

Movement Related Services



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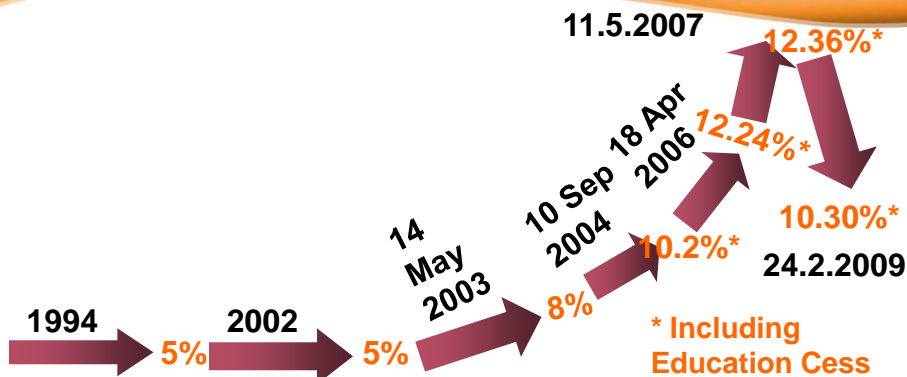
INTRODUCTION TO SERVICE TAX

- Tax on services introduced vide Finance Act, 1994
- Service tax extends to whole of India except the state of J&K
- Destination based consumption tax
- Services can be exported without payment of tax
- The word 'Service' is not defined
- Each type of activity which is made liable to tax under this provisions are defined.

INTRODUCTION TO SERVICE TAX

- A Constitutional amendment vide Constitutional (Eighty-Eighth Amendment) Act,
 - 2003 Insertion of new articles – 268A – Service tax levied by Union and collected and appropriated by Union and the States.
 - Further it amends Seventh Schedule to include new entry inserted after entry 92B as follows:
 - “92C – Taxes on Services”

SERVICE TAX RATE STRUCTURE



MOVEMENT RELATED SERVICES



Goods Transport

- Transportation of goods
 - by road
 - by air
 - by rail
 - through pipeline
 - of costal goods

Passenger Transport

- Rent-a-Cab
- Tour Operator
- Transport of passengers by air
- Transport of passengers by Cruise Ship services



TRANSPORTATION OF GOODS BY ROAD

LEGISLATIVE INTENT

- Budget Speech of FM while introducing GTA service in 2004

“I propose to add some more this year. These are business exhibition services; services provided by transport booking agents.....I may clarify that there is no intention to levy service tax on truck owners or truck operators”

DEFINITION

- GTA – any person who provides services
 - in relation to transportation of goods
 - by road and
 - issues consignment note, by whatever name called
- Taxable service-
 - Any service provided to any person,
 - by a goods transport agency,
 - in relation to transport of goods by road
 - in a goods carriage.

Goods Transport Services

- Rule 4B of Service Tax Rules makes it mandatory to issue consignment note.
- Rule 4A makes it mandatory to issue invoices.
- The two rules have certain information which is mandatory to mention.
 - **Serially numbered, name of the consignor & consignee, Regn. No. of goods carriage, details of goods transported etc.**

PERSON LIABLE TO PAY TAX

- If consignee or consignor is :

- Factory
- Company
- Corporation
- Society
- Co-operative society

- Dealer of excisable goods
- Body Corporate
- Partnership firm

- **Person who is liable to pay freight**
- In any other case, provider of service is liable to pay.

EXEMPTIONS

Abatement – Notification 13/2008 dt. 1.3.08

- 75% of the gross amount charged is exempted
- Condition for non availment of credit deleted
- GTA can not be considered as output service for the purpose of claiming credit

- Circular No. 334/1/08-TRU dt. 29.2.2008

EXEMPTIONS

- Notification No. 33/2004 dt. 3.12.04
 - Exempts service tax on taxable service provided by the goods transport agency to any person, in relation to transport of **fruits, vegetables, eggs or milk by road in a goods carriage**

EXEMPTIONS

- Notification No. 34/2004-ST, dated 3.12.2004,
-Exemption to GTA services where
 - the gross amount charged on consignments transported in a goods carriage does not exceed Rs. 1500.
 - the gross amount charged on an individual consignment transported in a goods carriage does not exceed Rs.750.

EXEMPTIONS

Notification No. 1/2009 ST dt. 5.1.09

- Following services provided to GTA for use in GTA services is exempt from tax:
 - Clearing and Forwarding & Cargo Handling
 - Packaging service & Manpower recruitment
 - BAS & BSS
 - Supply of Tangible goods

EXEMPTIONS

- **Threshold exemption of 10 Lakhs:**
 - Not applicable to person liable to pay tax other than service provider
 - Service provider could avail this exemption
 - ✓ Gross value on which other person is liable to pay service tax has to be excluded for computing 10L

PRACTICAL ISSUES

- Whether individual truck owner who is operating the transportation would be liable to tax?
- **Kanka Durga Agro Oil Products-2009(15)S.T.R. 399(T-Bang) – intention of the Govt is to tax transport agencies and not individual truck owners as clarified in Budget speach**

PRACTICAL ISSUES

- Reimbursement of freight charges to seller which is charged in Invoice, whether taxable?
- **NO - ST is chargeable on GTA services provided. Here transport agency is providing service. Only expenses are reimbursed**

PRACTICAL ISSUES

- Whether ST on GTA could be paid by utilising CENVAT Credit
 - **Till 1.3.2008 it was possible**
 - **W.e.f. 1.3.2008 Cenvat Credit Rules amended**
 - ✓GTA is not a OUTPUT SERVICE
 - ✓Hence credit can not be availed and utilised

PRACTICAL ISSUES

- What happens if service provider pays ST instead of the person liable to pay? Whether demand could be raised again on Person liable to pay
- Navyug Alloys Pvt. Ltd – 2009(13)S.T.R 421(T-Ahmd.)
 - Once tax paid, same amount cannot be confirmed in respect of same services

PRACTICAL ISSUES

- Composite Service involving GTA+ loading, unloading, packing and temporary storage...
- Whether GTA service or other service
- If predominant nature of service is GTA and other services are ancillary to it -- classification under GTA

Circ. No. 104/7/2008-S.T., dated 6-8-2008

PRACTICAL ISSUES

- Freight collected from sugar cane growers and paid to GTA?
- Distribution of goods in own transport and collecting charges from the buyers

RENT-A-CAB

DEFINITION

- Rent a Cab Scheme of operator means
 - Any person
 - Engaged
 - In the business of
 - Renting of cabs

- Taxable Service:
 - Services provided by Rent a Cab operator
 - In relation to renting of cabs

DEFINITION

- CAB -
 - a motorcab, or
 - a maxicab, or
 - any motor vehicle constructed or adapted
 - ✓ to carry more than twelve passengers, excluding the driver,
 - ✓ for hire or reward
 - Does not include Maxi cab or any other vehicle rented out to educational body

DEFINITION

- **MOTORCAB**
 - Constructed or adopted to carry not more than 6 passengers including driver for hire or reward

- **MAXICAB**
 - Constructed or adopted to carry more than 6 but not more than 12 passengers including driver for hire or reward

PRACTICAL ISSUES

- What type of renting is taxable?
 - Giving cab on hourly basis / KM basis
 - Giving cab on monthly rental basis with driver
 - Giving cab on monthly rental basis with driver but effective control and possession not transferred
 - Giving cab on monthly rental basis with driver- but effective control and possession transferred

PRACTICAL ISSUES

- Hiring on KM / time basis - not taxable

- *Kuldip Singh Gill- 2006 (3) S.T.R. 689*
- *R.S. Travels,- 2008 (12) S.T.R. 27 (Tri. - Del.)*
- *Surya Tours and Travels- 2008-TIOL-2035-CESTAT-DEL*
- *The service is transport service and not renting of CAB*

PRACTICAL ISSUES

- Whether transfer of cab with right to use would amount to deemed sale as per Art. 366(29A) of Constitution?

- *Andhra Pradesh v. Rastriya Ispat Nigam Limited (2002) 126 STC 114*
- *Lakshmi Audio Visual Inc., v. Asst. Commissioner of Commercial Taxes (Kar.) (2001) 124 STC 426*

PRACTICAL ISSUES

- If cab given for use by the client without transferring the possession or effective control, is it taxable under ‘Supply of tangible goods for use’ service?

EXEMPTION

- Exemption of 60% of the value of taxable services
 - No Cenvat availment
 - 12/2003 benefit should not be availed

Notfn.1/2006-1.3.06



TOUR OPERATOR SERVICE



DEFINITIONS

- Any person engaged in the business of
 - planning, scheduling, organizing or arranging tours
 - which may include arrangements for accommodation, sightseeing or other similar services
 - by any mode of transport,
 - and includes

DEFINITIONS

- any person engaged in the business of
 - operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit,
 - Other than a stage carriage permitted, granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made there under.

EXEMPTIONS

- Notification 1/2006
 - Package Tour- 75% abatement
 - Solely arranging and booking accommodations- 90% abatement
 - In all other cases -60% abatement

EXEMPTION

- Notification 20/2009
 - Exemption to
 - point to point transport of passengers
 - by a tour operator
 - having contract carriage permit

PRACTICAL ISSUES

- Passenger transport from Bangalore to Hyderabad by a Private Bus Operator?
 - Is it a Tour?

HUJ TRAVEL

- Circular No. 117/11/2009-S.T., dated 30-10-2009
- Export of Services - partly performed outside India

TRANSPORTATION OF GOODS BY AIR

DEFINITIONS

- **Aircraft operator (3b)**
 - any person who
 - provides the service of transport of goods or passengers by aircraft
- **Aircraft – As per Aircraft Act, 1934**
 - Means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of air against the earth's surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines

EXEMPTION

- **Notification NO. 29/2005 dt. 15.07.05**
 - Transport of Export goods are exempted



TRANSPORTATION GOODS THROUGH PIPELINE OR OTHER CONDUIT



SERVICES

- Services in relation to
- Transportation of goods
- Through
 - pipeline or
 - conduit
- is liable to tax



TRANSPORTATION OF GOODS BY RAIL



TRANSPORT THROUGH RAIL

- Prior to 1.9.2009
 - Transportation of goods **in containers** by rail
 - Service by any person other **than Government Railways** is taxable
- From 1.9.2009
- Services in relation to transport of goods by rail, in any manner is taxable
- Services provided by any person is taxable

EXEMPTION

- Notification No. 33/2009
 - Exemption to taxable services of transport of goods in containers by rail provided by Government Railways.
 - Government Railway - 'Railways owned by the Central Government'

**TRANSPORTATION OF COSTAL
GOODS**

TAXABLE SERVICES

- Services in relation to transport of —
 - Coastal goods;
 - Goods through national waterway; or
 - Goods through inland water.

COASTAL GOODS

- Goods other than imported goods, transported in a vessel from one port to another port

Kolkatta —————> Chennai

Imported goods: any goods brought to India from a place outside India other than goods which have been cleared for home consumption

NATIONAL WATERWAYS

- National Waterways as declared by the Government
- Presently 5 National Water ways are there

INLAND WATER

- Any canal, river, lake or other navigable water within a state
- Tidal waters

EXEMPTION

- Notification No 30/09 ST dt. 31.08.09
- Transport of certain goods are exempted
 - Food stuffs
 - Petroleum and petroleum products
 - Raw jute and jute textile
 - Defence/ military equipments
 - Relief materials meant for victims of natural or manmade disasters
 - Newspaper/magazines registered with Registrar of Newspapers

Transportation of persons by Air

DEFINITIONS

- **International journey (56a):**
 - Journey from any customs airport on board any aircraft to a place outside India

- **Passenger (77c):**
 - means any person boarding, at any customs airport, an aircraft for performing an international journey,
but does not include —

DEFINITION

- A person who has arrived at such customs airport from a place outside India and is in transit through India, provided that he does not pass through immigration and does not leave customs area and continues his journey to a place outside India; and
- A person employed or engaged by the aircraft operator in any capacity on board the aircraft

TAXABLE SERVICE

- Service provided by an aircraft operator,
- in relation to
 - scheduled or non-scheduled air transport of
 - such passenger embarking in India
 - for international journey,
 - in any class
 - other than economy class

TAXABLE SERVICE

- Economy class - scheduled air transport of passengers means, —
 - where there is more than one class of travel, the class attracting the lowest standard fare; or
 - where there is only one class of travel, that class.
- Economy class – Non-scheduled air transport of passengers,
 - no class of travel shall be treated as economy class;



Transportation of persons by Cruise Ship



TAXABLE SERVICE

- Services in relation to
 - transport of such person embarking from any port or other port in India,
 - by a cruise ship.

TAXABLE SERVICE

- **cruise ship” means**
 - a ship or vessel
 - used for providing recreational or pleasure trips,
 - but does not include a ship or vessel
 - used for private purposes or a ship or vessel of, or less than, fifteen net tonnage

IMPORTANT ASPECTS

- **Transportation by Air and transportation by Cruise ship does not qualify as Export of Service.**
- **Export of Service Rules Excludes both**



THANK YOU

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