

Amortization of Moulds and Dies: To do or not to do?

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The tax implications in respect of supply of Moulds/Dies by Original Equipment Manufacturer (OEM) to contract manufacturers has been a bone of contention for quite some time in the erstwhile indirect tax regime^[1].

These issues have been subject of diverse interpretations even in the GST regime. To bring greater clarity on these issues, the Central Board of Indirect Taxes & Customs (CBIC) has recently issued a [Circular^{\[2\]}](#). The intent of this Article is to narrow down the interpretations arising out of this circular, the logical conclusion which are following through the interpretations adopted and certain areas which are yet to be addressed.

The issues which have been identified and addressed by the Board through the circular can be split into two parts. It is interesting to see each of these separately.

Clarification No. 1

Moulds made contractually available by OEM on FOC basis

The first issue which is addressed in the Circular is on supply of moulds/dies by an OEM to an unrelated contract manufacturer under a contract wherein the OEM is obligated to make available the moulds/dies to the contract manufacturer and the latter will use them in the manufacture of and supply of components to the OEM.

In this regard, the Board has categorically stated that since supply without consideration between unrelated parties is not a supply, making available the moulds/dies could not be subjected to tax in the hands of the OEM. Further, it has also been clarified that the contract manufacturer is also not required to amortize the value of the moulds for inclusion in the component value (which would be manufactured using such mould).

In respect of OEM's eligibility to retain the input tax credit, the Circular clarifies that there is no requirement of reversal of credit as the provision of the mould/dies to the contract manufacturer is in the course or furtherance of business of the OEM.

In our view, this clarification of the Board is in line with the legal provisions of the GST Act and is also in consonance with the *ratio* laid down by Hon ble Apex Court in its recent decision on inclusion of cost of FOC supplies made by service recipient in the value of services provided by the service provider^[3].

Clarification Number 2

Moulds to be contractually provided by contract manufacturer but made available by OEM

The next issue which is sought to be addressed in the Circular are cases where the contract manufacturer was obligated to make the moulds and dies which were required for manufacture of the components, but

the OEM has made available the moulds and dies instead.

In this case, the circular has stated that the amortised cost of the moulds and dies made available by the OEM are required to be added to the value of the components which are being supplied by the contract manufacturer.

The Circular is silent on the tax treatment which is required to be adopted in the hands of the OEM for the supply (making available) of moulds and dies. Without answering this query, the last part of the clarification (in the Circular) directly addresses the issue relating to ITC in the hands of the OEM. The circular states that the OEM is required to reverse the credit which has been availed in respect of Moulds and dies because the supply of such items to the contract manufacturer **will not be considered a transaction in** the course or furtherance of the OEM's business.

In our view, the reasoning stated for the conclusion may not reflect the correct position of law. Firstly, the phrase **business** has been defined very widely. It would be incorrect to state that the provision of moulds and dies by the OEM (even under no contractual obligation) would not be in furtherance of the business of the OEM. It is a settled jurisprudence^[4] that any activity which is commercially expedient for the business will be considered an activity in the course or furtherance of business.

Further, this conclusion cannot be arrived at unless the question as to whether the making available of the moulds and dies would be treated as a supply by the OEM or not, is addressed. In our view, there can be multiple business arrangements between the OEM and component manufacturers for making available the moulds/dies and each arrangement may have a different tax treatment. For example, to make available the moulds and dies, the OEM can choose to renegotiate the price of the components or may charge rentals for the moulds and dies or may provide the same on FOC basis permanently. Unless these commercial arrangements are thoroughly examined, one cannot make a general conclusion on the issue of reversal of credit in respect of moulds/dies.

Even assuming that the circular is right, there would be a loss of credit in the hands of the OEM, which is against the basic fundamentals of GST^[5].

Summary of the circular is tabulated below for ease of reference

Scenario	Moulds to be made available by OEM contractually	Moulds to be made available by contract manufacturer but actually supplied by OEM
Supply by OEM	Not a supply	Circular is silent
Amortization by Contract Manufacturer	Not Required	Value to be included in component
Credit in the hands of OEM	Not required to be reversed	Required to be reversed

Issues not addressed in the circular

It may also be noted that certain issues have not been addressed in the Circular, which are:

1. In a scenario, where moulds/dies are contractually made available by the OEM who is a related party to the contract manufacturer, whether the act of making available of moulds/dies on FOC basis will amount to a supply. Further, whether the contract manufacturer will be required to amortize the cost of the moulds/dies in the value of components supplied back to OEM.
2. What will be treatment under GST in the hands of the contract manufacturer as well as OEM if the moulds are manufactured by contract manufacturer himself and are sold to OEM on an *as is where is* basis and OEM in-turn leases back the moulds to the contract manufacturer for use in manufacture of components. Further, whether input tax credit moulds/dies would be available to OEM or not?
3. Whether treatment applicable to moulds/dies as clarified in the Circular will apply to tools, other equipment and child parts made available by OEM as well?
4. Whether making available of moulds/dies in Clarification No. 2 will amount to a supply in the hands of the OEM?

While it is welcoming to see the Board providing clarity on such contentious issues, it would be appreciated if the other issues as discussed hereinabove which are causing uncertainty in the trade and industry are also addressed.

[1] **See:** Mutual industries v. CCE [2000 (117) E.L.T. 578 (Tribunal)], Moriroku UT India Pvt v. State of UP [2008 (224) E.L.T. 365 (S.C.)], N.M. Goel v. Sales Tax Officer [1989 AIR 285 SC] and CST v. Bhayana Builders [2018 (10) G.S.T.L. 118 (S.C.)]

[2] *Vide* Circular No. 47/21/2018-GST dated 08.06.2018

[3] *See:* Bhayana Builders [*supra*]

[4] CIT v. Chandulal Keshavlal & Co. - (1960) 38 ITR 601 (SC) and Eastern Investments Limited v. CIT - 1951 (20) ITR 1

[5] Allowing credit on every transaction

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