

SEMINAR ON SERVICE TAX

ISSUES RELATED

TO

**BUSINESS AUXILIARY SERVICES, GOODS TRANSPORT AGENCY
SERVICE,**

**EXPORT SERVICES AND BRIEF HIGHLIGHTS OF RECENT
AMENDMENTS**

ORGANISED BY :

CENTRAL INDIA REGIONAL COUNCIL

AT RAGENDRA SWARUP CENTER FOR PERFORMING ART AUDITORIUM

ON 27-05-2005

BUSINESS AUXILIARY SERVICES

PAYMENT OF SERVICE TAX (CHARGING SECTION) :

Every person providing taxable service to any person shall pay service tax at rate specified in section 66.

TAXABLE SERVICE :

As per section 65(105)(zzb) of the Finance Act, 1994, taxable service in relation to Business Auxiliary service means any service provided to a client by a commercial concern in relation to business auxiliary service. Thus, any services in order to be taxable under this category shall meet following requirements :

- a) Service shall be provided to a client
- b) Service shall be provided by a commercial concern
- c) Services shall be as per specific definition of Business Auxiliary Service

BUSINESS AUXILIARY SERVICES

As per Section 65 (19) of the Finance Act, 1994, business auxiliary service means :

“Any service in relation to :

- (i)** Promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii)** Promotion or marketing of service provided by the client; or
- (iii)** Any customer care service provided on behalf of the client; or
- (iv)** Procurement of goods or services, which are inputs for the client; or
- (v)** Production of goods on behalf of the client; or
- (vi)** Provision of service on behalf of the client; or
- (vii)** A service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

BUSINESS AUXILIARY SERVICES

and includes services as a commission agent, but does not include any information technology service and any activity that amounts to “manufacture” within the meaning of clause (f) of section 2 of the central excise act, 1944

Explanation - for the removal of doubts, it is hereby declared that for the purposes of this clause, “information technology service” means any service in relation to designing, developing or maintaining of computer software, or computerised data processing or system networking, or any other service primarily in relation to operation of computer systems”.

Sub-clause (iv), (v) and (vi) of business auxiliary service have been made effective from 10-09-2004

VALUE OF TAXABLE SERVICE FOR CHARGING SERVICE TAX :

As per Section 67 of the Finance Act, 1994, the value of taxable service in relation to business auxiliary service shall be the gross amount charged by the service provider for such service rendered by him.

BUSINESS AUXILIARY SERVICES

EXEMPTION FROM BUSINESS AUXILIARY SERVICES :

Vide Notification no. 14/2004-ST dated 10-09-2004, services provided in clause (iv), (v), (vi) and service incidental or auxiliary thereto of business auxiliary service are exempt for following assesses :

- a) Individual
- b) Hindu Undivided Family (HUF)

Vide Notification no. 14/2004-ST dated 10-09-2004, services provided in clause (iv), (v), (vi) and service incidental or auxiliary thereto of business auxiliary service are exempt if such services are provided in relation to agriculture, printing, textile processing or education.

BUSINESS AUXILIARY SERVICES

Vide Notification no. 8/2005-ST dated 01-03-2005, services provided in sub-clause (v) of business auxiliary services being in relation to “production of goods on behalf of the client” has been exempted subject to the condition that

- a) goods are produced using raw materials or semi-finished goods supplied by client and
- b) such goods produced are returned back to client for use in or in relation to manufacture of any final products on which excise duty is paid by the client.

Moreover, it has been clarified that where final products manufactured by client is exempt or chargeable to “nil” rate of duty, such exemption on production services is not available.

BUSINESS AUXILIARY SERVICES



FEW ISSUES

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BUSINESS AUXILIARY SERVICES

**Whether Individual
receiving commission is
exempt from Business
Auxiliary service ?**

BUSINESS AUXILIARY SERVICES

The term “Commercial Concern” is not defined under Service Tax Laws. Further said terms has also not been judicially commented in context of Service Tax Provisions.

In Service Tax laws while defining service provider, at some place the term “person” and at some place “commercial concern” have been used. Thus, the intention of legislature is clearly spelt out that both these term have different meaning and are accordingly placed.

The term “person” has also not been defined under the Service Tax Laws. However, as per general clauses it includes individual.

Thus, it may be interpreted that “individual” does not fall under “commercial concern”. However, proprietary firm does falls under said category, if the same has been incorporated for the purpose of commerce and/or business.

BUSINESS AUXILIARY SERVICES

In order to avail benefit of such interpretation, it may be advisable that an individual may show his/her commission income under the head “income from other sources” in his computation of total Income. Showing the same under “business income” may lead to protracted litigation.

BUSINESS AUXILIARY SERVICES

Whether services provided by Chartered Accountants, such as preparing returns, drafting petitions, drafting submissions, drafting of appeals etc.. on behalf of the client fall under the category of business auxiliary services ?

BUSINESS AUXILIARY SERVICES

**What is difference
between**

“for”

&

“on behalf of” ?

BUSINESS AUXILIARY SERVICES

Few Example of "for" & "on behalf of"

"on behalf of"

M/s. XYZ Ltd. providing customer care services to customers of M/s. TISCO.

"for"

M/s. ABC Ltd. providing Taxation services to M/s. TISCO.

BUSINESS AUXILIARY SERVICES

“on behalf of”

M/s. XYZ Ltd. providing repair & maintenance services to customers of M/s. Seimens India Limited

“for”

M/s. ABC Ltd. providing computer repairs & maintenance services to M/s. Seimens India Limited

BUSINESS AUXILIARY SERVICES

When tailor stitches shirt for you
from fabrics provided by you, he
stitches it

for you

on his own behalf

not on your behalf

BUSINESS AUXILIARY SERVICES

Thus it signifies that any
"on behalf of"
transaction have following parties

The Client (Principal)

The Agent (Person rendering the service)

The Third Party (Customer of Client)

BUSINESS AUXILIARY SERVICES

In Nut Shell :

One acts on behalf of his principal only when he deals with third parties.

But

One deals with his principal, he **does not act on behalf of** the principal.

In fact, he act **for** principle.

Moreover, such relationship is on principal to principal basis.

BUSINESS AUXILIARY SERVICES



JOB WORK

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BUSINESS AUXILIARY SERVICES

Common Features of Job Work Transaction

The job worker is not the owner of the Material

The materials are delivered to job worker for a limited purpose of carrying out the desired process

He is required to deliver back the material as per order and direction of sender.

BUSINESS AUXILIARY SERVICES

DOES
JOB WORK TRANSACTION IS
“FOR”
OR
“ON BEHALF OF”
PRINCIPAL MANUFACTURER

BUSINESS AUXILIARY SERVICES

**Applicability of service tax
where Hon'ble Supreme
Court decides as to whether
any activity amounts to
manufacture or not ?**

BUSINESS AUXILIARY SERVICES

Whether liability of service tax changes at various levels on interpretation by the Appellate forum as to whether any activity amounts to manufacture or not ?

BUSINESS AUXILIARY SERVICES

Introduction of Notification no. 8/2005-ST dated 01-03-2005 has settled the position of term “production” and makes it clear that in job work transactions, wherever and in whatever form excise duty is not levied, service tax under business auxiliary service would be levied.

BUSINESS AUXILIARY SERVICES

Whether benefit of exemption Notification No. 8/2005-ST dated 01-03-2005, is applicable to following units, who gets their intermediate products through a job worker ?

- a) A SSI Unit claiming benefit under notification no. 8/2003-CE dated 01-03-2003 and removing final products without payment of duty.
- b) Manufacturer- exporter clearing final product without payment of duty under bond or LOU
- c) A manufacturer clearing final product at “nil” rate of duty.

Is it justified that all the above three categories may be put on same line

GOODS TRANSPORT AGENCY

PAYMENT OF SERVICE TAX (CHARGING SECTION) :

Every person providing taxable service to any person shall pay service tax at rate specified in section 66.

TAXABLE SERVICE :

As per section 65(105)(zzp) of the Finance Act, 1994, taxable service in relation to Goods Transport Agency service means any service provided to a customer by a goods transport agency in relation to transport of goods by road in a goods carriage. Thus, any services in order to be taxable under this category shall meet following requirements :

- a) Service shall be provided to a customer
- b) Service shall be provided by a Goods Transport Agency
- c) Service shall be provided in relation to transport of goods by road in a goods carriage.

GOODS TRANSPORT AGENCY

As per Section 65 (50b) of the Finance Act, 1994, 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.

As per Section 65 (50a) of the Finance Act, 1994 read with section 2(14) of the Motor Vehicles Act, 1988, Goods carriage means “any motor vehicle constructed or adopted for use solely for the carriage of goods, or any motor vehicle not so constructed or adopted when used for carriage of goods”.

As per Section 65 (50) of the Finance Act, 1994 read with section 2(7) of the Sale of Goods Act, 1930, Goods means “every kind of movable property other than actionable claims and money; and includes stock and shares, 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.

GOODS TRANSPORT AGENCY

VALUE OF TAXABLE SERVICE FOR CHARGING SERVICE TAX :

As per Section 67 of the Finance Act, 1994, the value of taxable service in relation to Goods Transport Agency shall be the gross amount charged by the service provider for such service rendered by him. Vide Notification no. 32/2004-ST dated 03-12-2004 an abatement of 75% from gross value of taxable services has been provided subject to fulfillment of following conditions :

- a) Such exemption is available where credit under the provisions of CENVAT Credit Rules' 2004 in respect of inputs or capital goods has not been taken by **Goods Transport Agency**.

- b) Benefit of Notification no. 12/2003-ST dated 20-06-2003 as amended has not been availed by **Goods Transport Agency**. In terms of said notification, value of goods and materials sold with services are exempt.

GOODS TRANSPORT AGENCY

EXEMPTION FROM GOODS TRANSPORT AGENCY :

Vide Notification no. 33/2004-ST dated 03-12-2004, services provided in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage have been made exempted.

Vide Notification no. 34/2004-ST dated 03-12-2004, certain specified limits of value of taxable services have been kept exempted. These are :

- i) If gross amount charged on consignment transported is Rs.1,500/- or less than the said amount.
- ii) If gross amount charged on individual consignment transported is Rs.750/- or less than the said amount. Individual consignment has been defined to mean whole consignment transported to a single consignee.

GOODS TRANSPORT AGENCY

RECIPIENT OF GOODS TRANSPORT AGENCY SERVICES TO PAY SERVICE TAX UNDER SPECIFIC CIRCUMSTANCES

Vide Notification no. 35/2004-ST dated 03-12-2004 read with Notification no. 36/2004-ST dated 03-12-2004, in certain specified circumstances, recipient of Goods Transport Agency services have been made person liable for making payment of service tax. Thus, they have to get them self registered and follow all procure under service tax laws.

- a) The liability of service tax would be on consignor OR consignee, who pays or is liable to pay freight either himself or through his agent for transportation of goods, where consignor or consignee is
- i) factory registered under or governed by the Factories Act, 1948,
 - ii) company established by or under the Companies Act, 1956,
 - iii) corporation established by or under any law,

GOODS TRANSPORT AGENCY

- iv) Society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India,
- v) co-operative society established by or under any law,
- vi) dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder; or
- vii) body corporate established, or a partnership firm registered, by or under any law.

b) The liability of service tax would be on Goods Transport Agency, where consignor AND consignee does not fall under any of the aforesaid categories like

- i) Individual,
- ii) HUF and
- iii) Unregistered Partnership firm.

GOODS TRANSPORT AGENCY



FEW ISSUES

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**Whether an
individual truck
owner is liable to pay
service tax ?**

GOODS TRANSPORT AGENCY

Most important consideration which distinguish an ordinary transporter and GTA is the issue of consignment note.

In mercantile practice as well as under the sale of Goods Act, 1930, a consignment note represents the document of title of goods. At least, one may claim possession of goods, if not ownership. Consignment note is also known in commerce as lorry receipt, GC Note, bilti.

GOODS TRANSPORT AGENCY

For taxability under GTA category following is essentially required :

GTA shall be a commercial concern

GTA shall issue a consignment note

Such consignment note shall contain prescribed details

GOODS TRANSPORT AGENCY

Whether Truck brokers and truck operators, who gets commission for meeting individuals who owns trucks and GTA who needs trucks are liable for service tax ?

GOODS TRANSPORT AGENCY

Whether CHA & C&F, who engage trucks and pay freight. They in turn bill their clients for its reimbursement. Is such CHA & C&F are liable ?

**Applicability of Service Tax
where a manufacturing
concern hire truck operator
and pays freight to
truck operator ?**

GOODS TRANSPORT AGENCY

A customer instruct his supplier to directly deliver the goods to his job worker and also advise the job worker to pay the freight, which would be reimbursed later on. Is job worker, who pays freight on behalf of customer is liable to pay service tax ? If yes, whether he would be able to take credit of service tax ?

Moreover Rule 4B requires GTA to mentioned on consignment note as to who is to pay service tax i.e. consignor or consignee or GTA, so whether GTA should also mention about job worker of consignee ?

GOODS TRANSPORT AGENCY

As per Notification no. 32/2004-ST dated 03-12-2004, abatement of 75% from gross value of taxable service is available to GTA, subject to fulfillment of few conditions.

What will happen to a case where a corporate engaged in manufacturing activities dealing with several GTA's.

How do such corporate ascertain as to whether all such GTA's who have delivered the goods or have collected the goods have fulfilled specified conditions as to whether such GTA have not taken CENVAT credit and have also not availed benefit of exemption under 12/2003-ST.

GOODS TRANSPORT AGENCY

If a declaration to this effect is taken from each GTA, how one can verify truthfulness of such declaration. ?

In such situation better option would be to pay full duty and take its corresponding credit.

GOODS TRANSPORT AGENCY

Why non-vegetarian are at receiving end ?

Notification no. 33/2004-ST dated 03-12-2004 exempts fruits, vegetables, eggs or milk.

Why chickens or fish are left out ?

GOODS TRANSPORT AGENCY

Whether CENVAT credit on outward freight is allowable ?

GOODS TRANSPORT AGENCY

Definition of Input service under CENVAT Credit Rules'2004 :

As per Rule 2(1) "input service" means any service :-

- (i) used by a provider of taxable service for providing an output service, or
- (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and **clearance of final products from the place of removal,**

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and **outward transportation upto the place of removal.**

GOODS TRANSPORT AGENCY

Definition of “Place of removal” Central Excise Rules, 2002 :

As per Rule 4(3)(b) “place of removal” means :-

- (i) a factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty.
- (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory from where such goods are removed.

Thus, where removal is on ex-factory basis, no outward transportation would qualify as input service.

However, if the goods are delivered to the buyer at depot of consignment agent's, freight upto depot of consignment agent place would qualify as input service.

GOODS TRANSPORT AGENCY

Documents on which CENVAT credit on input service, being GTA service may be availed.

Credit is available only on documents specified under rule 9(1) of the CENVAT Credit Rules' 2004. I.e INVOICE containing details as provided under Rule 4A of the Service Tax Rules'1994. Eventhough consignment note issued by GTA contains all such particulars, however, credit of inputs service shall only be allowed where invoices are issued by GTA.

GOODS TRANSPORT AGENCY

Does gross amount charged by GTA also includes octroi or local levies etc.. ?

GOODS TRANSPORT AGENCY

NO

These amount are not payable to GTA for their services, however are payable to local authorities.

EXPORT OF SERVICES

In respect of Category “b” at Pg. 11

Service is considered as export of service if such services are performed outside India, either wholly or partly

EXPORT OF SERVICES

If a Chartered Accountant audits the accounts of the Indian operations of a multinational company and also partake in the audit of the company's foreign branch office, his entire provision of service (to the Indian office) would be deemed as an "export of service" because "part" of the service is rendered outside India.

EXPORT OF SERVICES

**An Explanation to section 65(105)
has been made whereby :**

Services provided from outside India being received by person who has place of business, fixed establishment, permanent address, or as the case may be, usual place of residence in India, such service shall be deemed to be taxable service

EXPORT OF SERVICES

If a machine is sent outside India for some repairs to be done by a foreign company, then such repairs done by the foreign company shall become taxable service, by virtue of the said deeming provision.

It is common sense that, like the levy of Excise duty is on manufacture of goods, the taxable event for levy of Service tax should be on provision of service.

EXPORT OF SERVICES

Such Deeming provisions are outside the purview of Finance Act

The Finance Act, 1994 has got jurisdiction only over the territory of India. However, by such deeming provision the tax has been demanded in respect of the services, which are rendered outside India, merely on the ground that the recipient is situated in India.

SCOPE OF TAXABLE SERVICE WIDENED

Hitherto as per definition of taxable service
service tax was levied on

“service provided”

Amendment in Finance Act, 2005 has
amended the definition of Taxable service

“Service provided or to be provided”

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SCOPE OF TAXABLE SERVICE WIDENED

**SUCH AMENDMENT WOULD
HAVE WIDER
IMPLICATIONS FOR
CERTAIN SERVICE
INDUSTRIES**

SCOPE OF TAXABLE SERVICE WIDENED

ADVANCES WHETHER REFUNDABLE OR NON REFUNDABLE PAID TAXABILITY



**THAKS
FOR
PATIENT HERRING**