

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

J. RAGINI, B.A., B.L.

M. POOJA, B.A., M.A., LL.B.

CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

I. QUERIST:

M/s.Rialto Enterprises Pvt. Ltd.,
Survey No.100/2, Vandalur Kelambakkam Road,
Melakottaiyur,
Chennai – 600 127.

II. FACTS:

1. The querist is manufacturing toothbrush under the brand name Oral-B and supplies to P&G under third party manufacturing arrangement.
2. The querist proposes to manufacture battery operated power toothbrush in their new plant at 101A, Vandalur Kelambakkam Road, Melakottaiyur, Chennai-600 127 and the same is incorporated as additional place of business in their GSTIN. There are 24 of inputs involved in the power brush.
3. The querist is planning to outsource certain intermediate products (O-Ring, Seal Ring, Battery Contact + & -, Switch Plate) and molded parts (Ex:- Housing Front, Stationary Disc, etc., – 10 items) + sub-assemblies under Job Work basis from M/s.Sri Balaji Assemblers and Plastics (SBAP), who is also duly registered under GST Act provisions and holds a valid GSTIN.
4. According to the querist, the following is the procedure.
 - (1) The querist procures all raw materials and components from respective approved suppliers.
 - (2) The querist will send the raw material to SBAP for injection molding under job work challan to manufacture intermediate products, viz., Front & Back Housing.
 - (3) SBAP will send the processed intermediate products to the querist and claims labour charges under job work.
 - (4) SBAP is also manufacture some inputs with his own raw materials and supplies to the querist under P2P (5 Items). The querist will issue Purchase Order.



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- (5) The querist sends intermediate products (produced at SBAP under job work) and sends other inputs procured directly from other approved suppliers and from SBAP to SBAP under job work challan to manufacture sub-assemblies.
 - (6) SBAP will send back the sub-assemblies to the querist and claims labour charges under job work.
 - (7) The querist assembles the finished goods and exports the same to P&G.
 - (8) The querist and SBAP generates E-Way Bill, whenever there is movement of goods taking place.
5. To save the transportation cost / transshipment time involved in the movement of goods between the querist and SBAP, as referred to in Point Nos.(3), (4) and (5), it has been agreed by both the parties that,
- SBAP shall raise the invoice by claiming labour charges and retain the intermediate products produced under job work as referred in Point No. (2).
 - SBAP shall raise invoice for the goods will retain the inputs produced under P2P as referred in Point No. (4).
 - The querist will account the stock against the job work challan and make the payment to SBAP as per Invoice and PO terms.
 - The querist will account the stock against direct PO and make the payment to SBAP as per Invoice.
 - The querist will issue fresh job work challan for the items referred in Point Nos.(2) and (4) for manufacture of sub-assembly.
6. The querist has given process flow chart for easy understanding.
7. There is no movement of goods between the querist and SBAP and only exchange of documents, viz., Job Work Challan and Invoice from SBAP.



III. QUERY:

In the above context, the querist needs clarifications on the following queries.

- (i) Whether the querist and SBAP need to generate E-Way Bill or some endorsement made on invoice would be sufficient.
- (ii) If endorsement is sufficient, what are the wordings?
- (iii) To avoid buying the items and sending it back to SBAB under Job Work Challan for the items referred in Point No.(4) above, can SBAP assemble the items in a sub-assembly and claims this value in assembly charges as 'composite supply'?
- (iv) What will be the code for the composite supply and the rate of tax.?

IV. OPINION:

1. With regard to job work to be undertaken by job worker, based on the provisions of CGST Act and Rules, Board has issued a Circular No.38/12/2018-GST dated 26.03.2018. A copy of this Circular is enclosed to this opinion as Annexure-A.
2. The above circular was further amended by issue of a Circular No.88/07/2019-GST dated 01.02.2019. A copy of this Circular is also enclosed to this opinion as Annexure-B.
3. Apart from the above, it is necessary that the following definition for 'job work', in this connection, is taken into account.

Section 2(68) of CGST Act, 2017 defines "job work" as "*any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly*".

4. As far as movement of the goods are concerned, relevant provisions are contained in Rule 45 as well as Rule 55 of CGST Rules 2017.



5. A perusal of the above rules and the circulars issued will clearly indicate that the inputs or capital goods etc., sent to a job worker need to be returned to the principal supplier or to any job worker and from him to the principal supplier. Alternatively, the supply can be effected from the job worker's premises directly to the customer of the principal and in such cases, such supply will be treated as 'supplies of the principal'. Thus, the provision envisages despatch as well as return of intermediate goods with proper documentation including E-Way Bills for the movement between the principal and the job worker. There is no explicit provision in the Rule or Circular, which authorises retention of the intermediate goods by the job worker for processing / manufacturing with the job worker's own goods or further with the help of further supplies of inputs from the principals.
6. It is true that in respect of the situations mentioned against the Point Nos. (3), (4) and (5), extra movement can be avoided. However, in the absence of a positive provision in the Rules or Circulars in this regard, it will not be possible to follow such a procedure. Also, the statutory form GST ITC 04 which is to be filed every quarter contains columns for providing details regarding the return of the inputs/intermediate goods/waste and scrap from the job worker.
7. Alternatively, the querist has suggested, where there is specific processing of intermediate goods sent to the job worker with job worker's own items the same can be treated as 'composite supply'.
8. In this regard, the following definition of "composite supply" as it appears in Section 2(30) of CGST Act, 2017 will be relevant. As per this sub-section, "composite supply" means "*a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply*".
9. Thus, the above definition envisages supply of two or more services or goods or combination thereof. It is further provided that in the ordinary course of business, such a supply should be naturally bundled together.
10. Under such a situation, for composite supplies, the provision or services, which constitutes principal supply will be taken as the basis for levy of tax.



11. It is to be noted that in the present case, there are no two supplies, as such, by the job worker that can be combined as 'composite supply'. As already pointed out, there is a separate definition for 'job work' and based on this definition, job worker is a person, who undertakes a treatment or process on the goods belonging to any registered person. Therefore, in this context and in the absence of separate provisions, available for job worker, it will not be possible to hold that the process undertaken on the goods belonging to the principal / querist can be taken as an independent supply by the job worker and naturally combined with other services/goods in the normal course of business. Here, the specific provisions applicable to a job work need to be taken into account rather than the generic provisions relating to composite supplies.
12. As per the Circulars referred to above, in this case, the job worker is permitted to use his materials also, for completion of the job work and the taxability of such services, where his materials are included, will depend upon the total value.
13. As such, for these reasons, legally, combining the processing undertaken by the job worker with the materials supplied / contributed on his own by the job worker will not amount to a 'composite supply'.
14. As such, the questions relating to the code for this supply and the rate applicable for a such supply by treating it as a 'composite supply' will not arise.



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Encl.: As above

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Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.