No end to tides and taxes in Port.

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Service tax on port service was introduced for the first time, with effect from 16.07.2001. At the time of introduction of the levy, the levy was only in relation to "major ports". Later the scope of this levy has been extended to other ports (minor ports) also, with effect from 01.07.2003. The term "port service" has been defined as "port service means any service rendered by a port or other port (minor ports) or any person authorised by such port or other port, in any manner, in relation to vessels or goods". The broad of nature of such definition of the term "port service" has led to lot of interpretational warfare. What would be the classification of service and consequent effective date, if a service falling under any particular entry of taxable service is rendered within port area, what is the real scope of the "authorisation" envisaged in the definition were all matters of dispute. Airport service was introduced with effect from 10.09.2004 which covered services rendered by the Airports Authority or any person authorised by it, in an airport or civil enclave. Similar disputes arose under this category of service also.

May be to put an end to such disputes, certain amendments were proposed in the Finance Bill, 2010, which were also enacted with effect from 01.07.2010.

The definition of "port service" under section 65 (82) of the Act, has been substituted as "port service means any service rendered within a port or other port, in any manner". The definition of taxable service in case of port service, other port service (minor port) and airport service were also amended and as per the amended definitions, "any service provided to be provided to any person by any other person in relation to port services in a port (major port) / in other port (minor ports), in any manner" would be a taxable service under port services. Similarly, any service provided or to be provided to any person by airports authority or by any other person in any airport or civil enclave, would be a taxable service.

It has also been provided that the provisions of Section 65 A of the Act, dealing with classification of service would not apply if the service is wholly rendered within the port / other port / airport / civil enclave.

The consequences of the above amendments are:

(a) The service provider can be anybody, not necessarily authorised by port / other port / airports authority.
(b) Any service rendered in a port / other port / airport / civil enclave would be a taxable service. It need not be falling under any other category of taxable service. For example, if a thug illegally collects "mamool" from various persons inside the port, for enabling them to conduct their business without any hindrance from him, he would be rendering "port service" and would be liable to pay service tax on such "mamools", notwithstanding the illegality involved!
(c) If any service is performed wholly inside the port / other port / airport / civil enclave, the same would be classifiable only under these services and not under any other head of taxable services. A host of services may be performed inside the port / other port / airport / civil enclave and it is very difficult to predict the nature of such services. But for certain activities, for which exemption has been provided under Notifications 33/2010 ST Dated 22.06.2010, 38, 41 & 42/2010 ST Dated 28.06.2010,

any other service rendered within the port / other port / airport / civil enclave, would be liable to service tax. For example, if there is a mandap inside the port / other port / airport / civil enclave and the same is hired out to the employees thereof, the same shall be liable to service tax only under port / other port / airport service, and the benefit of abatement for mandap keeper service, available under notification 1/2006 would not be available. Similar would be the fate of a pandal / shaminana contractor and outdoor caterer, if they put up a pandal / shamiana or provide catering service, inside port / other port / airport / civil enclave.

(d) The issue as to whether a service is "wholly" rendered within the port / other port / airport / civil enclave, would be important, to decide whether the service is classifiable under port / other port / airport service, or under any other category of taxable service. This will assume more important, if exemption is available under one category of service and not available under another category of service, or if the abatement rates are different.

As a consequence of the amendments, Notification 1/2006, providing for various abatement percentages for various taxable services has also been amended by Notification 40/2010 ST Dated 28.06.2010 (albeit with the goof up of amending an non existing entry and correcting it thereafter). But this amendment is also going to lead to lot of fiasco.

The entry of port services / airport services / other port services is sought to be added under different serial numbers of the notifications, dealing with different taxable services, with different abatement rates. For example, under rent a cab service, where there is an abatement of 60 %, these port / airport / other services are added. Further the port / airport / other port services are also added under other categories of services such as erection and commissioning, construction service, etc. where different abatement rates are available.

Once any service wholly performed inside the port / airport is classified under port / airport service, the presence of multiple entries with various abatements would create confusion as to which rate of abatement should be claimed. There is no stipulation that if services of rent a cab is performed inside the port / airport, the abatement applicable to rent a cab service will apply and if the services of erection, commissioning and installation service is performed inside the port / airport, the abatement applicable to erection, commissioning and installation service would apply.

To further amplify, the following abtement percentages are available for port / other port / airport services.

S.No.	Notification	Abatement %
1	S.No. 3 of Notification 1/2006, as amended by Notification 40/2010	60 %
2	S.No. 5 of Notification 1/2006, as amended by Notification 40/2010	67 %
3	S.No. 7 of Notification 1/2006, as amended by Notification 40/2010	67 %
4	S.No. 7(a) of Notification 1/2006, as amended by Notification 40/2010	75%
5	S.No. 10 of Notification 1/2006, as amended by Notification 40/2010	67 %
6	S.No. 10(a) of Notification 1/2006, as amended by Notification 40/2010	75%
7	S.No. 11 of Notification 1/2006, as	70%

	amended by Notification 40/2010	
8	Notification 13/2008	75 %

Now, if a person who provides cabs on rent for use within the port / other port / airport / civil enclave claims 67 % abatement of 70 % abatement, under Notification 1/2006, how can he be denied the same?

Further, Notification 13/2008, providing for 75 % abatement for Goods Transport Agencies, read as "hereby exempts the taxable service provided by a goods transport agency to any person in relation to transport of goods by road in a goods carriage, referred to in sub-clause (zzp) of clause (105) of section 65 of the Finance Act". Now, clauses (zn) or (zzl) or (zzm) are also added to this notification. But where is GTA service referred to these clauses? How does the notification makes sense?

Rather they could have prescribed some uniform rate of abatement for port / other port / airport services, by introducing one more entry in Notification 1/2006, instead of adding the service under different heads.

Anyway, the taxation scenario inside the port and airport would continue to remain stormy and turbulent in the days to come.