LEVY ON GTA - ONLY BY PLA?

(By S.Jaikumar, G.Natarajan & M.Karthikeyan)

Mr. Evergreen and Mr. Nevergreen are our imaginary creations. As Mr. Evergreen characterizes extreme optimism, Mr. Nevergreen portrays abysmal pessimism. At times, they also speak some down–to-earth realism. In this piece, they confront each other on the burning topic of the nation on indirect taxation viz., levy of service tax on Goods Transport Agency services.

Now, on to them.

Evergreen: Hello Mr. Nevergreen. How are you? Where are you coming from? Why you look so dull, cheer up my dear!

Nevergreen: Hi. Am ok. Am just coming from the Central Excise department. I went there to get registered under the Service Tax for the GTA.

Evergreen: Achcha. It's fine. By the way, you are already a registered manufacturer paying duty and availing Cenvat credit. So there would be no pay out for you.

Nevergreen: Means?

Evergreen: You need not pay anything from your pocket. On one hand you will pay your service tax liability on GTA from your Cenvat credit and on the other hand you will take Cenvat credit of the same.

Nevergreen: How can you come out with such a strange logic! How is it possible?

Evergreen: As per rule 3 (4) (e) of the Cenvat Credit Rules, 2004, Cenvat Credit can be used for payment of "service tax on any output service".

Nevergreen: But the GTA service is not an "output service" for me. It is only an "input service".

Evergreen: You are right. But, have a look at the Explanation appended to the definition of the term "output service" under rule 2 (p) of the Cenvat Credit Rules, 2004. It reads as:

> *"Output service" means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions "provider" and "provided" shall be construed accordingly;*
>
> *Explanation: For the removal of doubts, it is clarified that if a person liable for paying the service tax does not provide any taxable service or does not manufacture any final products, the service for which he is liable to pay service tax shall be deemed to be the output service.*

From the above Explanation, you may find that a statutory fiction is being created to consider the services which are not provided by a person also, as a "deemed output service" at the hands of those persons, who are liable for payment of service tax.

Nevergreen: So what?

Evergreen: As you are a "person liable for paying service tax" as per Rule 2(1)(d) of the Service Tax Rules, 1994, the service for which you are made liable to pay the Service Tax, viz., GTA, becomes your "deemed output service".

Nevergreen: Ridiculous! How can a service be an input service as well as an output service for the same person?

Evergreen: Where is the restriction? In the instant case, the GTA service is prima facie an input service. By virtue of a deeming fiction, it is deemed as an output service, in certain cases. There is no bar in the statute to the effect that a service cannot be an input service as well as a deemed output service.

Nevergreen: Can you amplify to whom all the deeming provision is made applicable to?

Evergreen: The deeming provision would be applicable, if the person liable for paying the service tax either (a) does not provide any taxable service **OR** (b) does not manufacture any final products. As the disjunctive word **"OR"** is used between these two conditions, it has to be construed that if a person satisfies any one of the above conditions, the service for which he is liable for paying service tax (GTA service, in the instant case) can be considered as a "deemed output service". In other words, if a manufacturer does not provide any taxable service, the GTA service shall be a "deemed output service" for him. Similarly, if a person providing any taxable service does not manufacture any final products, the GTA service can be considered as a "deemed output service" for him. Only when a person is manufacturing final products as well as renders any taxable service, the above Explanation would not be made applicable to him.

Nevergreen: Funny! Why the deeming fiction should apply only to one who either manufactures or provides taxable service? Why not to a person, who is engaged in both? What is the logic? Further if your explanation is accepted and if a manufacturer is allowed to pay the service tax on GTA through his accumulated Cenvat Credit and the same is once again availed as Cenvat Credit by him, then is there any revenue to the Government? Then it would be only a book exercise. Is this the intention of the levy?

Evergreen: I am not able to find out the logic behind the Explanation. It may be intentional or not. But is it in violation of any express provisions? To me, it is not. If you are this against then tell me as to what would be interpretation of the Explanation appended to the definition of "output service"?

Nevergreen: The Explanation is not so intended. I feel the purpose is totally different. Let me elaborate. As you know. Rule 3 of Cenvat Credit Rules, 2004, is the one which prescribes the persons eligible to avail Cenvat credit. Normally, a person who is either a manufacturer of final products or a provider of taxable service would be covered within the ambit of Rule 3 of the Cenvat Credit Rules, 2004. They would be entitled to avail Cenvat Credit of the specified duties paid on

their inputs / capital goods and service tax paid on input services. But, there are circumstances, by which persons, who are neither manufacturers of final products nor providers of taxable service, are also made liable for payment of service tax. (Eg. GTA Service, Service tax payable when the service provider is situated outside India). Such persons, might have also consumed / used any inputs / capital goods / input service, while receiving the services. Unless the service in respect of which they have become liable for payment of service tax is deemed as an output service, they cannot avail Cenvat Credit of the specified duties paid on their inputs / capital goods / input services.

I will give an example.

A person (who is neither a manufacturer of final products nor a provider of any taxable service) has received consulting engineering services from a foreign company. Since the service provider is situated outside India, the said person is liable for payment of service tax in this regard, as per Rule 2 (1) (d) (v) of the Service Tax Rules, 1994. The said person has availed various input services (viz., courier service, telephone service, leased circuit service, etc.) while receiving such service from the foreign company and also paid service tax thereon. *Per se*, he is not entitled for the Cenvat credit of the above said input services because he is neither a manufacturer nor a service provider. By virtue of this deeming provision under the said Explanation, the consulting engineering service is made as an deemed output service for him and thus he is made as a service provider. As such, he becomes entitled to avail Cenvat Credit, as per rule 3 (1) of the CCR, 2004 on the eligible input services.

Evergreen: Do you mean to say that the Explanation is intended only for this purpose?

Nevergreen: I strongly believe so. The above proposition makes the GTA service as an output service ONLY to those who either do not manufacture or do not provide any taxable service. This is because of the fact that, such persons would have earned the Cenvat credit on various other inputs/input services. If they are allowed to utilise such Cenvat credit to discharge their GTA service Tax liability, then it would make the levy fallacious and purposeless. So the Explanations bars both the manufacturers and the service providers from the deeming fiction. In other words, for them, it shall not be a deemed output service and hence the liability cannot be discharged through their Cenvat credit under Rule 3(4)(e) of the Cenvat Credit Rules, 2004 **but only through CASH.** That makes the levy sensible and meaningful!

Evergreen: But what about the Cenvat credit of the service tax so paid on the GTA? Is it available as credit or not?

Nevergreen: Hmmm. To an extent… Yes.

Evergreen: Means?

Nevergreen: Not in entirety. May be so long as it is your input service!

Evergreen: You have already argued that GTA service is not my output service. If it is not an input service too, then what is it?

Nevergreen: Though the GTA service is not your output service, it is not your input service straightaway. Such services should satisfy the definition of an "input service" as per Rule 2(l) of the Cenvat Credit Rules, 2004.

Evergreen: Ok. I agree to it. If so, do you agree that I am entitled to avail Cenvat Credit of all the service tax paid on GTA services utilised for inward movement of raw materials, intermediate movement of goods to the job workers, outward transportation of final products, etc.

Nevergreen: Not in all cases. Credit would not be allowed in respect of the service tax paid on freight utilise for outward movement of finished goods, from the place of removal to the place of customers.

Evergreen: Why not?

Nevergreen: The definition of the term "input service" specifies only "outward transportation upto the place of removal".

Evergreen: But my dear Sir, please read the earlier part of the definition. It reads as "any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of the final product and clearance of final products **from the place of removal**.

Nevergreen : That is a general provision. As far as the transportation is concerned, only what is specifically provided alone is entitled.

Evergreen: Ha! That justifies you are Mr. Nevergreen. The latter part of the definition is only an inclusive one and is not exhaustive.

Nevergreen: Then, what would be the relevance of such inclusion?

Evergreen: Well. Wherever the goods are directly sold from the factory (place of removal), the service tax in respect of the freight paid for transportation of the goods from the factory would be covered under "any service in or in relation to clearance of final products from the place of removal". If the goods are cleared from a depot, the freight incurred from the depot to the customer place would once again be covered by the above expression. But, there would be a vacuum in respect of the freight between the factory and the depot. The latter part of the definition, covering transportation upto the place of removal, would take care of such situation.

Nevergreen: How can it be? The freight paid for the removal of excisable goods from the place of removal is not at all part of the assessable value of the subject goods, for arriving at the assessable value. How can the service tax paid on such freight be allowed as Cenvat Credit? Is it not against the concept of Cenvat – Avoiding the cascading effect of duty?

Evergreen: Availment of Cenvat credit on input service has got nothing to do with the assessable value of the goods being cleared. Is there any statutory requirement that the value of all input services, on which Cenvat Credit has been availed, shall form part of the assessable value of the goods being cleared? If you remember, there was a requirement sometime back that the packing materials, whose value is included in the value of the final products, are eligible for Cenvat Credit as input.

But the present rules do not have any such correlation to the assessable value of the final products and the value of the inputs / input services.

Nevergreen: May be true but may not be correct. Don't ever be surprised that, someday, our Bapus would bring retrospective amendments to cover up their goof.