# Tax Talk

The Monthly Service Tax Bulletin

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## Editorial

Wishing you a very Happy New Year. May the year 2013 bring lots of success, prosperity, peace and warmth in our lives. Let's hope the year witnesses India going steady on the growth trajectory and continues to achieve new landmarks in all spheres.

Buzz in the tax circle is whether July 2012 onwards, all assessees will be exempted for filing of Service Tax Returns because everyone is still waiting to file the Service Tax Return for which Form and the due date for the same are yet to be announced. The department is yet to issue any instructions in this behalf leaving the assessees confused and apprehensive. Here, we would like to remind that CBEC had proposed a single common one page return i.e., EST-Return vide F No. 201/05/2011-CX.6 dated 13.04.2012 for service tax and excise to harmonize the ER-1, ER-3 and ST-3 returns. The department is perhaps facing the problem of re-modifying the one page common return in the wake of restoration of all the old accounting codes. We have no other option other than to wait.

In this issue we have covered the features of Transport of Goods by Road Service. This service is the most popular service due to reverse charge covering a large number of Business Entities w.e.f. 1st January 2005, the date from which the service became effective.

One good news for all the assessee is that in a recent judgement by Delhi High Court, Rule 5 of Service Tax (Determination of Value) Rules, 2006, have been struck down as being *ultra vires* to Section 66 and 67 of the Finance Act, 1994. This rule had created havoc as it proposed to include almost all types of reimbursable expenses incurred on behalf of the client in the value on which service tax is payable subject to expenses incurred as a pure agent. This may not be the final thing in this matter. The Government has two options, one is to appeal to Supreme Court and wait for the final judgment or retrospectively validate levy through the Budget which is just round the corner.

The Government has come out with Notification No. 49/2012-ST dated 24th December 2012, thereby amending the Mega Exemption Notification 25/2012-ST dated 20th June 2012, and extending the exemption umbrella over service of Life insurance business provided under Janashree Bima Yojna and Aam Aadmi Bima Yojna.

**We welcome Ms. Kameshwari Subramanian, who has taken charge as Chief Commissioner of Central Excise and Service Tax, Kolkata Zone from 26th December 2012. We take the opportunity to congratulate her and wish her all the best.**

We by this newsletter aim to benefit all section of professionals and business entities. To further facilitate the process we have posting FAQs in all our issues. In order to help us serve you better we request you to forward your queries to the email-id office@goyalstax.com. We endeavour to solve your queries in the subsequent issues.

If any of your friends and well wishers wants to receive this newsletter, please feel free to contact us at servicetaxgoyal@gmail.com.

CA Sushil Kr Goyal

### DUE DATES

| CASE | Form | |
|---|---|---|
| Payment of Month / Quarter ending 31st December, 2012 | Cash/Cheque | 5th Jan 2013 |
| | E-Payment | 6th Jan 2013 |

* Please use the Old Accounting codes while making payment

Present Service Tax on Goods Transport Agency was introduced by the Finance Act 2004 w.e.f. 01.01.2005.

With the introduction of Negative List by the Finance Act, 2012, number of services have undergone changes and we are trying to focus on all the key areas relating to the taxability of services of 'Goods Transport Agency'.

We now need to understand what is a GTA? Section 65B(26) of the Finance Act, 1994 defines GTA as follows:

***Goods Transport Agency***

*means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;*

***Issue of consignment note***

Rule 4B of Service Tax Rules, 1994 provides that "*any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service".*

***Consignment Note***

*As per explanation to Rule 4B of Service tax Rules it means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.*

***No Consignment Note***

*However it is also provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted from Service Tax, the goods transport agency shall not be required to issue the consignment note.*

***No Service Tax***

(A) As per item no. (p) of Negative List:

*Services by way of transportation of goods*

*(i) by road except the services of-*

*(a) a Goods Transport agency; or*

*(b) a Courier agency*

This implies that if the transportation services are rendered by any person other than GTA or Courier Agency, i.e. for example transportation of goods services rendered by truck owners who do not issue consignment note, then no service tax shall be leviable.

(B) As per item no. 21 of Mega Exemption Notification, Service Tax is not payable in case of service provided by GTA by way of transport of :

*(i) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;*

*(ii) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or*

*(iii) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;*

(C) As per Notification No. 31/2012, service provided to an exporter for transport of the goods by goods transport agency in a goods carriage will be eligible for exemption subject to the conditions specified in this regard in the notification.

(D) As per item no. 22 of Mega Exemption Notification, services by way of giving on hire to a goods transport agency, a means of transportation of goods is exempt.

***Abatement***

Services of goods transport agency in relation to transportation of goods shall be entitled to a exemption of 75% of the value of taxable service, provided CENVAT credit on inputs, capital goods and input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

***Person liable to pay tax***

Where the person liable to pay freight is any of the following, they will be liable to pay service tax, in any other case it will be paid by GTA.

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

***Place of Provision***

The place of provision of services in case of transport of goods by road as provided in Rule 10 of Place of Provision of Services Rules, 2012 is the location of the person liable to pay tax.

The Government has drafted the rules in such a way that under all circumstances, the location of person liable to pay tax is always within the taxable territory and hence place of provision always is taxable territory. Therefore, service tax is payable in all cases, whether the goods are transported from India, to India or within India.


# No Tax on Reimbursement

The year 2012 while passing by, has yet again marked another turnaround in the service tax law, as the 30th day of November this year saw a landmark judgment being passed by the Division bench of the Delhi High Court in the case of **Intercontinental Consultants and Technocrats Pvt. Ltd. (Petitioner) vs. UOI & ANR (Respondent).** The order declared that Rule 5(1) of Service Tax (Determination of Value) Rules, 2006 runs counter and is repugnant to the chargeability Section 66 & 67 of the Finance Act, 1994 and to the extent is ultra vires.

**Brief background**

> The petitioner being provider of Consulting Engineering Service to NHAI, was receiving payments both, for its service and the reimbursable expenses incurred by it such as air, travel, hotel stay etc. But, the service tax was duly deposited by it for the service portion only.

> The department finding the petitioner guilty of not paying service tax on the reimbursed expenses and thereby violating Rule 5(1), issued Show Cause Notice on 17.03.2008.

> The Petitioner filed Writ Petition to the DHC, which quashed Rule 5, declaring it to be unconstitutional and ultravires to the chargeability condition laid down in section 66 & 67 of Finance Act, 1994.

**Grounds of Appeal**

> Section 66 and 67 specifically includes gross amount charged by the service provider **for such service** provided or to be provided. Thus, it is only the value of such service that is to say, the value of the service rendered by the petitioner to NHAI, which is that of a consulting engineer, that can be brought to charge and nothing more. And, rules are being to support the act and can under no circumstances go beyond it.

> The rule is such that it may cause **Double taxation** by implication. If the expenses on air travel tickets are already subject to service tax and is included in the bill, to charge service tax again on the expense would amount to double taxation.

**Our take on this Judgement**

>Upto this time the cases involving Rule 5 where the Petitioner pleaded themselves as 'Pure Agents' of the service receiver, were thought off as a very weak ground at the litigation stages and were more often than not rejected by the adjudicating officers. But this judgement coming up from the division bench of DHC, has come as a real boost for those pending cases.

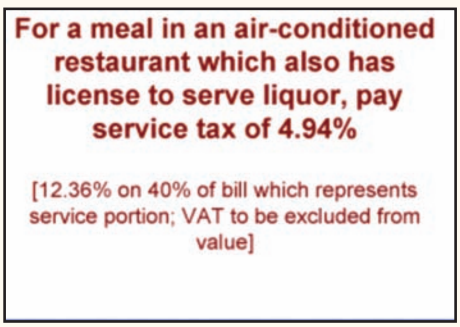
> The order may lead to serious trouble on the part of the department as the assessees may involve themselves in undervaluing the service portion of the payment and receiving major part of the claim by way of reimbursement, so as to avoid tax on the service portion.

> In the present scenario the government can either file an appeal to the Hon'ble Supreme Court and wait for the final judgement to come or retrospectively make amendments in the forthcoming Budget.

# Restaurant Service

Service Tax was introduced on the services of the restaurant w.e.f. 1st May 2011. The tax was applicable on services provided by a restaurant having facility of air conditioning and license to serve alcoholic beverages. There was an abatement of 70% of the gross value charged by the restaurant subject to the condition that no Cenvat credit was taken on input, capital goods or input services.

The new provisions of service tax have put the service under declared list category. Under the new provisions effective from 1st July 2012, service tax is chargeable on services provided by a restaurant having facility of air conditioning or central air heating and license to serve alcoholic beverage. Also the valuation of such service rendered has been prescribed as 40% of the gross value charged, effective service tax rate being 4.94% and Cenvat credit of goods classifiable under chapter 1 to 22 of CETA shall not be available. Since the inception there was a lot of confusion regarding the rate at which tax is payable and the value on which such tax should be calculated. The department has taken an initiative to mitigate all such confusions by widespread advertisement in print media. We have reprinted some of the advertisements below for the benefit of all concerned:




## Frequently Asked Question

**Q. What is the difference between Supply of Manpower and Job Work?**

**A.** Supply of Manpower has been defined in Service Tax Rules, 1994 as follows:-

*"**supply of manpower**" means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.*

Job Work has been defined under Cenvat Credit rules, 2004 as follows:-

*"**job work**" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly;*

From the above we understand that under supply of manpower service, control or superintendence of personnel is under the control of service receiver and it is the discretion of service receiver to determine the nature of work to be carried out by such personnel. Job worker processes the goods and returns the same to manufacturer after due processing, i.e. the job worker is not at the disposal of manufacturer and they work on their own accord.

**Q. Whether TDS is deductible on the amount inclusive of service tax or on the amount exclusive of service tax in case of expense incurred for services under reverse charge?**

**A.** TDS is deductible on the total amount which is payable to the service provider, and in case the service is covered under the reverse charge category then the amount payable would be exclusive of service tax and hence TDS shall be deductible on the amount exclusive of service tax payable by the service recipient.

## New Exemption

The Central Government, has exempted following scheme of Life Insurance by inserting item no. 26A in the notification No.25/2012-Service Tax, dated the 20th June, 2012, as follows:

In the said notification, after entry 26, the following shall be inserted namely:

**"26A. Services of life insurance business provided under following schemes -**

**(a) Janashree Bima Yojana (JBY); or**

**(b) Aam Aadmi Bima Yojana (AABY);".**

*[Notification No.49 /2012 - ST, dated 24th December, 2012 ]*

## STOP PRESS

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**www.aces.gov.in**





**BOOK POST**

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