

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2024/07
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/11)

Date: - 16.04.2024

Name and address of the applicant	:	M/s Perma Pipe India Private Limited Godown No. 11 & 12, Survey No. 197, Mithirohar, Kachchh, Gujarat-370240.
GSTIN of the applicant	:	24AAECP4835H1ZG
Jurisdiction Office	:	Center Commissionerate - Kutch - Gandhidham Division - Gandhidham Rural Range -IV
Date of application	:	30.03.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a)
Date of Personal Hearing	:	27.02.2024 & 9.11.2023
Present for the applicant	:	Shri Rahul Gajera (Advocate)

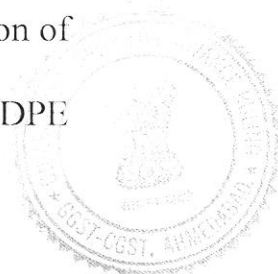
Brief facts

M/s Perma Pipe India Private Limited (for short -"applicant") is engaged in the activity of adding insulation to bare M.S. pipes to convert them into pre-insulated M.S. Pipes. The applicant is registered with the department & their GSTIN No. is 24AAECP4835H1ZG.

2. Presently, the applicant is discharging GST @ 18% (9% CGST + 9% SGST) under of Sr. No. 26(iv) of notification No. 11/2017- CT(Rate) dated 28.06.2017 (heading 9988).

3. Briefly, the facts are that the applicant is adding PU Foam and PE film/HDPE jacket on the bare M.S. pipes provided by their customers (*ie* other registered owners). The procedure adopted by the applicant for adding insulation to bare M.S. pipes, to convert them into pre-insulated M.S. pipes, is as under *viz*

- i. they purchase chemicals *viz* Polyol, Isocyanate etc. for preparation of PU foam;
- ii. they purchase of HDPE granules required for preparation of HDPE jackets; and

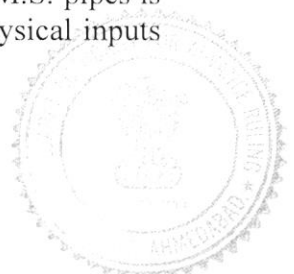


- iii. they purchase of PE films required for winding PU foam.

The PU foam is either sprayed or injected and PE film or HDPE are further wound/jacketed to the bare M.S. pipes to provide insulating properties to allow storage/transportation of hot or cold material. A flowchart of the two types of manufacturing process viz. insulation by way of spray of PU foam; and insulation by way of injection of PU foam, undertaken by the applicant on bare M.S. pipes to obtain pre-insulated M.S. pipes has been submitted by the applicant along with the application.

4. The applicant has further stated as under:

- that they receive bare M.S. pipes on job work basis under delivery challan and after carrying out the necessary process of adding PU Foam and PE film/HDPE jacket, they send back the pre-insulated M.S. pipes to customers in terms of section 143, *ibid*;
- that in terms of para 3 of Schedule-II of the CGST Act, 2017, any treatment or process which is applied to another person's good is a supply of service;
- that in terms of notification No. 11/2017-CT(Rate) dated 28.06.2017, the entry 9988 (manufacturing services supplied on physical inputs owned by others) is relevant;
- that services by way of job-work falling under clause (id) of Sr. No. 26 (heading 9988) of the notification, *ibid*, attracts GST @ 12% (6% CGST + 6% SGST);
- that to be covered under heading 9988, the following twin conditions need to be satisfied:
 - a. activity must be manufacturing;
 - b. such services must be performed on physical inputs owned by others.
- that the activity carried out by the applicant amounts to manufacture;
- that though manufacturing services or manufacturing process is not defined in the CGST Act section 2(72), *ibid*, defines "manufacture";
- that they wish to rely on the case of M/s. J G Glass Industries [1998 (97) ELT 5 (SC)], wherein the Hon'ble Court evolved a two-fold test viz
 - [a] whether by the said process, a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist; and
 - [b] whether the commodity already in existence will serve no purpose but for the said process;
- that in the present case, a different commercial commodity comes into existence as compared to the bare M.S. pipes; that without the process carried out by the applicant, the insulated M.S. pipes would not emerge; that the process carried out by the applicant leads to the emergence of a new product *ie* pre-insulated M.S. pipes with distinct name, character and use; that bare M.S. pipes and insulated M.S. pipes are bought and sold in the market as distinct commercial commodities; that in the absence of such insulation, the bare M.S. pipes would not be able to maintain required temperature of the chemicals or other material stored/transported in the pipes;
- that in order to be covered by heading 9988, the manufacturing services must be performed on physical inputs owned by others; that the PU foam as well as the PE film/HDPE jacket is owned by the applicant; that since the ownership of PU foam and PE film/HDPE jacket being added to the bare M.S. pipes is not supplied by the customer the services are carried out on physical inputs



(goods) owned by the customer as well as the applicant, hence, it will not get covered by heading 9988;

- that while Sr. No. 26 (Heading 9988) of the notification covers manufacturing services on physical inputs (goods) owned by others, Sr. No. 27 (Heading 9989) of the notification covers other manufacturing services; that there is no condition under SI. No. 27 of the notification regarding ownership of the goods on which manufacturing service is carried out;
- that the service provided by them is not covered under Sr. No. 26 of notification *ibid* since though the activity amounts to manufacture, the process is not performed entirely on physical inputs owned by others;
- that the services provided by the applicant are covered under Sr. No. 27 of heading 9989 of the notification and chargeable to GST @ 18% (9% CGST + 9% SGST);

5. In view of the foregoing, the applicant has raised the following question *viz*

1. Whether the activity of insulating of bare M. S. Pipes provided by the customers on job work basis by using PU Foam and PE Film/HDPE jackets owned by the applicant would be classifiable under clause (iv) of Sr. No. 26 or under Sr. No. 27 of notification No. 11/2017-CT (Rate) dated 28.6.2017.

6. Personal hearing in the matter was held on 9.11.2023 and 27.2.2024 wherein Shri Rahul Gajera, Advocate appeared on behalf of the applicant and reiterated the facts as stated in the application.

7. The applicant vide his additional submission dated 24.11.2023, submitted the flow chart diagram certified by the Chartered Engineer Shri Anwar Y Kukad.

8. Assistant Commissioner, CGST, Kutch vide his letter dated 9.1.2024 informed that that activity in respect of which advance ruling is sought is an ongoing activity; that the question raised is not pending or decided in any proceedings; that on examining the issue it appears that the activity of insulating of bare M.S. pipes provided by the customers on job work basis by using PU Foam and PE film/HDPE jackets owned by the applicant is classifiable under Sr. No. 26(iv) [heading 9988] and not under Sr. No. 27; that the activity amounts to manufacture.



Discussion and findings

9. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

10. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearings. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

11. Before advertng to the submissions, we would like to reproduce the relevant provisions for ease of reference:

• CENTRAL GOODS AND SERVICES TAX, 2017

Section 2. Definitions.-

(68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly;

(72) "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;

• SCHEDULE II.

Activities '[or transactions]' to be treated as supply of goods or supply of services

(3) Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

• Notification No. 11/2017-Central Tax(Rate), dated 28.06.2017 [as amended]

G.S.R.....(E).-In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column



(4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

26	Heading 9988 (Manufacturing services on physical inputs (goods) owned by others)	(i) Services by way of job work in relation to- (a) Printing of newspapers; [(b) Textiles and textile products falling under Chapter 50 to 63 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)] ⁹⁴ [except services by way of dyeing or printing of the said textile and textile products] ⁹⁵ ; [(c) all products [other than diamonds.] ⁹⁶ falling under Chapter 71 in the First	2.5	-
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⁹⁴ Substituted vide notification No. 20/2017 – Central Tax (Rate) dt 22.08.2017. Prior to substitution it read “Textile yarns (other than of man-made fibres) and textile fabrics;”

⁹⁵ Inserted vide notification No. 15/2021 – Central Tax (Rate) dt 18.11.2021.”

⁹⁶ Inserted vide notification No. 20/2019 – Central Tax (Rate) dt 30.09.2019

		Schedule to the Customs Tariff Act, 1975 (51 of 1975);] ⁹⁷ (d) Printing of books (including Braille books), journals and periodicals; [(da) printing of all goods falling under Chapter 48 or 49, which attract CGST @ 2.5 per cent. or Nil] ⁹⁸ [***] ⁹⁹ [***] ¹⁰⁰ [(f) all food and food products falling under Chapters 1 to 22 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975); (g) all products falling under Chapter 23 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), except dog and cat food put up for retail sale falling under tariff item 23091000 of the said Chapter; [***] ¹⁰¹ [(i) manufacture of handicraft goods. <i>Explanation:-</i> The expression “handicraft goods” shall have the same meaning as assigned to it in the notification No. 32/2017 -Central Tax, dated the 15th September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1158 (E), dated the 15th September, 2017 as amended from time to time.] ¹⁰² [***] ¹⁰³		
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⁹⁷ Substituted vide notification No. 31/2017 – Central Tax (Rate) dt 13.10.2017. Prior to substitution it read “Cut and polished diamonds; precious and semi-precious stones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);”

⁹⁸ Inserted vide notification No. 31/2017 – Central Tax (Rate) dt 13.10.2017

⁹⁹ Omitted vide notification No. 03/2022 – Central Tax (Rate) dt 13.07.2022. Prior to it, it reads as “(e) Processing of hides, skins and leather falling under Chapter 41 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).”

¹⁰⁰ Omitted vide notification No. 03/2022 – Central Tax (Rate) dt 13.07.2022. Prior to it, it reads as “(ea) manufacture of leather goods or foot wear falling under Chapter 42 or 64 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) respectively;”

¹⁰¹ Omitted vide notification No. 03/2022 – Central Tax (Rate) dt 13.07.2022. Prior to it, it reads as “(h) manufacture of clay bricks falling under tariff item 69010010 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);].”

¹⁰² Inserted vide notification No. 46/2017 – Central Tax (Rate) dt. 14.11.2017

¹⁰³ Omitted *Explanation* vide Nott 20/2017 – Central Tax (Rate) dt 22.08.2017. The following was omitted “*Explanation:-* “man made fibres” means staple fibres and filaments of organic polymers produced by manufacturing processes either:- (a) by polymerisation of organic monomers to produce polymers such as polyamides, polyesters, polyolefins or polyurethanes, or by chemical modification of polymers produced by this process [for example, poly(vinyl alcohol) prepared by the hydrolysis of poly(vinyl acetate)]; or (b) by dissolution or chemical treatment of natural organic polymers (for example, cellulose) to produce polymers such as cuprammonium rayon (cupro) or viscose rayon, or by chemical modification of natural organic polymers (for example, cellulose, casein and other proteins, or alginic acid), to produce polymers such as cellulose acetate or alginates”



		[(ia) Services by way of job work in relation to- (a) manufacture of umbrella; (b) printing of all goods falling under Chapter 48 or 49, which attract CGST @ 6 per cent]	6	-] ¹⁰⁴
		[(ib) Services by way of job work in relation to diamonds falling under chapter-71 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);	0.75	-
		(ic) Services by way of job work in relation to bus body building: [Explanation- For the purposes of this entry, the term "bus body building" shall include building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975.] ¹⁰⁵	9	-
		[(ica) Services by way of job work in relation to manufacture of alcoholic liquor for human consumption	9	-] ¹⁰⁶
		(id) Services by way of job work other than [(i), (ia), (ib), (ic) and (ica)] ¹⁰⁷ above	6	-] ¹⁰⁸
		[(ii) Services by way of any treatment or process on goods belonging to another person, in relation to- (a) printing of newspapers; (b) printing of books (including Braille books), journals and periodicals (c) printing of all goods falling under Chapter 48 or 49, which attract CGST @ 2.5 per cent. or Nil.] ¹⁰⁹	2.5	-] ¹¹⁰
		[(iia) Services by way of any treatment or process on goods belonging to another person, in relation to printing of all goods falling under Chapter 48 or 49, which attract CGST @ 6 per cent.	6	-] ¹¹¹
		[(iii) Tailoring services.	2.5	-] ¹¹²] ¹¹³

		[(iv) Manufacturing services on physical inputs (goods) owned by others, other than [(i), (ia), (ib), (ic), (ica), (id), (ii), (iia) and (iii)] ¹¹⁴ above.	9	-] ¹¹⁵
27	Heading 9989	[***	***	***] ¹¹⁶
		[Other manufacturing services; publishing, printing and reproduction services; material recovery services	9	-] ¹¹⁷

¹⁰⁴ Inserted vide notification No. 31/2017 – Central Tax (Rate) dt 13.10.2017

¹⁰⁵ Inserted vide notification No. 26/2019 – Central Tax (Rate) dt 22.11.2019

¹⁰⁶ Inserted vide notification No. 06/2021 – Central Tax (Rate) dt 30.09.2021

¹⁰⁷ Substituted vide notification No. 06/2021 – Central Tax (Rate) dt 30.09.2021. Prior to substitution it read as: "(i), (ia), (ib) and (ic)"

¹⁰⁸ Inserted vide notification No. 20/2019 – Central Tax (Rate) dt 30.09.2019

¹⁰⁹ Inserted vide notification No. 31/2017 – Central Tax (Rate) dt 13.10.2017

¹¹⁰ Substituted vide notification No. 20/2017 – Central Tax (Rate) dt 22.08.2017. Prior to substitution it read in column

(3) "Manufacturing services on physical inputs (goods) owned by others, other than (i) above"

¹¹¹ Inserted vide notification No. 31/2017 – Central Tax (Rate) dt 13.10.2017

¹¹² Substituted vide notification No. 1/2018 – Central Tax (Rate) dt 25.01.2018. Prior to substitution it read:

"(iii) Manufacturing services on physical inputs (goods) owned by others, other than (i) [, (ia), (ii) and (iia)] ^A above.	9	-"
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A. inserted vide notification No. 31/2017 – Central Tax (Rate) dt 13.10.2017. Prior to substitution it read "and (ii)"

¹¹³ Inserted vide notification No. 20/2017 – Central Tax (Rate) dt 22.08.2017

¹¹⁴ Inserted vide notification No. 06/2021- Central Tax (Rate) dt 30.09.2021. Prior to substitution it read as : "(i), (ia),

(ib), (ic), (id), (ii), (iia) and (iii)"

¹¹⁵ Inserted vide notification No. 1/2018- Central Tax (Rate) dt 25.01.2018

¹¹⁶ Omitted vide notification No. 06/2021- Central Tax (Rate) dt 30.09.2021. Prior to omission it read as:

"(i) Services by way of printing of all goods falling under Chapter 48 or 49 [including newspapers, books (including Braille books), journals and periodicals], which attract CGST @ 6 per cent. or 2.5 per cent. or Nil, where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer.	6	-"
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¹¹⁷ Substituted vide notification No. 06/2021- CTR dt. 30.09.2021. Prior to this, it read as:

"(ii) Other manufacturing services; publishing, printing and reproduction services; materials recovery services, other than (i) above.	9	-"
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Previously, Substituted vide notification No. 20/2017 – Central Tax (Rate) dt 22.08. 2017. Prior to substitution it read "Other manufacturing services; publishing, printing and reproduction services; materials recovery services."



• **Circular No. 126/45/2019-GST dated 22.11.2019**

2. The matter has been examined. The entries at items (id) and (iv) under heading 9988 read as under:

(3)	(4)	(5)
(id) Services by way of job work other than (i), (ia), (ib) and (ic) above;	6	-
(iv) Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ib), (ic), (id), (ii), (iia) and (iii) above.	9	-

3. Job work has been defined in CGST Act as under.

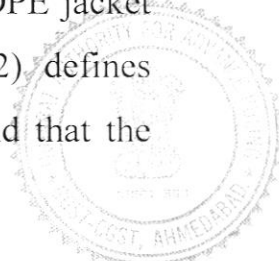
*"Job work means any treatment or processing undertaken by a person on goods belonging to another **registered** person and the expression 'job worker' shall be construed accordingly."*

4. In view of the above, it may be seen that there is a clear demarcation between scope of the entries at item (id) and item (iv) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017. Entry at item (id) covers only job work services as defined in section 2 (68) of CGST Act, 2017, that is, services by way of treatment or processing undertaken by a person on goods belonging to another **registered** person. On the other hand, the entry at item (iv) specifically excludes the services covered by entry at item (id), and therefore, covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under the CGST Act.

12. Let us first examine the claim of the applicant that the process undertaken by them, satisfies the test laid down by the Hon'ble Supreme Court's judgement, *supra* & thus amounts to manufacture to fall within the ambit of heading 9988. However, it is the applicant's case that the PU foam as well as PE film/HDPE jacket [which render essential characteristic of an insulated pipe] are owned by the applicant & since these constitute a bulk of essential ingredients in insulated pipes, they fall outside the ambit of heading 9988 which according to the applicant mandates that the manufacturing service must be performed on physical inputs owned by others.

13. The applicant, therefore, is before us stating that since the services provided by them are amounting to manufacture but not covered by Sr. No. 26 [heading 9988] of the notification *ibid*, the same is covered under Sr. No. 27 [heading 9989] and is chargeable to GST @ 18%.

14. The first claim that needs to be examined is whether the averment that coating of M.S. bare pipes with PU foam as well as PE film or HDPE jacket during insulation process amounts to manufacture. Section 2(72) defines manufacture, and the same is reproduced *supra*. However, we find that the



matter is no longer *res integra* having been decided by the Hon'ble Supreme Court in the case of M/s. Tega India Ltd [2004(164) ELT 390 (SC)] wherein in para 9, it was held as follows:

9. *The above authorities reiterate the well established law that Circulars issued by the Central Board of Excise & Customs are binding. The law also is that if a tariff item makes no difference between coated and uncoated goods then the mere process of coating would not amount to manufacture of some new commodity. Merely because some extra process is carried on the product would not by itself mean that a new item has come into existence.*

In this case the tariff item reads as follows :

"Heading No.	Sub-heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)
73.03	7303.00	Tubes, pipes and hollow profiles, of cast iron	Rs. 100 per tonne
73.04		Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel	
	7304.10	- Of iron	Rs. 100 per tonne
	7304.90	- Other	Rs. 1,500 per tonne."

Thus it is to be seen that the tariff item makes no distinction between coated and uncoated tubes, pipes etc. The Board had in June 1988 issued a Circular clarifying that the process of guniting i.e. cement mortar coating on the outside did not amount to manufacture of a new product. By another Circular dated 9th February, 1994 the Board has also clarified that galvanized pipes and tubes continued to be covered by the expression Tubes and Pipes and galvanization does not amount to manufacture.

Subsequently the below mentioned chapter note 5 was added to chapter 73 [Articles of Iron or Steel], of the Central Excise Tariff Act, 1985, wef 14.5.2023

"5. In relation to the pipes & tubes of headings 7304, 7305 and 7306, the process of coating with cement or polyethylene or other plastic materials shall amount to 'manufacture'".

However, interestingly this chapter note does not find a mention in the Customs Tariff Act, 1975, which is adopted for classification under GST, in terms of explanation (iii) of notification No. 1/2017-CT (Rate) dated 28.6.2017. Hence, the claim that the activity performed, amounts to manufacture, is not tenable and is therefore, rejected.

15. The second claim is that it would fall within the ambit of Sr. No. 27 of the notification *ibid*, under the heading 9989. Ongoing through the explanatory notes to scheme of classification of service under GST for chapter heading 9989, it is seen that it comprises of the following [*relevant extracts*]



9989	Other manufacturing services; publishing and reproduction services; material recovery services	
99891	Publishing, printing and reproduction services	
998911	Publishing, on a fee or contract basis	
998912	Printing and reproduction services of recorded media, on a fee or contract basis	
99892	Moulding, pressing, stamping extruding and similar plastic manufacturing services	
998921	Moulding, pressing, stamping, extruding & similar plastic manufacturing services	
99893	Casting, forging, stamping & similar metal manufacturing service	
998931	Iron and steel casting service	Note 1
998932	Non ferrous metal casting services	Note 2
998933	Metal forging, pressing, stamping, roll forming & powder metallurgy services	Note 3
99894	Materials recovery [recycling] services, on a fee or contract basis	
998941	Metal waste and scrap recovery [recycling] services, on a fee or contract basis	
998942	Non metal waste and scrap recovery [recycling]services, on a fee or contract basis	

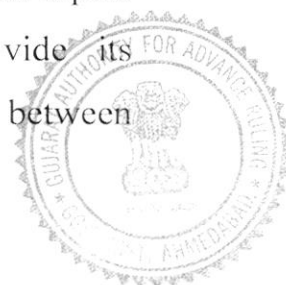
Note 1: The resulting intermediate iron and steel casting products are typically not identifiable in the Harmonized Commodity Description & Coding system based on their future use.

Note 2: The resulting intermediate casting products are typically not identifiable in the Harmonized Commodity Description & Coding system based on their future use.

Note 3: The resulting intermediate metal products are typically not identifiable in the Harmonized Commodity Description & Coding system based on their future use.

We find that the activity of coating of MS pipes performed by the applicant does not fall within the ambit of either of the sub-headings mentioned *supra*. The averment therefore that their activity would fall under Sr. No. 27 (heading 9989) lacks merit.

16. The question that would then arise is what is the proper heading in respect of the activity performed by the applicant. We find that the CBIC has already clarified the issue with its circular no. 126/45/2019-GST dated 22.11.2019, the relevant paras of which are also already reproduced *supra*. Consequent to insertion of entry 26(id) under heading 9988 of notification No. 11/2017-CT (Rate), *ibid*, which prescribes 12% GST for all services by way of job work, doubts were raised that this insertion may lead to a situation rendering the entry at item 26(iv) dealing with ‘manufacturing services on physical inputs owned by others’ redundant. Tax Research Unit of CBIC vide its aforementioned circular clarified that there is a clear demarcation between



entries at items 26(id) & 26(iv); that item (id) covers only job work services as defined u/s 2(68), *ibid* ie services by way of treatment or processing undertaken by a person on goods belonging to another **registered** person. What this means is that the process may or may not result in manufacture. Further circular states that Sr. No. 26(iv) specifically excludes services covered under entry (id) & therefore covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under CGST Act.

17. Additionally, the explanatory notes to scheme of classification of service under GST for chapter heading 9988, states as follows [*relevant extracts*]

9988	Manufacturing services on physical inputs owned by others	Description beneath is mentioned as Note 1
99881	Food, beverage and tobacco manufacturing services	
99882	Textile, wearing apparel & leather manufacturing services	
99883	Wood and paper manufacturing services	
99884	Petroleum chemical and pharmaceutical product manufacturing services	
99885	Rubber, plastic and other non metallic mineral product manufacturing services	
99886	Basic metal manufacturing services	
99887	Fabricated metal product, machinery & equipment manufacturing services	
998873	Other fabricated metal product manufacturing and metal treatment services	Description beneath is mentioned as Note 2
99888	Transport equipment manufacturing services	
99889	Other manufacturing service	

Note 1: The services included under Heading 9988 are performed on physical inputs owned by units other than the units providing the service. As such, they are characterized as outsourced portions of a manufacturing process or a complete outsourced manufacturing process. Since this Heading covers manufacturing services, the output is not owned by the unit providing this service. Therefore, the value of the services in this Heading is based on the service fee paid, not the value of the goods manufactured.

Note 2: The service code includes metal treatment and coating services, general machining services, cutlery, hand tool and general hardware manufacturing service and other fabricated metal product manufacturing services not elsewhere classified.

[emphasis added]



The activity undertaken by the applicant of coating of M.S. pipes falls within SAC code 998873 in terms of Note 2 *supra*. Thus, even on this ground the averment that the activity would fall within the ambit of SAC code 9989 is ruled out.

18. Further, on going through the Agenda and the Minutes of the 37th GST Council Meeting, it is observed that the point was examined by the fitment committee and included in the Agenda, which was thereafter deliberated and accepted by the GST Council as recorded in the Minutes of the Meeting, viz

Annexure IV

Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relations to services

Sl. No.	Proposal	Justification	Fitment Committee Recommendation
1	To reduce GST	Due to 5% GST on job work	Recommendation:
2	<p>i. Reduce GST rate for engineering job work from 18% to 5%.</p> <p>Reference: Vellore District Small & Tiny Industries Association.</p> <p>ii. All kind of job work may be charged at uniform rate of 5%.</p> <p>Reference: Laghu Udyog Bharti</p>	<p>i. To bring engineering job work at par with leather & textile job work.</p> <p>ii. Most job workers belong to small and medium scale sector and varying rates create problem in compliance and managing challans. Further, in job work credit flows from principal and job workers. It is revenue neutral exercise.</p>	<p>Recommendation:</p> <p>The rate of GST on all job work services, which are not currently eligible for the 5% rate may be reduced to 12%.</p> <p>Analysis:</p> <p>The rate of job work services has been reduced to 5% mainly where the final product attracts GST @ 5% or lower, such as textile sector, processing of hides, skin, leather and footwear, printing of books and newspapers, diamond cutting and polishing, manufacture of handicraft goods, tailoring services etc.</p> <p>The GST applicable on job work services in other major sectors such as manufacturing of industrial goods, automobiles, chemicals, pharmaceuticals, heavy engineering goods, machines and instruments, steel and other metals is 18%.</p> <p>Job workers in the engineering and automobile sector have substantial ITC. The inputs and input services used by job workers in these sectors attract GST @ 18%. Out of the total tax payable on job work services, 71% was paid through ITC. Reducing the rate on job work services in this sector from 18% to 5% will result in inversion at the level of Job worker.</p> <p>Placing the job work services under RCM will also result in blocking of ITC of the job worker and increasing of the costs of the job worker and the principal.</p> <p>The rate reduction to 5% would lead to demand of refund at the hand of job-worker. Therefore, instead of reducing the rate on job work services in the engineering and automobile sector from 18% to 5%, the same may be reduced to 12%.</p>



The rate of GST on all job work services, which are not currently eligible for the 5% rate may be reduced to 12%. However, the rate of GST applicable on Bus Body Building shall remain at 18% as inputs used for bus body building are at higher rate of 28%/18%.

Revenue Implication of the proposal is Rs. 1100 Crores approximately. This amount shall shift as liability from job-worker to the principal and is therefore not a loss of revenue.

Minutes of the 37th GST Council Meeting [relevant extracts]

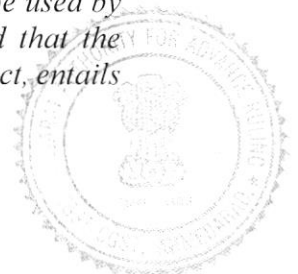
34.34. He further explained that the item no. 2 of Annexure IV was regarding engineering job work where the GST rate was recommended to be reduced from 18% to 12%. He stated that analysis of data showed that GST tax rate of 18% was high, leading to cash flow problems for the sector. Hence, the Fitment Committee had suggested GST tax rate of 12% and there would not be any cash flow problem, as the cash revenue would shift to the principal from **job worker**. He also explained that this entry did not cover the body building activity of job work on the chassis supplied by the Motor Vehicle manufacturers. There was sufficient credit available to them on inputs, which were mostly at 18% while output was taxed at 28% (if the vehicle was sold) or at 18% (if the service activity of body building was done). The Council agreed and approved the recommendations of the Fitment Committee for Sl. No. 1 and 2.

19. Even otherwise, the Hon'ble Supreme Court in the case of Dhiren Chemical Industries [2002(130) ELT 3(SC)] in para 9 has held as under:

9. We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue.

This was reiterated in the case of Ratan Melting and Wire Industries [2008(12) STR 416 (SC)], wherein the Hon'ble SC held that circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes. Thus, dutifully, following the clarification issued by the circular dated 22.11.2019, issued by CBIC, we find that in respect of services by way of treatment or processing undertaken by the applicant on goods belonging to another **registered** person, the same would be classified under 26(id) of notification no. 11/2017-CT(Rate), *ibid*, under the heading 9988. Likewise, for services by way of treatment or processing undertaken by the applicant on physical inputs which are owned by persons other than those registered under CGST Act, would be classified under 26(iv) of notification no. 11/2017-CT(Rate), *ibid*, under the heading 9988. Further, we find that vide Circular No. 38/12/2018 dated 26.03.2018, GST Policy Wing, CBIC, New Delhi has clarified as follows:

5.Scope/ambit of job work: Doubts have been raised on the scope of job work and whether any inputs, other than the goods provided by the principal, can be used by the job worker for providing the services of job work. It may be noted that the definition of job work, as contained in clause (68) of section 2 of the CGST Act, entails



that the job work is a treatment or process undertaken by a person on goods belonging to another registered person. Thus, the job worker is expected to work on the goods sent by the principal and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each case. Further, it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

[emphasis supplied]

20. In view of the foregoing, we rule as under:

RULING

The activity of insulating of bare M.S. Pipes provided by the registered customers on job work basis by using PU Foam and PE Film/HDPE jackets owned by the applicant would be classifiable under clause (id) of Sr. No. 26 of notification No. 11/2017-CT (Rate) dated 28.6.2017. Further, it would be classifiable under clause (iv) of Sr. No. 26 of notification No. 11/2017-CT (Rate) dated 28.6.2017 in respect of similar service provided on goods belonging to unregistered persons.


(MILIND KAVATKAR)
MEMBER (SGST)


(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 16.04.2024

