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ANALYSIS OF GOODS AND TRANSPORT AGENCY SECTOR UNDER GST

SUBMITTED BY - MS. MAARIA LAKDAWALA (A017)

YEAR: BBA-LLB 4TH YEAR, SEMESTER-VIII

RESEARCH PAPER SUBMITTED

TO THE SVKM'S NMIMS, NAVI MUMBAI

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FOR BBA LLB [HONS.]

DECLARATION

I, MAARIA LAKDAWALA, hereby declare that this submitted to the Kirit P. Mehta, School of Law represents my original work and has not been previously submitted for academic or publishing purposes. Furthermore, this paper represents my own opinions and conclusions. The materials/sources utilized in this paper are given their due credit.

ABSTRACT

This research paper examines the Goods Transport Agency (GTA) service under the Goods and Services Tax (GST) regime in India. The paper provides an overview of the legal framework governing GTA services, including the interpretation of GTA as per notifications and case laws. It analyzes the provisions related to rate of tax, input tax credit, and nature of taxation (forward charge vs reverse charge) applicable to GTA services.

The paper also examines specific issues like the tax treatment of sub-contractors in the road transportation sector and services provided to unregistered persons and government departments. It discusses the mandatory requirement of issuing consignment notes for a service to qualify as a GTA service.

The impact of GST on the logistics sector is analyzed, including benefits like streamlined taxation,

lower logistics costs, and increased tax compliance. However, issues like increased compliance burden for small transporters due to e-way bills are also highlighted.

Overall, the paper provides a comprehensive understanding of the GST provisions applicable to Goods Transport Agencies and how it has impacted the road transportation and logistics sector in India.

CHAPTER I: INTRODUCTION

In India, roads are a crucial form of transportation. At the end of March 2020, India's road network was over 6,215,797 kilometres long. The world's second-largest road network is located here. Over 71% of India's freight traffic is transported on its roads, making them the country's main mode of transportation. As a result, there are a number of legal requirements related to the transportation of products by road under GST laws. First, an e-waybill needs to be issued for each movement of items whose value exceeds Rs. 50,000. E-waybills, however, have a complete different set of jurisdiction to look into. Second, either the transporters or the beneficiaries must pay tax on the transportation services on a forward charge basis or a reverse charge basis.

Under the Goods and Services Tax (GST) system in India, a Goods Transport Agency (GTA) is a person or a business that provides services for the transportation of goods by road. GTA's can be an individual or a company that provides transport services to other businesses or individuals. Under the GST regime all services are exempted from GST except the service of Goods Transport Agency defined as "any person who provides service in relation to transport of goods by road and issue consignment note, by whatever name called"¹ and Courier Agency².

Issuance of consignment note is mandatory for the goods transport service by road to fall under taxability criteria, consignment note although a key element has not been verbatim defined anywhere in the goods and Services Act, 2017 nor in Central Tax (Rate) Notification dated 28.06.2017, however we do find a viable definition under Rule 4B of Service Tax Rules, 1994.

GST System is a systematic maze concocted by the government where reading just the notification, act, law, rules standalone will not lead to any conclusion rather all of them have to

¹ clause (ze) in para 2 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

² clause (u) in para 2 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

be read in harmony to derive the best possible understanding.

Consignment Note the document includes information such as the serial number, consignor and consignee names, registration number of the goods carriage in which the goods are transported, information about the goods being transported, information about the place of origin and destination, and the person who will be responsible for the service tax that must be paid by the consignor, consignee, or the GTA.

CHAPTER II: LEGAL FREAMEWORK INTERPRETATION OF GOODS TRANSPORT AGENCY IN GST.

The imposition of service tax on road transportation services has historically been divisive. Service Tax was imposed beginning on November 16, 1997, by the Finance Act, 1997, although it was later repealed following a nationwide boycott.

After that, starting on September 10, 2004, the Finance (No. 2) Act of 2004 levied service tax on commodities transported by road by a goods transport agency. The levy was, however, once again postponed until further notice due to the transporters' strike. Following the formation of a committee to address the matter, the Government issued Notification Nos. 32 to 35/2004 - ST, all dated 03-12-2004, imposing a tax on the transportation of goods by road with effect on January 1, 2005.

Under the GST regime, the legal framework currently in place for the Service Tax is maintained. Even under the GST system, road transportation services (apart from GTA services) are still exempt. In terms of GTA services, under the reverse charge system, the tax burden is placed on the recipients of those services (of Goods Transportation) if they belong to certain classes of people.

Except for the services of the Goods Transport Agency and courier agencies, service for the transportation of goods via road. However, because consignment notes are even issued by transport owners, the law creates confusion by defining the GTA³ " According to the Rule of Interpretation of Tax Statutes established by the Honorable Courts, whenever a legislation causes

³ "Notification 12-2017 dated 28 June 2017 Paragraph 2 Clause (ze)

trouble, it can be resolved by referring to the mover's speech delivered on the floor of the legislature.

Finance Minister Shri P. Chidambaram in his Budget Speech⁴ reiterated the position of law stating ***“58 services have been brought under the net so far. I propose to add some more this year. 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. It is clear from the above speech, the tax was imposed only on goods transport agency and not on transport owners.”***

In the case of ***C.C.E. & C. GUNTUR VERSUS KANAKA DURGA AGRO OIL PRODUCTS PVT. LTD.***⁵ the Tribunal upheld the same position. wherein the Tribunal found that the claims made by the transport booking agents alone that they were protected by the Goods Transport Agency service and that the service tax paid for using the services of specific truck drivers was refundable.

In Paragraph 2 Clause (ze) , ***“any person who provides service in relation to transport of goods by road and issue consignment note, by whatever name called”***⁶ the terminology and makes it clear that according to interpretation of statues consignment note is a mandatory criteria for taxability and not a supplementary addition to the clause.

In the case of ***“Nandganj Sihori Sugar Co. vs. CCE”***⁷ it was established that there is stark difference between bill issued for transportation of goods and the same cannot be utilised vis-a-vis as consignment note. Additionally

The consignment note that GTA issues reflects its responsibility to:

- (a) transport the shipment that has been given to it to its destination;
- (b) make the delivery to the consignee; and
- (c) hold the shipment in transit. Furthermore, a bill issued merely for the purpose of transporting goods cannot be considered a consignment note. If the transporter does not issue such a consignment note, the service provider will not fall under the purview of the goods transport

⁴ 8/7/2004 (Para. 149)

⁵ [2009 (15) S.T.R. 399 (Tri. - Bang.)],

⁶ clause (ze) in para 2 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

⁷ 2014

agency. When a consignment note is issued, it means that the transporter has acquired the items' lien and has taken on responsibility for them up until their safe delivery to the consignee. Only those GTA services that take on agency functions have been included in the GST network.

Individual truck/tempo drivers are not covered within the meaning of the term GTA if they do not issue any consignment notes. As a result, the services rendered by these individual transporters who fail to produce a consignment note would be covered by the entry at s.no.18 of Notification 12/2017 - Central Tax (Rate) dated June 28, 2017, which is free from GST.

CHAPTER III: RATE MECHANISM AND NATURE OF TAXATION.

Input Tax Credit – “

When the GST is paid at the time of the purchase of a good, it is called 'Input Tax' and then the trader collects the GST during the sale which is called 'Output Tax'. **During the time of GST payment to the government, the input tax is deducted from the output tax and this deduction is 'Input Tax Credit'.**”

iTC on Inputs and Capital Goods: GTAs are eligible for claiming input tax credit for taxes paid on inputs and capital goods used in the course of providing their services.

Inputs refer to goods and services that are used by GTAs in their day-to-day operations, such as fuel, lubricants, spare parts, and maintenance services.

Capital goods refer to assets used by GTAs to provide their services, such as vehicles, trailers, and containers. The ITC can be claimed by the GTA for taxes paid on inputs and capital goods that have been used exclusively for providing GTA services.

Transportation services offered by the GTA are taxable, whereas those offered by non-GTA providers are not. There was ambiguity as to whether GTA Services fall in the purview of HSN 9965 OR 9967 it was cleared by notification⁸ that only GTA services are to be classed as SAC

⁸ CGST Notification (Rate) No. 11/2017 dated 28.06.2017.

9965, while "Support services in transport" are to be classified as SAC 9967.⁹ It is now mandatory to follow HSN 9965 for GTA services and HSN 9967 no longer applies to GTA services and only to transport services taxable @18%

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 equipments".

Taxation Rate and Forward Charge Mechanism The GTA's rate of taxation on transportation services and the method by which it would be levied are linked. The GTA can be paid as tax using a forward charge or a reverse charge system.

The following alternatives are available to the GTA if he chooses to pay tax using the forward charge mechanism: 1. Tax at 12% with ITC - Under this option, the GTA will impose a 12% GST on all invoices and offer ITC for those eligible inbound supplies that it receives.

2. Tax at 5% without ITC - In this case, the GTA will invoice 5% GST but won't claim any ITC for its inbound supplies. The GTA may choose to pay tax on a forward charge basis by filing a declaration in Annexure V by the 15th March of the prior fiscal year, i.e., by the 15th March 2024 for the FY 2023–24. The aforementioned declaration may be made by August 16, 2022, for FY 2022–2023.

Reverse Charge Mechanism When the GTA decides against forward charge taxes, and follows reverse charge mechanism the recipient of transportation services will be responsible for paying tax using a reverse charge method. The recipient must pay tax at a rate of 5% as per sec 9(3) CGST

⁹ CGST Notification (Rate) No. 11/2017 dated 28.06.2017.

Act ¹⁰ and claim an input tax credit for that tax. There will be no ITC available to the transporter for its incoming supplies.

CHAPTER IV: ANALYSING THE CASE OF SUBCONTRACTORS IN ROAD TRANSPORTING SECTOR.

In the business, the primary contractor GTA bills the client who actually receives the service, while the subcontractor GTA bills another GTA for subcontracting service. It is frequently observed that the primary contractor will charge tax to the subcontractor, who is actually providing transportation services on behalf of other GTA, even if this appears to be an exempt supply. As this is an abstract scenario it can be best understood with a simple illustration.

Factory Z requested bulk transportation services from "A" in the aforementioned transaction. Transporter "A" subcontracts transporter "B" to complete any remaining tasks because it is unable to do so fully. It should be highlighted that because A received the contract, A—not B—will be the one to issue the consignment note.

As registered businesses, "A" and "B" are using the input tax credit option and charging 12% GST using the forward charge method. In the aforementioned transaction, GTA-B has the option to issue a taxable invoice and claim 12% tax back from GTA-A. We'll see.

It is very evident from the definition of GTA provided above that a person issuing a consignment note will be regarded as a goods transport agency. In the aforementioned scenario, "A" issues the consignment note, making "A" the GTA for the transaction. According to the entry of notification that was mentioned in the explanation above, **any services for the transportation of goods by road outside of the GTA would be exempt supplies.** In the present illustration, "B" is merely acting in the capacity of a truck owner to GTA "A" and not as a GTA, which is mostly covered by the notification's exemption entry. As a result, A & Z will be the only taxable supply and the transaction between A & B will be an exempt supply.

Can transporter "B" issue another consignment note to "A" for the same transaction and keep the GTA designation for the exchange? A consignment note serves as documentation for the handling

¹⁰ Notification No. 13/2017-CT(Rates)

of items during relocation and shipping. There can only be one consignment note for a single transaction and the same movement of items. As a result, there will only be one consignment note for the movement of goods.

In light of the foregoing discussion, we have discovered that the services of major carrier contractor "A," who issues consignment notes, are taxable, whereas those of contractor "B," are exempt.

As stated in rules 42 and 43 of the GST Operate, transporters who occasionally act as "GTA" and as subcontractors (merely as truck owners who deliver goods) must reverse the input tax credit.

From the acquisition of trucks and chassis, which are capitalised in the books of accounts, these transporters benefit significantly from the Input tax credit.

Throughout the year, the transporters buy and sell trucks and fleets according on their requirements and the age of the vehicle. For the entire sector, it becomes very difficult to comply with Rule 43 regarding the availability and reversal of ITC on capital items.

As far as we are aware, rule 43 compliance necessitates the reversal of credit for 60 months following the date of the invoice, which necessitates the requirement to continually prepare working and reconciliation documents to support the same. If an asset that was capitalised and for which an input tax credit was claimed is sold before the stipulated five-year period, Rule-44 of the Act will also come into play. In light of Rule 42, 43, and 44's provisions, all these compliances present obstacles for the sector's proper utilisation and reversal of input tax credit. The transportation sector, which has always had some level of flexibility when it comes to creating and maintaining records, is currently having difficulty keeping ITC records pertaining to the availability and reversal of the same.

CHAPTER V: ANALYSING THE CASE OF SERVICE PROVIDED TO UNREGISTERED PERSON, GOVERNMENT DEPARTMENT etc.

Persons who are unregistered are exempt from GST by Notification¹¹,

In short, the recipient is responsible for paying tax under reverse charge when GTA provides a service to a factory, society, corporation, partnership firm, or registered person. However, GTA is exempt from GST while providing services to people who are not registered.

Additionally, where a government department, local government, or government agency is registered under GST only for the purposes of TDS under Section 51 of the CGST Act¹² and 10/2017 -IT(Rates), both dated 28.06.2017 and inserted with effect from 1.01.2019], the provision of reverse charge in the case of a registered person under Notification No. 13/2017-CT(Rates) .

This means that for services provided to a government department, local authority, or government agency, GTA is not required to pay GST under the forward charge mechanism. Even if they are just registered under GST for the purpose of TDS under GST, they will be treated as an unregistered person for the purposes of exemption to GTA services.

The Government Department, Local Authority, or Government Agency will be required to pay GST under reverse charge if they obtain GTA service if they are registered under GST for a purpose other than TDS. As a result, starting on October 13, 2017, the GTA will never be liable to pay taxes on its own, unless it chooses to do so using a forward charge of 12% [6% plus 6%]. Finally, up to October 13, 2017, GTA was obligated to pay GST in the following circumstances: a) when the service recipient is an unregistered individual person. b) the shipment of household items when the freight is covered by an unregistered private individual. c) services rendered to a person outside of the taxable area when the receiver is paying the freight, such as transportation to Bangladesh, Nepal, or Bhutan.

¹¹ Notification No-32/2017(CGST Rate), dated 13.10.17

¹² [Proviso to Sr. No. 1 of Notification Nos. 13/2017-CT(Rates)

CHAPTER VI: IMPACT OF GOODS TRANSPORT AGENCY.

1. Streamlined Taxation: GST has replaced multiple indirect taxes such as central excise, service tax, and value-added tax (VAT), which were levied at various stages of the supply chain. This has streamlined the taxation process and reduced the burden of compliance and administrative costs.
2. Reduction in logistics cost: GST has reduced the logistics cost for businesses, as the tax on the transportation of goods has been rationalized. The introduction of e-way bills has also helped in reducing the time and cost of transportation. The reduction in logistics cost has led to an increase in the competitiveness of Indian businesses, making them more attractive to foreign investors.
1. Boost to the e-commerce sector: The e-commerce sector in India has grown significantly since the introduction of GST. The removal of multiple taxes and the introduction of a unified tax system has made it easier for e-commerce companies to transport goods across the country. This has led to an increase in the number of e-commerce companies and has boosted the overall growth of the sector.
2. Increased tax compliance and accountability : The introduction of GST has made tax compliance easier for Goods Transport Agencies, as they are now required to register and file their returns under a single tax system. This has increased tax compliance and has helped in the formalization of the economy.
3. Impact on small transporters: While the impact of GST on the transport sector has been mostly positive, small transporters have been adversely affected by the introduction of the e-way bill system. The e-way bill system requires transporters to generate a bill for each consignment, which has increased the compliance burden on small transporters.

CHAPTER VII: CONCLUSION

In conclusion, the impact of Goods Transport Agency in GST has been mostly positive for the economy. GST has led to an increase in the efficiency of the transportation of goods, a reduction in logistics cost, and a boost to the e-commerce sector. However, the impact on small transporters has been mixed, with some facing increased compliance burden. The introduction of GST in 2017 had a significant impact on the transport sector in Maharashtra, including the GTA. It led to a uniform tax structure and removed state-level taxes, making it easier for transporters to move goods across different states.

The GTA in Maharashtra faces tough competition from other transporters, both within the state and from neighbouring states like Gujarat and Karnataka. There is a need for Goods Transport Agency (GTA) in India under the GST system. The logistics and transportation sector plays a crucial role in the economy, and GTAs provide an essential service for the movement of goods by road. The GST system in India aims to bring transparency and efficiency in the tax treatment of goods and services. Before the implementation of GST, the tax treatment for transportation services was complex and varied across different states. There were multiple taxes, including entry taxes, octroi, and other state-specific taxes, which added to the cost of transportation. This led to inefficiencies and delays in the movement of goods, and businesses had to bear the additional tax burden. Under the GST system, GTAs are required to pay tax on their services, and they can claim input tax credit for taxes paid on goods and services used in the course of providing their services. This simplifies the tax treatment and reduces the burden on businesses. Furthermore, the consignment note issued by GTAs serves as proof of the services provided, and this helps businesses claim input tax credit on the transportation services received. This brings transparency and accountability in the tax treatment and ensures that businesses are not burdened with unnecessary taxes. Overall, GTAs play a crucial role in the transportation of goods, and the GST system provides a streamlined and efficient tax treatment for their services.

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