

Treading the GST Path – XXXII

GTA imbroglio

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GST could have been used as an opportunity to spruce up the taxation of goods transport sector and wriggle it out from the bothering confusions under Service Tax, but unfortunately, the levy of GST on goods transport services is nothing but a Cut and Paste from Service Tax, with all confusions in tact.

To recall, after an unsuccessful attempt to levy service tax on this sector in 1997, which met with a judicial death {Laghu Udyog Bharati Vs UOI 2006 (2) STR 276 SC} , the Government again resurged in 2005 with the introduction of service taxon “Goods Transport Agency” service, with a reverse charge mechanism. The Finance Minister declared in his Budget speech,

“I may clarify that there is no intention to levy service tax on truck owners or truck operators”.

The term Goods Transport Agency was defined in Section 2 (50b) of the Finance Act, 1994 as,

“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.

Under the negative list era also the legacy continued and the term “goods transport agency” has been defined in Section 65 B (26) as

“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.

The Reverse charge also continued.

As per section 66 D of the Act, dealing with negative list, the following activities have been kept outside the levy of service tax.

(p) services by way of transportation of goods—

(i) by road except the services of—

(A) a goods transportation agency; or

(B) a courier agency

It is clear from the above that always the Government wanted to tax only “Goods Transport Agency” services and keep other goods transport services outside the ambit of the levy. But the line of difference between what constitutes goods transport agency service and what does not is very thin.

But the soothing words from the Finance Minister did not find favour with the judiciary.

In the case of CCE Vs Subramanian Siva Co-Operative Sugar Mills Ltd. – 2014 (35) STR 500 Mad, the Hon'ble Madras High Court has held,

16. *As far as the reliance placed on the Finance Minister's Speech in the course of budget presentation is concerned, Courts have consistently held that budget speech would not be taken in aid for understanding the scope of the clear terms of the provisions in the taxation enactment vide the decision of the Apex Court reported in 1998 (9) SCC 630 = 1998 (99) [E.L.T.](#) 199 (S.C.) [Union of India v. Ganesh Rice Mills and Another].*

17. *Section 65(50b) of the Finance Act, 1994 defines the "Goods Transport Agency" as 'any person' who provides service in relation to transport of goods by the road and issuing consignment note, by whatever name called.*

18. *The expression "any person" is not defined under the Act. Section 3(42) of the General Clauses Act defines "person", as including any company or association or body of individual whether incorporated or not. The thrust of the definition is that it includes every person engaged in an activity providing service of transport of goods by road. Thus, any commercial or a proprietary concern carrying on the business of Goods Transport would fall under the definition of "Goods Transport, Agency" in Section 65(50b) of the Finance Act. In the absence of any words of restriction, the definition 'any person' thus would have application to any concern providing the service.*

Same view was held by the Hon'ble Tribunal in the case of Sree Balaji Transport VS CCE – 2015 (38) STR 651 Tri-Bang.

The definition of the term GTA refers to any person who provides any service in relation to transport of goods and issues a "consignment note". Reference could also be made to Rule 4 B of the Service Tax Rules, 1994.

RULE [4B. Issue of consignment note. — Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note [to the recipient of Service] :

Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.

Explanation. - For the purposes of this rule and the second proviso to rule 4A, "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 names 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.

On the one hand, the term GTA is defined with reference to a person who issues a consignment note and on the other hand, issue of consignment note has been made mandatory to all GTAs, which reminds us of the age old argument, whether the egg came first or the chicken? These anomalies were also noted by the Hon'ble Tribunal in its decision in the case of Birla Readymix Vs CCE – 2013 (30) STR 99 Tri-Del.

8. *When consignment notes are not issued by the operator they cannot be considered as a "Goods Transport Agency". In this context we have also considered the provision in Rule 4A and also Rule 4B of Service Tax Rules, 1994 which stipulate that every "Goods Transport Agency" shall issue consignment note. This provision read with Section 65(50b) of Finance Act, 1994 as quoted above leads to a situation where the definition is dependent on a requirement laid down using the defined term itself and leads to difficulties in proper understanding of the matter. Since the provision of Act has to prevail we understand the definition at Section 65(50b) has to be understood independent of Rule 4B of Service Tax Rules, 1994 to decide whether the person concerned is a goods transport agency by adopting ordinary meaning of consignment note and then apply Rule 4B of Service Tax Rules, if the person concerned is found to be a goods transport agency.*

9. *We further note that service tax is levied on the services of a "Goods Transport Agency" and not on services of a "Goods Transport Operator". The latter term was used in Finance Act, 1994 during the period Nov., 1997 to June, 1998 and the former expression is being used now. So it is to be understood that these two expressions refer to different types of persons. The mere fact that the operator is doing activity of transportation cannot make the operator a "Goods Transport Agency". So the operators in this case cannot be considered as "Goods Transport Agencies". We are not in agreement with the argument of Revenue that the log-book maintained by the operators should be considered as equivalent to consignment note. The fact that part of the hire charges for the vehicles is being paid on the basis of number of kilometers run cannot alter the nature of the responsibility of the operators because such payment is consistent with a scheme of hiring the vehicle though it may be consistent with a contract for transportation of goods also. On the other hand a fixed charge per month for the vehicle is more consistent with a scheme of hiring the vehicle rather than a contract for transporting the goods. It is seen the contracts provide for such component of remuneration also.*

It has been held in the following cases, if a person did not issue any consignment note, he is not a GTA.

CCE Vs Drolia Electrosteels (P) Ltd – 2016 (43) STR 261 Tri-Del.

Nandganj Sihori Sugar Co. Ltd. Vs CCE – 2014 (34) STR 850 Tri-Del.

The above legacy has been carried forward as it is under GST.

As per Notification 11/2017 Central Taxes (Rate) Dt. 28.06.2017, the following CGST rates (with equal rate of SGST under the SGST Notifications) have been prescribed.

9	Heading 9965 (Goods transport services)	(iii) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use). <i>Explanation.</i> - "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.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> no. (iv)]
			6	-
		(v) Goods transport services other than (i), (ii), (iii) and (iv) above.	9	-

The above entry (iii) has been amended as below, vide Notification 20/2017 Central Taxes (Rate) Dt. 22.08.2017

(3)	(4)	(5)
<p>“(iii) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use). <i>Explanation.-</i> “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.</p>	2.5	<p>Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> no. (iv)]</p>
	or	
	6	<p>Provided that the goods transport agency opting to pay central tax @ 6% under this entry shall, thenceforth, be liable to pay central tax @ 6% on all the services of GTA supplied by it.”</p>

Further, as per Notification 12/2017 Central Taxes (Rate) Dt. 28.06.2017, the following supply of services are exempted.

18. Services by way of transportation of goods-

(a) by road except the services of—

(i) a goods transportation agency;

(ii) a courier agency;

(b) by inland waterways.

22. Services by way of giving on hire to a goods transport agency, a means of transportation of goods.

It may be observed that the definition of the term “goods transport agency” and the exemption for all road transportation services except services by GTA and courier agency, still continues under GST. And the question as to who is a GTA and what are the services other than GTA still haunts one.

The following practical issues arise out of the above legal provisions.

- When a supplier of goods bills freight also along with sale price, the said supplier is not a GTA. Can he claim exemption from payment of GST on the freight charged, on the basis of the above exemption? But the Illustration under the definition of composite supply lays down that in such case, the freight also should suffer same rate of GST applicable for goods. If we treat the freight as exempt from payment of GST as per the above exemption, then the supply is not at all a composite supply.
- A is giving his vehicle to B by charging freight and not by way of hire and B uses the vehicle to transport the goods of C. Can A claim the above exemption under S.No. 22 of Notification 12/2017.
- In a chain of transaction involving several transporters, how to determine the liability / exemption?

Be that it may, the effect of the above notifications could be tabulated as below.

RCM applicability.

If the GTA services are received by the following persons, GST is payable under RCM.

- 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*
- 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.*

Rate and exemption.

S.No.	Activity	GST applicable	Remarks
1	GTA service provided to categories of persons not covered by RCM	5 % to be paid by GTA	NO ITC can be availed by the GTA
		12 % to be paid by GTA	ITC can be availed by the GTA
2	GTA service provided to categories of persons covered by RCM	5 % to be paid by the service recipient. ITC can be availed by the recipient	GTA cannot avail ITC
		GTA can opt to avail ITC and pay @ 12 %.	If such option is exercised, no RCM would apply.
3	Giving goods transport vehicles on hire to GTA	Exempted	

Place of supply.

Section 12 (8) of the IGST Act, 2017 deals with the same.

(8) The place of supply of services by way of transportation of goods, including by mail or courier to, -

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

S.No.	Situation	Place of supply
1	A from Chennai (Registered under GST) engages M/s Gupta Transports, Mumbai to transport his imported goods from Mumbai to his job worker's premises in Nagpur	Tamil Nadu. Location of recipient – being Registered Person. Hence IGST is payable. Sec. 12 (8) (a)
2	A from Chennai (Registered under GST) engages M/s Gupta Transports, Mumbai to transport his imported goods from Mumbai to his job worker's premises in Bhopal	
3	A from Chennai (not registered under GST) engages M/s Gupta Transporters, Mumbai to transport his imported goods from Mumbai port to Chennai	Maharashtra. CGST and Maharashtra SGST payable. Section 12 (8) (b). If A is not falling under any of the category of persons attracting RCM, then M/s Gupta Transports shall pay CGST + Maharashtra SGST.
4	A & Co, a partnership firm from Chennai (not registered under GST) engages M/s Gupta Transporters, Mumbai to transport his imported goods from Mumbai port to Chennai	Being a partnership firm A is liable to pay GST under RCM for GTA services and hence need to obtain registration. Once registration is obtained, Place of supply as per Sec. 12 (8) (a) would be Tamil Nadu and IGST is payable by A & Co, under RCM.

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