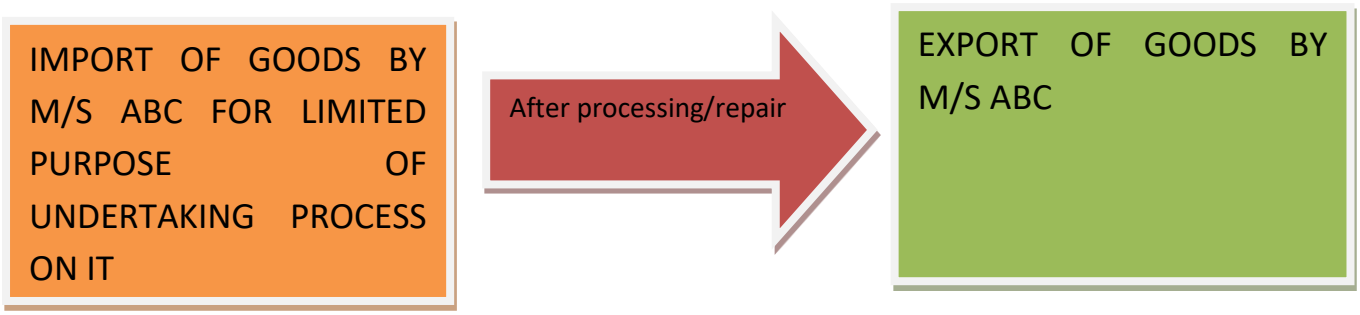
GST UPDATE ON JOB WORK OF IMPORTED GOODS

In the present update, we seek to discuss the procedure for job work of imported goods and its subsequent export thereof and the GST implications on the various transactions involved therein.

There are two transactions involved in the job work process of imported goods:-



Now, the procedure and GST implications for each of the transaction is discussed as follows:-

IMPORT OF GOODS FOR JOB WORK:- M/s ABC will have to get the goods cleared for home consumption by filing bill of entry and paying the applicable IGST. However, there is exemption from payment of customs duties and additional duties under notification no. 32/97-Cus dated 01.04.1997, but there is no exemption from payment of IGST levied under section 3(7) of the Customs Tariff Act, 1975. Therefore, M/s ABC will have to pay IGST on import of goods for the purpose of job work, i.e. for carrying out repairs/any process on goods. Now, the question arises is whether M/s ABC will be eligible for claiming input tax credit of the said imported goods? The answer is "YES" because the imported goods will be used for providing the services of job work. But the problem is that ownership of these goods does not transfer to recipient. In case of domestic job work, the credit of goods given by principal does not pass on to job worker. However, since he has paid the duty, he should get the credit. Moreover, the second argument given for not allowing the credit is that value of these materials is not added to the final services to be exported by job worker. But the argument for allowing the credit is that the IGST paid on imports will necessarily be part of services as nobody will work on loss. Hence, its credit should be allowed.

EXPORT OF GOODS AFTER PROCESSING- After carrying out the required process, M/s ABC will export the said goods. However, first and foremost, it needs to be examined that whether the transaction would be considered as export in terms of section 2 of the IGST Act, 2017. The relevant provisions are produced for quick reference as follows:-

(5) ***"export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;***
(6) "export of services" means the supply of any service when,—

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

The transaction of sending goods after processing is covered by the term "export of goods" as stated above but since the ownership of goods already rests with the foreign service recipient, no invoice shall be raised by M/s ABC with respect to the value of goods sent outside India. Hence, one view is that the said goods will be sent outside India by way of delivery challan. Alternatively, another view can be to send the goods on the basis of invoice raised for job work services provided but in that case, the value of goods would not be included. Now if we show export of services but the shipping bill will be generated and it could not be linked. Moreover, e-way bill generated for export will not find any invoice for the same. As no specific provision is provided in this regard, a suitable clarification is expected from the government regarding movement of processed goods out of India without sale.

As far as the transaction regarding provision of service is concerned, it is submitted that the place of supply should be outside India so as to qualify as export of service. According to second proviso to section 13(3)(a) of IGST Act,

2017, the performance based criteria does not apply for goods temporarily imported for repair/processing which are further exported. Consequently, the general rule applies wherein place of supply shall be the location of recipient of services according to section 13(2) of the IGST Act, 2017. Hence, as all the conditions of export of service are satisfied, the transaction of undertaking process on imported goods would be considered as export of service. Therefore, there is no need to pay IGST and the service can be exported be executing LUT.

POINTS TO PONDER:-

1. The situation leads to input tax credit on import of goods being substantially higher than the IGST payable on service of job work which is exported. Although the clearance of imported goods and payment of IGST thereon is essential for provision of job work service, the quantum of input tax credit being substantially higher can be a matter of dispute as there would be realisation of proceeds on export of processed goods as the ownership already vests with the foreign recipient.

2. Recently, there has been amendment in CGST Rules, 2017 wherein a new Rule 96B has been inserted for recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds are not realised. Although, there is no condition as regards realisation of export proceeds in case of export of goods, but the amended rule seeks to grant benefit of refund only on realisation of export proceeds. It is pertinent to mention that in the present transaction, export of goods is inextricably connected with the job work service provided and so it is quite possible that the refund of accumulated input tax credit (as input tax credit on import of goods is substantially higher) is rejected for realisation of export proceeds with respect to value of goods which is not included in the invoice of job work service. Hence, the government should clarify the exact procedure in case of export of job worked invoices so that unwarranted litigation is avoided.

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