

# Western India Regional Council

Subject : Service Tax Implications on Logistics Sector

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Venue : J. S. Lodha Auditorium,

ICAI Bhawan,

Cuff Parade

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# Service Tax Implications on Logistics Sector

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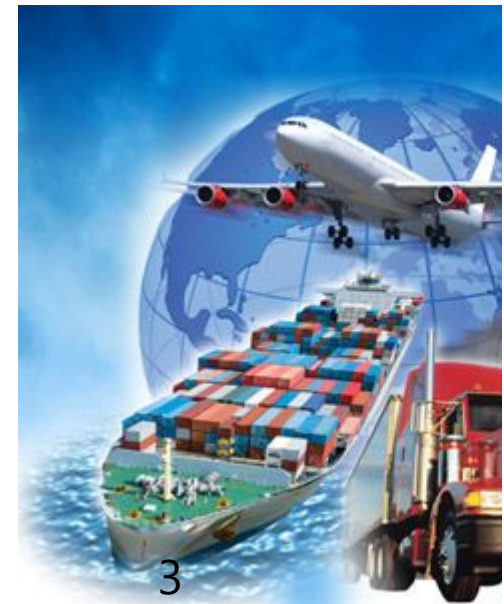
# Logistics – A brief description

Logistics generally means –

- Management of flow of things between point of origin to point of consumption
- Safe, efficient, reliable and sustainable movement of good over time and distance.

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Logistics by road  
(By a Goods Transport  
Agency)

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# Definition

In the current law, i.e. post 1st July, 2012, services of Goods Transport Agency are not defined.

However the term "Service" has been defined under **Section 65B(44)** as under:

*"Service means any activity carried out by a person for another for a consideration, and includes a declared service which includes-*

*a) An activity which constitutes merely,-*

- (i) A transfer of title in goods or immovable property, by way of sale, gift, or in any other manner; or*
- (ii) Such transfer, delivery or supply of any goods which is deemed to be sale within the meaning of clause (2) of the constitution; or*
- (iii) A transaction in money or actionable claim;*

*b) A provision of service by an employee to the employer in the course of his employment in relation to his employment;*

*c) Fees taken in any court or tribunal established under any law for the time being in force."*

➤ Referring to the above definition, it is well settled principle that the activity of goods transport agencies are covered under the definition of service.

# Definition

- In the erstwhile section 65(105)(zzp), services provided by Goods Transport Agency were defined as-

*“**Taxable service** means any service provided or to be provided to any person, by a **goods transport agency** to transport of **goods** by road”.*

## **Current Provisions and Analysis of the definition:**

- **Taxable Service [Sec. 65B(51)]:** *“taxable service” means any service on which service tax is levied under section 66B i.e. charging section.*
- **Goods Transport Agency [Sec. 65B(26)]:** *“goods transport agency” means any person who is engaged in relation to transport of goods by road and issues consignment note, by whatever name called.*
- **Goods [Sec. 65B(25)]:** *“goods” means every kind of moveable property other than actionable claim and includes securities, growing crops, grass and things attached to or forming part of the land which are to be severed before sale or under the contract of sale.*

# Negative List Provisions

- Following services fall under the negative list [Section 66D(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*

## **Analysis:**

- Broadly speaking, transportation of goods by road are not liable to service tax.
- Exception contained in the above clause makes the services provided by goods transport agency courier agency liable to service tax.

# Exemptions under Notification – 25/2012 dated 20th June, 2012

Following exemptions are provided by way of notification No. 25/2012 (as amended till date):

➤ **Entry (21) reads as follows –**

Services provided by a goods transport agency, by way of transportation in a goods carriage of,-

- (a) agricultural produce;
- (b) goods, where gross amount charged for the transportation of goods on a consignment transported carriage does not exceed one thousand five hundred rupees;
- (c) goods, where gross amount charged for the transportation of all such goods for a single consignee rupees seven hundred fifty;
- (d) milk, slat and food grain including flours, pulses and rice;
- (e) chemical fertilizer, organic manure and oil cakes;
- (f) newspaper or magazines registered with Registrar of Newspapers;
- (g) relief material meant for victims of natural or man made disasters, calamities, accidents or mishap; c
- (h) defence or military equipments;
- (i) cotton, ginned or baled.



# Exemptions under Notification – 25/2012 dated 20th June, 2012

## Analysis of Entry No. 21

Scenario	Taxability
Where the consignment of a single consignee is transported in a carriage	Gross amount charged $\leq$ Rs. 1500 – Exem Gross amount charged $>$ Rs. 1500 – Entire taxable
Where the consignment of a multiple consignee is transported in a carriage	Gross amount charged $\leq$ Rs. 750 - Exem form each consignee Gross amount charged $>$ Rs. 750 – Entire taxable

# Exemptions under Notification – 25/2012 dated 20th June, 2012

## **Entry (22) reads as follows:**

*"Services by way of giving on hire-*

*(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers*

*(b) to a goods transport agency, a means of transportation of goods"*

## **Analysis:**

- Services of giving on hire a vehicle for transportation of goods to a goods transport agency is from service tax.

Other Exemptions – Notification No. 31/2012  
Dated 20th June, 2012 as amended by N/No. 04/2015 dated  
1st March, 2015

# Abatements

**Notification No. 26/2012** dated 20th June, 2012 as amended by **Notification No. 8/2015** dated and **Notification No. 8/2016** dated 1st March, 2016 states as under

**Issue:**

Activities incidental to goods transport service

**Clarification:**

- GTA services may include various intermediate and ancillary service provided in relation to the p of road transport.
- Such intermediate and ancillary service may include loading/unloading, packing/unpacking, tran temporary warehousing etc. which are provided in the course of transportation of goods.
- These services are not provided as independent activities but are the means for successful provis principal service
- According to the MF(DR) circular No. 186/5/2015-ST dated 05-10-2015, all such ancillary service part of GTA service and would be eligible for abatement available to GTA service.



## Transport of Goods by Vessel

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# Definition

- In the current law, i.e. post 1st July, 2012, services of transportation of goods by vessel are not **specifically** defined.
- However referring to the definition of the term service under section 65B(44), the activity of transportation of goods by vessel gets squarely covered under the definition of the term service.
- In the erstwhile section 65(105)(zzzzl), taxable services were defined as-

*“Taxable service means any service provided or to be provided to any person, by any other person, in relation to transport of-*

*(i) Coastal goods*

*(ii) Goods through national waterway*

*(iii) Goods through inland water”*



# Negative List Provisions

Following services fall under the negative list [Section 66D(p)] :

*"Services by way of transportation of goods-*

*(i)-----*

*(ii)-----*

*(iii)By inland waterway"*

## **Analysis**

- **Inland water:** Inland water has the meaning assigned to it in clause (b) of section 2 of the Inland Waterways Act, 1917.

### **Section 2(b) of Indian Vessels Act, 1917:**

"inland water" means-

- ) any canal, river, lake or other navigable water within a State,
- i) any area of any tidal water deemed to be the inland water as defined by the Central Government under section 70,
- ii) waters declared by the Central Government to be smooth and partially smooth waters under clause section 3 of the Merchant Shipping Act, 1958.



# Exemptions – Notification No. 25/2012

## Dated 20th June, 2012

Following are the exemptions in **Notification No. 25/2012** (as amended):

### **Entry(20) read as follows:**

Services by way of transportation by rail or a **vessel** from one place in India to another of the following

- (a) ---
- (b) Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishaps
- (c) Defence or military equipments
- (d)---
- (e)---
- (f) Newspaper or magazines registered with the registrar of newspapers;
- (g) Railway equipments or materials;
- (h) Agricultural produce
- (i) Milk, salt and food grain including flours, pulses and rice;
- (j) Chemical fertilizer, organic manure and oil cakes
- (k) cotton, ginned or baled.

# Recent amendments

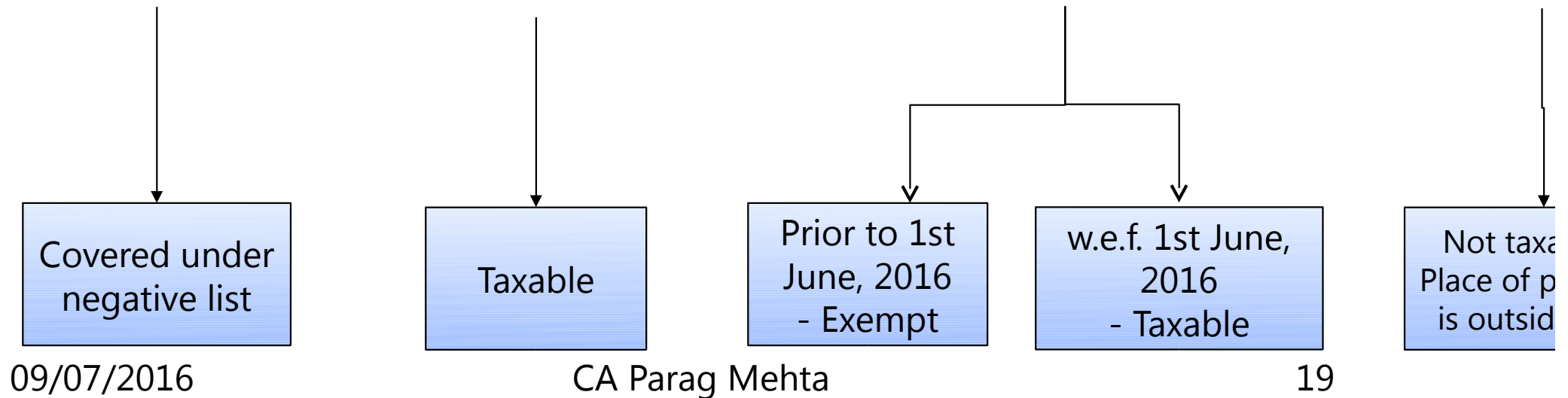
## Effect of the amendment:

- Prior to 1st June, 2016 **ocean freight as well as air freight** was exempt by way of clause (p) in net
- Hence, ocean freight for imports liable to service tax **w.e.f 1st June, 2016.**

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# Summarised Position



# Abatements

**Notification No. 26/2012** dated 20th June, 2012 as amended by **Notification No.8/2015** dated 1st March, 2015 states as under



## Transport of Goods by Aircraft

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# Definitions

- In the current law, i.e. post 1st July, 2012, services of transportation of goods by Aircraft are not specifically defined.
- However referring to the definition of the term service under section 65B(44), the activity of transportation of goods by aircraft gets squarely covered under the definition of the term service.
- In the erstwhile section 65(105)(zzn), taxable services was specifically defined as-

*“Taxable service” means any service provided or to be provided to any person, by an **aircraft operator**, in relation to transport of goods by **aircraft**.*

## **Analysis :**

- **“Aircraft”** has the meaning assigned to it in clause (1) of section 2 of Aircraft Act,1934.  
*“aircraft” means any machine which can derive support in the atmosphere from reactions of the air, a [other than reactions of the air against the earth's surface] and includes balloons, whether fixed or free, airships, kites, gliders and flying machines;*
- **“Aircraft operator”** means any person who provides the service of transport of goods or passenger by aircraft.



# Recent amendments

## Effect of the amendment:

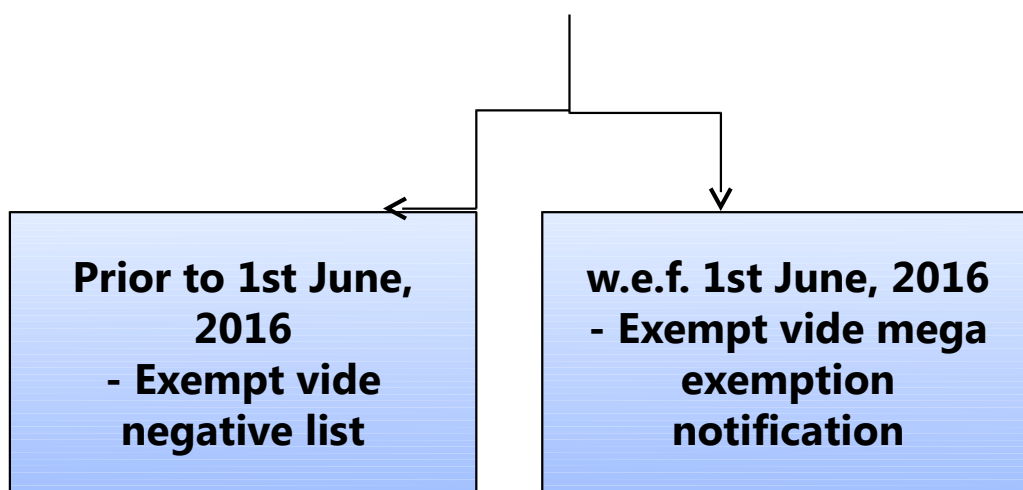
- Broadly speaking there is **no effect on the taxability** of services by way of transportation of goods by aircraft. **It continues to be exempt.**
- Prior to 1st June, 2016 transportation of goods was exempt by way of **clause (p) of negative list.**
- W.e.f 1st June, 2016, transportation of goods is exempt by way **entry no. 53 in mega exemption**

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# Summarized Position



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**It is not taxable as the  
place of provision is  
out of India  
(Rule 10 of POPSR)**

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Transport of Goods by

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# Definitions

- In the current law, i.e. post 1st July, 2012, services of transportation of goods by Rail are not defined.
- In the erstwhile section 65(105)(zzzp), taxable services was defined as-

*“Taxable service” means any service provided or to be provided to any person, by any other person, in relation to transport of goods by rail, in any manner.*

## **Analysis :**

- **“Goods [Sec. 65B(25)]:** *“goods” means every kind of moveable property other than actionable claim and money; and includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.*



# Exemptions – Notification No. 25/2012 Dated 20th June, 2012

Following are the exemptions in **Notification No. 25/2012** (as amended):

## **Entry(20) read as follows:**

Services by way of transportation **by rail** or a vessel from one place in India to another of the following

- (a) ---
- (b) Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishaps;
- (c) Defence or military equipments
- (d)---
- (e)---
- (f) Newspaper or magazines registered with the registrar of newspapers;
- (g) Railway equipments or materials;
- (h) Agricultural produce
- (i) Milk, salt and food grain including flours, pulses and rice;
- (j) Chemical fertilizer, organic manure and oil cakes
- (k) cotton, ginned or baled.

# Abatements

**Notification No. 26/2012** dated 20th June, 2012 as amended by **Notification No. 8/2016** dated states as under

Place of Provision of S  
Rules for Transportatio  
Services

# Place of Provision of Service Rules

## Rule 10 of Place of Provision of Service Rules 2012

### Services by GTA

- Place of provision of service for services **by GTA** is the location of the **person who is liable to pay the freight.**

### Other than mail or Courier agency

- Place of provision of service for services by way of transportation of goods by road is the **place of destination of the goods.**

Transportation service  
provided  
by  
Government / Local  
Authority

# Transportation of goods by government / local authority

- Following services fall under the negative list [Section 66D(a)] :

*“Services by government / Local authority **excluding** the following services **to the extent they are covered elsewhere-***

(i) -----

(ii) -----

(iii) *Transport of goods or passengers*

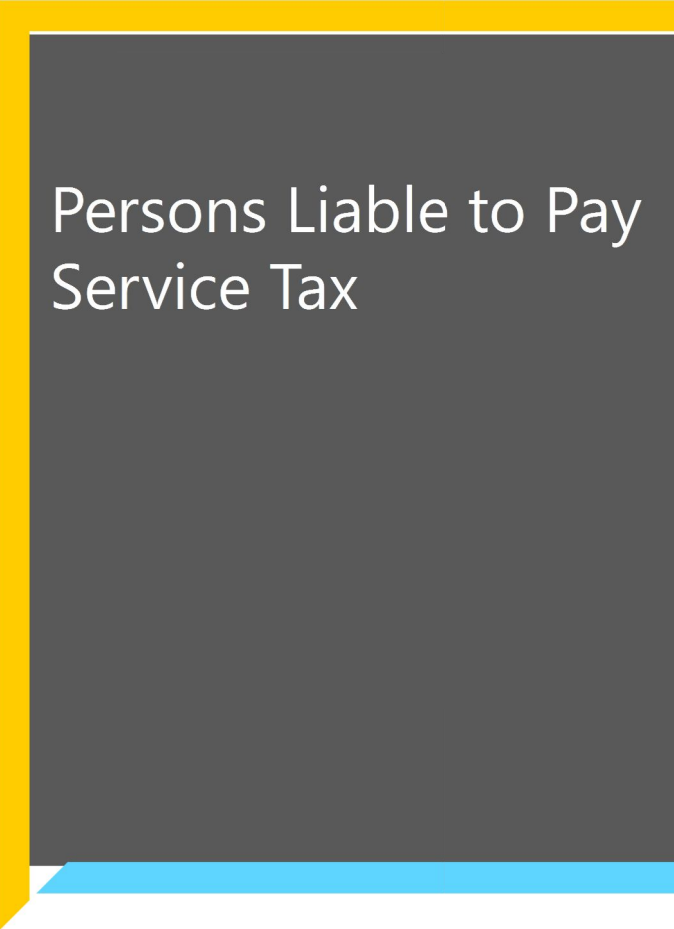
(iv) -----

- Clause (p) of Sec 66D states that services by way of transportation of goods by road **except, by GTA or agency** and by inland waterways are exempt.

## **Analysis:**

- Services by way of transportation of goods by GTA / courier agency provided by government / local authority are taxable.
- Services by way of transportation of goods by inland waterways is exempt.
- Services by ways of transportation of goods by ways other than mentioned above is liable to service tax.

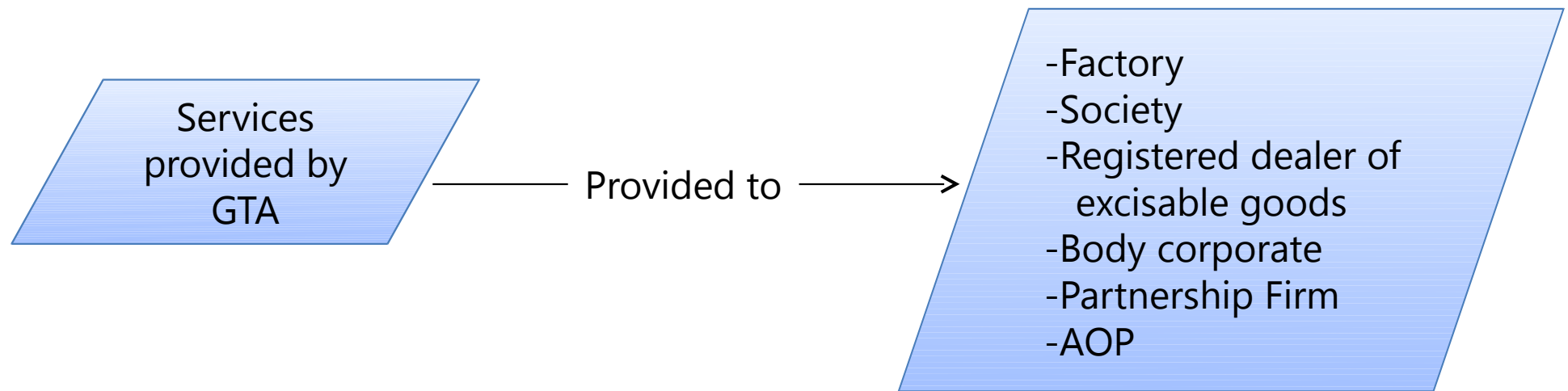




Persons Liable to Pay  
Service Tax

# Persons liable to pay service tax - GTA

**Notification No. 30/2012** (As amended) dated 20th June, 2012 lays down the provisions regarding who are liable to pay the service tax **in case of GTA services**.



- If the GTA services are consumed by the persons mentioned above, the persons liable to pay service tax is the person who is liable to pay the freight.
- If GTA services are consumed by individual / HUF or any of the entity other than mentioned above, the person liable to pay service tax is GTA.

# CENVAT Eligibility

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# CENVAT Credit Provisions

(Notification No. 26/2012 – ST as amended by

~~Notification No. 8/2015 dated 1st March 2015) – GTA~~

Taxable Service	Abatement	Conditions for availing abate
Transport of goods by road by GTA – Goods <b>other than</b> used household goods	70%	<b>No Cenvat credit of:</b> -Inputs -Input Service -Capital Goods
Transport of goods by road by GTA – Transport of used household goods	60%	<b>No Cenvat credit of:</b> -Inputs -Input Service -Capital Goods

### **Analysis :**

- The restriction on availment of cenvat credit is imposed on service provider where, the service pr the benefit of abatement under notification no. 26/2012-ST (As amended).
- However where the person liable to pay service tax is service receiver, then such recipient of serv the benefit of the abatement without complying to any of the conditions.

CENVAT Credit Provisions  
(Notification No. 26/2012 – ST as amended by  
Notification No. 8/2015 dated 1st March 2015) By

Taxable Service	Abatement	Conditions for availing abatement
Transport of goods in a vessel	70%	<b>No Cenvat credit of:</b> -Inputs -Capital Goods

# CENVAT Credit Provisions

(Notification No. 26/2012 – ST as amended by

~~Notification No. 8/2015 dated 1st March 2015) – By Rail~~

Taxable Service

Abatement

Conditions for availing abate

Transport of goods by rail

70%

**No Cenvat credit of:**

- Inputs
- Capital Goods

Transportation in containers by rail or  
any person other than Indian Railways,

60%

**No Cenvat credit of:**

- Inputs
- Capital Goods



Services  
by  
Multimodal  
Transport Opera

# Multimodal Transport Operators – Introduction

- **Multimodal transport** (also known as **combined transport**) is the transportation of goods under contract, but performed with at least two different means of transport
- In practice, **freight forwarders** have become important MTOs; they have moved away from their traditional role as agents for the sender, accepting a greater liability as carriers.

## Services by freight forwarders:

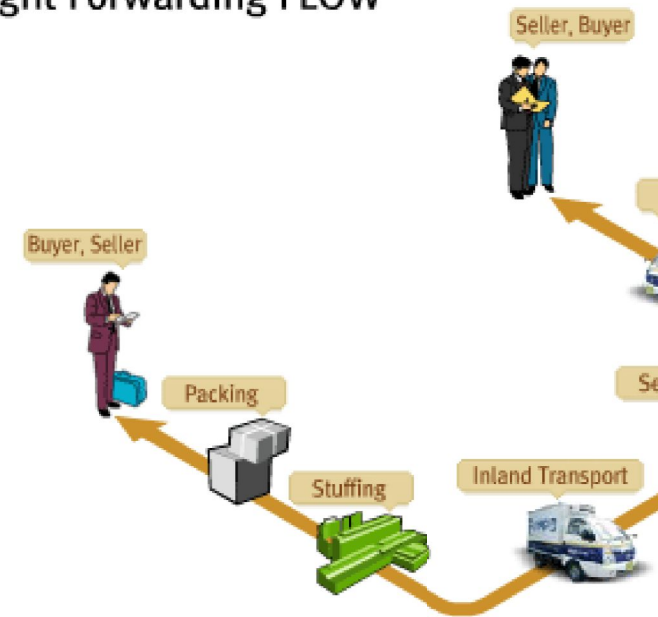
- Local Transportation
- Loading & unloading services
- Cargo Handling Services
- Customs clearance
- Warehousing of goods
- International Freight



# Bundled Service Provisions - Issue

## Ocean Freight Forwarding FLOW

- Multimodal Transport Operators (MTO) usually contracts to carry cargo from the source till destination by way of one or more modes of Transport.
- The issue that arises in that case is whether these services can be split up to charge different rates of taxes for various modes of transport that are used to transport the cargo.
- Issue remains bundled service or unbundled service (Section 66F)



# Profit margin on international freight - Issue

## **Profit margin on international freight**

- There is generally a difference in the freight recovered from the customer and the freight paid to the shipping line.
- Typically, freight forwarders buy space/freight from shipping line in bulk at reduced rates and then sell them in retail to the customers at higher rates.

## **Issue : Whether this margin earned by freight forwarder is taxable ?**

### **Arguments:**

#### ➤ **CBEC's education guide [Para 5.9.6]:**

- Freight forwarder buys and sells cargo space as a principal and, hence, no service tax is payable on the margin amount earned by him in case of export freight, as the destination of goods is outside India.

#### ➤ **Case laws discussed:**

- Greenwich Meridian Logistics (India) Pvt. Ltd. v/s Commissioner of Service Tax, Mumbai [ Mumbai High Court ]
- M/s. BAX Global India Ltd. v/s Commissioner of Service Tax, Bangalore [Bangalore CESTAT]

# Profit margin on international freight – Case law

## **M/s BAX Global India Limited v/s Commissioner of Service Tax, Bangalore [Bangalore CESTAT] Observations**

- Freight revenue represents the freight collected by the appellants towards air freight for the customer, which is then paid to the airlines.
- These are actually reimbursable expenses and they do not relate to any CHA activities.
- In certain cases the appellants had incurred less cost and in certain cases, they had incurred more cost.
- In any case, the profit or loss incurred in respect of activities which are not related to CHA activities should not be the concern of the department for the purpose of collecting service tax.

# Profit margin on international freight – Case law

## **Greenwich Meridian Logistics (India) Private Limited v/s Commissioner of Service Tax, Mumbai [Mur CESTAT]-Observations**

- Ocean freight is the profits arising from purchase and sale of space or slots for ocean transport.
- The appellant handles the logistics of exporters for delivery to the consignee and is registered as a transport operator with the director general of shipping. Their responsibilities and liabilities are governed by the Multimodal Transportation of Goods Act, 1993.
- **Sec. 2 of Multimodal Transportation of Goods Act, 1993:**  
multimodal transport operator means any person who-
  - (i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;
  - (ii) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier party to the multimodal transportation, and who assumes responsibility for the performance of the said contract;
  - (iii) is registered under sub section (3) of section 4.
- Hence, even the statute under which the appellant is registered designates the transaction between the shipping line and appellant as that on principal to principal basis.

# Profit margin on international freight – Case law

## **Greenwich Meridian Logistics (India) Private Limited v/s Commissioner of Service Tax, Mumbai [Mur CESTAT]-Observations**

**...contd.**

- Even in the absence of shippers, the appellant contracts for space or slots in vessel in anticipation of den distinct business activity. Such a risk of non usage of the procured space devolving on the appellant.
- By no stretch is this assumption of risk within the scope of agency function.
- In short it is nothing but a principal to principal transaction and the freight charges are consideration for procured from shipping line.
- We therefore find that the freight is paid to the shipping line and freight is collected from the client ship independent transactions.
- Mumbai CESTAT therefore finds no justification for sustaining the demand on freight margin.

# Reimbursements

## Issue / Facts:

- Freight forwarders incur a number of expenses on behalf of their customers while rendering their services.
- In some cases these services are not used by freight forwarders in providing their output services and freight forwarders are only facilitating payment of service charges on behalf of the customers.

## Provision in the law:

- Benefits of reimbursements would be available only on satisfaction of the conditions specified in Rule 5(2) of the Service (Determination of Value) Rules, 2006 in respect of all expenditure or cost incurred by the agent'

## Judicial Precedents:

- **Intercontinental Consultants & Technocrats Pvt. Ltd. v/s UOI (SC)** which says that Rule 5(1) of Service (Determination of Value) Rules, 2006 is ultra vires.
- However with the amendment in definition of consideration i.e. Section 67 of The Finance Act, 1994, above verdict still hold true? SLP has been admitted in SC against the said judgement.
- The above ruling was also referred by Chennai tribunal in case of **M/s. PVGT Freight Forwarders & Ltd. v/s Commissioner of Service Tax.**



A gist of GST  
on  
logistics sector

# Taxability of international freight

## -Service Tax law v/s. GST

### **Current scenario (Service Tax Law):**

- For transportation by vessel:
  - Export freight – Non taxable (POPS – Outside India)
  - Import freight – Taxable w.e.f. 1st June, 2016.
- For transportation by Air:
  - Export freight – Non taxable (POPS – Outside India)
  - Import freight – Non taxable (Entry 53 in N/N 25/2012)

### **GST Law (Based on model GST Law):**

- Under GST law, outbound transportation (i.e. export freight) will be liable to tax.
- The reason being under GST law, recipient of goods is the person who is liable to pay the consideration.
- Hence, if the recipient is unregistered, the place of supply will be where the goods are handed over for transportation.
- These would render international freight liable to GST.
- No clarity on abatements / exemptions.



# Taxability of international freight -Service Tax law v/s. GST

- Substantial increase in cost of fuel as petroleum products are outside the scope of GST regime at
- Implications of RCM for import of services
- Model GST law defines composite supply but there is no clarity on supply of bundled services
- Implications on leasing of aircraft
- The above views are on the basis of draft GST law in absence of exemptions, abatements and other miscellaneous rules, difficult to comment in detail on the same

# Words of Caution

- Views expressed are the personal views of faculty based on his interpretation of law
- Application of various provisions and its implications will vary on facts of the case and law prevail relevant time
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