

Goods and Services Tax on Transportation of Goods by Road



The levy of Service Tax on Road Transportation Service has always been a contentious issue. 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. To qualify as services of GTA, the GTA should be necessarily issuing a consignment note. If such services of GTA are availed by the specified categories of persons, the recipients who avail such services are the ones liable to pay GST @ 5% unless the GTA opts for collecting and paying taxes @ 12%. On the contrary, Services provided by GTA to persons other than specified category recipients are exempted from chargeability of GST. Read on to know more...

Transportation of goods by road is done by transporter or courier agency. Here, we are discussing about transporter. Transporter can be of two types:

- a. Goods Transport Agency (GTA)- like VRL Logistic or TCI XPS
- b. Transport (i.e. Vehicle) Owners

The real difference between GTA and Transport Owners is, GTA are not fleet owners. They provide service of transportation by using the fleet of others.

Why are we trying to differentiate between GTA & Transport Owners?

Because of the following exemption—“Notification No. 12-2017 dated 28 June 2017 Paragraph 1 Serial No. 18–Service by way of transportation of goods by road except the services of Goods Transport Agency and courier agency.”

However, law has an issue in defining the GTA as “Notification 12-2017 dated 28 June 2017 Paragraph 2 Clause (ze)-any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called”, because consignment note is even issued by transport owners.

As per Rule of Interpretation of Tax Statutes given by the Hon’ble Courts, whenever law has an issue, to suppress such an issue, one can refer to the speech of mover given on the floor of the Parliament.

Finance Minister Shri P. Chidambaram, in his Budget Speech on 8-7-2004 (Para 149) has stated as follows: “149. 58 services have been brought under the net so



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far. I propose to add some more this year. These are business exhibition services; airport services; services provided by transport booking agents; transport of goods by air; survey and exploration services; opinion poll services; intellectual property services other than copy right; brokers of forward contracts; pandal and shamiana contractors; outdoor caterers; independent TV/radio programme producers; construction services in respect of commercial or industrial constructions; and life insurance services to the extent of the risk premium. I may clarify that there is no intention to levy service tax on truck owners or truck operators. Nor, as was clarified by my predecessor, is there any intention to levy service tax on the savings part of the premium collected by an insurer.”

Thus, as far as the aforesaid statement is concerned, one can draw a meaning that the tax was imposed only on goods transport agency and not on transport owners. The same view has been upheld by the Tribunal in *C.C.E. & C. GUNTUR VERSUS KANAKA DURGA AGRO OIL PRODUCTS PVT. LTD.* [2009 (15) S.T.R. 399 (Tri. - Bang.)] where-in the Tribunal held that Transport booking agents alone contended as covered under Goods Transport Agency service and Service tax paid for engaging services of individual truck operators liable to be refunded.

Whether the intention is to levy tax only on goods transport agency or on transport owners as well has always been a contentious issue. The Honourable Madras High court in the case of *C.C.E., SALEM Versus SUIBRAMANIA SIVA CO-OP SUGAR MILLS LTD.* [2014 (35) S.T.R. 500 (Mad.)] has held that 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 the budget speech would not be taken in aid for understanding the scope of the clear terms of the provisions in the taxation enactment. 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”.

The definition and taxability of transportation of goods in GST are identical to as it was in 2005

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A consignment note is issued, and it indicates that the *lien* on the goods has been transferred (to the transporter), the transporter becomes responsible for the goods till its safe delivery to the consignee. Thus it is only the services of such GTA, who assumes agency functions, that is being brought into the GST net.

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(Positive Regime of Taxation in Service Tax) and 2012 (Negative Regime of Taxation in Service Tax). Also, the current Finance Minister Mr. Arun Jaitley while deciding the rate and exemption on services on 19th May 2017 at the GST Council Meeting has said that they are following a grandfatherly approach in deciding taxability of services in GST regime. Thus, all the contention/interpretation prevailing under the erstwhile service tax law will prevail under the GST regime.

By going through the definition of GTA, 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. Thus, 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.

Registration

The next question which needs to be answered is, “When GTA is required to take registration?”

Section 22(1) of CGST Act, 2017 “Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees”

It means, once the aggregate turnover of a GTA

exceeds ₹20 lakh, he is compulsorily required to take registration. The said limit of ₹20 lakh will be reduced to ₹10 lakh, if a GTA is having business in any of the special category states such as north-eastern states or hilly states.

No Registration Required for Person Whose Supplies are in Reverse Charge

In terms of Notification No. 5/2017- Central Tax dated 19/06/2017, *"In exercise of the powers conferred by sub-section (2) of section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby specifies the persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under sub-section (3) of section 9 of the said Act as the category of persons exempted from obtaining registration under the aforesaid Act."*

Thus, a person is *not required to obtain registration* if he is *exclusively* supplying goods or services, the total tax on which is required to be paid by the recipient *under reverse charge basis* even if his aggregate turnover exceeds ₹20 lakh.

Applicable Tax Rates and Eligibility of Input Tax Credits

Paragraph 1 of Notification No. 11/2017- Central Tax (Rates) notifies central tax rates for services subject to condition mentioned there in the notification.

Sr. No. 9(iii) of that para prescribes 2.5% Central Tax rate for Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use) with the condition that "credit of input tax charged on goods and services used in supplying the service has not been taken".

However, if a goods transport agency wishes to avail credit of input tax charged on goods and services used in supplying the services, he may avail so by paying Central Tax @ 6% (Aggregate Tax=12%) on all the services of GTA supplied by it. [In terms of amendment made by para (iii) of Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017]

Eligibility of ITC to Supplier of Goods in Case of GTA Services

Where 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, in cases where the GTA opted to pay GST @ 12% on Forward Charge basis, the recipient would be eligible for ITC of the GST paid.

Reverse Charge

In terms of Sr. No. 1 of paragraph 1 of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017, Central Government has notified the applicability of reverse charge on GTA as follows:

"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 to-

- (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 (with Full 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 under reverse charge basis. 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.

However, in terms of Clause (c) of Para (i) of Notification No. 32/2017-Central Tax (Rate) dated 13th Oct 2017, a new clause 21A has been inserted in Notification No. 12/2017-Central Tax (Rate) *Exempting the Services Provided by a Goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the recipients falling under specified categories.*

As per Section 10(2) of CGST Act, 2017, "The composition scheme in case of service provider is available only in case of Restaurant or catering service". Therefore, composition scheme is not available for goods transport agency.

Illustration:

A GTA is providing services exclusively to the Specified category recipient. His turnover for the year is ₹ 50 lakh. He does not opt to pay 12% GST and hence not availing any ITC. Whether he is required to take registration? What if he wishes to opt to pay 12% GST with full ITC?

Since in this case, the person is engaged exclusively in making taxable supplies, the tax on which is required to be paid by the recipient, thus in terms of Notification No. 5/2017- Central Tax dated 19.06.2017, the GTA is not required to be registered.

If he wishes to opt for 12% GST with Full ITC, then the services supplied by it will come out from the Reverse Charge Mechanism. In such case, the GTA will be required to obtain registration as his aggregate turnover exceeds ₹ 20 lakh.

No Registration required for person whose supplies are fully exempted:

Section 23(1) of CGST Act, 2017 the following person is not required to take registration:

"any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act."

Exemptions Available in Case of Transportation of Goods by GTA

1. Exemption to Specific Services provided by GTA:

Notification No. 12/2017- Central Tax dated 28th June 2017 Paragraph 1 Serial No. 21:

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

2. Exemption to GTA receiving means of Transport on Hire:

Notification No. 12/2017- Central Tax dated 28th June 2017 Paragraph 1 Serial No. 22(b): Services by way of giving on hire – to a goods transport agency, a means of transportation of goods.

Place of Supply:

As per Section 7 of IGST Act, 2017, Where the Location of Supplier and Place of Supply are in:

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

Then such supply will be treated as "Supply in the course of Inter-state trade or commerce"

On the other hand, where the location of the supplier and the place of supply of goods are in the same State or same Union territory, then it shall be treated as intra-State supply as per Section 8 of IGST Act, 2017.

Rule for determination of Place of Supply in case of Transportation of goods by road by GTA:

- If that supply is to a registered person, place of supply will be "location of such person"
- If that supply is to a person other than a registered person, place of supply will be "location at which such goods are handed over for their transportation"
- However, where the location of supplier of services or the location of recipient of services is outside India, place of supply of services of transportation of goods by GTA shall be the "place of destination of such goods."

Is Composition Scheme Available for Transportation?

As per Section 10(2) of CGST Act, 2017, "The composition scheme in case of service provider is available only in case of Restaurant or catering service". Therefore, composition scheme is not available for goods transport agency.

What Accounts and Records Need To Be Maintained by GTA?

As per Section 35(2), every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in prescribed manner.

If a Transporter is not registered, then he shall submit the details regarding his business electronically on the common portal in FORM GST ENR-01 and upon validation of the details furnished, a unique enrolment number shall be generated and communicated to the said person.

Any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with the GSTIN of the registered consigner and consignee for each of his branches.

Detention, Seizure and Release of Goods and Conveyances in Transit

As per Section 129(1) of CGST Act, 2017 "Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in *contravention of the provisions* of this Act or the rules made there under, all *such goods and conveyance* used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be *liable to detention or seizure* and after detention or seizure, shall be released on payment of applicable tax and penalty.

Generation of E-Way Bill by the Transporter

As per Rule 138(3) of CGST Rules, 2017 "*Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter in Part B of FORM GST EWB-01 on the common portal and the e-way bill shall be generated by the*

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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).

transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01"

Thus, in cases where the E-way bill is not generated both by the Supplier and the recipient, the Transporter will be required to generate the same.

There may be the possibility that individual consignment made by a supplier is of value less than ₹50,000 whereby the supplier is not required to generate Form GST EWB-01, but if the value of all goods carried in the conveyance is more than ₹50,000 then the transporter shall generate FORM GST EWB-01 on the basis of Invoices/ Bill of Supply/ Delivery challan prior to movement of goods. Thus in such a case, both Part-A and Part-B of the form will require to be furnished by the transporter.

However the generation of E-way Bill has been deferred till 31st March, 2018 in case of most of the states.

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 GST on those services has been exempted. The GTA service supplier is not entitled to take ITC on input services availed by him if tax is being paid by recipient under reverse charge @ 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 input service as the same is exempted. ■