

## Transportation of Goods by Road Services: Denial of Abatement Exemption – A Burning Issue

**In the wake of several cases of denial of Abatement Exemption under Notification No. 32/2004-ST dt. 3.12.04 by the Service Tax Authorities, the issue is becoming increasingly controversial. Generally, the basic contention of Service Tax Authorities in these cases has been that any assessee liable to pay GTA Service Tax in terms of Rule 2(1)(d)(v) of the Rules is not entitled to benefit in terms of the Exemption Notification. This article probes the issue from a professional angle.**

It was in the Union Budget 2004-05 that Service Tax was first introduced on Services provided by a Goods Transport Agency (GTA) in relation to transport of goods by road. For this purpose, a sub-clause (zzp) was inserted in Clause 105 of Section 65 of the Finance Act, 1994 ("Act"), vide Finance (No. 2) Act, 2004, defining taxable service as any service provided to a customer by a goods transport agency, in relation to transport of goods by road in a goods carriage.

The Service Tax on GTA Services came in effect from 1.1.05. As per the provisions of Section 67 of the Act, the value of the taxable services for charging Service Tax is the gross value charged and received by the service provider for such services. In case of the services of GTA, the gross value shall be the gross amount charged by the GTA for the services of transportation of goods by road, i.e. freight charges.

Rule 2(1)(d)(v) of Service Tax Rules, 1994 ("Rules") introduced by Notification No. 35/2004 - ST, dated 3.12.04 prescribes that the person making payment towards freight would be liable to pay Service Tax, in case the consignor or the consignee of the goods transported is one of the following:

- (i) Factory registered under or governed by the Factories Act;
- (ii) Company established by or under the Companies Act;
- (iii) Corporation established by or under any law;
- (iv) Society registered under Societies Registration Act or similar law;
- (v) Co-operative society established by or under any law;
- (vi) Dealer of excisable goods, registered under the Central Excise Law; or
- (vii) Any body corporate established, or a partnership firm registered, by or under any law.

In cases other than those mentioned above, Service Tax is to be paid by the GTA. Further, the GTA is required to issue a consignment note (even in cases covered above) except in cases where the service in relation to transport of goods by road is wholly exempted from Service Tax.

The following exemptions have been provided with regard to GTA Services:

- (i) Notification No. 32/2004 – ST dt. 3.12.04 exempts Service Tax on 75% of the gross amount charged in respect of taxable service provided by a GTA to a customer, provided that credit of duty paid on inputs or capital goods used for providing such taxable service is not taken, and benefit of Notification No. 12/2003 – ST, dt. 20.6.03 is not availed of by the GTA.



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(ii) Notification No. 33/2004 ST dt. 3.12.04 exempts Service Tax on taxable service provided by GTA to a customer in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage.

(iii) Notification No. 34/2004 – ST dt. 3.12.04 exempts the taxable service provided by the GTA to a customer, from the whole of service tax, in such cases where:

(a) the gross amount charged on consignments transported in a goods carriage does not exceed Rs. 1,500; or

(b) the gross amount charged on an individual consignment transported in a goods carriage does not exceed Rs. 750.

### Denial of Abatement Exemption by Service Tax Authorities

A large number of Show Cause Notices (SCNs) are being issued by Service Tax Authorities denying 75%. [Abatement Exemption under Notification No. 32/2004-ST dt. 3.12.04 on the ground that the conditions Specified therein are only applicable to GTA and accordingly the Abatement Exemption is applicable only to GTA. Hence any person specified in terms of Rule 2(1) (d) (v) of the Rules is not eligible for the benefit of 75% abatement under Notification No. 32/04-ST dt. 3.12.04

### Backdrop of GTA Levy and Abatement Exemption

In pursuance to an agreement dated 27<sup>th</sup> August 2004 between the Government and representatives of the transport industry, a Committee was set up to look into appropriate mechanism/modalities for collection and payment of service tax. It was instructed vide letter F. No. B2/8/2004-TRU dated 10.9.2004 that no tax would be payable by the GTA till such time the Government comes out with the relevant rules and notifications prescribing the modalities for levy and collection.

The Committee submitted its report on 27<sup>th</sup> October 2004, and taking into account the

recommendations of the Committee, Notification Nos. 32 to 35/2004-Service Tax (all dated 3.12.04) were issued prescribing the modalities for levy and collection of service tax in respect of transport of goods by road. These notifications were made effective from 1.1.05.

The relevant extracts from the aforesaid Committee Report, relating to Recommendations for Grant of Abatement while computing “Taxable Value of Services”, are reproduced hereafter for ready reference:

#### “Para 6

#### Taxable Value

*The Committee noted that the transport sector has to bear a number of taxes for running the vehicles and for carrying goods by road. In addition, fuel, spares, etc., are the main running expenses. While credit of excise duty paid on excisable inputs can be availed for payment of service tax, practically it is not possible for the transport sector to avail of such credit. Further, no set-off is available towards other taxes borne by the transporters. Also, the truck owners / operators are not liable for the payment of Service Tax and cannot avail Cenvat credit on inputs and capital goods. In this regard the Committee recommends that whosoever is liable to pay Service Tax on transport of goods by road should be allowed abatement towards items such as fuel, spare parts, toll tax, local taxes, etc. Taking into account all the cost elements and the abatements given to sectors providing similar services, the Committee recommends an abatement of 75% on the gross freight amount charged. The abatement would, however, be subject to condition of non-availment of Cenvat credit on input goods and capital goods, and non-availment of exemption to goods sold during the course of provisions of service, etc. The credit of taxable services would, however, be available to the assessee claiming such abatement.*

Exemption notifications granting Abatements from Value of Taxable Services, have been issued in regard to many services like mandap keepers, outdoor caterers, erection, commissioning and

installation, construction, etc. The same is also granted for GTA services.

The basic objective of granting abatements is to provide a deduction from the value of taxable service under a presumptive/composition method whereby the value of goods sold during the course of providing the services are not subjected to Service Tax resulting in double taxation vis-à-vis Sales Tax / VAT / Works Contract Laws.

In the context of GTA Services, substantial expenditure is incurred by GTAs on fuel and spares, for which credit/set-off is not available. Hence, an abatement of 75% has been granted to compensate for the same.

### **Abatement Exemption Notification No 32/2004 – ST dt. 3.12.04**

The full text of the Notification is reproduced hereunder for ready reference:

*“In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government being satisfied that it is necessary in the public interest to do so, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from so much of the service tax leviable thereon under section 66 of the said Act, as is in excess of the Service Tax calculated on a value which is equivalent to 25% of the gross amount charged from the customer by such goods transport agency for providing the said taxable service.*

*Provided that this exemption shall not apply in such cases where:*

- (i) the credit of duty paid on inputs or capital goods used for providing such taxable service has been taken under the provision of the Cenvat Credit Rules, 2004; or*
- ii) the goods transport agency has availed of the benefit under the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 12/2003 – Service Tax, dated 20 June, 2003 [G.S.R. 503(E), dated 20 June, 2003]”*

A careful perusal of the above exemption notification would show that exemption is allowed in regard to taxable services provided by GTA, in relation to transportation of goods by road in a goods carriage. This covers all taxable services provided by a GTA in terms of Section 65(105) (zzp) of the Act.

There is absolutely nothing in the exemption notification that excludes cases where persons specified in Rule 2(1)(d)(v) of the Rules are liable to pay Service Tax, from the scope/eligibility to the benefit of Abatement Exemption.

### **Reverse Charge Mechanism – Applicability of Service Tax Provisions**

The relevant extracts from the Act have been reproduced as follows:

#### **"Section 68**

- 1) Every person providing taxable service to any person shall pay Service Tax at the rate specified in Section 66 in such a manner and within such period as may be prescribed.*
- 2) Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Government in the Official Gazette, the Service Tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in Section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the Service Tax in relation to such service.”*

The aforesaid statutory provisions under the Act are very clear that all provisions of the Act/ Rules would equally apply to specified persons liable to pay Service Tax in terms of Section 68(2) r.w. Rule 2(d)(1) of the Rules as if such specified persons were the Service Providers.

Accordingly, since Exemption Notification No. 32/2004 – ST dt. 3.12.04 granting abatement has been issued in term of Section 93(1) of the Act, it would apply with equal force to specified persons liable to Service Tax in terms of Rule 2(1)(d)(v) of the Rules [i.e specified consignor or consignee

making payment in case of GTA services availed by them.]

**Dept Clarification – GTA Services – MF (DR) Letter F. No. B1/6/2005 – TRU dt. 27.7.05 [186 ELT T27]**

Relevant extracts from the CBEC clarification have been reproduced hereunder for ready reference.

**“31 – Goods Transport Agency**

**31.1**

*An abatement of 75% in taxable service of goods transport by road is available on the condition that the goods transport agency has not availed credit on inputs and capital goods used for providing taxable service, and has also not availed benefit of notification No. 12/2003 – Service Tax, dated 20.6.2003 (vide Notification No. 32/2004-Service Tax, dated 3.12.2004). It has been requested that in cases where liability for tax payment is on the consignor or consignee, the procedure as to how it should be confirmed by such consignor or consignee that the goods transport agency has not availed credit or benefit of notification No. 12/2003-Service Tax may be prescribed. In such cases it is clarified that a declaration by the goods transport agency in the consignment note issued, to the effect that neither credit on inputs or capital goods used for provision of service has been taken nor the benefit of Notification No 12/2003-Service Tax has been taken by them may suffice for the purpose of availment of abatement by the person liable to pay service tax.”*

The above CBEC clarification has been issued to clear doubts as to the methodology to be adopted at the end of specified consignors or consignees, to ensure compliance of conditions stipulated in the Exemption Notification No. 32/04 – ST dt. 3.12.04 as to non-availment of Cenvat credit / exemption at the end of GTA.

This clarification impliedly confirms the position that specified consignors/consignees under Rule 2(1)(d)(v) of the Rules making

payment for GTA Services availed are eligible for abatement benefit in terms of Exemption Notification No. 32/04-ST dt. 3.12.04. Had this not been the position, the question of issuing aforesaid clarification by CBEC would not have arisen at all.

**Exemption Notification 6/2005 – ST dt. 1.3.05 (Rs 4 lakh Exemption Scheme)**

The relevant extracts from Exemption Notification No. 6/2005 have been reproduced hereunder:

*“In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding four lakh rupees in any financial year from the whole of the Service Tax leviable thereon under Section 66 of the said Finance Act:*

**The basic objective of granting abatements is to provide a deduction from the value of taxable service under a presumptive/composition method whereby the value of goods sold during the course of providing the services are not subjected to Service Tax resulting in double taxation vis-à-vis Sales Tax/VAT/ Works Contract Laws.**

*Provided that nothing contained in this notification shall apply to:*

- (i) *taxable services provided by a person under a brand name or trade name, whether registered or not, of another person, or*
- (ii) *such value of taxable services in respect of which service tax shall be paid by such person and in such a manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules 1994.*

3... *For the purposes of determining aggregate value not exceeding four lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 for which the person liable for paying service tax is as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account."*

The above General Exemption clearly excludes persons liable to pay Service Tax under Section 68(2) of the Act read with Rule 2(1)(d) of the Rules, from the scope of Exemption. Accordingly, specified consignors/consignees liable to pay Service Tax in terms of Rule 2(1)(d)(v) of the Rules under GTA Services are not entitled to avail benefit of the Rs. 4 lakh Exemption Scheme in view of the specific exclusion in the Exemption Notification.

### Interpretation of Exemption Notification

- "It is a well-settled principle of interpretation that courts in construing a statute or notification will give much weight to the interpretation put on it at the time of enactment or issue, and since, by those who have to construe, execute and apply the said enactments."
- "The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is, as it were, contained in the Act itself."
- "The principle is well-settled that when two views of a notification are possible, it should be construed in favour of the subject as part of a fiscal enactment."
- "In a taxing Act, provisions establishing an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit."

- "It must be borne in mind that absurd results of construction are to be avoided."
- "Judges are often criticised for being tied too closely to the statutory words and for failing to give effect to the intention of the Parliament or the lawmaker. According to the tradition of our law, primacy is to be given to the text in which the intention of the lawgiver has been expressed. Cross-refers to Blackstone's observation that the fairest and most rational method to interpret the will of the lawmaker is by exploring his intentions at the time when the law was made, by signs the most natural and probable. And these signs are the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law."

[Collector v. Parle Exports – (1988) 38 ELT 741 (SC); Caroline M. Armytage v. Frederick Wilkinson – 1878 (3) Appeal Cases 355.]

### Denial of Benefit of Abatement Exemption by Service Tax Authorities Not in Accordance with Legal Provisions of the Act

In the light of the detailed discussions above, the basic contention of Service Tax Authorities that any assessee liable to pay GTA Service Tax in terms of Rule 2(1)(d)(v) of the Rules is not entitled to benefit in terms of Exemption Notification No. 32/04 – ST dt. 3.12.04, is not in accordance with the legal position under the Act / Rules due to one or more of the following reasons:

- (a) The basic objective of granting abatement from the Value of GTA Services vide Notification No. 32 / 04 – ST dt. 3.12.04, is to compensate for cost of fuel/spares that would be comprised in the Value of Taxable Services provided by a GTA for which credit/set-off of taxes paid is usually not available to a GTA. Considering the conceptual background for grant of abatement, there is absolutely no justifiable basis for making a distinction between GTA and specified consignors/consignees of GTA for grant of exemption;

(b) On a plain and simple reading of Exemption Notification No. 32/04 – ST dt. 3.12.04 there is absolutely nothing to indicate or suggest that specified consignors or consignees of GTA liable to pay Service Tax in terms of Rule 2(1)(d)(v) of the Rules are excluded from the scope and eligibility of the said Exemption Notification.

(c) According to Section 68(2) of the Act, all the provisions of the Act/Rules would equally apply to specified consignors/consignees of GTA under Rule 2(1)(d)(v) of the Rules. Hence, Exemption Notification No. 32/04-ST dt. 3.12.04 issued in terms of Section 93 of the Act, would have statutory force and apply to specified persons liable to pay Service Tax in terms of Rule 2(1)(d)(v) of the Rules as if such persons are service providers.

Further, even under the aforesaid Reverse Charge Mechanism, GTA Service Tax is paid in terms of Section 65 (105) (zzb) of the Act, as applicable to GTA Service Providers.

(d) CBEC clarification dt. 27.7.05 clearly confirms the position that specified consignors/consignees of GTA under Rule 2(1)(d)(v) of the Rules are eligible for the benefit of Exemption Notification No. 32/04 – ST dt. 3.12.04. Had this not been the case, there was absolutely no necessity for CBEC to issue the aforesaid clarification for GTA services prescribing a methodology to be adopted by such specified persons to ensure compliance of conditions specified under Exemption Notification No. 32/04 – ST dt. 3.12.04 at the end of GTA.

(e) Department clarifications are binding on the Officials of the Service Tax Dept. It is a settled position that department circulars/clarifications are binding on the Department authorities, and they cannot take a contrary stand. In this regard, attention is drawn to the following rulings of the Supreme Court:

- *Ranadey Micronutrients v. Collector of Central Excise (1996) 87 ELT 19(SC)*
- *Paper Products Ltd. v. Commissioner of Central Excise (1999) 112 ELT 765 (SC)*

- *CCE v. Indian Oil Corporation Ltd. (2004) 165 ELT 257 (SC)*
- *Fenner India Ltd. v. CCE (2004) 167 ELT 18 (SC)*

Hence, the stand of the Service Tax authorities is clearly contrary to the settled principles laid down by the Supreme Court.

(f) Had the intention of the Government been to exclude specified consignors/consignees of GTA under Rule 2(1)(d)(v) of the Rules, the same would have been done with specific mention in the Exemption Notification No. 32/04- ST dt. 3.12.04.

**As per the provisions of Section 67 of the Act, the value of the taxable services for charging Service Tax is the gross value charged and received by the service provider for such services. In case of the services of GTA, the gross value shall be the gross amount charged by the GTA for the services of transportation of goods by road, i.e. freight charges.**

In this regard, attention is drawn to Notification No. 6/05-ST dt. 1.3.05 wherein persons liable to pay Service Tax in terms of Section 68 of the Act read with Rule 2(1)(d) of the Rules are specifically excluded from eligibility to the Rs. 4 lakh Exemption Notification.

(g) If the contention of the Service Tax Authorities is adopted, a substantial number of assesseees would be denied the benefit of Exemption Notification No 32/04 – ST dt. 3.12.04 and the benefit would be available only to a very small section of assesseees. This would result in an absurd situation and would be against the settled principles relating to interpretation of Exemption Notifications laid down by the Supreme Court from time to time. □