



Udyog whitepaper



Job work for exempted goods

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Any large manufacturing enterprise outsources some processes, for reasons of the labour-intensive nature of the process, or the space that it requires, or for other operational or commercial reasons. Below we shall look at the somewhat complex law and procedures that govern movement of goods in connection with job work. In particular, the intricacies of job work for exempted goods are unraveled.

Why excise duty on job work?

The meaning of job work in central excise, as defined in the Cenvat Credit Rules 2004 and in all the relevant exemption notifications is working upon material that does not belong to the job worker.

In excise, 'manufacture' includes job work, and the job worker is considered the manufacturer of the item that emerges as a result of his processes. In other words, the ownership of the material and the non-sale nature of the transaction are not relevant. This is in the nature of central excise duty as a duty levied on manufacture of goods:

- Excise duty is levied on 'manufacture' of 'excisable goods' under section 3 of the Central Excise Act 1944.
- 'Manufacture' is any process that brings about a change in the material / item worked upon so that it becomes a commercially different product. (This is in terms of case law on the subject.)
- 'Excisable goods' means (i) that the product should be 'goods', that is, it should be marketable (-this is the position emerging from case law); and(ii) it should be specified in the central excise tariff [-this is as per the definition in section 2(d) of the Central Excise Act 1944].

Therefore if excisable goods are produced as a result of a process of job work, they attract excise duty. The job work, though it is a service, is excluded from service tax by virtue of an entry in the negative list (see below).

What if the product is not marketable? Service tax...

If a process does not amount to manufacture of excisable goods, and is done for somebody else, it attracts service tax. The provisions of service tax in this regard are as follows:

- The negative list of services in section 66D of the Finance Act 1994 includes an entry in clause (f): "any process amounting to manufacture or production of goods".
- "Process amounting to manufacture or production of goods" is defined in section 65B(40) as follows: "a process on which duties of excise are leviable under section 3 of the Central Excise Act 1944..."
- Duties of excise are leviable under section 3 of the Central Excise Act on all excisable goods produced or manufactured in India.

In view of this, the negative list entry will cover only manufacture of excisable goods. Processes that do not fall within this description attract service tax.

Exemptions for job work: service tax and excise duty

Whether service tax or excise duty, as the case may be, is actually payable, will be finally known only after examining the applicability of exemption notifications.

Service tax

Service tax is exempted on job work by virtue of serial number 30 of notification 25/2012-ST, which reads as follows:

“30. Carrying out an intermediate production process as job work in relation to -

- (a) agriculture, printing or textile processing;
- (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);
- (c) any goods on which appropriate duty is payable by the principal manufacturer; or
- (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;”

The exemption granted by way of this item in notification 25/2012-ST covers a general exemption for job work, and specific exemptions for processing of particular kinds of goods, as seen in some more detail below.

Exemption from service tax if the final product is dutiable:

Clause (c) of item 30 of notification 25/2012-ST is a general exemption for job work. The condition is that the resultant item is returned to the factory of the principal for further use in the manufacture of a product on which excise duty is payable. In this context “appropriate duty” is defined under paragraph 2(b) of the notification as follows:

“duty payable on manufacture or production under a Central Act or a State Act, but shall not include ‘Nil’ rate of duty or duty wholly exempt”;

Thus the exemption from service tax is available only if duty is payable on manufacture by the principal. This could be a duty payable not only under the Central Excise Act but also under a state enactment. (This is meant to cover manufacture of alcoholic products on which the duty on manufacture is payable under state excise.)

Exemption from service tax for parts of cycles, sewing machines

if the final product of the principal is exempted cycles or sewing machines, specified job work processes for the same are exempted under clause (d) of the same serial number 30, which covers

(Carrying out an intermediate production process as job work in relation to –)(...)

“(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year”.

Thus for the specified processes on parts of cycles or sewing machines, service tax is exempted up to job charges aggregating Rs 1.5 crores in a financial year, provided the job charges had not exceeded Rs 1.5 crores in the previous financial year.

Exemption for textile processing etc

In addition, there are specific exemptions for intermediate processes for agriculture, printing and textile processing, in clause (a), and for diamonds, gemstones and jewelry, in clause (b) of the notification.

In sum, the service tax exemption for job work covers -

- (i) processes amounting to manufacture of excisable goods (- this is under the negative list)
- (ii) intermediate production processes in relation to goods on which central excise duty or state excise duty will be paid by the principal;
- (iii) intermediate production processes of electroplating, zinc plating anodizing, heat treatment, powder coating, painting including spray painting or auto black, during manufacture of parts of cycles or sewing machines, up to job charge value of Rs 1.5 crores (if this value had not been exceeded in the previous financial year).
- (iv) intermediate processes in relation to agriculture, textile processing or printing.

Excise duty

Notification 214/86-CE:

Excise duty is exempted for job work under two separate exemption schemes that cover two different situations. The most commonly used exemption for job work is 214/86-CE. The popular understanding of this notification is that it exempts goods manufactured as job work, if they are eventually used (as such or after further processing by other job workers) in the manufacture of a product on which excise duty is payable by the principal. In fact the exemption is more complex, layered and beneficial.

Notification 214/86-CE is an exemption for goods that are produced as job work, and is applicable in two situations:

- The item produced as job work will be used (as such or after further processing) in manufacture of goods that will be cleared upon payment of excise duty by the principal (- this clearance can take place from the premises of the principal or from the premises of a job worker); or
- The material produced as job work will be used (as such or after further processing) in manufacture of exempted goods that will be cleared upon payment of 'amount' under Rule 6(3) of the Cenvat Credit Rules 2004. 'Amount' under this sub-rule is paid to neutralize credit taken on common inputs that are used both for the exempted item and for some dutiable product.

The notification 214/86-CE permits movement from one job worker to another, and even dispatch of finished goods from the premises of a job worker. Such dispatch on payment of excise duty by the principal is possible with permission of the Deputy / Assistant Commissioner having jurisdiction over the principal, under the provisions of rule 4(6) of the Cenvat Credit Rules 2004. The permission is granted for one year at a time.

In other words, a manufacturer of both dutiable and exempted products can avail the benefits of notification 214/86-CE for carrying out job work for the exempted products, if he takes Cenvat credit on common inputs that are used for dutiable products also. All the benefits of the notification, including the facility to have multiple job workers process the goods serially, and dispatch of finished goods without return to the factory, are made available to him under this notification, as long as he has availed credit on common inputs and will pay the requisite 'amount' under Rule 6(3) upon dispatch of the exempted product.

Notifications 83 and 84/94-CE:

The less known scheme of job work exemption covers goods that are exempted under notification 8/2003-CE (known as the SSI exemption) and certain other specified goods. In this case the final product is exempted, and the job work for it is also exempted. The goods that are covered in this exemption are intermediate items for cycles, pressure cookers, footwear, and for any goods cleared under SSI exemption. Thus, a manufacturer of goods in these categories can send intermediate products (which may otherwise be dutiable by virtue of a different classification, like parts of footwear, which are in a different heading from exempted footwear) for job work outside the factory without payment of excise duty under notification 84/94-CE. The job worker in turn can manufacture items that would otherwise be dutiable, and return them to the principal without payment of excise duty, under notification 83/94-CE.

The condition of both the exemptions, that is 84/94-CE for movement of goods from the principal to the job worker, and 83/94-CE for return of goods by the job worker to the principal, is identical: the job worker must return the processed goods to the principal for further manufacture in relation to the specified exempted goods. The specified exempted goods are cycles, pressure cookers, footwear, and goods cleared under the small-scale manufacturers' exemption number 8/2003-CE.

This scheme of job work for exempted goods is more rigid and allows for less operational flexibility than notification 214/86-CE:

- It does not allow the job worker to send the processed goods anywhere other than the factory of the principal
- Clearance of finished goods from the job worker's premises is not allowed.
- Further, it requires further process of manufacture to be carried out before the goods are dispatched by the principal

If these conditions are not observed, the availability of the exemption is vitiated, and the job worker or principal, as the case may be, will face the risk of a demand of excise duty. For example, if the principal sent excisable goods to the job worker under notification 84/94-CE and the job worker did not return the processed goods to the principal but instead sent them to another job worker for further processing, it is a contravention of the condition of 84/94-CE as well as of 83/94-CE, and excise duty demands are possible at both stages.

The point of taxation for excise duty

Excise duty becomes payable upon the removal of excisable goods from the factory. Intermediate goods could emerge at the principal's factory and be removed from there to the job worker's premises for processes. They could also emerge at the job worker's premises. Excise duty is payable by the principal or the job worker respectively in these situations, unless an exemption is available.

It is necessary to emphasize that in excise it is 'removal' and not sale that attracts excise duty. Section 3 of the Central Excise Act 1944 requires that a duty of excise shall be levied and collected on all excisable goods which are produced or manufactured in India except in SEZs. The time at which the liability crystallizes into an actual requirement to pay the duty is prescribed in the Central Excise Rules 2002 as follows:

"RULE 4. Duty payable on removal. — (1) Every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided:"

The rule provides that no person who produces or manufactures excisable goods shall remove them without payment of duty from any place where they are produced or manufactured. Thus excise duty becomes payable upon removal of excisable goods. This could be a removal from the factory of the principal, of intermediate goods being sent for job work, or it could be a removal from the premises of the job worker, of intermediate or finished goods that have been processed there.

In planning movement of material / goods for job work, these two points of liability must be kept in mind and covered.

Planning movement for job work

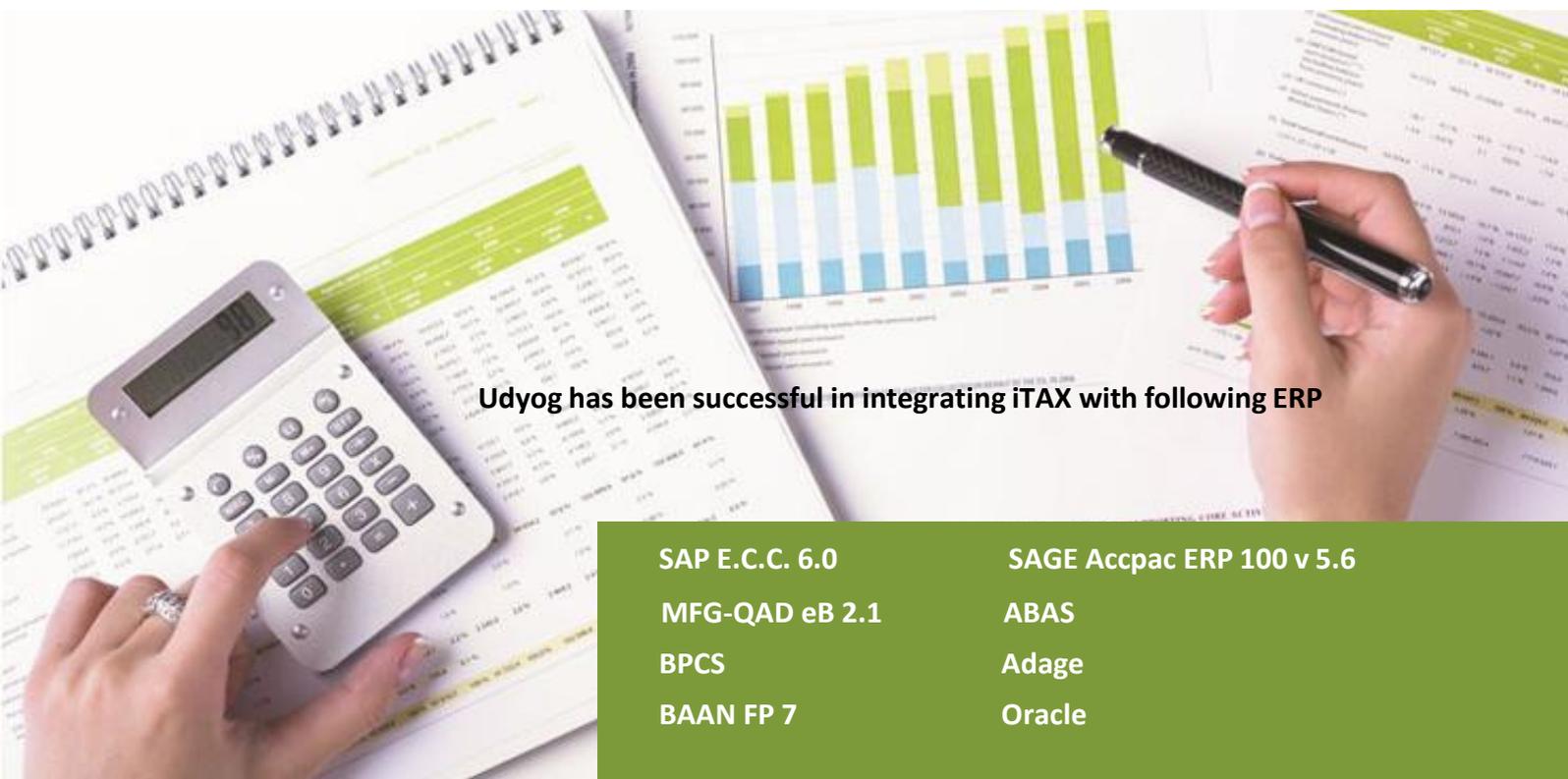
As seen above, planning for job work has to take certain excise and service tax issues into consideration. In planning for excise duty, one has to consider the liability that arises at each point of removal of excisable items. Other than the job work exemptions discussed above, the items that are involved in job work may be independently exempted under some notification, in which case no liability will arise. Further, the job worker may be eligible for SSI exemption under notification 8/2003-CE, in which case also no liability will arise till he crosses the exemption threshold. It must be kept in mind that calculation for this purpose has to include the landed cost of the material at the premises.

In sum, exemptions from excise duty for job work could be (i) one of those discussed above, that is 214/86-CE, 83/94-CE or 84/94-CE; (ii) SSI exemption, that is, the person on whom the liability for paying the excise duty falls is eligible for exemption under notification 8/2003-CE; or (iii) any other exemption for the specific product

Stand-alone processes that do not amount to manufacture of excisable goods will attract service tax, unless the final product is dutiable, or unless exemption from service tax is available under serial number 30 of notification 25/2012-ST.

Therefore, if excise duty is exempted, it may be wise to integrate processes so that the processes carried out by a job worker amount to manufacture and will not attract service tax. If excise duty is not exempted, the opposite is applicable. It will then be advantageous to separate processes so that they do not amount to manufacture in the hands of the job worker. In that case, service tax will be payable only on the job charges. Excise duty, on the other hand, will be payable on the job charges plus value of material.

If it is possible to take Cenvat credit for common inputs, this will facilitate job work without payment of excise duty, for specified exempted goods. As seen above, taking Cenvat credit on common inputs and paying 'amount' under Rule 6(3) of the Cenvat Credit Rules on exempted goods enables a manufacturer to send goods for job work under the more liberal notification 214/86-CE. Thus, a decision to take or not to take Cenvat credit on common inputs used for both dutiable and exempted products can have operational repercussions.



Udyog has been successful in integrating iTAX with following ERP

SAP E.C.C. 6.0	SAGE Accpac ERP 100 v 5.6
MFG-QAD eB 2.1	ABAS
BPCS	Adage
BAAN FP 7	Oracle

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