

GST Impact on Gems and Jewellery Industry

Introduction

Introduction

- ▶ **A significant sector for Indian economy as it is exports oriented as well as labour intensive.**
- ▶ **As of January 2021, India's gold and diamond trade contributed 7.5% to India's Gross Domestic Product (GDP) and 14% to India's total merchandise exports.**
- ▶ **This sector is likely to employ 8.23 million persons by 2022, from 5 million in 2020.**
- ▶ **In FY21, exports of gems & Jewellery stood at US\$ 25.30 billion. In March 2021, exports of gems & Jewellery stood at US\$ 3.42 billion.**
- ▶ **In April 2021, India exported gems & Jewellery worth US\$ 3.37 billion compared with US\$ 36.11 million in April 2020.**

Introduction

- ▶ Based on **its potential for growth and value addition**, the Government declared gems and Jewellery sector as a focus area for export promotion. The Government has undertaken various measures recently to promote investment and upgrade technology and skills to promote 'Brand India' in the international market.
- ▶ The Government has permitted **100% FDI** in the sector under the automatic route, wherein the foreign investor or the Indian company do not require any prior approval from the Reserve Bank or Government of India.

Taxability under GST

Sec.	Definition as per the provisions of IGST Act, 2017
7	<p>(1) For the purposes of this Act, the expression “supply” includes—</p> <p><i>(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;</i> (relevant extracts)</p>
9	<p><i>(1) there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.....</i> (relevant extracts)</p>

GST Rates

Tax Rates

Goods

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Schedule	S.No.	HSN	Particulars	GST Rate
I	154	2616	Precious metal ores and concentrates	5%
III	194.	7018	Imitation pearls, imitation precious or semi-precious stones	18%

Tax Rates

Goods Schedule VI

S.No.	HSN	Particulars	GST Rate
2.	7103	precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport	2.5%
3.	7104	Synthetic or reconstructed precious or semiprecious stones, whether or not worked or graded but not strung, mounted or set; ungraded synthetic or reconstructed precious or semiprecious stones, temporarily strung for convenience of transport	2.5%

Tax Rates

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Goods Schedule VI

S.No.	HSN	Particulars	GST Rate
5.	7105	Dust and powder of natural or synthetic precious or semi-precious stones	3%
6.	7106	Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form	3%
8.	7108	Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form	3%
9.	7109	Base metals or silver, clad with gold, not further worked than semi-manufactured	3%
10.	7110	Platinum, unwrought or in semi-manufactured forms, or in powder form	3%
11.	7111	Base metals, silver or gold, clad with platinum, not further worked than semi-manufactured	3%
13.	7113	Articles of jewellery and parts thereof, of precious metal	3%

Tax Rates

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Goods Schedule VI

S.No.	HSN	Particulars	GST Rate
14.	7114	Articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal	3%
15.	7115	Other articles of precious metal or of metal clad with precious metal	3%
16.	7116	Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed)	3%
17.	7117	Imitation jewellery [other than bangles of lac/shellac]	3%
18.	7118	Coin	3%

Tax Rates

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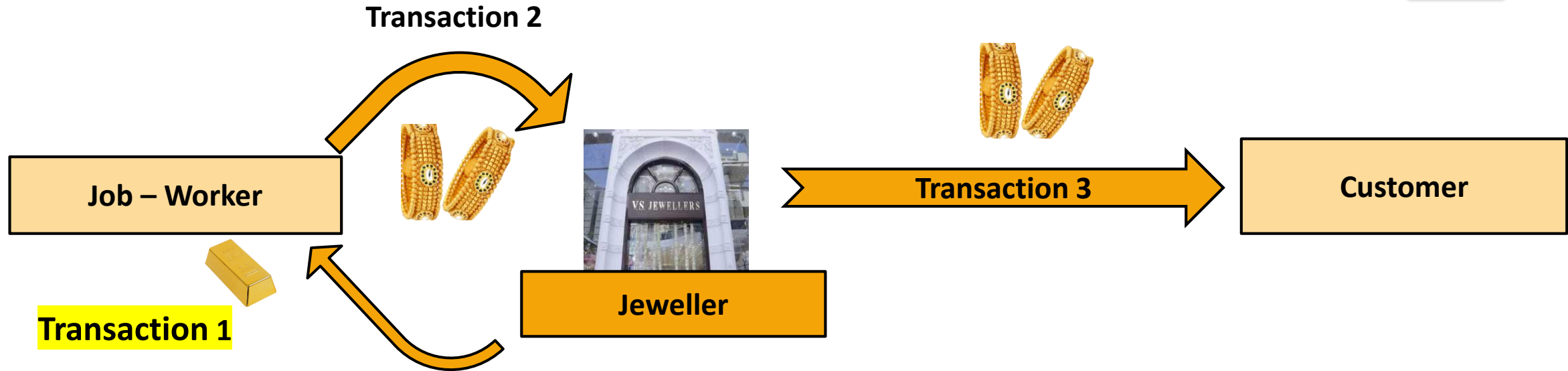
Services

S.No.	SAC Code	Particulars	GST Rates
1.	9988	Services by way of job work in relation to all products [other than diamonds] falling under Chapter 71 in the First Schedule to the Customs Tariff Act, 1975	5%
2.	9988	Services by way of job work in relation to diamonds falling under chapter 71 in the First Schedule to the Customs Tariff Act, 1975 (51of 1975)	1.5%

Transactions in the Industry

Case 1 : Sale Transaction

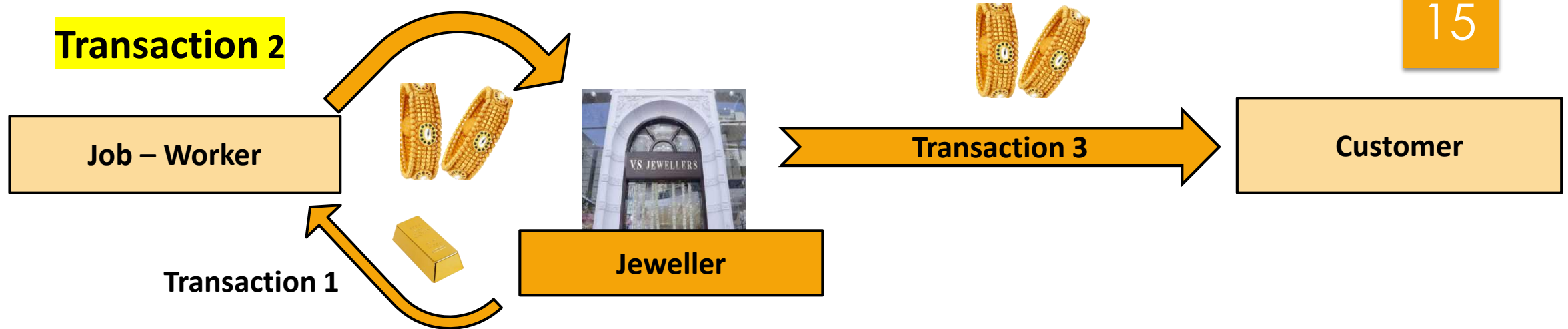
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Transaction	Details	Legal Requirements
1	The Jeweller sends gold to the job worker to be made into bangles (Principal to Job –worker)	<ul style="list-style-type: none"> NO GST to be charged As per Rule 45 of the CGST Rules – Such removal is under the cover of Delivery Challan

Case 1 : Sale Transaction

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Transaction	Details	Legal Requirements
2	<p>Job worker send the finished goods back to the Jeweller.</p> <p>For the services rendered</p> <p>INPUTS received back in one year.</p>	<p>Rule 45 of the CGST Rules – Delivery Challan issued by the principal earlier is returned back along with the goods.</p> <p>JOB WORK CHARGES</p> <ul style="list-style-type: none"> • If the job worker is registered, he would issue tax invoice in relation to the job work services rendered. • If Job work is unregistered, the principal would have to pay tax on reverse charge basis.

JOB WORK CHARGES

Job work charges refers to the amount the jeweller pays to the a job worker for rendering his services (also known as karigar who makes the Jewellery).

The following two categories of SAC have been specifically prescribed for job work:

- **SAC Code – 9988 with rate of tax 3% (CGST+SGST)**

Services by way of job work in relation to **all products [other than diamonds]** falling under Chapter 71 in the First Schedule to the Customs Tariff Act, 1975

- **SAC Code – 9988 with tax rate 1.5% (CGST+SGST)**

Services by way of job work in **relation to diamonds falling under chapter 71** in the First Schedule to the Customs Tariff Act, 1975 (51of 1975)

Making Charges Vs Job Work Charges

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Making Charges

- **Making charges is the amount a customer pays to the jeweller for the designing and for craftsmen's efforts put in to shape, polish, cut and mould the pure / raw gold into that intricate and durable ornament.**
- The purity of gold (whether 14KT, 18KT or 22KT) and the weight of the gold, all go into determining the cost of the making charges.

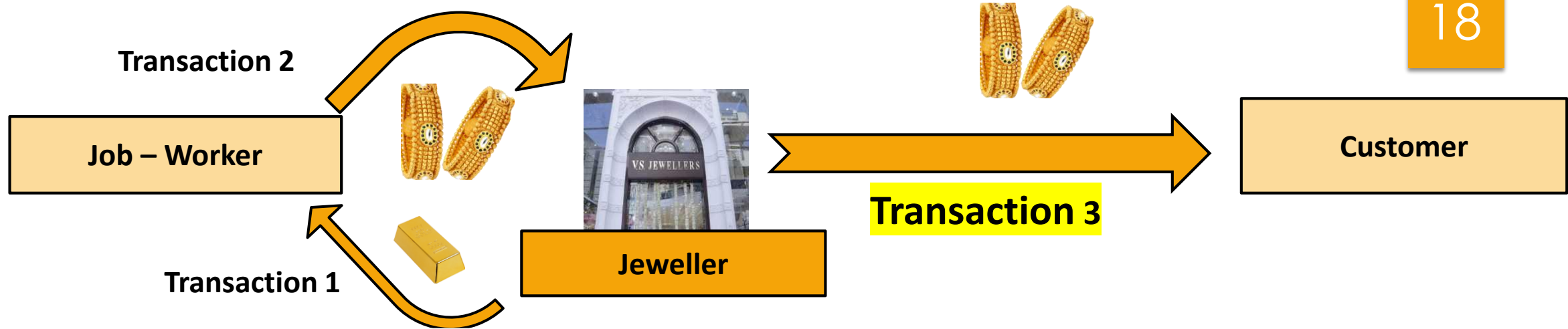
SAC Code is 998399

'Repairing charges and other Professional, Technical and Business Services.'

Rate 18%

Case 1 : Sale Transaction

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Transaction	Details	Legal Requirements
3	<p>Customer approaches to jeweller to buy these gold bangles.</p> <p>Over the counter sale</p>	<ul style="list-style-type: none"> • Tax Invoice [as per Sec 31(1)] has to be issued at the time of sale. • In this transaction, the Customer pays for two supplies – price of gold as well as making charges. • Note : the principal supply is the supply of gold. • The two supplies are made in conjunction with each other. • They are naturally bundled in the ordinary course of business. • Hence, classified as composite supply <p>For the meaning of term is a mixed supply and composite supply refer next slide</p>

Composite Supply vs Mixed Supply

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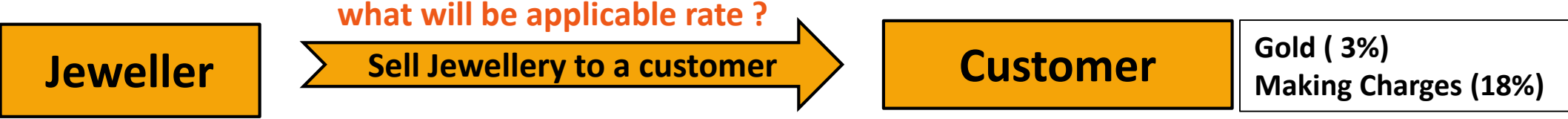
Particulars	Composite Supply
Definition	<p>As per Sec 2(30) “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;</p> <p>Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply</p>
Taxability as per Sec 8	<ul style="list-style-type: none">• As the transaction involves – Principal + ancillary supply• Tax rate applicable on ‘Principal Supply would apply

Composite Supply vs Mixed Supply

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Particulars	Mixed Supply
Definition	<p>Sec 2(74) “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply</p> <p>Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.</p>
Taxability as per Sec 8	<ul style="list-style-type: none">• As the supply involves more than two or more supplies,• the highest rate of tax among the supply would get attracted.

Case 1: Sale Transaction



Manner of Invoicing	Tax Rate	Comments
Making charges included in the price of gold	Both Gold and making charges @ Rate – 3%	Making charges are generally shown separately on invoice by the jeweller as a trade practice. Being a composite supply rate of gold would apply.
Making charges and Gold prices shown separately on invoice	Both Gold and making charges @ Rate – 3%	

NOTE - Gold Jewellery studded with diamond. What would GST be charged @ 3% (GST rate gold) or 0.25% (GST diamond rate)

Here, the prime intention of the buyer is to buy gold, thus rate of GOLD would apply.

Case 1 : Sale Transaction / Over the counter sale

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Place of Supply :

Where the supply does not involve movement of goods, whether by the supplier or the recipient, the **place of supply shall be the location of such goods** at the time of delivery to the recipient. Hence, it is an intra state supply. [Sec. 10(1)(c) of IGST Act, 2017]

Time of Supply :

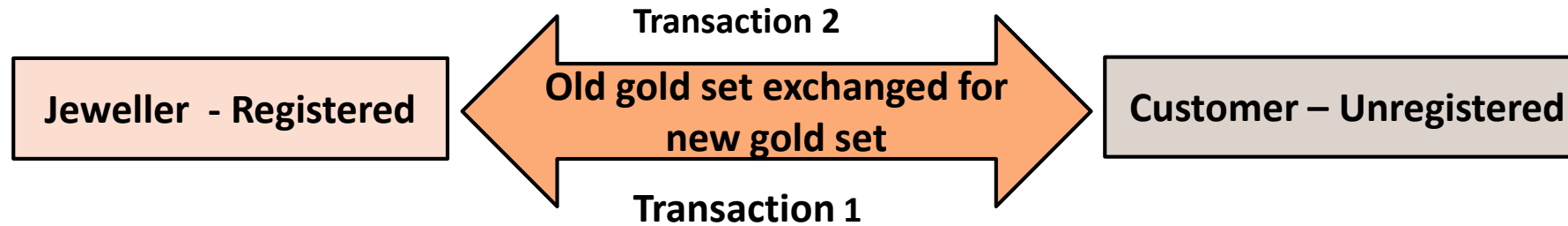
Date of issue of invoice by the supplier or the last date on which he is required to **issue invoice under sec 31**. [Sec. 12(2) of CGST Act, 2017]

Document to be issue at the time of sale:

Jeweller has to issue tax invoice as per the provision of Sec31

Case 2: New gold ornaments in exchange of old gold

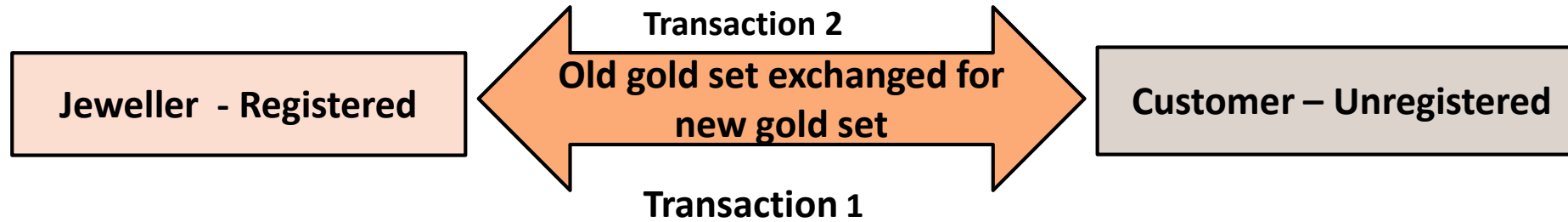
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Description	Issues	Comments
<p>Transaction No 1: The customer approaches the Jeweller to buy gold ornament in exchange of his old gold set</p>	<p>Is customer required to pay GST on the sale of old gold set to the jeweller ?</p>	<ul style="list-style-type: none"> • Not liable to tax as the transaction is not done in the course or furtherance of business. • Further the requirement of payment of GST under RCM (Sec 9(4)) of goods purchased from unregistered person is done away from 13.10.2017.

Case 2: New gold ornaments in exchange of old gold

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Description	Issues	Comments
Transaction No 2: New Gold set being sold by to the customer in exchange of old gold.	Is the jeweller required to pay GST on sale of new gold set ? If Yes then at what value ?	Yes, The jeweller would be liable to pay tax on the price of the new gold set sold. Valuation : Sec 15 + Rules 27 - Value of supply of goods or services where the consideration is not wholly in money.

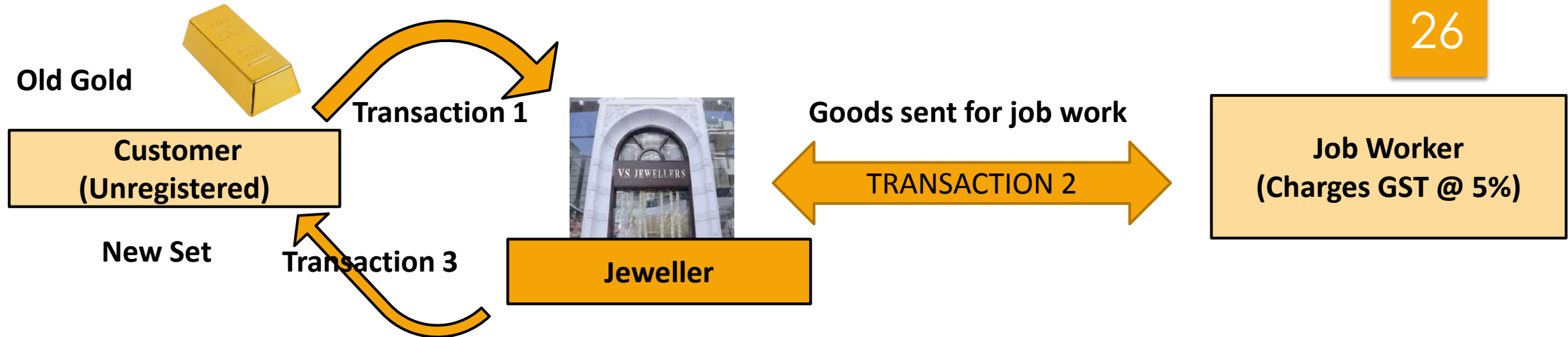
Rule 27, CGST Rules 2017

Where the supply of goods or services is for a **consideration not wholly in money**, the value of the supply shall,-

- (a) be the **open market value of such supply**;
- (b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
- (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
- (d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

Case 3: Old Gold Given to be Remade into New Jewellery

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Description	Comments
Transaction 1 - Customer gives his old gold to the Jeweller to be remade into new gold ornaments	This transaction is not a supply.
Transaction 2 - Jeweller gives the old gold to job worker for conversion into new ornaments and would pay him job work charges	The job work services provided would be liable to tax @ 5%.
Transaction 3 - The jeweller gives the new set to the jeweller and collects making charges.(Weight of old and new set is the same)	Making Charges liable to tax. Rate 18%.
However, if additional gold is added to the new set.	Jeweller would collect GST on gold also.

Case 4: Buying and Selling of Old Gold

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Description	Issues	Comments
Transaction No 1: Jeweller buys old ornaments from an unregistered person	Is customer required to pay GST on the sale of old gold set to the jeweller ?	Not liable to tax. Press Release No 78/2017 dt 13.07.2017 clarified this would not constitute supply as the transaction is not done in the course or furtherance of business.
Transaction 2 The jeweller does minor repairs and sells the old ornaments to another customer	Is the jeweller required to pay GST on sale of repaired gold set ? If Yes then at what value ?	<p>Yes, The jeweller would be liable to pay tax on the price of the new gold set sold.</p> <p>Valuation : Sec 15 + Rules 32(5) - Person dealing in buying and selling of second hand goods,</p> <p>GST would be payable on the <u>margin</u> provided that</p> <p>- <u>NO ITC has been availed</u> and <u>nature of goods does not changes</u></p> <p>Margin = Selling Price less Purchase Price</p>

Case 5: Goods sent / taken on Approval Basis

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- ❖ A Jeweller might have to move goods either within the same state or from the state of registration to another state on approval basis. In this regards **Department issued Circular no 10/10/2017 – GST dt. 18.10.2019.**

Situations	Resolve
In case of intra – state supply	Goods to be moved under the cover of Delivery Challan u/r 55 CGST Rules 2017.
In case of inter – state supply	There is no need for the supplier to get registered as a casual tax payer. Goods can be taken under the cover of Delivery Challan u/r 55 CGST Rules 2017.

Time of Supply for issuing invoice:

The supply occurs when the goods are approved for sale or 6 months from the date of removal whichever is earlier.

Place of Supply:

- **When supply involves movement of goods** whether by the supplier or the recipient or by another person the PoS of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. **(Sec 10(1)(a) IGST Act, 2017).**
- **When supply does not involve movement of goods** the place of supply shall be the location of such goods at the time of delivery to the recipient. **(Sec 10(1) (c) IGST Act.**

The movement from the location of the supplier of such goods shall be under the cover of delivery challan as per rule 55 of the CGST Rules, 2017.

Tax invoice to be issued only post approval of the customer

Place of Supply: When supply involves movement of goods whether by the supplier or the recipient or by another person the PoS of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. (Sec 10(1)(a) IGST Act,2017).

In relation to place of supply the para 4 of the circular reads as under :

“all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-state supplies and attract integrated tax in terms of Section 5 of the Integrated Goods and Services Tax Act, 2017”

Time of Supply for issuing invoice: (vide. Para 3 of Circular 10/10/2017 - GST)

The supply occurs when the goods are approved by the customer.

The said para reads as under:

“The goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods.

For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified.”

Case 7: Goods taken / send for Exhibition

The Concerns of the Industry on the issue related to the matter 'where the goods sent/taken out of India for exhibition or on consignment basis for export promotion' were addressed in the Circular No. 108/27/2019-GST.

Particulars	Goods sent on Consignment Basis for Participation in an exhibition or promotional event. NO SALE WOULD BE UNDERTAKEN	Goods sent on Consignment Basis for Participation in an exhibition and could be sold if customer approves
1. Does movement of goods for participation in exhibition amount to supply	No	No
2. Document to accompany such goods	Delivery Challan	Delivery Challan

Goods taken out of India for participating in Exhibitions

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Particulars	Goods sent on Consignment Basis for Participation in an exhibition or promotional event. NO SALE WOULD BE UNDERTAKEN	Goods sent on Consignment Basis for Participation in an exhibition and could be sold if customer approves
3. If goods are being taken out of India will it qualify as export and amount to Zero rated supply,	No	No
4. In situation no3 will there be any need of LuT.	No	No
5. If entire quantity of goods is brought back within 6 months.	No further treatment required	No further treatment required
6. If goods are neither sold nor brought back within 6 months.	A tax invoice would be required to be issued for specified goods in accordance with the provisions contained in <u>section 12</u> and <u>section 31</u> of the <u>CGST Act</u> read with <u>rule 46</u> of the <u>CGST Rules</u> within the time period stipulated under <u>sub-section (7) of section 31</u> of the CGST Act.	

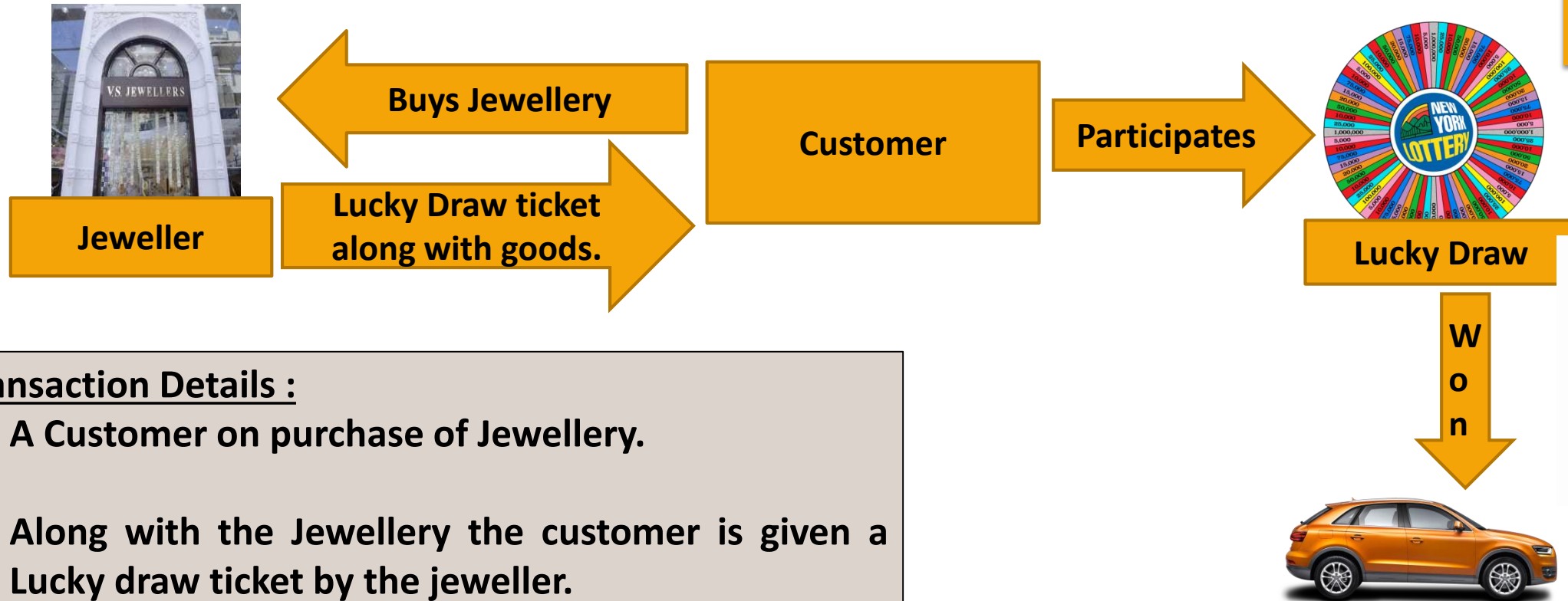
Goods taken out of India for participating in Exhibitions

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Particulars	Goods sent on Consignment Basis for Participation in an exhibition or promotional event	Goods sent on Consignment Basis for Participation in an exhibition and could be sold if customer approves
7. If some goods are sold over the period of 6 months in form of multiple sales	NA	<p>A tax invoice would be required to be issued for specified goods in accordance with the provisions contained in <u>section 12</u> and <u>section 31</u> of the <u>CGST Act</u> read with <u>rule 46</u> of the <u>CGST Rules</u> within the time period stipulated under <u>sub-section (7)</u> of <u>section 31</u> of the CGST Act.</p> <p>Note: tax invoice to be raised at the time of each sale.</p>

Case 8: Gifts given in lucky draw

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Transaction Details :

- A Customer on purchase of Jewellery.
- Along with the Jewellery the customer is given a Lucky draw ticket by the jeweller.
- On a particular date, the draw would be conducted in which 3 Winners would be selected.
- First one would get a car, Second and third winner one would get laptops .

Issue : Would this transaction of giving car or laptops qualify to be supply ?

Case 8: Gifts given in lucky draw

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Issues	Discussion
<ul style="list-style-type: none">• Is giving this lottery gift qualifies to be supply?	<ul style="list-style-type: none">▪ No consideration at the time when the gifts are distributed at the time of lucky draw.▪ The jeweller had performed this activity to promote his business.▪ It is a marketing strategy whose cost has been recovered by the jeweller by the increase in the sales volumes. <p>?</p>

Case 8: Gifts given in lucky draw

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Issues	Comments	Legal Provisions
<ul style="list-style-type: none">Whether ITC can be availed for CAR ?	<p>In light of the provisions of Sec 16(1) this qualifies to be expense incurred in the course or furtherance of business. Hence, ITC can be availed</p>	<p>Next Slide</p>
<ul style="list-style-type: none">Whether ITC can be availed for laptops ?	<p>In light of the provisions of Sec 16(1) this qualifies to be expense incurred in the course or furtherance of business. Hence, ITC can be availed</p>	<p>Next slide</p>

Relevant Legal Provisions

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16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Sec 17 (5)(a) Relevant Extracts

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

- (a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-
 - (A) further supply of such motor vehicles; or
 - (B) transportation of passengers; or
 - (C) imparting training on driving such motor vehicles;
- (aa) vessels and aircraft except when they are used—
 - (i) for making the following taxable supplies, namely:-

Sec 17 (5)(a) Relevant Extracts

- (A) further supply of such vessels or aircraft; or
- (B) transportation of passengers; or
- (C) imparting training on navigating such vessels; or
- (D) imparting training on flying such aircraft;
- (ii) for transportation of goods;
- (ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):
Provided that the input tax credit in respect of such services shall be available-
 - (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;
 - (ii) where received by a taxable person engaged-
 - (I) in the manufacture of such motor vehicles, vessels or aircraft; or
 - (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

A jeweller is running a promotional scheme. In which he is giving a TV on every gold purchase of worth five lakh. Will provisions of sec 17(5)(h) attracted on the ITC availed for on the TV ?

Issues –

As the jeweller gives out promotional items to increase his business then –

- Will he be eligible to claim ITC on inputs purchased to be given out under promotional scheme or would it fall under the block credit category Sec 17(5)(h)?**
- Or Is it in the course or furtherance of business as required under the provisions of Sec 16(1)**

Sec 17(5) (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and (Relevant Extracts)

Comments :

- Promotional expenses are being incurred for the purpose of growing business. Hence, condition of sec 16(1) satisfies
- Its is not a gift.
- Element of quid pro quo is present

As per the provisions of sec 16(1)

Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Sec 17(5)(h) not gets attracted as its not a gift

General Discussion

- ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration.
- 'Buy One, Get One free' is to be treated as supplying two goods for the price of one and thus, ITC shall be available.
- Discounts offered by the suppliers shall be excluded provided satisfy the parameters laid down in section 15(3), including the reversal of similar amount of ITC by the recipient of the supply. [Circular No. 92/11/2019-GST dated 7.3.2019].

Multiple Issues

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S. No	Issue	Relevant Legal Extracts	Comments
10	<p>Packing Charges: Gold Jewellery is generally packed in exquisite boxes.</p> <p>At what rate GST is to be charged on it ?</p>	<p>Sec 15(2) The value of supply shall include</p> <p>(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;</p>	<ul style="list-style-type: none">• As per the Sec 15 (2) (c) incidental expenses become part of transaction value.• Tax rate of the main supply shall apply
11	Hallmarking Charges	Same as above	Same as above

Multiple Issues

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S. No	Issue	Relevant Legal Extracts	Comments
12	A jeweller runs schemes wherein , the customer has to pay equal installments for 11 months. In the 12th month the installment would be paid by the jeweller himself and buyer can purchase gold items equivalent to the amount of all the installments.	16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.	<ul style="list-style-type: none">• What is the nature of 12th installment paid by the jeweller ?• Is it promotional expense?• Will it become part of valuation?

S. No	Issue	Relevant Case laws	Comments
13	Processing Loss:	<p><u>CCE–v. BOC (India) Ltd. [2007] 2007 taxmann.com 849 (Delhi)</u></p> <p>There is a clear distinction between waste, refuse or by product arising during the manufacture of the final product. <u>The loss of nitrogen/liquid argon due to evaporation cannot be considered as waste or refuse or even a by-product</u> arising during the manufacture of the final product. Evaporation is a natural consequence of the manufacturing activity carried out by the Assessee. Therefore, the provisions of Rule 57 D of the Central Excise Rules, 1944 would not apply.</p>	<ul style="list-style-type: none">• Would there a read of reversal of Input gold procured by the Jeweller and sent to job worker for processing?

Multiple Issues

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S. No	Issue	Relevant Case laws	Comments
13	Processing Loss:	<p><u>Rupa & Co. Ltd. [2015] 64 taxmann.com 60 (Madras)</u></p> <p>13. To say that what is contained in finished product is only a quantity of all the inputs of the same weight as that of the finished product would presuppose that all manufacturing processes would never have an inherent loss in the process of manufacture. The expression 'inputs of such finished product' contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the fact that <u>every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.</u></p>	<ul style="list-style-type: none">• Would there a read of reversal of Input gold procured by the Jeweller and sent to job worker for processing?

Multiple Issues

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S. No	Issue	Relevant Legal Provisions	Comments
14	Exports in gems and Jewellery industry	<p>As per IGST Act, Sec 2(5) “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;</p> <p>IGST Act Sec 6(1) “zero rated supply” means any of the following supplies of goods or services or both, namely:—</p> <p>(a) export of goods or services or both; or</p> <p>(b) supply of goods or services or both for authorized operations to a Special Economic Zone developer or a Special Economic Zone unit.</p>	<ul style="list-style-type: none">• Export of Jewellery to be treated as Zero rated supply.• ITC on purchases can be claimed as refund.

Other relevant provisions

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S.No.	Particulars	Details
1	Exemption from Generation of e way bill	<p>As per Rule 138(14) the following are exempt from generation of e way bill:</p> <ul style="list-style-type: none">• Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal• Jewellery, goldsmiths' and silversmiths' wares and other articles.
2	Place of supply for unpolished diamonds imported into India and not put to use in India, as per circular no. 103/22/2019.	In this situation, being performance based service the POS would not be determined under rule Sec 13(3)(a) but under Sec 13(2).

Relevant Extracts of the circular no. 103/22/2019 have been reproduced below

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Place of supply in case of performance based services is to be determined as per the provisions contained in clause (a) of sub-section (3) of Section 13 of the IGST Act and generally the place of services is where the services are actually performed.

But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.

In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in sub-section (2) of Section 13 of the IGST Act.

The said provisions read as under :

2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

RE: M/S. KALYAN JEWELLERS INDIA LIMITED, 2021 (4) TMI 885 – AAAR, TAMILNADU

Facts of the Case:

- The Appellant is in the business of manufacturing and trading of Jewellery Products.
- As a part of **sales promotion**, it has **issued Gift Vouchers/ Gift Cards to its customers.**
- The Appellant has sought Advance Ruling on the following questions:
 - (i). Whether the issue of own closed PPIs by the 'Applicant' to their customers be treated as supply of goods or supply of service*
 - (ii). If yes, is the time of issue of PPI's by the Applicant to their Customers is the time of supply of goods or services warranting tax liability`*
 - (iii), If yes, what is the applicable rate of tax for such supply of goods or services?"*

RE: M/S. KALYAN JEWELLERS INDIA LIMITED, 2021 (4) TMI 885 – AAAR, TAMILNADU

Ruling of the Case:

- Voucher by GST law is recognized as an instrument of consideration (non-monetary form) for future supply. Regarding classification of voucher, since voucher is only an instrument of consideration and not goods or services, the same is not classifiable separately but only the supply associated with the voucher is classifiable according to the nature of the goods or services supplied in exchange of the voucher earlier issued to the customer.
- The time of supply of the gift vouchers / gift cards by the applicant to the customers shall be the date of issue of such vouchers and the applicable rate of tax is that applicable to that of the goods.

Refunds

Refunds under Inverted Duty Structure - Imitation Jewellery

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This difference in rate between the inputs and output , leads to accumulation of ITC.

Due to this inverted duty structure, the manufacturer has to file for refund of accumulated ITC.
Relevant provisions. Sec 54 CGST Act, 2017

54. (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed. ,

..... Relevant Extracts....

Refunds under Inverted Duty Structure - Imitation Jewellery

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilized input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

ISSUE

Whether refund of accumulated ITC of Input Services and Capital Goods arising on account of Inverted Duty Structure eligible? As per Circular number 125/44/2019-GST dated 18.11.2019, Inputs do not include Services or Capital Goods therefore the refund of tax paid on input services and capital goods as part of refund of unutilized input tax credit will not be allowed.

Refunds Under Inverted Duty Structure (IDS)

Gujarat High Court hold IDS to cover Input Service in the case of **VKC Footsteps India Pvt Ltd Vs UOI 2020-TIOL-1273-HC-AHM-GST** held that

“the input and input services are both part of input tax and input tax credit. Therefore, as per the provision of sub-section 3 of Section 54 of the CGST Act,2017, the legislature has provided that registered person may claim refund of “any unutilized input tax”, since Rule 89(5) of the CGST Act,2017 cannot restrict the claim only to “input” by excluding “input services” from the point of view of “input tax credit”. It is also to be noted that Sub-section 3 of Section 54 also refers to both goods and services and not only supply of goods as per amended Rule 89(5) of the CGST, Rules 2017”

Madras High Court in the case of **Transtonnestroy Afcons JV Vs UOI [2020-TIOL-1599-HC-MAD-GST]** held that

“the refund of **ITC is a statutory right** and it is only available to the extent of the unutilized credit of ITC accumulated on account of inverted duty structure on goods excluding services. Further Section 54(3)(ii) curtails a refund claim to the unutilised credit that accumulates only on account of the rate of tax on input goods being higher than the rate of tax on output supplies” .

Accordingly, the Hon’ble Court concludes that “**Input Service**” shall not form part of **Net ITC for refund calculations**

Comments :

The above two judgements which lead to confusion and litigation between the taxpayers for eligibility of ITC on input services under inverted duty structure which needs to be clarified by the apex court.

JOB WORK

As per the provisions of Sec 2(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;

Legal Provisions – Sec 143 of CGST Act and Rule 45

- The Principal has to intimate the Department when the goods are being sent for job work. (In Form ITC -04)
- Principal has to ensure that good come back in time from the job worker or else *it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.*
- Time limit is 1 year in case of inputs and 5 years in case of capital goods.
- Principal s has to maintain *keeping proper accounts for the inputs or capital goods.*
- Movement of goods shall be under the cover of Delivery Challan as per Rule 55*

Job Worker

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In this industry the job worker adds alloy to the gold as binding agent. Now at what rate GST would be charged ?

It is clarified vide para 5 of circular No. 38/12/2018 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.

- (1) *A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,—*
- (a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;*
 - (b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:*
- (2) *The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.*
- (3) *Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.*

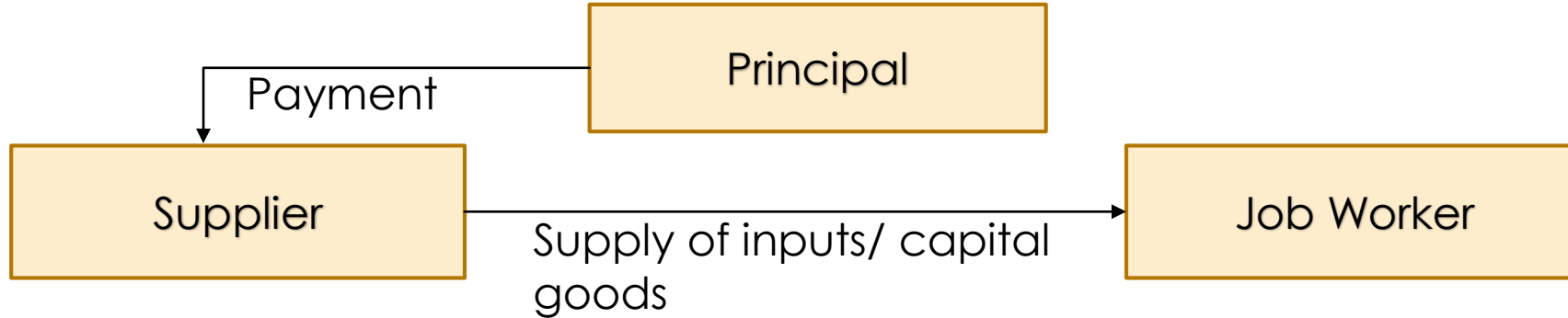
Conditions and restrictions in respect of inputs and capital goods sent to the job worker (Rule 45)

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- (1) *The **inputs, semi-finished goods or capital goods** shall be sent to the job worker under the **cover of a challan issued by the principal**, including where such goods are sent directly to a job-worker. , and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:*
- (2) *The **challan issued by the principal** to the job worker shall contain the details specified in rule 55.*
- (3) *The details of challans in respect of goods dispatched to a job worker or received from a job worker during a quarter shall be included in **FORM GST ITC-04** furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter 1or within such further period as may be extended by the Commissioner by a notification in this behalf:*
- (4) *here the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.*

Section 19 : ITC in relation to goods / capital goods sent for job work

Section 19: ITC in respect of inputs and capital goods sent for job work



Transaction	Principal	Job worker
Inputs/ Capital goods supplied by the supplier to job worker directly*	Allowed to take ITC in respect of such inputs or capital goods	No transaction
In case such inputs or capital goods are not received in specified time	It will be assumed that principal has supplied such inputs/ capital goods to job worker and shall be required to pay output tax	He shall be allowed to take ITC, provided job worker is registered under CGST Act, 2017

*Subject to condition that inputs/ capital goods as the case may be are received back by the principal after the job work within a period of one year/ three years respectively.

*Capital goods excludes moulds and dies / jigs and fixtures / tools sent to Job worker for job work

Time of Supply / Place of Supply

Place Of Supply of Services

Section	Provisions (Relevant Extracts Only)
Section 12 - Place of supply of services where location of supplier and recipient is in India	<p><i>(2) The place of supply of services, except the services specified in sub-sections (3) to (14),—</i></p> <ul style="list-style-type: none"><i>(a) made to a registered person shall be the location of such person;</i><i>(b) made to any person other than a registered person shall be,—</i><ul style="list-style-type: none"><i>(i) the location of the recipient where the address on record exists; and</i><i>(ii) the location of the supplier of services in other cases.....</i>
Section 13 - Place of supply of services where location of supplier or location of recipient is outside India.	<p><i>(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:</i></p> <p><i>Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services</i></p> <p><i>(3) The place of supply of the following services shall be the location where the services are actually performed, namely:-</i></p> <ul style="list-style-type: none"><i>(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:</i>

Section	Provisions (Relevant Extracts Only)
Section 12 - Time of supply of goods	<p>(1) <i>The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.</i></p> <p>(2) <i>The time of supply of goods shall be the earlier of the following dates, namely:-</i></p> <ul style="list-style-type: none">(a) <i>the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or</i>(b) <i>the date on which the supplier receives the payment with respect to the supply</i> <p><i>Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount</i></p> <p>Explanation 1.—<i>For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.</i></p> <p>Explanation 2.—<i>For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.</i></p>

Section	Provisions (Relevant Extracts Only)
Section 12 - Time of supply of goods	<p><i>(4) In case of supply of vouchers by a supplier, the time of supply shall be—</i></p> <ul style="list-style-type: none"><i>(a) the date of issue of voucher, if the supply is identifiable at that point; or</i><i>(b) the date of redemption of voucher, in all other cases.</i> <p><i>(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—</i></p> <ul style="list-style-type: none"><i>(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or</i><i>(b) in any other case, be the date on which the tax is paid</i> <p><i>(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.</i></p>

Section	Provisions (Relevant Extracts Only)
Section 10 - Place of supply of goods other than supply of goods imported into, or exported from India.	<p><i>(1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—</i></p> <p><i>(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;</i></p> <p><i>(c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;.....</i></p>
Section 11 - Place of supply of goods imported into, or exported from India.	<p><i>The place of supply of goods,—</i></p> <p><i>(a) imported into India shall be the location of the importer;</i></p> <p><i>(b) exported from India shall be the location outside India.</i></p>

Section	Provisions (Relevant Extracts Only)
Section 13 Time of supply of services	<p><i>(2) The time of supply of services shall be the earliest of the following dates, namely:-</i></p> <ul style="list-style-type: none"><i>(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or</i><i>(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or</i><i>(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:</i> <p><i>Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.</i></p> <p><i>Explanation.—For the purposes of clauses (a) and (b)—</i></p> <ul style="list-style-type: none"><i>(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;</i><i>(ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.</i>

Section	Provisions (Relevant Extracts Only)
Section 13 Time of supply of services	<p><i>(4) In case of supply of vouchers by a supplier, the time of supply shall be—</i></p> <ul style="list-style-type: none"><i>(a) the date of issue of voucher, if the supply is identifiable at that point; or</i><i>(b) the date of redemption of voucher, in all other cases.</i> <p><i>(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—</i></p> <ul style="list-style-type: none"><i>(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or</i><i>(b) in any other case, be the date on which the tax is paid.</i> <p><i>(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value</i></p>

Thank You.