

Service Tax - GTA - Conflict between popular view and Revenue's stand

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THERE

has been a fair amount of discussion and debate on the matter of interpreting the clauses defining the tax on 'goods transport agent' (GTA), especially with regard to the fact that whenever the services of goods transport by road has been provided by individual truck owner or truck operator to specified persons (listed in Rule 2 (i) (d) (v) of the Service Tax Rules 1994), whether such tax is payable or not.

One school of thought strongly argues and definitively holds that there is no tax leviable or payable on the services provided in transporting goods by road, whenever such goods are transported by an individual truck owner or a truck operator. The rationale being that the Finance Minister's budget speech in 2004 made it clear that the intention of the Government is not to levy service tax on truck owners and truck operators. By default, it is argued, this tax is levied only on transport booking agents.

There appears to be quite an argument in this line of thought which in context should make it the only considered view on the subject given that the Apex Court had ruled in *K.P. Verghese v. The Income-tax Officer, Ernakulam and Another* (982 1 S.C.R. 629), that the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill could certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation was enacted. It has also been reiterated that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible.

The Department, it appears, has taken the view that whenever services have been extended by the truck owners to specified persons, then such services are leviable to service tax on transportation of goods by road.

But is there really a manifest contradiction between what the Hon'ble Minister had said in his Budget Speech delivered on 8 th July 2008 with what may be the popular view in the department?

The tax on GTA has operated with some vigour over the period of last five years or so. The functioning at the field level would bring in sharp focus whether this tax has resemblance to the design guidance that was given or has it strayed in its implementation.

Let us for a moment see what the Hon'ble FM had stated: -

Budget 2004-2005. Speech of Shri P. Chidambaram, Minister of Finance, July 8, 2004 {Excerpts}

“

149. 58 services have been brought under the net so 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.

”

Before moving on to Sections and the Rules concerning the service tax on GTA, let us briefly give attention to some of the CBEC Circulars issued on the subject to gather an idea of how the Department had dealt with the new levy.

‘ 26. *Transport of goods by road by a goods transport agency :*

In pursuance to an agreement between the Government and representatives of the transport industry, a Committee has been set up to look into appropriate mechanism/modalities for collection and payment of service tax by commercial concerns and the rules/notifications will be finalized in consultation with the Committee. The Committee would give its report within two months. In terms of the agreement, the tax would be levied and collected in a manner to be notified. No tax would, therefore, be payable by the goods transport agency till such time Government comes out with the relevant rules/notifications prescribing the modalities for levy and collection ’

Â Letter F. No. 341/18/2004-TRU (Pt.), dated 17-12-2004]

‘ In the Budget 2004, it was proposed to levy service tax on services provided by a goods transport agency in relation to transport of goods by road.

2. For this purpose vide Finance (No. 2) Act, 2004, a sub-clause (zsp) was inserted in clause 105 of section 65 of the Finance Act, 1994, 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.

2.1 The definitions of “goods carriage” and “goods transport agency” were also provided by inserting clause 50a and 50b in the Finance Act, 1994 as follows:

(50a) “goods carriage” has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988; and

(50b) “goods transport agency” means any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

3. In pursuance to an agreement dated 27th 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 issued from F. No. B2/8/2004-TRU dated 10-9-2004 that no tax would be payable by the goods transport agency till such time the Government comes out with the relevant rules/notifications prescribing the modalities for levy and collection (refer para 26 of the letter).

4. The Committee has submitted its report on 27th October, 2004. Taking into account the recommendations of the Committee, Notification Nos. 32 to 35/2004-Service Tax all dated 3rd December, 2004 have been issued prescribing the modalities for levy and collection of service tax in respect of transport of goods by road. These notifications would be effective from 1st January, 2005. .

4.4 Notification No. 35/2004-Service Tax, dated 3rd December, 2004 prescribes that the person making payment towards freight would be liable to pay the 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.*

The Goods Transport Agencies are required to issue a consignment note (even in cases covered under para 4.4) other than in cases where the service in relation to transport of goods by road is wholly exempted from service tax. The consignment note should be serially numbered

and should contain the names of the consignor and consignee, registration number of the goods carriage used for transport of goods, details of goods transported, place of origin and destination and person liable for paying service tax .'

Proceeding further, it is seen that at the time of its initial introduction in 2004, SECTION 65 of the Finance Act, 1994, says: -

(50a) "goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988; and

(50b) " goods transport agency " means any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

1)Â In the context of sub clause 50 b (above), the expression ' means ' can only be construed as 'is'.

i)Â When a statute says that a word or phrase shall 'mean'-not merely that it shall 'include'- certain things or acts, 'the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition.'

Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, (1990) 3 SCC 682, 717.

ii)Â "The legislature uses the work "means" where it wants to exhaust the significance of the term "defined."

Taj Mahal Hotel v. C.I.T. Hyderabad, AIR 1969 AP 84 at 87. [C.P.C.(5 of 1908), Explan., Preamble]

iii)Â When the word 'means' is employed in a definition it shows that the definition is a hard and fast definition and that no other meaning can be assigned to the word or the expression defined that is put down in the definition.

Darbari Lal v. Dharam Wati, AIR 1957 All 541,545 (FB)

iv)Â The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression that is put down in

definition". Gough v. Gough, (1891) 2 QB 665; Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court, (1990) 3 SCC 682, 717.

v)Â The dictionary meaning of a word cannot be looked at where the word has been statutorily defined or judicially interpreted. But where there is no such definition or interpretation, the court may take aid of dictionaries to ascertain the meanings of a word in common parlance, bearing in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word and the court has, therefore, the context in which it has to interpret that word.

[Titaghur Paper Mills Co. Ltd. vs. State of Orissa (1983) 142 ITR 663 (SC)]

vi)Â "Words in the section of a statute are not to be interpreted by having those words in one hand and the dictionary in the other. In spelling out the meaning of the words in a section, one must take into consideration the setting in which those terms are used and the purpose that they are intended to serve." *[CGT vs. N.S. Getti Chettiar (1971) 82 ITR 599 (SC)]*

2)Â There is no connotation or implication of an 'instrumentality' or 'agency' in the said definition [sub clause 50 (b)]. The use of the word "agent" in itself really means very little. In fact, the etymology of the word agent or agency tells us much. "The words are derived from the Latin verb, ago, agere; the noun agens, agentis. The word agent denotes one who acts, a doer, force or power that accomplishes things" HAROLD GILL REUSCHLEIN & WILLIAM A. GREGORY, The Law of Agency and Partnership § 1, at 2-3 (2d ed. 1990)- {Advanced Law Lexicon, P. Ramanatha Aiyar, 3 rd edition}

3)Â "The expressions 'pertaining to', ' in relation to' and 'arising out of', used in the deeming provision, are used in the expansive sense. The expression 'arising out of' has been used in the sense that it comprises purchase of shares and lands from income arising out of the Kanpur Undertaking. The words "pertaining to" and "in relation to" have the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word 'pertain' is synonymous with the word 'relate'. The term 'relate' is also defined as meaning to bring into association or connection with. The expression "in relation to" (so also "pertaining to") is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, see *State Wakf Board v. Abdul Aziz (A.I.R. 1968 Madras 79, 81 paragraphs 8 and 10, following and approving Nitai Charan Bagchi v. Suresh Chandra Paul (66 C.W.N. 767), Shyam Lal v. M. Shayamlal (A.I.R. 1933 All. 649)*

and 76 Corpus Juris Secundum 621 .In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is stated that the term "relate" is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction. *[Doypack Systems (Pvt) Ltd. vs. Union of India*

4) In *Renusagar Power Co. Ltd. v. General Electric Company and Another* (1984) 4 SCC 679, the Apex Court observed as under :

“Expressions such as “arising out of” or “in respect of” or “in connection with” or “in relation to” or “in consequence of” or “concerning” or “relating to the contract are of the widest amplitude and content and include even questions as to the existence validity and effect (scope) of the arbitration agreement.”

5) In *Thyssen Stahlunion GMBH v. Steel Authority of India Ltd.* (1999) 9 SCC 334, the Supreme Court observed as under :

“The phrase “in relation to arbitral proceedings” cannot be given a narrow meaning to mean only pendency of the arbitration proceedings before the arbitrator. It would cover not only proceedings pending before the arbitrator but would also cover the proceedings before the court and any proceedings which are required to be taken under the old Act for the award becoming a decree under Section 17 thereof and also appeal arising thereunder. The contention that if it is accepted that the expression “in relation to arbitral proceedings” would include proceedings for the enforcement of the award as well, the second limb of Section 85(2)(a) would become superfluous and cannot be accepted.”

6) The Supreme Court in the case of *T.N. Kalyana Mandapam Association* (supra) has held that mere making available of a mandap with or without other services was itself regarded as a service exigible to service tax under the said act. *T.N. Kalyana Mandapam Association v. Union of India* - [\(2004-TIOL-36-SC-ST\)](#)

7) The term ¶ commercial concern ¶ has not been defined under the Finance Act, 1994 and therefore has to be understood in the sense as used by the legislature under the taxable head of ¶manpower recruitment agency¶ service along with the following taxable heads out of the 100 odd specified taxable services:-

i) ‘Advertising agency’ means any commercial concern engaged in providing any service connected with making, preparation, display or exhibition of advertisement and includes advertisement consultant

ii) ‘Courier agency’ means any commercial concern engaged in the door-to-door transportation of time-sensitive documents, goods or articles.....

iii) ‘Credit rating agency’ means any commercial concern

iv) ‘Dry cleaner’ means any commercial concern

v) Market research agency means any commercial concern engaged in conducting market research.....

vi) Photography studio or agency means any professional photographer or commercial concern

vii) Sound recording studio or agency means any commercial concern engaged in.....

viii) Video production agency means any professional videographer or commercial concern engaged in...

8) As per Webster's Comprehensive International Dictionary 1996 Edition, the term “commercial” means “having financial gain as an object”. As per Illustrated Oxford Dictionary, commercial concern means “having profit as a primary aim rather than artistic value”.

9) Hon'ble Calcutta High Court in the case of *M.N. Dastur & Co. Ltd. v. Union of India* (supra) has observed that :-“a ‘concern’ without any qualification can include any business or professional establishment and the “ commercial concern ” would include all concerns connected with commerce carrying on trade or profession or any kind of commercial activities and includes a company.”[*M.N. Dastur and Co. Ltd. v. Union of India* [\(2005-TIOL-187-HC-KOL-ST\)](#)]

10) Hon'ble Supreme Court in its judgment in the case of *Indian Chamber of Commerce and others v. Commissioner of Income Tax, West Bengal-II* (Calcutta) reported in 1976 (1) SCC 324 while examining the scope of the term “charitable purpose” in Section 2(15) of the Income-tax Act has observed as under :-

i)Â “The definition of ‘charitable purpose’ in that clause is at present so widely worded that it can be taken advantage of even by commercial concern s which, while ostensibly serving a public purpose, get fully paid for the benefits provided by them, namely, the newspaper industry, which while running its concern on commercial lines, can claim that by circulating newspapers it was improving the general knowledge of the public. In order to prevent the misuse the definition in such cases, the Select Committee felt that the words “not involving the carrying on of any activity for profit” should be added to the definition.”

11)Â The above observations of the Hon'ble Supreme Court, though with regard to the scope of the term “charitable purpose”, also throw light on the question as to what is a “commercial concern” and according to the above-mentioned observations of the Hon'ble Supreme Court, a “commercial concern” is the one which get fully paid for the services provided by it. Therefore, in our view, the test for determining as to whether a concern is a “commercial concern” would be as to whether it charges fully commercial price for the goods or services sold by it and monitors its commercial performance by preparing annual balance sheet and profit and loss account.

From mere objectives of an organization - like welfare of ex-servicemen or other sections of the society requiring help, promotion of sports etc. it cannot be concluded that it is not a commercial concern.

The Appellant - corporation is charging fully commercial price from its clients, - which includes besides the salaries of the security personnel, its commission to cover the administrative expenses and profit. It prepares annual profit and loss account and balance sheet. It is expected to generate resources to sustain itself and not fall into insolvency. It is free to deploy its funds in carrying out its functions which include marketing, processing, supply and storage of agricultural produce, small scale industry, building construction, transport and other business, trade or activity, as approved by the Government and it can invest the surplus funds generated in Government securities or in such other manner as it may decide. The Appellant - corporation, therefore, functions like a ‘commercial concern’- [PUNJAB EX-SERVICEMEN CORPN. Versus COMM. OF C. EX., CHANDIGARH ([2008-TIOL-1972-CESTAT-DEL](#))

Coming on to SERVICE TAX RULES, 1994 , it is noted that Rule 2 states the following: -

RULE 2: Definitions. - (1) In these rules, unless the context otherwise requires, -

(d) “Person liable for paying service tax” means

(v) In relation to taxable service provided by a goods transport agency , where the consignor or consignee of goods is,-

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any company [formed or registered under] the Companies Act, 1956 (1 of 1956);

(c) any corporation established by or under any law;

(d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;

(e) any co-operative society established by or under any law;

(f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder; or

(g) any body corporate established, or a partnership firm registered, by or under any law,

Any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage;

Now, for the conclusions that may follow: -

1)Â The foregoing discussions and citations would make it amply clear that a ‘goods transport agency’ (GTA) is defined as / or understood as having all of the following properties simultaneously: -

- (a) It is a commercial concern,
- (b) Which provides service in relation to transport of goods by road,
- (c) And issues consignment notes (by whatever name called).

- 2) Clearly a GTA as defined above may or may not be involved in the business of actual transportation of goods by road.
- 3) It would not be entirely unreasonable to assume that in most situations that we ordinarily come across, GTA services would have been provided by firms/entities which charge a fully commercial price for the services sold by it and monitors its commercial performance by preparing annual balance sheet and profit and loss account.
- 4) It also appears that GTA- Goods Transport Agent- is statutorily defined in section 65 (50 b). It is a hard and fast definition and that no other meaning can be assigned to the word or the expression defined that is put down in the definition. As such, the expression 'Agency' used in "Goods Transport Agency" by itself really means very little.
- 5) The Goods Transport Agencies are required to issue a consignment note. The consignment note should be serially numbered and should contain the names of the consignor and consignee, registration number of the goods carriage used for transport of goods, details of goods transported, place of origin and destination and person liable for paying service tax.
- 6) It has also been recorded by the CBEC Circular that there was a prolonged process of consultation between the Government and representatives of the transport industry, before the tax on GTA was finally given effect to. A Committee had been set up to look into appropriate mechanism/modalities for collection and payment of service tax.
- 7) The Finance Act 1994 in Section 68 speaks of Payment of service tax. It says-

SECTION 68:

- (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such 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.]

- 8) The word 'levy' traces its ancestry to Anglo-French levé, literally, raising, (from lever to raise). It is defined to mean the imposition or collection of an assessment.
- 9) The implication of any and every tax is evaluated in Public Finance with its impact or incidence or both. This, as a natural corollary, would mean that if the truck owners or truck operators suffered in being the object of impact or incidence of the tax on GTA then, this effect was not what was intended.
- 10) Importantly, in all situations covered under Section 68 (2) of the Finance Act, 1994, there is no occasion when either the impact or the incidence of the tax is on the truck owners or truck operators.

The individual truck operator or the truck owner has to never bother about the collection or the payment of service tax on GTA. This happens whenever the consigner or the consignee is belongs to one of the listed categories indicated in Rule 2 (1) (d) (v) of the Service Tax Rules, 1994.

Thus, in such situations there appears to be no manifest contradiction with what the Hon'ble Finance Minister stated in his Budget Speech on July 8, 2004; there is no levy of service tax on the truck operators or truck owners. Any person, who pays the freight in case of transportation of goods by road between specified persons, must also pay the freight.

This does not end the debate, does it???

(The views expressed in the article are personal)