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***.AN
OVERVIEW
OF
SERVICE
TAX ON
GTA***

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SERVICE TAX ON GTA- AN OVERVIEW



Background of Service Tax on GTA

The levy of Service Tax on Road Transportation Service has always remained subject matter of uncertainty and litigation. Earlier, The Finance Act, 1997 had levied Service Tax on Goods Transport Operators w.e.f. 16-11-1997 which was subsequently withdrawn after nation-wide strike. Thereafter by the Finance (No. 2) Act, 2004 Service Tax has been imposed on Transport of Goods by Road service rendered by any goods transport agency with effect from 10-09-2004.

However, the levy was deferred till further notice again in view of transporters strike. The Government thereafter constituted a committee to study the matter. Taking into account the recommendations of the Committee, Notification Nos. 32 to 35/2004 – ST all dated 03-12-2004 were issued, finally levying tax of Transport of Goods by Road with effect from 01-01-2005.



Definitions



Who is a GTA – Goods Transport Agency

As per Section 65B(26) of the Finance Act, 1994; "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". Therefore, issue of Consignment Note (C/N) is integral and mandatory requirement before any road transport can be said to be GTA.

➤ *What is a Consignment Note – (C/N)*

Consignment Note is not defined in the Act. As per Explanation to Rule 4B of Service Tax Rules, 1994; consignment note 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.

➤ *Who is a courier Agency*

As per section 65B(20) of the Act, “courier agency means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles”.

Note: A courier agency is not restricted to transportation of goods by road. It can transport any documents, goods or articles by any mode of transport such as air, road or water.

➤ *It is mandatory to issue Consignment Note*

Yes, Rule 4B *ibid* mandates issue of C/N by any goods transport agency which provides service in relation to transport of goods by road in a goods carriage to the recipient of service. In case of default, penalty upto Rs. 10,000/- may be imposed u/s 77 of the Act. However, it is not mandatory for a courier agency to issue a consignment note.

➤ *Whether each and every transportation of Goods by road is taxable for all person ?*

No. Services by way of transportation of goods by road are taxable, ONLY IF the same is provided by –

- ✓ a goods transportation agency;
- ✓ a courier agency

Services of Road Transport provided by all others are not taxable because they are covered by the Negative List u/s 66D(p)(i) of the Act. In other words, if any person is providing service of transportation of goods by road, and is neither covered under the statutory definition of GTA, nor under courier agency, then he is not liable to pay any service tax on such transportation.

➤ *Reverse Charge on GTA*

Example- We are a Partnership Firm. We purchased Plant & Machinery from Kolkata and paid freight of Rs. 20,000/- to the transporter. Our chartered accountant informed that we are legally required to obtain service tax registration and pay service tax on Rs. 20,000/-!!!! Why? We are not providing any service?

Normally, the liability to pay service tax is on the person providing the service. But, by fiction of law, section 68(2) of the Act has empowered the Central Government to notify such services, on which the liability to pay service tax, to the extent specified, shall be shifted from the service provider to the service recipient. This is popularly known as Reverse Charge Mechanism (RCM). Notification No. 30/2012-ST dated 20-06-2012 has been issued which covers GTA service and shifts full (100%) liability of service tax on the service receiver. Any person located in taxable territory, who pays or is liable to pay freight is treated as service receiver.

➤ The above same rule apply to Individual/Proprietorship firm paying freight or not ?

No. As per Entry No. A(ii) of N/No.-30/2012, reverse charge is applicable only when taxable service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

- 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 there under;*
- 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;*

So, it can be clearly seen that an individual/proprietorship firm is not covered in the above 'specified category'. It means, if the freight is paid (either himself or through his agent) by an individual/proprietorship firm or HUF then the service tax thereon shall be paid by the GTA itself.

Note: N/No.-30/2012 is effective from 01-07-2012. But, even before that, reverse charge was applicable on GTA and instead of 'person liable to pay freight', it earlier covered 'consignor or consignee' as a specified category, which was slightly different from the current specified category.

A goods transportation agency transports a consignment of ATC. Rod from Alwar to Gandhidham. The consignor is a public limited company and the consignee is an unregistered partnership firm. The goods shall be used in construction of a single residential house. As per the agreement, freight shall be payable by the consignee. The consignment note is prepared on 'TO PAY' basis. Who is the person liable to pay service tax?

One of the 'specified category' is a partnership firm whether registered or not under any law. Here, the person liable to pay freight is a 'specified category', so reverse charge is applicable. The service tax shall be paid by the partnership firm. The end use of goods is generally not relevant for taxing GTA service (Except few instances, say when it is provided to the United Nations or a specified international organization, SEZ, etc.)

ABC Ltd. sells the goods to XYZ Ltd. The freight for transportation of the goods has been paid by ABC Ltd to the GTA. The consignment note is prepared on 'FREIGHT PAID' basis. ABC Ltd. collects this freight from XYZ Ltd., on actual basis, by separately showing it in the invoice, which is paid by XYZ Ltd., to ABC Ltd.

Who is liable for payment of Service Tax?

ABC Ltd. is the person liable to pay freight. It cannot be said to be paying the freight on behalf of XYZ Ltd. ABC Ltd. is only getting reimbursement of the freight paid by it, initially. As such, the liability for payment of service tax will only be on ABC Ltd.

➤ Threshold Exemption

We have heard that just like basic exemption of Rs. 2 Lacs in Income-tax, there is a threshold exemption of Rs. 10 Lacs in service tax. Is it correct?

Yes, there is threshold exemption of Rs. 10 Lacs available under N/No. – 33/2012-ST, but the same is allowed only to the service provider. The service recipient liable to pay tax under RCM, on services covered u/s 68(2) has been specifically excluded to avail the threshold exemption.

In strict legal terms, suppose a partnership firm of chartered accountants or advocates is setting up a new office. They paid freight of Rs. 1,501/- to GTA on transportation of furniture & fixtures purchased for the office. For such a trivial transaction, the partnership firm must obtain service tax registration and pay tax thereon and file half yearly return!!! This is quite illogical and harsh requirement, particularly for the small assessee's, but that's law.

The trade associations/ chamber of commerce should send representation to the Central Government to allow some threshold exemption to the service recipient liable to pay tax under reverse charge. It would prevent small assessee's from genuine hardship. This may also save a lot of unknowing defaults resulting into litigations, which could put extra pressure on judiciary.

➤ Exemption – Value/Item Based

Mega Exemption Notification No. 25/2012-ST has exempted low value consignments from the levy of service tax, as follows: (a) Where the gross amount charged for the transportation of goods on a consignment transported in a single goods carriage is upto Rs 1,500/-; or (b) Where the gross amount charged for transportation of all such goods for a single consignee in the goods carriage is upto Rs. 750/-

EXAMPLE:

A company receives goods from a GTA in a truck. No other goods are loaded in that truck. The company pays freight of Rs. 1500/- to GTA. No service tax is payable by any person on this consignment as it is exempted.

EXAMPLE:

A company receives goods from a GTA in a truck. Some other goods not belonging to the company are also loaded in the truck. The company pays freight of Rs. 900/- to GTA. The freight of other goods is Rs. 500/-. Service Tax is not payable by the company on this consignment as the total freight for the truck is Rs. 1400 (<1501) so it is exempted.

EXAMPLE:

In the above illustration, if the freight of other goods is Rs. 700/-, then the total freight for the truck is Rs. 1600 (>1500). Freight paid by company is Rs. 900 (>750). So, exemption is not available and the company should pay service tax on Rs. 900/-!!

Practical Issue: What could be the documentary proof that the goods carriage is transporting goods belonging to only single consignee or more than one consignee!! Should the consignor/consignee take a certificate from the GTA that vehicle did not carry any other goods?

Example –

A proprietorship firm trading in Cement is registered under central excise as dealer, has paid freight for a quarter as below. What is the service tax liability?

Particulars	Freight Paid	Service Tax
224 trucks @ Rs. 1,450/-	324,800	Exempted
310 trucks @ Rs. 1,600/-	496,000	Taxable
1 Trailer @ Rs. 35,000/-	35,000	Taxable
Total	8,55,800	

Here, the proprietorship firm is liable to pay service tax under reverse charge as it is registered under central excise. The consignment in a single vehicle with freight upto Rs. 1,500 is fully exempted. So, service tax on balance Rs. 5,31,000/- @ 3.09% = 16,408/-

In the above example, if the proprietorship firm is not registered under central excise, then what are the consequences?

Then, RCM is not applicable and the service tax shall be paid by the respective GTA, after considering the exempted consignments. Assuming that a single GTA is involved in the above case, the GTA is liable to pay tax amounting to Rs. 16,408/-

Is there any other exemption available on GTA Service?

Yes. N/No. 3/2013-ST dated 01-03-2013 has amended the N/No. 25/2012 w.e.f. 01-04-2013, extending exemption for services provided by a GTA, by way of transport in a goods carriage of;

- i. agricultural produce;
- ii. foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
- iii. chemical fertilizer and oilcakes;
- iv. newspaper or magazines registered with the Registrar of Newspapers;
- v. relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- vi. defense or military equipments;"

This amendment is a positive for the FMCG and food companies like Hindustan Unilever, Nestle, ITC, Perfetti, Kellogs, etc. and those manufacturing or trading/dealing or retailers (including departmental stores like Big Bazaar, Vishal Mega Mart, etc.) in these products. It is pertinent to mention that prior to this amendment; the exemption was available on fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage.

Abatement on GTA

The dictionary meaning of abatement is 'diminution in amount, degree or intensity; moderation' or reduction. Notification No. 26/2012-ST dated 20-06-2012 has allowed abatement of 75% on GTA. It means that if the value of GTA service (freight) is Rs. 100, service tax is exempted on Rs. 75 and service tax @ 12.36% (including Ed. & SHE Cess) shall be paid only on the balance value of Rs. 25. So, effective rate of service tax on GTA service is 3.09% of total freight.

Who can avail abatement?

The abatement can be availed by the person liable to pay service tax on GTA. In other words, in case of reverse charge, the service recipient can avail abatement and pay tax @ 3.09% and when reverse charge is not applicable, then the GTA can avail abatement and pay tax @ 3.09%

What are the conditions for availing abatement?

The abatement is available subject to the condition that the CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

Note: In the positive list approach, due to a lot of litigations and practical difficulty in proving non-availment of cenvat credit by the GTA, the government had allowed unconditional abatement of 75% w.e.f. 01-03-2008 vide N/No. 13/2008-ST, and dropped the similar condition as in Para 10.3. But, it has re-appeared in the negative list regime w.e.f. 01-07-2012 vide N/No. 26/2012-ST!!!

Due date for payment of Service Tax

The due date for payment of service tax is determined by Rule 6(1) of Service Tax Rules, 1994, which is summarized as below:

Status of Assessee	Frequency of Payment	Mode of Payment	Due Date as per Rule 6(1)
Individual, proprietary firm or partnership firm (including LLP)	Quarterly	E-Payment Cash/Cheque	6 th of the subsequent quarter Th 5 of the subsequent quarter
For other assessee's (company, society, trust, etc.)	Monthly	E-Payment Cash/Cheque	6 th of the subsequent month Th 5 of the subsequent month

However, for the month/quarter ending on 31st March, the due date shall be 31st March of the same month/quarter. [2nd proviso to Rule 6(1)]

CENVAT CREDIT RULES

A manufacturing company is paying freight on transportation of raw materials upto its factory. Can it avail abatement and cenvat credit simultaneously?

Yes, any service receiver can avail abatement and pay tax @ 3.09% and still take cenvat credit of such tax, if the GTA service is otherwise eligible as 'input service'. In case of outward freight, cenvat credit is not available for freight paid beyond the 'place of removal'. The above condition in Para 10.3 restricting the cenvat credit is for the service provider using any inputs, capital goods or input services for providing such services.

How can a service recipient ascertain that the GTA has not taken cenvat credit?

The service recipient should obtain a declaration/certificate from the GTA that they have not availed cenvat credit on inputs, capital goods and input services, used for providing the taxable service. In the absence of such a declaration, the Assessing Officer may deny the benefit of abatement and can raise demand. It is suggested that the GTA should have a declaration pre-printed in its consignment note. [Refer Note to Para 10.3]

A person has cenvat credit balance available for utilization. Can he utilize cenvat credit for payment of service tax on GTA under reverse charge?

No, the service recipient is not allowed to utilize cenvat credit for payment of service tax under reverse charge. [Explanation to Rule 3(4) of Cenvat Credit Rules, 2004]. Thus, the service recipient must directly deposit service tax on GTA through GAR-7 Challan.

When can a service recipient avail cenvat credit of service tax paid under RCM?

As per 1st proviso to Rule 4(7) of Cenvat Credit Rules, 2004; the service recipient can avail cenvat credit of an input service, where service tax is paid by him on reverse charge, after making payment of value of input service to the service provider and after payment of service tax thereon. Thus, cenvat credit is not available unless payment of value of input service is made.

What is the relevant document for availing cenvat credit by service recipient?

The cenvat credit is available to service recipient as the person liable to pay tax on the basis of GAR-7 challan evidencing the payment of service tax. [Rule 9(1)(e) of Service Tax Rules, 1994]

SOME QUESTIONS ARISING IN MIND

Whether it is compulsory for a GTA to take registration for service tax?

As per section 69(2) of the Act, registration is compulsory, when the aggregate value of taxable services, provided from all the premises, of all descriptions, exceeds Rs. 9 Lacs. So, a GTA need not apply for service tax registration until the limit of Rs. 9 Lac is reached. While calculating the limit of Rs. 9 Lac, the GTA service where reverse charge is applicable is to be excluded.

Does it mean that a GTA providing all transportation service to persons covered under RCM is not required to obtain service tax registration?

Yes, because he is neither liable to pay tax, nor his aggregate value of taxable services exceed Rs. 9 Lacs. As per circular no. 341/18/2004-ST dated 17-12-2004, according to provisions of section 69 of the Act, requirement of registration is limited to persons liable to pay service tax. Thus those goods transport agencies, which are not liable to pay any service tax, are not required to be registered under the service tax rules.

Whether it is compulsory for a recipient of GTA service to take registration for service tax?

Yes, if reverse charge is applicable, service recipient becomes liable to pay service tax and section 69(1) of the Act mandates that every person liable to pay tax shall obtain service tax registration. The application shall be made in Form ST-1 within 30 days of arising of liability. The Range Superintendent shall issue the registration certificate in Form ST-2. The half-yearly returns are required to be filed in Form ST-3 by 25th October/April every year for 1st & 2nd Half respectively.

We are wholesale dealers of food items like rice, wheat, sugar, refined oil, mustard oil, jeera, etc. Are we liable to pay service tax on freight paid on transportation of these food items?

No. Neither service receiver, nor service provider (GTA) is liable to pay service tax as the transportation of these items is exempted.



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