

Is GST paid on ‘Goods Transport Agency (GTA)’ eligible as ITC?

- CA Vinay Gandhi Billapati

Goods and Services Tax (In Short “GST”) is one of the biggest Indirect tax reforms of independent India. GST is aimed at making taxation system Good and Simple. GST made One Nation, One Market and One Tax. After GST, wherever a good is purchased, the rate of tax is common in all states. However, the price may vary depending on the availability of resources required for a particular product in particular state. Hence, the role of transportation plays a key role. The most common expenditure in any books of accounts is transport expenses paid on sale or purchase depending on agreement between supplier and recipient. Another important benefit and objective of GST is to reduce cascading effect through a mechanism called ‘Input Tax Credit (In Short ‘ITC)’. There are various confusions as to availability of ITC on tax paid on GTA. In this article, author tries to bring clarity on whether GST paid on 'Goods Transportation Agency' (GTA) service is available as ITC to set off against the output tax liability.

For more clarity on the subject matter of discussion, it is relevant to discuss the following:-

- ➔ What is ‘Goods Transport Agency’?
- ➔ Rate of tax on GTA
- ➔ Reverse Charge Mechanism in case of GTA
- ➔ Availability of ITC of tax paid on GTA Service

What is Goods Transport Agency?

As per definition 2(ze) of the Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017, 'goods transport agency' means any person who provides service in relation to transportation of goods by road and issues consignment note, by whatever name called.

What is 'Consignment Note'?

The term ‘consignment note’ is not defined in GST. However, Explanation to Rule 4B of Service Tax Rules, 1994 defines 'consignment note' to mean a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the names of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

There are plethora of case laws where the courts, various CESTAT held that "Only persons issuing consignment notes are covered within 'goods transport agency'; therefore, individual truck owners who do not book cargo and issue consignment note in normal course of business are, prima facie, not goods transport agency and, accordingly, services provided by them are not liable to service tax"

It was observed by CESTAT New Delhi in case of Birla Ready Mix v. Commissioner of Central Excise, [2013] 39 STT 257 that "The mere fact that the operator is doing activity of transportation cannot make the operator a "Goods Transport Agency." The fact that part of the hire charges for the vehicles is being paid on the basis of number of kilometers run cannot alter the nature of the responsibility of the operators because such payment is consistent with a scheme of hiring the vehicle though it may be consistent with a contract for transportation of goods also. On the other hand a fixed charge per month for the vehicle is more consistent with a scheme of hiring the vehicle rather than a contract for transporting the goods..... the operator was responsible only for the vehicle and there is no custodial rights or responsibilities in matter of goods carried. This obviates the need to issue consignment notes which normally is a document of title for the goods when it is in the custody of the transporter. Since the appellants are responsible for the goods transported, consignment note, which is a document of title to the goods, is not issued."

CESTAT, New Delhi in case of Nandganj Sihori Sugar Co. v. Commissioner of Central Excise, [2014] 46 GST 570 observed that "a consignment note issued by Goods Transport Agency represent its liability to transport the consignment handed over to it to the destination and deliver the same to the consignee and merely a bill issued for transportation of goods cannot be treated as Consignment Note."

In brief, wherever the transporter is responsible for transport of goods, he may be considered as GTA irrespective if fact that there is a consignment note issued by the transporter or not.

Rate of Tax on GTA

Notification No. 11/2017 - Central Tax (Rate) which notified rate on services; Entry 9 (iii) prescribes rate of 2.5% CGST on GTA Services with a condition that Credit of input tax on goods or services used in supplying the service has not been taken. Though rate of 5% is beneficial, restriction on ITC became a big hindrance. For example, if GTA purchases a vehicle which is taxed at 18%/28% depending on nature of vehicle, person pays GST on purchase of vehicle which will be a significant amount but is not eligible for ITC and hence tax paid on vehicle becomes his cost which in turn increases his price of transport charges which goes against the objective of introduction of GST. Hence the rate applicable to GTA is amended vide Notification No. 20/2017 – Central tax (Rate) dated 22.08.2017 wherein the tax structure applicable to GTA service is amended as follows:-

Rate of Tax	Restriction
2.5%	Credit of input tax on goods or services used in supplying the service has not been taken
6%	No ITC restriction

Therefore, if GTA charges 5% GST on its outward supply, it is not eligible to avail or utilise ITC on taxes paid on its inward supplies even if used in the course or furtherance of

business. However, if GTA charges 12% GST on its outward supplies, it is eligible to avail ITC and pay tax after set off of tax paid on inward supplies.

In case where transport charges are borne by the supplier of goods, the invoice is raised by supplier along with transport charges. The rate of GST for transport charges depends on the rate applicable on goods which are being transported since transportation and supply of goods becomes a composite supply of goods being transported and rate applicable for goods is applied for transportation charges too. However, if different rates of goods are transported in a single invoice, there arises a challenge in the rate applicable for transport charges. For Example, if goods attracting 12% and 28% are invoiced together and transport charges are included in the invoice, challenge is to determine the rate of GST on transport charges.

Reverse Charge Mechanism in case of GTA

In general, under indirect taxes, tax is collected from the buyer of Goods or receiver of services and the supplier pays to the Government. As per section 9(3) of CGST Act, 2017 is tax shall be payable by recipient under reverse charge in certain notified cases. In this connection, attention needs to be drawn to Notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017 wherein Entry 1 talks of Goods Transport Agency service. As per the said entry,

Nature of Service	Service Provider	Service Recipient
Transport of Goods by Road	Goods Transport Agency	Any of the following:- (a) Any Factory registered under Factories Act, 1948 (b) Any Society registered under Societies Registration Act, 1860 or any other law for time being in force in India (c) Any Co-operative Society established by or under any law (d) Any person registered under CGST/SGST/IGST/UTGST (e) Any body corporate established by or under any law (f) Any partnership firm whether registered or not including AOP (Association of Persons) (g) Any Casual Taxable person

After issue of Notification No. 20/2017 – Central Tax (Rate) wherein GTA is allowed to avail ITC, the relevant amendment was also made in Notification No. 13/2017 – Central Tax (Rate) vide Notification No. 22/2017 – Central Tax (Rate) dated 22.08.2017 wherein Entry 1 as discussed above has been amended to exclude GTA who charges 6% CGST i.e. If GTA charges GST rate of 12% (6% CGST+ 6% SGST), the recipient need not pay tax under Reverse Charge under Section 9(3) of CGST Act, 2017.

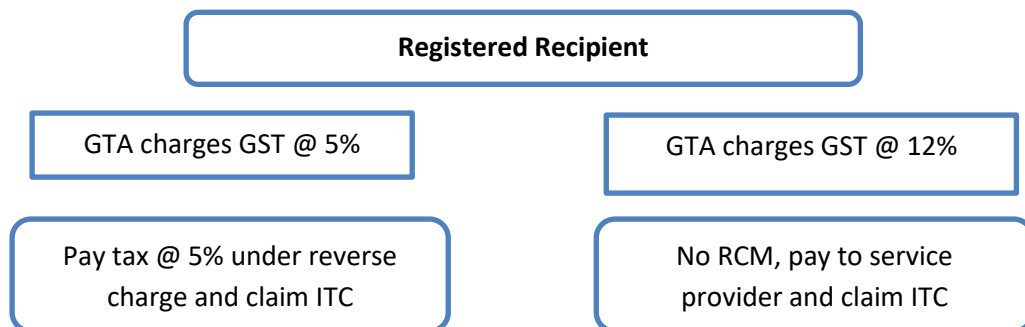
Eligibility of ITC on tax paid on GTA

Input Tax Credit (ITC) is allowed on tax paid on Inputs, Input Services and Capital Goods used in the course or furtherance of business. ITC on tax paid on GTA service is allowed to be availed if the service is used in the course of business. However, the restriction mentioned in Notification No, 11/2017 – Central Tax (Rate) dated 20.06.2017 as discussed earlier is for service provider and not for service recipient who is paying tax under reverse charge. Therefore, tax paid on GTA under reverse charge is allowed as input tax service for the person who paid tax under reverse charge. In case where GTA charges 12% GST, the recipient need not pay tax under reverse charge and the tax paid to service provider is eligible ITC if it is used in the course or furtherance of business.

Conclusion

In Short, the following depicts the taxability of GTA under GST

From the view point of recipient of GTA service,



From the view point of Supplier of GTA Service,

