

Service Tax on GTA services can be demanded from specified consignor or consignee, whoever is liable to pay freight

A Case Study

Udyog Software (India) Ltd.

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**Essar Logistics Ltd. vs. Commissioner of Central Excise,
Surat [(2014) 48 taxmann.com 73 (Ahmedabad - CESTAT)]**

Essar Logistics Ltd. (the **Appellant**), a Goods Transport Agency (GTA) service provider, was engaged by Essar Oil Ltd. (EOL) for transportation of their final products from refinery to depots of EOL itself, as well as to various terminals hired by the EOL.

In the case of transfer of final products to depots of EOL, Service tax leviable was being paid by EOL itself hence it was not in dispute. In the case of transportation of final products from refinery of EOL to their franchisees and other depots of the EOL, the Appellant was charging freight from said consignee, on basis of lorry receipts and Service tax thereon was neither paid by EOL nor by the Appellant.

The Department contended that the Appellant is responsible to pay Service tax in respect of the services rendered by transportation of goods from EOL to their franchisees. It was argued that when the consignee is not covered under the entity as specified under the Rule 2(1)(d)(v) of the Service Tax Rules, 1994 (the Service Tax Rules), and the consignor also does not pay the freight, the Appellant, being GTA service provider, is liable to discharge the Service tax on the freight collected by them from the consignee though it may be mentioned on the consignment note that consignee is liable to pay Service tax.

The Hon'ble CESTAT, Ahmedabad, held that as per Rule 2(1)(d)(v) of the Service Tax Rules, if consignor or consignee is one of the specified entities, then person liable to pay Service tax would be person liable to pay freight. Since consignor i.e. EOL was a factory as per Factories Act and a company under Companies Act, GTA service provider i.e., the Appellant was not liable to Service tax. It was further held that the clarification of the Board vide Circular No. 341/18/2004- TRU, dated 17-12-2004 cannot go beyond the statutory provisions, which clearly mandate that Service tax liability has to be discharged either by consignor or consignee, if he falls under the specified category under Rule 2(1)(d)(v) of the Service Tax Rules.