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# WHO AM I? Sent to ELT.



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Service tax is leviable on services rendered by "Courier agencies", with effect from 01.11.1996. In this connection, the following clarification issued by the TRU, in its letter F.No.341/43/96 TRU Dated 31.10.1996 is the fabric for this article.

11. Points have been raised about the scope of the term "courier agency." Courier agency has been defined to be a commercial concern engaged in the door-to-door transportation of time sensitive documents, goods or articles, utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles. It is thus to be seen that any commercial concern engaged in the activity described above is a courier agency for the purposes of Section 85 of the Finance (No. 2) Act, 1996 and it is not relevant whether such commercial concern describes itself as a courier agency or not. What is of significance is that once the commercial concern falls within the definition of the term "courier agency" it is liable to pay the service tax on the services provided by it.

12. As regards to the scope of courier agency, the definition is quite elaborate and self-explanatory. Moreover, courier agencies are clearly identifiable by virtue of the nature of business performed by them in the matter of delivery of time sensitive documents, goods or articles. The nature of their business is quite distinct from the ordinary transporters, which carry goods from one place to another place. What distinguishes the commercial concern, as courier agency from an ordinary transporter is the service provided by it in the door-to-door transportation of time sensitive documents, goods or articles.

13. It has been pointed out that some transporters also undertake the door-to-door transportation of goods or articles and they have also made special arrangements for speedy transportation and timely delivery of such goods or articles. In fact, many of them advertise themselves as **Express Cargo Service** giving assurance of delivery within the stipulated time period. The nature of service thus provided by these transporters is not different from the service provided by the conventional courier agencies. Therefore, these **express cargo services** are also liable to pay service tax.

So far so good. But, the levy of service tax on "Goods Transport Agencies", with effect from 01.01.2005 has now brought chill in the spine. It is relevant to point out here that as per Notification 32/2004, service tax in respect of GTA service is payable only on 25 % of the freight, subject off course to some conditions.

Now, the moot question!

Whether those transport operators, who were treated as "couriers agencies" in terms of the above said directions of the TRU, can now call themselves as GTAs, thereby attracting service tax only on 25 % of the freight amount!

Our immediate reaction to the query is "Why not?"



Those "Express cargo Services" are also transport operators *per se*. They transport the goods by road, in goods carriage. By virtue of the nature of the services rendered by them, they were also capable of being considered as "courier agencies". Now, the levy of service tax is applicable for GTAs also. As per Section 65 A of the Finance Act, 1994, a service should be classified according to its most specific description than based on a general description. Prior to the levy of service tax on GTA services, there was no specific category of taxable service, to cover the cases of such transporters, but they were capable of being considered as "courier agencies". Now, when the levy of service tax is introduced on GTA services, which is most specific to cover the cases of such transporter, there is no reason, to deny reclassification of the service under the category of GTA. Had there been no notification providing for payment of service tax on 25 % of the freight amount, such re-classification is not a matter of concern at all and the same should be allowed. As such, any lawful attempt to reduce one's tax liability, by appropriately classifying the service, should not be faulted.

**Parting shot :** Now a reverse swing!!! Most of the transport operators, particularly who cater industrial consumers, ensure timely delivery and undertake door (factory gate) delivery. As per the TRU's letter referred to above, such transporters can be considered as "courier agencies". If so, all along such transporters are liable for payment of service tax as "courier agencies". Is it so???

