

OCEAN FREIGHT IN DEEP SEA!

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While ocean freight could be related to both exports and imports, we shall discuss such ocean freight with regard to imports alone for the purpose of this article and as such wherever freight is mentioned, the same may be read in conjunction with import, unless otherwise specified.

Such freights can be of two types viz., FOB and CIF. While in the case of former the freight, insurance and cost are borne by the importer, in the later case the freight and insurance are paid by the exporter himself. In the issue for discussion is only where the foreign supplier i.e., exporter arranges a foreign liner for transportation of the goods to India and its consequent levy under the erstwhile Service Tax as well as under the new GST regime.

Service Tax regime:

While the transportation of goods by air or by a vessel from a place outside India to the Customs Station in India was under the negative list up to 01.06.2016 vide sub-clause (ii) of clause (p) of Section 66D of Finance Act, 1994 and hence the said services were not subjected to service tax during the material period of time.

However, vide Finance Act, 1994, the said sub-clause was omitted with effect from 01st June 2016 resulting in introduction of levy on vessel transporting goods through sea from a place outside India to the Customs clearance point. While amending the said Act, the Legislature has continued to extend the benefit of exemption to transportation of goods by air.

When the cost of transportation is borne by the importer i.e., imports on FOB and when the service provider (Liner) is located outside taxable

territory i.e., India, then the importer as a recipient is liable to be pay service tax upon importation. On the contrary when the goods are imported into India and the Bill of Entry is filed by the importer in CIF value, then no service tax is liable on the hands of the importer. This apparently led to an anomaly.

To remedy this anomaly, an amendment was made. Vide Notification No.03/2017-ST dated 12.01.2017, brought into force from 22.01.2017, reverse charge was introduced by amending Notification No.30/2012-ST. The relevant stands thus:

“(vii) provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India;”;

Consequently, sl.no.12 was introduced in the said notification, which is reproduced below with a new explanation inserted therein:

“ 12.	<i>in respect of services provided or agreed to be provided by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India</i>	Nil	100%”.
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Explanation IV.- For the purposes of this notification, in respect of services provided or agreed to be provided by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, person liable for paying service tax other than the service provider shall be the person in India who complies with sections 29, 30 or 38 read with section 148 of the Customs Act, 1962 (52 of 1962) with respect to such goods.”.

The table above indicates that the service tax in the hands of service provider (Liner) would be NIL and that the service recipient (person who complies with sections 29, 30, 38 read with Section 148 of Customs Act, 1962) would be liable for 100% of the service tax liability.

As per the above, the levy of service tax would on the person filing the import manifest viz., agent of Shipping Liner, under reverse charge.

Parallel amendments were made to the provisions of Rule 2(1)(d)(i) of Service Tax Rules, 1994 wherein person liable to pay service tax has been defined – Notification No.02/2017-ST refers: -

(EEC) in relation to services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, the person in India who complies with sections 29, 30 or 38 read with section 148 of the Customs Act, 1962 (52 of 1962) with respect to such goods.

As the levy was imposed on the person filing the import manifest i.e., agent of the Shipping Liner, certain practical problems in the form of claiming the service tax and also availing cenvat credit crept in.

Thus with effect from 23.04.2017, the provisions of the above said Rule was amendment by way of Notification No.16/2017-ST dated 13.04.2017 in order to render the importer as defined under Section 2(26) of Customs Act, 1962 liable. As a result for the imports made with effect from the said date, the importer i.e., the person who is filing the Bill of Entry is liable to pay ST under Reverse Charge.

Consequential amendments were also made with regard to the Point of Taxation. A new Rule 8B of Point of Taxation Rules, 2012 was introduced wherein the point of taxation in respect of such Reverse Charge payable by the importer for the ocean freight is the date of filing of Bill of Lading by the foreign supplier. In this regard, Notification No.14/2017-ST dated 13.04.2017 refers.

Similar amendments were made in Cenvat Credit Rules, 2004 by way of amendment to Rule 2(l) ibid so as to include the above said services within its ambit to enable the importer to avail credit of such service tax

paid. In this regard Notification No.10/2017-CE (NT) dt.13.04.2017 refers.

Consequent to the above said amendments, the importer is liable to pay service tax in respect of the services of transportation of goods by vessel and since no freight amount would be available with the importer, he would be liable to pay ST at 1.5% on the CIF value. The liability to pay ST by the importer continued until GST was introduced with effect from 01.07.2017.

GST Regime:

Under GST Regime, the provisions contained in Integrated Goods and Services Tax Act, 2017, would govern the Place of Supply. With regard to the instant case, the Place of Supply shall be determined by Section 13 (9) ibid and in terms thereof the place of supply would be the place of destination of the goods. Since the destination of the goods is in taxable territory, the ocean freight would be subjected to the levy of GST. For ease of reference, the relevant provision is reproduced below:

“(9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.”

The levy of GST for the said supply is brought under reverse charge vide Notification No.10/2017-IT (Rate) dated 28.06.2017 (sl.no.10).

Vide explanation 4 to Notification No.8/2017-IT (Rate) dated 28.06.2017 {Sl.No.9 (ii)} the GST payable by the importer, when the freight charges is not available, is 5% on 10% of CIF value since 10% is deemed to be the freight charges in such cases.

In fine, under the GST regime, the importer is liable to pay GST 0.5% on CIF Value for the Ocean Freight when the foreign supplier engages a foreign liner for transporting through a vessel.

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