Special Secretary to the Government of West Bengal to the Pr. Chief Comm.-Kol & DGGI, HQ which says- by product would be included (but it is in context of "flour")

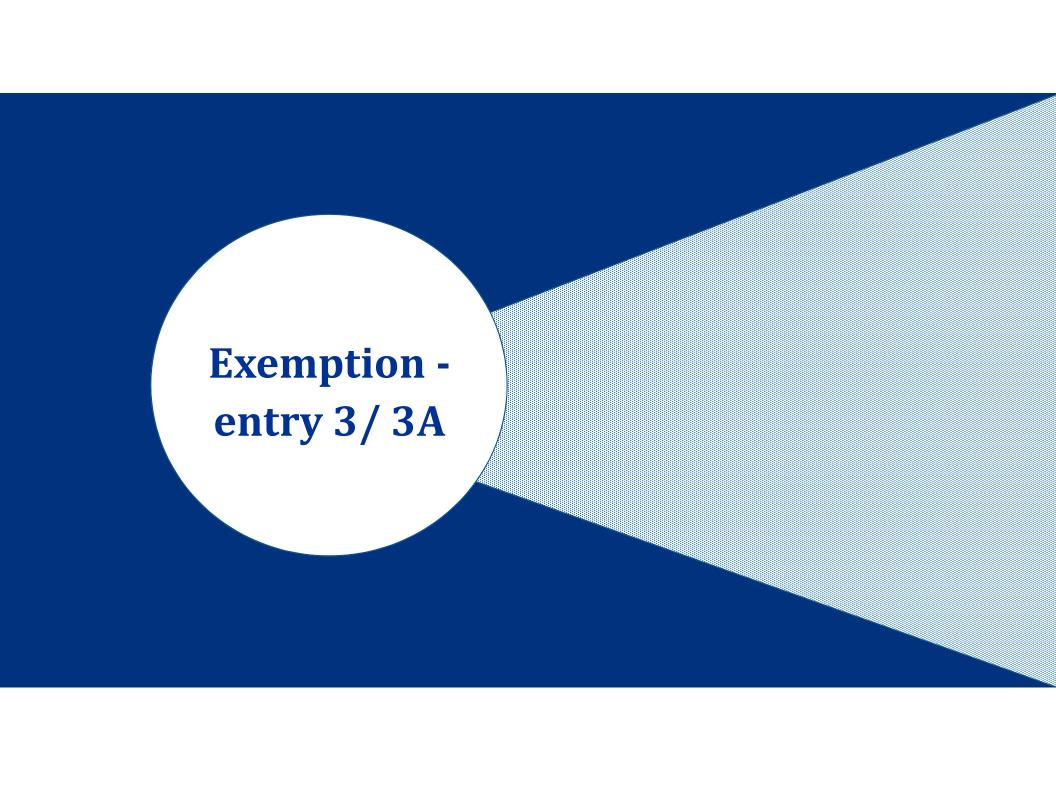
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M/ Shirdiri Sainath Industries [2020-TIOL-2052-HC-AP-GST] - Reiterated the following principles laid down by Hon'ble Apex court in the matter of Food Corporation of India vs. State of A.P [1997 SCC Online AP 1143]

- (i) When the terms are entered in the form of a written agreement, the same are sacrosanct and shall be looked into know the purpose for which by-products were given to the miller and not by adducing oral evidence.
- (ii) When the terms only specify a certain amount as remuneration and nothing else is indicated towards remuneration, no further condition can be regarded as remuneration.

Held – Parties if want By – products to be added, would have mentioned clearly. The by-products form part of compensation but not consideration.

\*Bhayana Builders Private Limited [2018 (10) GSTL 118 S.C.], Intercontinental Consultants and Technocrats Pvt Ltd [2018 (10) GSTL 0401 S.C.] – held similarly.



# Exemption entry 3 w.e.f. 01/07/2017 (Exit Gate 1)

- **Condition -** Pure services (excluding works contract service or other composite supplies involving supply of any goods)
- **Recipient** Provided to CG/SG/UT/LA/Governmental authority or entity.
- **Purpose** by way of any activity **in relation to** any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a **Municipality under article 243W** of the Constitution.

#### \*Governmental authority means –

- *I.* Set up by the Act of the parliament/state legislature.
- II. Established by any Govt. with 90 % or more participation (equity or control) for carrying 243G/W functions.

#### Continued...

- Markfed Governmental Authority > 90 % held by State Government.
- Rice millers supply is in relation to 243W which covers "Public distribution system" (entry 28 of the schedule) -
- SAKSHI JHAJHARIA AAR, WB binding agreement.
- Condition Pure service (examined in subsequent slide)
- If condition not fulfilled GST @ 5% applicable.

#### **Pure Services**

CBIC Sectoral FAQ - Question 25: What is the scope of 'pure services' mentioned in the exemption notification No. 12/2017-Central Tax (Rate), dated 28-6-2017?

Answer: In the context of the language used in the notification, supply of services without involving any supply of goods would be treated as supply of 'pure services'. For example, supply of man power for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services.

On the other hand, let us take the example of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services involves only supply of services and not for works contract services.

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# **Perpetrating Issues - Shortage?**

Though the same is part & parcel of job work contract (i.e., included within 67%) and for which no separate consideration is charged, will it constitute "goods" for above exemptions?

**High chances of litigations in this area**, however the **correct understanding** would be:

- 1. Where there is no independent value being assigned for goods, the same shall be considered as part & parcel of services.
- 2. The value of goods shall become part of "Transaction Value".
- 3. "Value of the goods not relevant" "value of the consideration received for goods" is relevant.
- 4. The entire consideration is received towards Job work service and the job worker is allowed to add goods (Schedule II treats job work as a service).

#### Some Contrary AAR's

- In Re: M/S. Karnataka State Electronics Development Corporation Limited (AAAR) Street Lighting activity Energy performance contract held, the lights etc. transferred at the end of contract would be considered as "goods" and thus not pure.
- IN RE: M/S. UNIQUE AQUA SYSTEMS (AAR) Contract for operation and maintenance of RO plant included supply of "Smart Cards" held not a pure service..

# Perpetrating Issues - Fortification/ Gunny!!

- Artificial rice taxable @ 18 %. Mixed with the milled rice.
- It's a mandate by Central Government to fulfil nutrition requirement. Introduced in 2021 currently applies to few millers.
- High demand Market price Rs. 82/kg cost somewhere between Rs. 30 to 40/kg.
- Two models –1) Procured by Millers, 2) Procured by Markfed.
- In the 1<sup>st</sup> model Markfed pays @ 72/kg. Since value separately indicated etc. not a pure service.
- Same goes with gunny bags wherever the same are procured by millers and sold @ 14/kg. (not usage charges)

# Other inclusions and exclusions for pure service

Exemption would be available from 01-07-2017, if the contract covers **only pure service elements** as below:

Ingredients	Pure Service/ Not
Fortified Rice (when procured by Millers)	Not Pure
Fortified Rice (when procured by Markfed and provided to millers)	Pure Service
Gunny bag charges (sale)	Not Pure
Gunny bag USAGE charges	Pure Service
Custom Milling Charges	Pure Service
Transportation Charges	Pure Service
Shortage	Pure Service

# Exemption entry 3A w.e.f. 25/01/2018 (Exit Gate 2)

- **Condition** Composite supply of goods to service where **value of supply of goods** constitute not more than 25%.
- **Recipient** Provided to CG/SG/UT/LA/Governmental authority or entity.
- **Purpose** by way of any activity **in relation to** any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a **Municipality under article 243W** of the Constitution.
- Exemption available as clarified by Circular No. 153/09/2021-GST, issued on 17th June 2021.
- The same was recommended to be clarified by 43<sup>rd</sup> GST council meet.

# Other inclusions and exclusions under 25%

Based on some principles laid down earlier, below are some inclusions and exclusions for computing 25%.

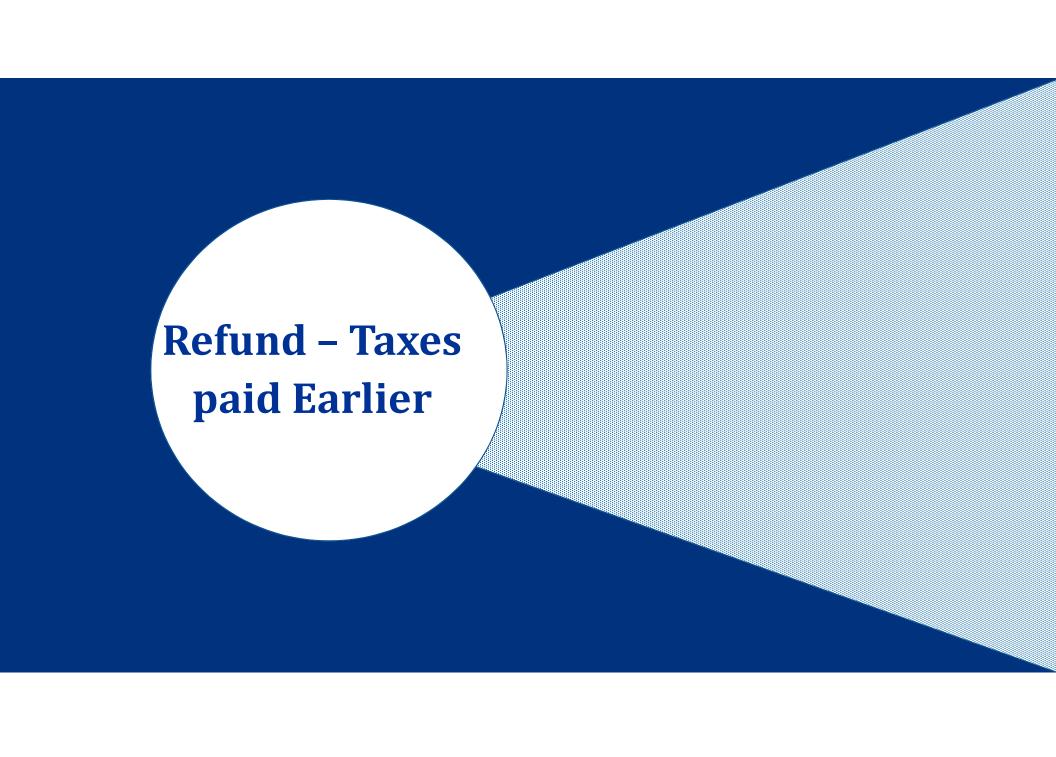
Ingredients	Inclusion/ Not within 25%
Fortified Rice (when procured by Millers)	To be included
Fortified Rice (when procured by Markfed and provided to millers)	Not included (mixing would be a part of service)
Gunny bag charges	To be included
Gunny bag USAGE charges	Not included (it's a service)
Custom Milling Charges	Not included (it's a service)
Transportation Charges	Not included (it's a service)
Shortage	Not included (as discussed above)

# Illustration

No.	Particulars	Amount (notional)	Includible in 25%	% of Contract Value
1	Milling charges	20 L	No	
2	Gunny Usage	1 L	No	
3	Gunny Sale	2 L	Yes	6.25%
4	Fortified Rice (procured by millers)	5 L	Yes	15.63%
5	Transportation	4 L	No	
	Total Value	32 L		21.88%

Exemption available as Value of goods < 25% of the total composite value

Note: value of by-product, not to be included for above calculation.



# Refund of earlier paid taxes

• Section 54 allows refund of – "any other amount paid" – even though the same is not a tax (here the supply was an exempt supply).

<u>Challenge</u> - deeming fiction under explanation to Rule 89(2) - where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer. Indicators:

- a. The invoice issued indicates tax amount.
- b. Markfed deducts GST TDS on such GST.
- c. ITC earlier availed.
- Possible refund ground Unjust enrichment normally doesn't apply to fixed price contracts.
- Time limit applicable (as not unconstitutional levy Mafatlal NA) two years from the date of payment of tax. (benefit of Supreme court extension could be attempted from 15/03/2020 to 14/03/2021 restored till further orders). **Refund from February 2018 could be applied.**

# THANK YOU



For any clarification

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