

A brief note on Goods Transport Agency (GTA) Service

An Insight into History of Goods Transport Agency

Service Tax was first introduced on Goods Transport Operator (GTO) services with effect from 16-11-1997. However, due to several oppositions from the truck associations, the levy of service tax on the same was withdrawn with effect from 02-06-1998. Since the magnitude of revenue loss from the withdrawal of service tax on transport services by road became so high that the Ministry of Finance once again introduced the tax on Goods Transport Agency (GTA) Services with effect from 01-01-2005.

With the re-introduction of service tax on transportation services by road, the incidence of tax has been shifted from Goods Transport Operator (GTO) to Goods Transport Agency (GTA). In fact a very thin line distinction can be drawn between the two, which can be noted from the Budget Speech dated 08-07-2004 delivered by Hon'ble Finance Minister, Shri P.Chidambaram which reads:

“the tax would be only on transport booking agents and there is no intention to levy service tax on truck owners or truck operators”

Goods Transport Agency – Definition

It would be pertinent to note that Clause (p) of Section 66D (Negative List) specifies transportation of goods by road except when provided by GTA as a Non-Taxable service. It means that only service provided by GTA is taxable. Now the question arises as to what technically is a Goods Transport Agency. Goods Transport Agency as defined u/s 65B(26) of Finance Act, 1994 introduced with effect from 01-07-2012 means:

- Any person;
- that provides service ‘in relation to’;
- transport of goods by road; &
- issues consignment note.

It may be noted that the definition uses the word “means” which makes the definition restrictive and exhaustive. As defined above, the aforementioned points are the mandatory ingredients for the purpose of levy of service tax on GTA. Besides the phrase used in the definition ‘in relation to’ has extended the scope of GTA, which includes various intermediary and ancillary services such as loading, unloading, packing, unpacking, transshipment, temporary warehousing and is to be treated as part of GTA service for the successful provision of the principal service. Further, it needs to be mentioned that any service which has a direct or indirect connection with a specified service has to be treated as ‘in relation to’ that specific service. The aforesaid can be affirmed

from the decision laid down by Hon'ble Supreme Court in the case of ***Doypack Systems (P) Ltd. vs. Union of India 1998 (36) ELT 201 (SC)***.

Moreover, any person who is the owner of trucks or arranges the trucks by hiring them and provides transportation service cannot be termed as GTA. In addition to this, a GTA must have a direct contract with consignor/consignee and receive freight from consignor/consignee.

Now the question which puts many minds into dilemma is the issue pertaining to consignment note. What actually is it? Let us have a brief analysis on it.

Consignment Note

Generally, when a person deposits the goods with any transporter for the purpose of transport to a given destination, the transporter issues the **lorry receipt** or consignment note to the person depositing the goods. The name of the consignee is mentioned on such note. The original copy of the lorry receipt is sent by the person depositing the goods i.e consignor to the consignee to enable him to collect the goods from the transporter.

Further, it has been made mandatory for every GTA to issue consignment note to the receiver of service under Rule 4B of Service Tax (Fifth Amendment) Rules, 2004. It would be pertinent to note that the failure to issue consignment note would merely be a violation of law but will not discharge the service receiver from paying his liability. The aforesaid can be affirmed from the case of ***Bharati Soap Works v CCE [2008]13 STT 196***.

Liability to pay Service Tax

When the taxable service is provided by GTA to an individual, HUF, sole proprietorship or an unregistered partnership firm, then it is the GTA who is liable to pay service tax on the taxable value of the services provided. However, as per Clause (2) of Notification No. 30/2012 – ST dated 20-06-2012, 100% liability (popularly known as, **Complete Reverse Charge Mechanism**) to pay service tax has been shifted from service provider to service receiver subject to the condition that the service receiver must belong to any of the specified categories which includes factory (registered under Factories Act, 1948), company, registered corporation, registered society, registered body corporate or a registered partnership firm.

Now, the common question which arises is that whether the threshold limit of INR 10 lacs needs to be considered, in case the liability to pay service tax falls on service receiver. In this connection, it would be pertinent to note that the threshold exemption of INR 10 lacs under Notification No. 33/2012–ST is made available only to service provider and not to service recipient. The service receiver is liable to pay service tax under Reverse Charge Mechanism.

Abatement/ value-based exemption in Value

An abatement of 75% of gross amount charged is permitted for determining the value on which tax is payable. In simple words, as per entry no. 7 of Notification No. 26/2012 – ST dated 20-06-2012, the service tax is payable for services provided by GTA on 25% of gross amount charged. But one needs to be cautious that if abatement of 75% is availed then CENVAT credit on inputs, capital goods and input services is prohibited if used for providing output service.

Besides abatement, it would be relevant to note that certain value based exemptions have also been inserted vide Item No. 21 of Notification No. 25/2012-ST dated 20-06-2012 which grants full exemption under two circumstances namely (i) where the gross amount charged on goods transported in a single goods carriage does not exceed INR 1500; & (ii) where the gross amount charged for transportation on a consignment of all such goods for a single consignee does not exceed INR 750.

Questions

Consignor Ltd., a public limited company, engaged in manufacturing of excisable goods arranges for the transportation of goods from Goods Transport Agency to the Consignee Ltd. The GTA charges a consideration of INR 10000 from Consignee Ltd.

What will be the amount of service tax & who shall be liable to pay service tax?

Since both the consignor & consignee falls under the specified category, the liability to pay service tax falls on consignor or consignee whoever pays freight or is liable to pay freight. In the instant case, as the freight is paid by the consignee, the liability to pay service tax also falls on consignee under the Reverse Charge Mechanism by availing an abatement of 75% on the gross amount charged by the GTA. It is pertinent to note that the Consignee will have to mandatorily take registration of GTA Services and pay service tax & accordingly file the half yearly return in Form ST-3. Service Tax payable by Consignee = INR 309 ($10000 \times 25\% \times 12.36\%$)

What if the consideration is reimbursed to the consignor from the consignee?

It may be noted that generally the freight is paid by the person who is the recipient of goods. However, in some cases, when the goods are sold on Free on Board (FOB) basis, it is the consignor who pays the freight. In this regards, it is relevant to note that in *M/s Sumangalam Suitings Pvt. Ltd. & Others vs. CCE*, the Hon'ble Tribunal has held that if the consignor has engaged a GTA for delivery of goods to the consignee, it cannot be contended that the consignee is liable to pay service tax, even if the consignee would have reimbursed freight charges to the consignor. Service Tax payable by Consignor = INR 309 ($10000 \times 25\% \times 12.36\%$)

What if the Consignor/Consignee (liable to pay) is an individual, proprietorship firm, or unregistered partnership firm?

If the consignor/consignee is an individual, proprietorship firm or unregistered partnership firm, then the liability to pay service tax falls on service provider i.e. GTA subject to the condition that

threshold limit of INR 10 Lacs must have exceeded. The GTA may not claim CENVAT credit of inputs and input services in case it claims abatement. Service Tax payable by GTA = INR 309 (10000*25%*12.36%).

Cenvat Credit on GTA Services

Rule 2(l) of the Cenvat Credit Rules, 2004 defines Input Services as “*inward transportation of inputs or capital goods and outward transportation upto place of removal*”. It would be relevant to note that if the manufacturer utilizes the services of GTA for inward transportation, then without giving any second thought to other things, the manufacturer can avail the CENVAT credit of service tax paid on GTA. But the doubt may arise in case of Outward freight. Is CENVAT credit allowed on outward transportation?

From the afore-mentioned definition of Input service, it is crystal clear that outward transportation up to place of removal is eligible for credit. Here, emphasis should be placed on the phrase “up to the place of removal”. Now, one may question that when can outward transportation is to be treated as input service? In this regard, Circular No. 97/8/2007 dated 23rd August, 2007 may be referred wherein it is stated that if the following three conditions are satisfied then only outward transportation is to be treated as input service, which are mentioned here-in-below:

- (i) The ownership is with the seller till the doorstep of the buyer;
- (ii) The seller shall bear the risk of loss or damage during transit; &
- (iii) The freight charges were integral part of the price.

And accordingly by satisfying the aforesaid conditions, a manufacturer paying the service tax on GTA service can avail the CENVAT credit on outward transportation.

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