CBEC & GTA - NERO & ROME!

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The first anniversary celebrations of the murkiest levy on the planet, "Service tax on GTA", are round the corner! We guess, this levy shall have the unique distinction of being the feedstock of the highest number of articles written (unquote, most of them are brickbats!), next to that of Adolph Hitler! Across the cross section of the nation, this levy has been extensively debated, from every pillar to post and by every pundit to sundries! Even after the passage of one year, we can bet on earth that, nobody (including the Board!) is clear about this levy, its exemptions, its abatement, who is liable to pay, payment mode or its availability of CENVAT credit! Leave alone clarification, the confusion created by the department by some of its dreadful circulars, are really shame worthy!

By its controversial communication that the 75 % abatement is available only for the transporters and not for the rest, the DGST drew the ugly First Blood! Though the said communication is stated to be withdrawn, the dutiful Revenue Brigade is not willing to believe it and in many places show cause notices are being issued like 'flying saucers' denying the abatement to the assesses!

The "War of the Words" between the department and the assesses, as to the latter's entitlement for CENVAT credit in respect of the service tax paid on outward transportation of finished goods from the place of removal, is nothing but a "Third World War!" The "Alert Notice" issued by the Commissioner of Central Excise, Hyderabad III Commissionerate (Alert Circular No. 1/2005-06), wherein, he has alerted the Preventive formations about the misuse of CENVAT credit on the above issue, is nothing but a laughing stock. It appears neither his apprehension nor his alert notice has any legal backing or Board's approval.

The question as to whether a manufacturer can utilize his Cenvat credit for payment of Service tax on GTA is mysterious than the mysteries of 'Bermuda Triangle'. We guess that, even for the mathematical genius like Ramanujan, understanding 750/1500 calculation for the exemption, shall be definitely hair splitting! Identifying the person liable to pay the tax, as per Rule 2 (1) (d)(v) of Service Tax Rules, is yet another "Inky Pinky Ponky". We all need an Oprah Winfray to conduct a "Tax Show" to decide as to whether the GTA service tax could be paid through PLA or through CENVAT credit! If 10 men sit together to discuss this issue, invariably, there are 11 opinions! But our beloved Board is still sitting in a cosy-easy chair, unperturbed and blissfully watching like Emperor Nero, who was playing his sweet fiddle when the entire city of Rome was burning!

An another nagging and a complicated issue in GTA is that, whether the service tax paid by a person towards GTA, who is neither a provider of any taxable service nor a manufacturer of excisable goods, can be availed as CENVAT credit, for discharge of his future GTA liabilities?

The TRU's letter No. 345/4/2005 Dated 03.10.2005, has come as a sole consolation in this calamitous situation! Kudos to the TRU, for having come out with a clarification, on this complicated issue. The said letter spells a wonderful reasoning, though it is a bit difficult to understand.

The said letter starts with the following preamble:

> "The issue raised is whether a person who is not a service provider, but discharges the service tax liability on the taxable services, under Section 68(2) of Finance Act, 1994, is entitled to avail credit of such service tax paid **even if he is not using such service as input service for use in the manufacture of excisable goods or taxable services.**"

From the above, it may be observed that the whole reference is only to those cases, where the GTA service is used by a person, who is neither a manufacturer nor a service provider, but has become liable for payment of service tax on GTA services availed by him, as per the provisions of Rule 2 (1) (d) (v) of the Service Tax Rules, 1994.

We will try to understand this with the help of an example.

"A" is an individual and he intends to set up a garment showroom. He orders all his requirements with a Garment manufacturing Company, "X Limited", which is a Public Limited company. The said "X Limited" consigns the garments to "A", through a Goods Transport Agency. Unfortunately for A, the goods are consigned by X Limited, on "Freight – To Pay" basis. As per Rule 2 (1) (d) (v) of the Service Tax Rules, if either the consignor or the consignee, falls under any of the specified categories stated therein (of which Companies established under the Companies Act, is one), the person liable for payment of service is the one, who is liable to pay freight either by himself or through his agent. In the instant case, since the consignor (X Ltd) is a Company, "A" is liable for payment of service Tax. Now the question is as to whether "A" can avail the Cenvat credit of the service tax on GTA, so paid by him and use the same to pay his future service tax liabilities on GTA, when he orders his next consignment from "X Limited". The above TRU clarification, perfectly answers this poser. As clarified, in the instant case, "A" is neither a manufacturer nor a service provider. He is just a garment merchant. So, the services of GTA availed by him, to bring the garments to be sold in his showroom is not at all used either in the manufacture of excisable goods or in rendering any taxable service. So the said GTA service is not at all an "input service" for him and thus he cannot take the Cenvat credit of such service tax paid by him and again use it.

But there is a possible grenade in this clarification too. Unfortunately, many of us tend to read too much in between the lines and land up in a thorough misinterpretation. Earlier, we all have witnessed that the most simple sentences being thoroughly complicated and ultimately making the Apex Court to read it for us! We are afraid that this letter should not fall as another victim to such "interpreters" and the Cenvat credit of the service tax paid on GTA should not be denied left, right and center for everyone, irrespective of the fact, whether he is a manufacturer or a service provider!

In an abundant caution to arrest such possible interpretation, we wish to draw credence from the following extract of the TRU's communication (supra):

> "In the present case, the person liable to pay service tax under Section 68(2) is neither the provider of an output service nor the manufacturer of final product and therefore the input service can not be used either for providing output service or manufacture of a final excisable product. The person is treated as deemed provider of service in

relation to services for which he is taxable only for the limited purpose of discharging the service tax liability and not for all purposes."

To elaborate, the case dealt with herein, is about the person paying service tax on GTA, who is neither a provider of any output service nor a manufacturer of final product. He resembles the example given above and not the case of any person who is either a manufacturer of excisable goods or provider of taxable service or both. In other words, the following conclusions can be drawn with regard to the TRU's clarification:

1. A person, who is neither a manufacturer of final products nor a provider of output service, cannot take Cenvat Credit of the service tax paid by him in terms of Section 68 (2) {GTA, etc.}. As such, all his subsequent payments of service tax by him, has to be made only through TR 6 challan.
2. If a manufacturer of final product or a provider of taxable output service, pays service tax in terms of section 68 (2) {GTA, etc.}, he can take Cenvat Credit of such service tax paid by him, if the said service qualifies as an "input service" on the strength of the TR 6 challan, on which such tax is paid.