

NORTH WESTERN RAILWAY

Head Quarters Office
Works Branch
Jaipur - 302017

No. NWR/HQ/S&C/W.444106888

Date: 21.03.2018

(Joint Procedural Order No. GST/01/2018)

Sub: Neutralisation of GST - Impact on Existing supply of goods /services and composite contracts.

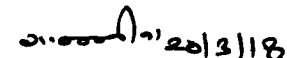
Ref: Rly Board's letter No. 2017/CE-I/CT/7/GST dated 27.10.2017.

The JPO is issued based on instructions contained in Railway Board letter No. 2017/CE-1/CT/7/GST dated 27.10.2017 to make existing Works/Services contracts awarded before implementation of GST as GST neutral, duly taking into account the Input Tax Credit (ITC) available to the contractor. This JPO also has general instructions and clauses to be incorporated in the supplementary/subsidiary agreement to be entered into with the Contractor for **existing contracts** of both Open Line and Construction for:

1. (i) Contracts awarded prior to 01.07.2017 and under execution.
(ii) Contracts for which tenders were opened before 01.07.2017 and finalised and awarded after 01.07.2017, where no clause for applicability of GST has been included.
2. All works contracts of Railways are to be provided with goods/service code based on the type of contract. In case contract consists of both supply of goods and service then interpretation regarding nature of contract shall be done as per clause 8, Chapter III of CGST Act 2017. The goods/service code is notified by the Ministry of Finance and can be downloaded from the website www.cbec.gov.in.
3. The JPO contains instructions for neutralizing the impact of the GST for the quantities of work executed after 01.07.2017 under the **existing contracts** as indicated at 1 (i) and (ii) above.
4. The review for GST neutrality is to be done on case to case basis on production of various documents which is detailed in the following paragraphs.
5. The tax liability of the contractor before implementation of the GST is to be reckoned irrespective of whether the same was actually paid or not. The net effect of GST neutrality may involve either reimbursement to the contractors or recovery from the contractors after comparing the tax liability in pre and post GST regimes.
6. The responsibility to discharge tax liability is that of Service Provider in most contracts of supply under works/services to Railways, therefore, GST shall not be deducted from bills. It is reiterated that Income Tax, Labour Cess and any other applicable charges are separate taxes which will continue and need to be deducted in the Bills for Works and services as per contract conditions and remitted to concerned authority immediately.
7. Agency providing the supply of goods or services or works should be registered under GSTN following the due process of GST law and discharge liabilities.


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8. Procedure to be followed for GST neutralization:

- 8.1. The works contracts awarded prior to 01.07.2017 and contracts for which tenders were opened before 01.07.2017 and finalised and awarded after 01.07.2017, where no clause for applicability of GST has been included are to be considered for GST neutralization as per Board's letter dated 27.10.2017. In case tender, if any, is finalized considering the impact of GST, then the work is not eligible for GST neutralization.
- 8.2. For dealing with impact of GST in individual contracts a Supplementary (Subsidiary) agreement is to be entered by the Executive with the contractor vetted by Finance in terms of Para 1265 of Engineering Code. The supplementary agreement shall be approved by the authority who accepts the tender as per Para 1265 A & B of Engineering Code. A Supplementary agreement to be signed by the Original Agreement Signing Authority or delegated powers. **(at Annexure-A)**.
- 8.3. A clause to be added in supplementary agreement to state that in case there is "any further change in the GST tax structure till the date of completion of work or any error is noticed in the calculation of amount payable/recoverable till the release of Final Bill amount to contractor or during sample post checks by GST consultant engaged by this Railway, the same shall be paid by the Railways or recovered from the contractor's bills/security deposit or any other dues of contractor with the Government of India".
- 8.4. The On Account/ Final contract certificate shall be prepared by the Railway on the basis of quantity of the work executed at agreement rates. This shall be communicated to the contractor.
- 8.5. On receipt of the On Account/Final contract certificate from the executive, the contractor shall submit the following documents to the Executive for GST neutralization:
- The invoice (Bill) duly segregating the GST component from the gross amount of work executed based on the On-Account bill/Final contract certificate for the payable amount based on the work executed. This should contain details of GSTIN, TIN & STRN Nos. State-wise, if he is working in more than one State along with the worksheet.
 - Work sheet of tax liability before GST and after GST including List of items for which Input Tax Credit (ITC) is available for the work as well amount of input tax credit item wise, duly certified by Chartered Accountant engaged by him. **The worksheet shall contain details of quantities of input material procured for the particular work/works. The contractor shall also certify that the same invoices have not been/will not be used for any other work to claim ITC/refund.** Further, a certificate is to be given that no refund claims of GST are pending settlement with GST authorities.
 - All original Tax Invoices en faced with agreement number are to be submitted in support of ITC duly certified by Chartered Accountant engaged by him with each On Account/FCC bills.
 - The tax liability of the Contractor before implementation of GST shall be worked out taking into account all stipulated taxes in force before GST implementation i.e. Excise duty, VAT, including VAT on Excise duty, Entry tax, Octroi duty, prevalent service tax etc along with documentary evidence. This is irrespective of whether the same was paid by the agency or not for each On Account/FCC bills.

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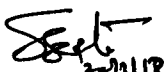
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- e) In case the contractor has procured material from unregistered vendors/suppliers, the details of such procurement should be included in work sheet. Self declaration of the unregistered vendors/suppliers should be enclosed.
- f) Copies of GST returns GSTR1, GSTR2, GSTR3, GSTR3-B etc., as available in GST Network from time to time, if required.
9. The ITC for quantities being claimed by the contractor in the work sheet, reconciled with the quantities executed as per Material Statement with reasonableness of rates of Input quantities will be verified by the concerned supervisor. The field executive not below the rank of Junior Scale Officer/Work-in-charge Officer will certify the admissibility. The Divisional Accountant/Works Accountant posted in Executive office shall verify and certify the worksheet with reference to quantities, rates, agreement and countersign the worksheet for having verified its correctness.
10. The difference in amount arrived as per the Pre- GST taxes and Post GST duly considering the ITC availed /refund claimed if any shall be certified by the Chartered Accountant engaged by the agency and forwarded by Executive to the Bills section of Associate Accounts Office for internal check and arranging payment. (Format at Annexure-B).
11. Recovery, if any, which is required to be done from the contractors, may be regulated as per section 171 (1) of CGST Act, 2017 i.e., any reduction in rate of tax on any supply of goods or services or the benefit of Input Tax Credit shall be passed on to the recipient (Railways) by way of commensurate reduction in prices. Executive will review all the agreements to ensure that recovery is done wherever due.
12. The final impact of GST shall also be worked out again at the time of final bill by the Executive to be scrutinized in internal check by Associate Accounts Office. Contractor cannot claim for compensation after GST neutralization once final bill is passed and Contractor submits a no claim certificate.
13. Sample post checks of the compensation made to or recoveries effected from the contractor may be got undertaken by the GST consultant engaged by North Western Railway.
14. This procedure shall also be followed for neutralisation of GST in case of Service Contracts. For the cases where the rates are all-inclusive, the contractor shall claim the difference of Service Tax and GST duly furnishing the required documents indicated above. For the cases where the rates are exclusive of Service Tax, the Railways will pay the GST (instead of Service Tax) at the rates applicable. The contractor shall be GST compliant and claim the applicable GST in their bills, which will be paid by the Railways. The GST neutralisation is subject to adjusting the available Input Tax Credit (ITC).

Note :

1. Instructions contained in this JPO should be read in conjunction with related rules and extant circulars/instructions issued from time to time. This does not supersede any rule, circular/instructions. In case of any conflict between the JPO and concerned rules, circulars/instructions, the latter shall prevail.
2. It is advised to regularly note the notifications/circulars etc., issued by CBEC and Railway Board and follow the instructions contained therein.


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Annexure-A**SUPPLEMENTARY AGREEMENT**

ARTICLES OF SUPPLEMENTARY AGREEMENT made this, the day of 2018, between the President of India, acting through having his office at hereinafter called the Railway (which expression shall unless repugnant to or excluded by the context include his successors and assignees) of the one part and (hereinafter called the contractor which expression shall include his heirs, successors and legal representatives) of the other part.

WHEREAS parties to this indenture executed an Agreement No. dated (hereinafter termed as "Original Agreement") in connection with the work of "....." AND WHEREAS the completion period of the Original Agreement is up to

AND WHEREAS the parties to the said Original Agreement have been carrying on with works mentioned in the said original Agreement on the same terms and conditions embodied in the said Original Agreement.

AND WHEREAS in the post-GST regime, this subsidiary agreement is made to assess the difference between pre-GST and post_GST net tax liability after carefully taking into account the Input Tax Credit available to the contractor, on a case to case basis, on production of documentary evidence for tax remittance (payment receipt), Invoices, GSTR-1, GSTR-2, GSTR-3 and GSTR-3B etc. Returns as available from time to time in GST Network, for reimbursement to contractors or recovery from contractors as due to neutralise the impact of GST for quantities of works executed after 01.07.2017.

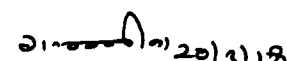
THEREFORE, it is agreed between the parties herein that in case there is any further change in the GST tax structure till the date of completion of work or any error is noticed in the calculation of amount payable / recoverable till the release of Final Bill amount to contractor or during sample post checks by GST consultant engaged by this Railway, the same shall be paid by the Railways or recovered from the contractor's bills/ security deposit or any other dues of contractor with the Govt. of India.

FURTHER, it is agreed between the parties herein that for neutralising GST impact on the works contracts awarded before implementation of GST, along with documentary evidence, the contractor should submit the following to the Railway:

- a. Details of GSTIN, TIN, STRN Nos. State-wise, if he is working in more than one State along with the worksheet. The invoice (Bill) duly segregating the GST component from the gross amount of work executed based on the on-account bill/Final contract certificate for the payable amount based on the work executed. The responsibility to discharge the tax liability will be that of Service Provider/Service Receiver (as applicable in GST Law) as per this contract.


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- b. Work sheet of tax liability before GST and after GST including List of items for which Input Tax Credit (ITC) is available for the work.
- c. Copies of all Tax Invoices enfacéd with agreement number are to be submitted in support of ITC duly self-certified and certified by Chartered Accountant engaged by him with each On Account/FCC bills as and when required by Railway. Based on the Invoices, the tax liability of the Contractor before implementation of GST shall be worked out taking into account all stipulated taxes in force before GST implementation i.e. Excise duty, VAT, including VAT on Excise duty, Entry tax, Octroi duty, prevalent service tax etc. This is irrespective of whether the same was paid by the agency or not for each on account/FCC bills (*format at Annexure-B*).
- d. In case the contractor has procured material from unregistered vendors/suppliers, the details of such procurement should be included work sheet.
- e. The worksheet shall contain details of quantities of input material procured for the particular work/works and the contractor shall also certify that the same invoices have not been/will not be used for any other work to claim ITC/refund. Further, a certificate is to be given that no refund claims of GST are pending settlement with GST authorities.
- f. Documentary evidence for tax remittance (payment receipt), Invoices, GSTR-1, GSTR-2, GSTR-3 and GSTR-3B Returns need to be provided in support of the worksheet.

FURTHER, it is agreed that recovery, if any, which is required to be done from the contractors, may be regulated as per Section 171 (1) of CGST Act, 2017 i.e. any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

The other conditions, stipulations, rates etc., applicable to the Original Agreement shall also be applicable to this Supplementary Agreement unless repugnant to or excluded by the context.

IN WITNESS whereof the parties to this indenture put their hand and seal on the day and year above written.

.....
(Name of the Contractor)
Address:

.....
(Name of the officer)

Designation
Office
Division / Unit

For & on behalf of the President of India

Witnesses with addresses & Signature:

1).....

2).....

N.B:- 1) This Supplementary Agreement shall be executed on a Stamp Paper of Rs.500/- as per Rajasthan Stamp Act, payable by the Contractor.

2) This Supplementary Agreement shall be notarised, the cost of which shall be borne the Contractor.


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ANNEXURE 'B'

WORKSHEET

Name of work:.....

Agreement No. and Date:

Agreement Value in Rs:

Gross Bill Value in Rs:

GSTIN.....

TIN.....STRN.....

Particulars	GST Rate		Amount (Rs)
Bill No.....			CC Bill
Gross Value of Bill			A
VAT/Sale tax on Gross Value (Pre-GST)	X%	Gross Value of Bill (A) x X/100	P
WCT/VAT/ST for composition scheme on Gross Value (Pre-GST)	Y%	Gross Value of Bill (A) x Y/100	Q
ED Amount paid on various materials (cement, sand & other material)			R
CST Amount paid on various materials (cement, sand & other material)			S
(A) Net Tax Liability (Pre-GST)			
(1) In case of WCT/VAT/ST for composition scheme		Q+R+S =T	T
(2) In case of VAT/ST		P-R-S	V
(B) Net Tax Liability (Post-GST)	12%	Gross Value of Bill (A) x 12/112	W
(C) Difference Payable/To be recovered = W - [T or V (whichever is applicable)]			XXXXX

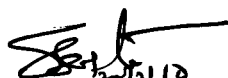
Note: VAT/WCT depending upon the contract and State Govt.

Certified that:

- 1) The quantities being claimed for ITC have not been/will not be claimed for refund of GST. In case, there is refund eligible, then refund amount will be deducted from the compensation to the contractor.
- 2) The material being consumed is for this work and the same invoices have not been/will not be used for any other work to claim ITC.

Signature of the contractor

Signature with seal of Chartered Accountant


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