GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHENNAI-600 005

PRESENT: DR. T.V. SOMANATHAN, I.A.S.,
COMMISSIONER OF STATE TAX

Circular No.58/2019-TNGST **Dated:23.04.2019**
(RC No.26/2019/A1/Taxation)

Sub:	Changes in Circulars issued earlier under the CGST Act, 2017 – Reg.
Ref:	Circular No. 88/07/2019-GST, dated 01-02-2019 issued by the Department of Revenue, Ministry of Finance, Government of India, New Delhi.

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The CGST (Amendment) Act, 2018, TNGST Amendment Act, 2019, IGST (Amendment) Act, 2018, and the GST (Compensation to States) (Amendment) Act, 2018 (hereafter referred to as the GST Amendment Acts) have been brought in force with effect from 01.02.2019.

2. Consequent to the GST Amendment Acts, the following circulars issued earlier under the TNGST Act, 2017 are hereby amended with effect from 01.02.2019, to the extent detailed in the succeeding paragraphs.

3. **Circular. No. 2/2017-TNGST, Dated: 10.10.2017**

The circular is revised in view of the amendment carried out in section 2(6) of the IGST Act, 2017 vide section 2 of the IGST (Amendment) Act, 2018 allowing realization of export proceeds in INR, wherever allowed by the RBI. Accordingly, the original and the amended relevant para of the circular are detailed hereunder.

3.1 **Original Para 2(k)**

Realization of export proceeds in Indian Rupee: Attention is invited to para A (v) Part- I of RBI Master Circular No. 14/2015-16 dated

01st July, 2015 (updated as on 05th November, 2015), which states that *"there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan".*

Accordingly, it is clarified that the acceptance of LUT for supplies of goods to countries outside India, Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. It may also be noted that the supply of services to SEZ developer or SEZ unit under LUT will also be permissible on the same lines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange.

3.2 **Amended Para 2(k)**

Realization of export proceeds in Indian Rupee: Attention is invited to para A (v) Part- I of RBI Master Circular No. 14/2015-16 dated 01st July, 2015 (updated as on 05th November, 2015), which states that *"there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro*

account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan". Further, attention is invited to the amendment to section 2(6) of the IGST Act, 2017 which allows realization of export proceeds of services in INR, wherever allowed by the RBI.

Accordingly, it is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.

4. **Circular. No. 5/2018-TNGST, Dated: 27.03.2018**

This circular is revised in view of the amendment carried out in section 143 of the TNGST Act, 2017 vide section 28 of the TNGST (Amendment) Act, 2019 empowering the Commissioner to extend the period for return of inputs and capital goods from the job worker. Further on account of amendment carried out in section 9(4) of the TNGST Act, 2017 vide section 4 of the TNGST (Amendment) Act, 2019 done in relation to reverse charge, certain amendments to the Circular are required. Accordingly, the original and the amended relevant para of the circular are detailed hereunder.

4.1 **Original Para 2.**

As per clause (68) of section 2 of the TNGST Act, 2017, "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. The registered person on whose goods (inputs or capital goods) job work is performed is called the "Principal" for the purposes of section 143 of the TNGST Act. The said section which encapsulates the provisions related to job work, provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and, if required, from there

subsequently to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools)

4.2 **Amended Para 2.**

As per clause (68) of section 2 of the CGST Act, 2017, "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. The registered person on whose goods (inputs or capital goods) job work is performed is called the "Principal" for the purposes of section 143 of the TNGST Act. The said section which encapsulates the provisions related to job work, provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and, if required, from there subsequently to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within the time specified under section 143.

4.3 **Original Para 3.**

It may be noted that the responsibility of keeping proper accounts of the inputs and capital goods sent for job work lies with the principal. Moreover, if the time frame of one year / three years for bringing back or further supplying the inputs / capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs / capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods

sent for job work are neither received back by the principal nor supplied further by the principal from the place of business / premises of the job worker within one/three years of being sent out. It may be noted that the responsibility for sending the goods for job work as well as bringing them back or supplying them has been cast on the principal

4.4 **Amended Para 3.**

It may be noted that the responsibility of keeping proper accounts of the inputs and capital goods sent for job work lies with the principal. Moreover, if the time frame specified under section 143 for bringing back or further supplying the inputs / capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs / capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business / premises of the job worker within the specified time period (under section 143) of being sent out. It may be noted that the responsibility for sending the goods for job work as well as bringing them back or supplying them has been cast on the principal.

4.5 **Original Para 6.1**

Doubts have been raised about the requirement of obtaining registration by job workers when they are located in the same State where the principal is located or when they are located in a State different from that of the principal. It may be noted that the job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit (i.e. Rs 20 lakhs or Rs. 10 lakhs in case of special category States except Jammu & Kashmir) in case both the principal and the job worker are located in the same State. Where the principal and the job worker are located in different States, the requirement for registration flows from clause (i) of section 24

of the TNGST Act which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed Rs 20 lakhs or Rs. 10 lakhs in case of special category States except Jammu & Kashmir in a financial year vide notification No. 10/2017 – Integrated Tax dated 13.10.2017. Therefore, it is clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

4.6 **Amended Para 6.1**

Doubts have been raised about the requirement of obtaining registration by job workers when they are located in the same State where the principal is located or when they are located in a State different from that of the principal. It may be noted that the job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit as specified in sub-section (1) of section 22 of the said Act, read with clause (iii) of the Explanation to the said section in case both the principal and the job worker are located in the same State. Where the principal and the job worker are located in different States, the requirement for registration flows from clause (i) of section 24 of the CGST Act which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed the specified threshold limit as specified in sub-section (1) of section 22 of the said Act, read with clause (iii) of the Explanation to the said section in a financial year vide notification No. 10/2017 – Integrated Tax dated 13.10.2017 as amended vide notification No 3/2019-Integrated Tax, dated 29.01.19. Therefore, it is clarified that a job worker is required to obtain registration only in cases where his aggregate

turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

4.7 **Original Para 9.4.(i.)**

(i) Supply of job work services: The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31 of the TNGST Act. The value of services would be determined in terms of section 15 of the TNGST Act and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal. Doubts have been raised whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services. In this regard, attention is invited to section 15 of the TNGST Act which lays down the principles for determining the value of any supply under GST. Importantly, clause (b) of sub-section (2) of section 15 of the TNGST Act provides that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, it is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the TNGST Act. However, the said provision has been kept in abeyance for the time being.

4.8 **Amended Para: 9.4.(i)**

(i.) Supply of job work services: The job worker, as a supplier of

services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31 of the TNGST Act. The value of services would be determined in terms of section 15 of the TNGST Act and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal. Doubts have been raised whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services. In this regard, attention is invited to section 15 of the TNGST Act which lays down the principles for determining the value of any supply under GST. Importantly, clause (b) of sub-section (2) of section 15 of the TNGST Act provides that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, it is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

4.9 **Original Para 9.6**

Thus, if the inputs or capital goods are neither returned nor supplied from the job worker's place of business / premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year / three years has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax. If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the TNGST Act

read with the rules made thereunder. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the TNGST Act. However, the said provision has been kept in abeyance for the time being. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned

4.10 **Amended Para 9.6**

Thus, if the inputs or capital goods are neither returned nor supplied from the job worker's place of business / premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year / three years has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax. If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the TNGST Act read with the rules made thereunder. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

5. **Circular No. 36 (2018) /2019-TNGST dated 05.04.2019**

This circular is revised in order to streamline the modes of recovery. Accordingly, the original and the amended relevant para of the circular are detailed hereunder.

5.1 **Original Para 3.**

Currently, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, it is clarified

that as an alternative method, taxpayers may reverse the wrongly availed VAT/Entry Tax credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of **FORM GSTR-3B**. The applicable interest and penalty shall apply on all such reversals **which** shall be paid through entry in column 9 of Table 6.1 of **FORM GST-3B.**

5.2 **Amended Para 3.**

It may be noted that all such liabilities may be discharged by the taxpayers, either voluntarily in **FORM GST DRC-03** or may be recovered vide order uploaded in **FORM GST DRC-07,** and payment against the said order shall be made in **FORM GST DRC-03**. It is further clarified that the alternative method of reversing the wrongly availed VAT/Entry Tax credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of **FORM GSTR-3B** would no longer be available to taxpayers. The applicable interest and penalty shall apply in respect of all such amounts, which shall also be paid in **FORM GST DRC-03.**

6. **Circular No. 41(2018)/2019-TNGST dated 05.04.2019**

The circular is revised in view of the amendment carried out in section 29 of the TNGST Act, 2017 vide section 14 of the TNGST (Amendment) Act, 2019 allowing suspension of registration. Accordingly, the original and the amended relevant para of the circular are detailed hereunder.

6.1 **Original Para 11.**

It is pertinent to mention here that section 29 of the TNGST Act has been amended by the TNGST (Amendment) Act, 2019 to provide for "Suspension" of registration. The intent of the said amendment is to ensure that a taxpayer is freed from the routine compliances, including filing returns, under TNGST Act during the pendency of the proceedings related to cancellation. Although the provisions of TNGST (Amendment) Act, 2019 have not yet been brought into force, it will be prudent for the field formations may not to issue notices for non- filing of return for taxpayers who have already filed an application for cancellation of

registration under section 29 of the TNGST Act. However, the requirement of filing a final return, as under section 45 of the TNGST Act, remains unchanged.

6.2 **Amended Para 11.**

It is pertinent to mention here that section 29 of the TNGST Act has been amended by the TNGST (Amendment) Act, 2019 to provide for "Suspension" of registration. The intent of the said amendment is to ensure that a taxpayer is freed from the routine compliances, including filing returns, under TNGST Act during the pendency of the proceedings related to cancellation. Accordingly, the field formations may not issue notices for non- filing of return for taxpayers who have already filed an application for cancellation of registration under section 29 of the TNGST Act. Further, the requirement of filing a final return, as under section 45 of the TNGST Act, remains unchanged.

7. This pari materia circular is issued with reference to the circular issued by the Government of India on the recommendation of the GST Council in the reference cited.

Sd/-T.V.Somanathan
Commissioner of State Tax

To
All the Joint Commissioners (ST) Territorial and Enforcement in the State.

Copy to: (1) Principal Secretary to CT& Regn. Department.
(2) All Additional Commissioners of State Tax in the Commissionerate.
(3) Joint Commissioner (CS) for hosting in Departmental site.
(4) Joint Commissioner (BIU) & MOU.
(5) Director/ CTS Training Institute, Chennai 6
(6) All Deputy Commissioners (ST) in the State.
(7) All Assistant Commissioners (ST) in the State.

// Forwarded by order//

22.4.19

Assistant Commissioner (Taxation)