

GOODS TRANSPORT AGENCY under GST

Background of levying tax on the services of Goods Transport Agency

The levy of Service Tax on Road Transportation Service has always been a contentious issue. The Finance Act, 1997 had levied Service Tax on Goods Transport Operators w.e.f. 16-11-1997 which was subsequently withdrawn after nation-wide strike.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 was imposed on Transport of Goods by Road service rendered by a goods transport agency with effect from 10-09-2004. However, the levy was deferred until further notice again in view of transporters' strike. The Government thereafter constituted a Committee to deal with the issue and after taking into account the recommendations of the Committee, Notification Nos. 32 to 35/2004 – ST all dated 03-12-2004 were issued, levying tax on Transport of Goods by Road with effect from 01-01-2005.

The legal position prevailing under Service Tax is being continued under the GST regime. The services of transportation of goods by road (except services of GTA) continue to be exempt even under the GST regime. In so far as the services of GTA is concerned, if the services (of Goods Transportation) are provided (by the GTA) to specified classes of persons, the tax liability falls on such recipients under the reverse charge mechanism. The following discussion will clarify the position.

Transportation of Goods by Road

In terms of Notification no. 1136 F.T. (12/2017-Central Tax (Rate)) dated 28.06.2017 (sr.no.18), the following services are exempt from GST

Services by way of transportation of goods (Heading 9965):

- (a) by road except the services of:
 - (i) a goods transportation agency;
 - (ii) a courier agency;
- (b) by inland waterways.

Thus, it is to be seen that mere transportation of goods by road, unless it is a service rendered by a goods transportation agency, is exempt from GST.

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, in the Service Tax regime, issuance of Consignment Note (C/N) was integral and mandatory requirement before any road transporter could be brought within the ambit of GTA.

Position under GST

Under GST laws, the definition of Goods Transport Agency is provided in clause (ze) of Notification no. 1136 F.T. (12/2017-Central Tax (Rate)) dated 28.06.2017.

(ze) "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;

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Note: Reference to WBGST Act, 2017 includes reference to CGST Act, 2017 also.

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Thus, it can be seen that issuance of a consignment note is the sine-qua-non for a supplier of service to be considered as a Goods Transport Agency. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of goods transport agency. If a consignment note is issued, it indicates that the lien on the goods has been transferred (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee.

It is only the services of such GTA, who assumes agency functions, that is being brought into the GST net. Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA. As a corollary, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at s.no.18 of notification no.12/2017-Central Tax (Rate), which is exempt from GST.

What is a consignment note?

Consignment Note is neither defined in the Act nor in the Notification no. 1136 F.T. (12/2017-Central Tax (Rate)) dated 28.06.2017. Guidance can be taken from the meaning ascribed to the term under the Explanation to Rule 4B of Service Tax Rules, 1994. In terms of the said rule, 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.

Charge of GST on services provided by GTA

In terms of Notification no. 1135 F.T. (11/2017-Central Tax (Rate)) dated 28.06.2017 as amended by notification no. 1497 F.T. (20/2017- Central tax (Rate)) dated 22.08.2017, sr.no. 9 and sr. no. 11, (i) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use) (Heading 9965 & 9967 respectively) attracts GST @2.5% or 6% SGST. Identical rate would be applicable for CGST also, taking the effective rate to 5% or 12%. However, the rate of 5% is subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken. The Explanation to the notification further clarifies that it shall mean that,- (a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and (b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of subsection (2) of section 17 of the Goods and Services Tax Act, 2017 and the rules made there under.

GST @ 6% CGST/SGST (12% cumulative) is subject to the condition that the goods transport agency opting to pay central/state tax @ 6% under this entry shall, thenceforth, be liable to pay central/state tax @ 6% on all the services of GTA supplied by it. Further, there is no restriction on the GTA from taking ITC if this option is availed.

Thus, where the GTA is not eligible to take ITC for the supplies effected by it and the liability under GST is discharged under reverse charge basis, the recipient of GTA service discharging the tax liability is entitled to take Input Tax Credit (ITC) of the amount of tax paid under reverse charge, provided it is used in the course or furtherance of business at his end. Further the

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recipient would be eligible for ITC of the GST paid by GTA on forward charge basis. Notification no. 1135 F.T. (11/2017-Central Tax (Rate)), sr.no.11, (ii) also provides that supporting services in transport other than those mentioned in (i) (Heading 9967) would attract GST @9% SGST. Identical rate would be applicable for CGST also, taking the effective rate to 18%. Similar rate has been prescribed for services falling under heading 9965 in terms of notification no. 1135 F.T. (11/2017-Central Tax (Rate)), sr.no. 9 (v).

Person Liable to Pay GST on GTA services

The liability to pay GST devolves on the recipients for supply of services by a goods transport agency (GTA) who has not paid central tax at the rate of 6%, in respect of transportation of goods by road (in terms of notification no. 1137 F.T. (13/2017-Central Tax (Rate)) dated 28.06.2017 (sr.no.1) as amended by notification no. 1499 F.T. (22/2017-Central Tax (Rate)) dated 22.08.2017, if the recipients (located in the taxable territory) belong to the following category:

- (a) Any factory registered under or governed by the Factories Act, 1948(63 of 1948); or
- (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; or
- (c) any co-operative society established by or under any law; or
- (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or
- (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; or
- (g) any casual taxable person.

Thus, in cases where services of GTA are availed by the above categories of persons in the taxable territory the GTA supplier has the option to pay tax (and avail ITC) @12% (6% CGST + 6% SGST); and if the GTA does not avail this option, the liability to pay GST will fall on the recipients. In all other cases where the recipients do not fall in the categories mentioned above, the liability will be on the supplier of GTA services.

GTA services specifically exempt

In terms of notification no. 1136 F.T. (12/2017-Central Tax (Rate)) dated 28.06.2017 (sr.no.21), the following services provided by a GTA (Heading 9965 or 9967) is exempt from payment of tax:

Services provided by a goods transport agency, by way of transport in a goods carriage of:

- (a) agricultural produce;
- (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;
- (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty;
- (d) milk, salt and food grain including flour, pulses and rice;
- (e) organic manure;
- (f) newspaper or magazines registered with the Registrar of Newspapers;

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- (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- (h) defence or military equipments.

Similarly, the following services received by the GTA (Heading 9966 or 9973) is also exempt in terms of notification no. 1136 F.T. (12/2017- Central Tax (Rate)) dated 28.06.2017 (sr.no.22)

Services by way of giving on hire:

- (b) to a goods transport agency, a means of transportation of goods.

Thus, if the GTA hires a means of transportation of goods, no GST is payable on such transactions.

Significance of the term 'in relation to' in the definition of GTA

The use of the phrase 'in relation to' has extended the scope of the definition of GTA. It includes not only the actual transportation of goods, but any intermediate/ancillary service provided in relation to such transportation, like loading/unloading, packing/unpacking, trans-shipment, temporary warehousing, etc. If these services are not provided as independent activities but are the means for successful provision of GTA Service, then they are also covered under GTA.

Conclusion

The above discussion shows that not all transport of goods by road is by a GTA. To qualify as services of GTA, the GTA should be necessarily issuing a consignment note. Only services provided by a GTA are taxable under GST. Services of transportation of goods by a person other than GTA are exempt. Moreover, in cases where the service of GTA is availed by the specified categories of persons in the taxable territory, the recipients who avail such services are the ones liable to pay GST and not the supplier of services unless the GTA opts for collecting and paying taxes @ 12% (6% CGST + 6% SGST). In all other cases where GTA service is availed by persons other than those specified, the GTA service supplier is the person liable to pay GST. The GTA services supplier is not entitled to take ITC on input services availed by him if tax is being charged @ 5% (2.5% CGST + 2.5% SGST). In case the GTA service supplier hires any means of transport to provide his output service, no GST is payable on such inputs.

In a nutshell, the GST law continues the provisions prevailing under the Service Tax regime. The law recognises that pure transportation of goods services are mostly provided by persons in the unorganised sector and hence has specifically excluded such operators from the tax net. In respect of those who provide agency services in transport, the liability is cast on the recipients in most of the cases or unless option to pay under forward charge has been exercised by the GTA.

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