

Goods Transport Agencies- Service Tax

*By Madhukar N Hiregange (FCA, DISA (ICAI))
& Srikantha Rao T (B.Com, ACA)*

The taxing of services for the transport services has been a thorny issue for the Government. Service tax was earlier imposed on Goods Transport Operators but was discontinued with effect from 02.06.1998. Later, the services provided by Goods Transport Agency were made liable but kept in abeyance till 01.01.2005. Though there were strikes by the transporters they have not succeeded in preventing the Government from bring on this category under the service tax net though the actual liability may not be on the transporter. The service receivers are to bear the brunt of this tax payment and procedural complications and they would not be admissible for the Rs 10 lakhs exemption provided to small service providers. Therefore even receipt and payment for one consignment over the limit would suffice for any person other than an individual to be covered. The liability under this category would be with effect from 01.01.2005

Definitions

Section 65 (50b) “goods transport agency” means any person which provides service in relation to transport of goods by road and issues **consignment note**, by whatever name called;

Section 65 (105)(zzp) taxable services means any service provided or to be provided to any person by a goods transport agency, in relation to transport of goods by road in a goods carriage;

As per section 65(50a), “goods carriage” would have the meaning assigned to it in section 2(14) of the Motor Vehicles Act 1988.

Definition of the term “Goods carriage”

Section 2(14) of Motor Vehicle Act 1988 defines goods carriage to mean “any motor vehicle constructed or adapted for use solely for carriage of goods or any motor vehicle not so constructed but used for carriage of goods.”

Concept of “goods”

Goods are defined as every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.

Definition of the term “Motor Vehicle”

Section 2(28) Motor Vehicles Act defines “ Motor Vehicle means any mechanically propelled vehicle adopted for use upon roads whether the power of propulsion is transmitted thereto from external or internal source and includes the chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or vehicle of a special type adapted for use only in a factory or any other enclosed premises or a vehicle having less than 4 wheels fitted with engine capacity of not exceeding 25CC.”

Where the vehicle for carriage of goods cannot be regarded as a goods carriage or for that matter, as a motor vehicle as per the definition of the term “motor vehicle” set out in the Motor Vehicles Act, the liability on GTA would not arise.

Service Tax Rules 1994

Rule 2(1)(d) defining person liable for paying service tax as follows –

“Person liable for paying service tax” means, -

.....

- (v) in relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is, -
 - (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
 - (b) any company established by or under the Companies Act, 1956 (1 of 1956);
 - (c) any corporation established by or under any law;
 - (d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any Part of India;
 - (e) any co-operative society established by or under any law;
 - (f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under; or
 - (g) any body corporate established, or a partnership firm registered, by or under any law, any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage

Thus where the consignor or consignee is a specified person as covered in the aforesaid paragraph, the person liable to pay freight would be required to pay service tax. The scheme

has been designed in such a way so as not to require the GTA to pay service tax unless neither the consignor nor the consignee happens to be any of the specified persons covered in the aforesaid paragraph.

Concept of “output service” as amended with effect from 01.03.2008

The term “Output service” has been defined by Rule 2(p) of Cenvat Credit Rules 2004 to mean any taxable service excluding the taxable service referred to in sub-clause (zzp) of clause 105 of Section 65 of the Finance Act, provided by the provider of taxable service to a customer, client or subscriber, policy holder or any other person, as the case may be, and the expressions “provider” and “provided” shall be construed accordingly.

Rule 2(r) of CCR 2004 defines “provider of taxable service” includes a person liable for paying service tax.

Utilisation of credits for paying service tax liability on GTA service

Readers may note that the definition of “output service” as it stands amended from 01.03.2008 does not allow the assessee to utilize cenvat credits in balance for the purpose of paying service tax on GTA service. This is because Rule 3 (4) (e) of CCR 2004 allows credit to be utilized for payment of service tax on any output service and if the definition of the term “output service” excludes GTA service, there is no question of utilizing cenvat credits for payment of service tax on the said service. Even before 01.03.2008, the department had clarified this concept vide Circular 97/08/2007 ST dated 23.08.2007

GTA Vs GTO

Readers may also note that the tax under this scheme was not sought to be levied initially on all transport operators. If one were to go by the budget speech made by the Honorable Finance Minister on 08.07.2004, the intention was to levy tax on transport booking agents and not on truck owners or truck operators though this is not what is happening at present. In our view, the definition of the term “goods transport agency” would require an amendment if the service provided by truck operators are to be kept outside service tax levy. One of the reasons this has not been done as of now could be due to the fact that the liability is not on the service provider and instead, on the service receiver/payer of freight.

Exemptions available:

General Exemptions:

- ☞ Notification 16/2002: The services provided to the United Nations or any International Organization is exempt.
- ☞ Notification 4/2004: The services to the developer and the units of the Special Economic Zone are exempt

Specific Exemption

- The consignments booked by individuals and unregistered partnerships are not liable for service tax either in the hands of the receiver or in the hands of the GTA. The departmental circular 341/18/2004 ST dated 17.12.2004 however opines that where the individual or unregistered partnership is the consignor/ consignee, the GTA is liable. This does not appear to be correct/ legal though this situation would rarely arise as either the consignee or the consignor would normally be the specified person covered above.

In **all other cases** the person liable is one who has to pay the freight either himself or through his agent for the transportation of goods. Therefore all entities being registered partnerships, companies, trusts, co-operative societies, factories under Factories Act, body corporate and dealers registered under Central Excise who pay freight would be required to register, maintain records, pay the service tax, file the returns and would be subject to Service Tax Audit at periodic intervals. (Notification 35/2004 dated 3.12.2004)

- There is an exemption provided wherein each consignment of less than Rs.750/- or a number of consignments in the same carriage amounting to less than Rs.1,500/- have been exempted for all categories. (Notification 34/2004 dated. 3.12.2004)
- There has also been an exemption provided to services in relation to transport of fruits, vegetables, eggs or milk. (Notification 33/2004 dated 3.12.2004) Here it should be noted that the exemption is not in relation to cereals like rice and wheat or other agricultural produce. This would even create an issue for many entities in the agricultural sector.
- **Part Exemption:** Notification 13/2008 ST dated 01.03.2008 provides an exemption of 75% of the gross amount charged by the GTA in respect of the services provided in relation to transport of goods by road, to any person and the service tax would be payable only on 25% of the amount billed/charged by such GTA. The said notification does not talk of any condition to be fulfilled.

- Certain specific services provided to a GTA have also been exempted if these services are to be used by the GTA in providing services in relation to transport of goods by road liable u/s 65(105)(zzp) of Chapter V of Finance Act (GTA service). These services are – clearing and forwarding agent's service, manpower recruitment or supply agency service, cargo handling service, storage and warehousing service, business auxiliary service, packaging activity, business support service, supply of tangible goods for use service.

Service Tax Credit: The user who pays the service tax would be eligible for service tax credit on the amount of Service Tax paid by him and can use the same for paying the central excise duty or the Service Tax if any payable by him. One aspect which merits attention here is that the credit of service tax on inward transportation alone is being allowed at present. The credit of service tax on outward transportation is subject matter of dispute and the same would have to be segregated till the matter is clarified by the Tribunal/Courts. The dispute in question here is regarding the place of removal as the credit of service tax on outward transportation up to place of removal is allowed as per the definition of the term "input service" under CCR 2004. The concept of "place of removal" has also been discussed by Circular 97/8/2007 dated 23.08.07 which talks about the term "place of removal" in different scenarios i.e. goods are sold at factory gate, or from depot or sold at buyer's premises. In other words, the concept of "place of removal" would depend on the facts and circumstances of each case. This line of thought has also been followed by the Tribunal in Adani Pharmachem (P) Ltd Vs CCE Rajkot (2008-TIOL-2019-CESTAT-AHM) in holding that the "place of removal" in case of exports would be the load port and that credit of service tax on transportation upto place of removal (load port) would be available.

The user who is a 100% EOU would be eligible to get a refund of the same if he were to be registered under central excise.

Export of Services: The performance of the service and the place where the service is performed would be relevant for finding out whether the service can be said to have been exported at all. Performance should be at least partially outside India to meet this criterion. The basic condition of provision of service from India and usage outside India has to be met in addition to consideration being in convertible foreign exchange. This is of academic interest as such export of service can rarely be accomplished considering country's geography. If a resident provides such services he need not pay the service tax. Further he would be

admissible for the rebate of inputs tax as well as input services credit in cash under Notification 11/2005 or 12/ 2005.

Value and Reimbursements: The gross amount charged for the service is liable subject to the exemption discussed earlier. Reimbursements of expenses incurred by the GTA on behalf of the service receiver would also be included in the gross amount for the service unless the expenses are incurred by the GTA as a pure agent of the service receiver. For this, the conditions prescribed in Rule 5(2) of Service Tax (Determination of Value) Rules 2006 would have to be satisfied. Thus where expenses are incurred by the GTA on behalf of the service receiver, the conditions would have to be satisfied to be on the safer side of the law even though one may like to contend saying that what is liable is amount charged for the service alone and not reimbursements.

Requirements, exemption and credits: The GTA is required to register though he is required to pay only for individuals. They are required to issue a consignment note for every consignment transported by them or on their behalf. This note should be serially numbered and contain the name of the consignor and the consignee, registration number of the GTA, details of the goods transported, origin and destination and the person liable to pay the tax. Where the GTA is required to pay tax as per the Circular discussed earlier, the option of going in for benefit of small service provider's exemption notification 6/2005 ST as amended can be examined. The value for the purpose of calculating the limit of ten lakhs rupees would not include the amounts on which the service receiver is liable. However, before proceeding, the GTA should determine the credits on capital goods (motor vehicles especially) on hand as opting for exemption would not be worthwhile where the credits are substantial.

Payment:

The consignor or the consignee is to pay the Service Tax before the 5th (6th day where payment is electronically through internet) of the subsequent month for the last month and by the 31st of March for last month of the financial year.

In case he is an individual or a partnership firm the payment has to be made before the 5th (6th if done electronically) of the month following the end of the quarter. In the last quarter ending 31st March , he is to pay by the 31st of march itself. For the small and decentralized assesseees this may be difficult whereby estimation would have to be done and the resultant difference would also have to be explained at the time of the audit.

Suggested Procedure for compliance:

- a. The payer (consignee or consignor) may apply for registration under Form ST1.
- b. The person who pays for freight may capture the amounts on which Service Tax is payable monthly. In case he is an individual or a partnership firm then he can collate the information every quarter.
- c. The deduction of 75 % against the same maybe claimed
- d. On the balance he may calculate 12 % as the service tax payable and 2% of the Service Tax payable as education cess and 1% on SHE Cess
- e. The same maybe paid before the 5th of the subsequent month or 5th of subsequent month of quarter. For the last month/ quarter he is required to pay by the 31st of March 2005.
- f. He is to file his returns every 6 months on or before 25th of April 2005 and 25th October 2005.
- g. The year end reconciliation of the transportation and freight accounts maybe recommended to ensure no slippages.